

ABSTRACT

Title of Document: STAYING POWER: THE MAINSTREAMING OF THE HARD-CORE PORNOGRAPHIC FILM INDUSTRY, 1969-1990

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When publicly screened hard-core pornographic films first appeared in theatres, in 1969, they generated less than \$1 million in annual revenue. By 1990, revenue approached \$600 million. By 2000, estimates placed U.S. revenue between \$5 and \$15 billion. This dissertation examines the hard-core industry's growth by concentrating on changes in the mode of consumption as well as noting changes in the films themselves. And it ties the story of the industry and its customers to the intersecting narratives of the Supreme Court, anti-pornography activism, and the Federal government.

The industry provided a product desired by a large and growing number of Americans. Videotape technology moved hard-core film from the highly contested public space of the motion picture theatre to the more easily defended private space of the home. The more effective the films were in arousing viewers and the more secret their consumption, the more the industry grew. The nature of the debate over hard-core pornography favored those defending consumption. While opponents of hard-

core emphasized pornography's putative harm, evidence for these claims never rose above the anecdotal level. Finally, successful prosecution of hard-core films became increasingly untenable. Even when Federal and state prosecutions increased during the 1980s, a grudging cultural toleration of hard-core films meant prosecutors could no longer rely upon juries to return guilty verdicts.

The hard-core industry, buoyed by success and confident that it understood their consumers, employed various publications to create a sense of community, assure customers that the best films were the most sexually arousing, and that arousal was both right and proper. Masturbation is crucial to understanding the industry's growth. Because of an 18th-century medical masturbation panic that reached its peak in the United States in the late 19th-century and endured, 20th-century American courts grappled with an obscenity doctrine predicated upon a barely acknowledged, enduring belief in the dangers posed by masturbation. Ironically, hard-core film became, after the shift to videotape, an astonishingly convenient and effective fantasy tool. The hard-core pornographic film industry grew in direct relation to its ability to supply a product that facilitated private desire and masturbation.

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PORNOGRAPHIC FILM INDUSTRY, 1969-1990

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Dedication

To Danis Kovanda, Maureen Johnson-Guerin, and Alfred Guerin

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Chapter 1: Introduction

A Different Perspective on the History of Hard-core Pornographic Film

Shifting the Focus

This dissertation examines the growth of the hard-core pornographic film industry between 1970 and 1990. I focus on the factors propelling this growth, but because of its size, even during the brief period, a comprehensive examination of the industry was impossible. My focus is upon key turning points, and major factors that enabled or retarded the industry's movement towards mainstream status, paying special attention to consumption of the films, and the efforts of the industry to defend itself against attack and create a relationship with its customers. Consequently, I often address the industry's history, in broad, general terms for purposes of concision. I found the wealth of material written on hard-core film content, and on the history of censorship, both activist and state-sponsored, insufficient for explaining why the industry grew so rapidly. Identifying the boundaries within which the industry operated does much to clarify the shape of the hard-core industry, and the content-based analysis tells us a vast amount about the films themselves. By directing attention to changes in the nature and modes of consumption, however—and here, I fully concede that evidence is often sparse or inferential—the reasons for the growth of the industry become clearer. I chose this period because these were the years during which the industry grew from an inchoate group of small, clandestine filmmakers into an identifiable industry. The current shape and size of the industry coalesced during this period. By 1990, the hard-core pornographic film was part of

mainstream American culture. By mainstream, I mean, first, for the majority of Americans who wished to purchase hard-core film, the films were moderately easy to acquire and quite affordable. While a minority of communities erected obstacles, by 1990, consumers were able to overcome these impediments with a modicum of effort, and the industry was able to market its product, even if it had to practice a degree of discretion on occasion. Second, the legal environment within which the industry maneuvered became sufficiently accommodating to ensure that, absent a sustained system of nation-wide prosecution and a radical judicial reversal of obscenity doctrine, hard-core film would survive. In short, the industry was not going to go away. Activism, legislation, and Supreme Court vagaries might conceivably blunt the growth of hard-core and restrain the marketing of extreme varieties of film, but eradication of hard-core was no longer an option. Even the most dedicated anti-pornography activists now concede that the “genie is out of the bottle.” Indeed, for some activists, continuing their opposition to pornography amounts to an “act of faith;” refusing to acquiesce publicly to a situation they privately acknowledge.¹ By arguing that hard-core is part of the mainstream, I do not assert that the culture is inundated with hard-core pornography, though some opponents make that charge. Using the word mainstream, in that sense, deploys the term for fright value, arguing that the culture is damaged, corrupted, and coarsened by the ready availability of pornography.² Since the consumption of pornography is an essentially private

¹ Robert W. Peters, President of Morality in Media, interview by author, New York, NY, October 18, 2006.

² Pamela Paul, *Pornified: How Pornography Is Damaging Our Lives, Our Relationships, and Our Families*, (New York, Henry Holt & Company, 2006); Ben Shapiro, *Porn Generation: How Social Liberalism is Corrupting our Future*, (Washington, D.C., Regnery Publishing, Inc., 2005). As an alternative work that acknowledges the culture’s familiarity with hard-core yet refuses to express

behavior, especially in the years after hard-core films moved out of the theaters and into the private home, I recognize the resistance some readers might experience when I characterize it as a cultural activity. This dissertation views culture broadly. Culture encompasses both consumptive practices and the products consumed, and mainstream culture encompasses the practices and products that are both familiar and available to a majority of Americans. Ready availability, however, does not mean rampant use. To say that today hard-core pornography is part of mainstream culture is to observe the obvious; it is never more than a mouse click away. That is not the same as saying everyone is clicking his or her mouse.³

This dissertation emphasizes the changes in the mode of consumption of the films, over the films' content, as its principal focus of study. Therefore, this dissertation represents a shift in emphasis and focus in the field of pornographic film history. I do address film content, but I do so sparingly in comparison to other works in this field. I believe that seeking to understand how, and under what circumstances people watched porn, coupled with an examination of how the industry utilized its awareness of the changes in the mode of consumption illuminates the issue of how the industry grew and thrived in ways previously overlooked. Viewed from this perspective of consumption, aspects other than film content become far more

alarm, see: Andrew Benjamin, *Pornification*, (New York, NY: Falls Media, 2006). Benjamin's humorous book invites readers to identify original Hollywood films based on their 'pornified' titles, i.e. *Analyze This*, *Cold Mountain* and *Grinding Nemo*.

³ While anecdotal, a personal experience illuminates the cultural familiarity I mean when I say hard-core became mainstream. During a conversation with Christopher Hitchens about this dissertation, he said, "I'll give you cultural mainstream; I once found myself on a jet with Milos Forman, Larry Flynt, Courtney Love, and Woody Harrelson headed to Prague to premiere a movie about Flynt for Václav Havel, the President of the Czech Republic. You can't get more mainstream than that." Hitchens was referring to *The People vs. Larry Flynt*, Directed by Milos Forman, Columbia Pictures, 1996.

important. One of the principal results of this perspective shift is that masturbation gains significant explanatory value in the history of hard-core film. As the work of Nicola Beisel demonstrates, late 19th-century anti-obscenity activism, led by Anthony Comstock, sought to restrict access to pornographic material primarily because of the fear attending the ‘secret vice.’⁴ Although religious traditions certainly buttressed anti-obscenity activism, flavored the rhetoric of opposition, and attracted support, the legislative and judicial acts that outlawed obscene materials relied upon a non-religious, medical discourse concerning masturbation’s effects.⁵ Even today the 2003 Supreme Court case *Lawrence v. Texas* provides a stark example of the resilience of anti-masturbatory beliefs in current American legal thought. *Lawrence* overturned the 1986 sodomy case, *Bowers v. Hardwick*.⁶ Justice Antonin Scalia’s *Lawrence* dissent noted that without *Bowers*’, “validation of laws based on moral choices,” a wide variety of state laws against, “bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity,” were open to reversal.⁷

⁴Nicola Kay Beisel, *Imperiled Innocents: Anthony Comstock and Family Reproduction in Victorian America*, (Princeton, N.J.: Princeton University Press, 1997).

⁵ Ronald Hamowy, “Medicine and the Crimination of Sin: ‘Self-Abuse’ in 19th Century America,” *Journal of Libertarian Studies*, Vol. 1, (1977), 229-270, and Allan Hunt, “The Great Masturbation Panic and the Discourses of Moral Regulation in Nineteenth and Early Twentieth-Century Britain,” *Journal of the History of Sexuality*, Vol. 8, No. 4, (Apr., 1998), 575-615.

⁶ *Bowers v. Hardwick*, 478 U.S. 186, (1986).

⁷ *Lawrence, et al. v. Texas*, 539 U.S. 558 at 590. Scalia was perhaps prescient, in his dissent. On February 12, 2008 (revised March 10), the Fifth Circuit Court voided a Texas statute that outlawed selling, giving, lending, distributing, or advertising devices designed or marketed for the “stimulation of human genital organs.” This leaves Mississippi, Alabama, and Virginia the only states with existing laws against such products: Miss. Code Ann. § 97-29-105; Ala. Code § 13A-12-200.2, and Va. Code Ann. § 18.2-373. *Reliable Consultants v. Ronnie Earl* 517 F.3d 738 (5th Cir. 2008). *Reliable Consultants* effectively overturns *Yoroko v. State*, which held there was no constitutional right, in Texas, “To stimulate...another’s genitals with an object.” *Yoroko v. State*, 690 S.W.2d 260, 263 (Tex. Crim. App. 1985).

The centrality of masturbation in reference to pornography, the fears masturbation engendered, the influence these fears had upon both early obscenity law and the mid-20th-century effort to define obscenity anew, stand in stark contrast to the relative comfort the hard-core industry demonstrated when discussing their feature-length films. While masturbation has received scant consideration in the academic literature on pornographic film, the industry seemed to recognize its essential relationship to their product early. The industry's straightforwardness towards masturbation was one of the first clues concerning its significance. Further research in industry publications, especially after uncovering the numerous advertisements for masturbatory devices, confirmed my initial suspicions.

Publicly shown hard-core films appeared at a time when anti-obscenity activism was experiencing a renewal after a period of relative quiet. This fact requires contextualizing feature-length hard-core film in respect to the pornographic films that preceded them. The stag films preceded feature-length hard-core by nearly 70 years. Their illegal status kept the films short, direct, and to the point. Technological innovations, beginning in the late 1920s, made filmmaking easier and cheaper; consequently, a greater number of people tried their hand at the craft. As amateur filmmakers joined the stag workforce, the number of stag films increased. Cheaper and therefore more available projectors meant increasingly viewers could view the stags in the privacy of their homes. It is noteworthy that while stag films, after their initial appearance, progressively sacrificed plotting, demand for the films did not decrease. The stags of the 1940s, 50s, and 60s, clinical and documentary in appearance, constitute the peak of this sort of production. The introduction of

videotape technology, in the late 1970s, worked a profound change, with comparable results, on feature-length hard-core films. Technological ease led to more production, a marked emphasis on the essential element of the films, the portrayal of sexual acts, and an increase in production. The literature on pornographic films of the 1980s consistently documents this dynamic, often characterizing this in terms of a decline in quality. Jim Holliday earthily captures the essence of this view, from within the industry, when he writes that videotape meant that the ‘golden age’ of hard-core films gave way to “shit on video.”⁸

Analyzing the stag films as cinema, and not as an item of contraband, also skews the perception of the films’ use and consumption. It passes over an essential question. Why were they illegal? Pornographies of all sorts, by their very nature, transgress widely shared and very strong cultural standards. This quality is one of their key characteristics. Film pornography, more than other varieties of pornography, operates on the level of fantasy. Hard-core film ostensibly uncovers intimacy, yet the very act of revelation transforms the private into the public. There is a sense, intentionally cultivated by the industry, that the viewer is part of an intimate encounter. Hard-core speaks to curiosity about the not yet experienced mystery of sex, or to memory of experiences; occasionally it speaks to both. The logo for the Pussycat Theater chain, which specialized in hard-core pornographic films, spoke clearly about these dual purposes: “For those who never knew and those

⁸ Jim Holliday, *Only the Best: Jim Holliday's Adult Video Almanac and Trivia Treasury*, (Van Nuys, CA, 1986), 187.

who will never forget.”⁹ Admittedly, some hard-core pornographic films and videos stirred sexual excitement artfully, merging romantic sensibility and explicit imagery. The majority, however, captured images of physical intimacy, with limited contextual framing, and relied upon the viewer to supply whatever additional emotional scaffolding needed to make the viewing experience meaningful. Wherever the films rested along this rough continuum between art and revelation, their fundamental characteristic was the potential physical arousal of the viewer, and it was this arousal, which lay behind the warrant for their suppression as well as their popularity.

This dissertation concludes that the hard-core film industry moved into the mainstream culture by 1990 because of several interrelated factors. First, starting in the 1970s, and continuing through early 1990s, the industry provided a product manifestly desired by a significantly large number of Americans. Second, by adopting videotape technology in the 1980s, the industry moved hard-core film from the highly contested public space of the motion picture theatre to the more easily defended private space of the home. It was through this relocation that the industry experienced its greatest growth, and consolidated its place in American culture. This relocation radically changed the mode of consumption. With the advent of videotape, hard-core films became a practical, real-time accompaniment to private masturbation. Third, the debate over hard-core favored the industry. While opponents emphasized pornography’s harm to viewers and society, empirical evidence for these claims was always inadequate. Outside of academia and the activist base, the rights-based critique of the anti-porn feminists was surprisingly inconsequential to hard-core

⁹ Jim Holliday quoted in Robert Stoller, *Porn: Myths for the Twentieth Century*, (New Haven, CT: Yale University Press, 1991), 167.

films' growth.¹⁰ Fourth, successful prosecution of hard-core films became increasingly unpredictable during the 1980s. At the heart of this instability was the reliance upon prurience as a defining element of legal obscenity. The Federal government's decision to resort to venue shopping and multiple jurisdictional prosecutions argues strongly for a collapsing consensus regarding the suppression of film pornography.

The subsequent relocation of pornographic film into cyberspace, during the 1990s, confirms the importance of the video shift in the 1980s. In much the same way that video store spelled the death of the hard-core theater, the internet may presage the end of the video store. Marcus Baram, in a 2007 online article for *ABC News*, reported the adult industry faced "major challenges" due to online posting of free, amateur hard-core material. "Sales and rentals of adult DVDs fell 30 percent" between 2005 and 2007.¹¹ Streaming video and digital hard-core films, available anytime of the day or night at the family computer, married near absolute privacy to immediate gratification. This however, merely replicated the changes earlier relocations had provoked. The technology edge allowed producers to offer films that empowered the viewer. He could select only those sexual acts that they desire to see, skipping over scenes of oral or vaginal sex, and going straight to the 'cum shots' or not.¹²

¹⁰ Making this assertion about the relative inconsequentiality of the feminist critique does not engage the truth claims of the feminist's contention; it merely assesses its limited impact on the industry's growth.

¹¹ Marcus Baram, "Free Porn Threatens Adult Film," *ABC News*, (June 11, 2007), <http://abcnews.go.com/business/Story?id=3259416&page=1>, (accessed Sept. 21, 2007).

¹² The viewer could bypass the 'cum shots' and view only oral or anal scenes. The viewer becomes the editor/director of his own fantasies.

The hard-core industry emerged in the context of the sexual revolution. While it is not the goal of this dissertation to reexamine the nature of that multi-faceted social reconfiguration in American sexual mores, it is important to note that while characterized as a liberating era; it was also a period of conflict. Large sections of American society continued to view sexuality as a dangerous and volatile force; the reaction to the growing calls for and assumption of sexual autonomy is as important an aspect of the era as the movement towards liberty. This is not to discount American society's acceptance of sexuality as an intrinsic component of human happiness, its increased tolerance of non-procreative sexual practices, and its recognition of the rights of the individual to seek sexual satisfaction. It is to acknowledge, rather, that segments of American society still contest the results of the revolution.

Did the films propel the sexual revolution, or were they a result of it? I believe the answer is both. The films revealed and inspired a range of sexual possibilities, as well as triggering reactions, both positive and negative. Hard-core films were for some an incitement to act out sexual fantasies. Sexual norms were in flux, and hard-core film's content and availability reinforced some people's belief in the need for change. For others, however, the availability led to questions concerning the rate of change. For many, the films served as a sign of social decay. While the films appeared in a society where some members were primed to enjoy them, others eager to exploit them, and still others resolved to oppose them, the legal system was unprepared for their arrival. A decade of Supreme Court decisions, rightly characterized as a march towards liberalization in expression, invited and protected

frank discussion and representation of sexuality. Behind the Court's decisions, however, lay an unwavering opposition to what it defined as obscene pornographic materials. As Justice William J. Brennan initially defined obscenity, these were works with predominating "tendency to excite lustful thoughts."¹³ Latent at the core of this formulation of obscenity lay a barely acknowledged, remarkably enduring belief in the dangers posed by masturbation. I contend that this conflation of obscenity and masturbatory material is of central importance in understanding the boundary shaping enterprise the Court instigated and its ultimate failure to limit the industry's growth. The anti-masturbatory efforts of the 19th-century structured obscenity legislation at the end of the century, and while the panic over masturbation receded partially over the first half of the 20th-century it did not vanish.

Between 1970 and 1990, this obscenity doctrine collided with a hard-core film industry seeking to establish itself. At times, the doctrine cohered and constrained the industry, at other times the doctrine threatened to crumble under its own inconsistencies. For the first decade of hard-core film's existence, the industry sought to fit within these boundaries regarding public display. This was difficult as obscenity laws by their nature aim to exclude representation of non-normative sex. This censorship enterprise, however, became problematic when allegiance to the established moral codes waned. The public display of hard-core film presented explicit, alternative sexual moral options that divorced sexual conduct from procreation and often rejected monogamy as either necessary or preferable, or relevant. One does not have to ascribe intentionality or even great intellectual substance to hard-core films to concede that they were an articulation of new

¹³ Roth v. United States, 354 U.S. 476 (1957) at 389.

possibilities. As offensive as they surely were to the dominant culture, and as crass as the profit seeking motives of the majority of their creators may have been, the films offered radical alternative views of how individuals might conduct themselves sexually. Even inarticulate and vulgar expressions can make arguments.

Technological innovation, eventually, allowed hard-core film to escape the highly contested public space, and relocate to the relative safety of the private home. There, the films could continue to make their argument, if they wished, but they would be doing so to a largely convinced audience. To a lesser extent, this was also true regarding theatrically viewed hard-core; the purchase of a ticket demonstrating an agreement to hear any argument. Furthermore, I argue hard-core became, after the shift to videotape, an astonishingly convenient and effective fantasy tool. The hard-core pornographic film industry grew in direct relation to its ability to supply a product that facilitated private desire and masturbation.

By viewing the shift to videotape as a case of pornographic film fulfilling its potential, this dissertation stands in stark contrast to the large body of academic literature written on the industry to date which characterizes the video era as one of cinematic decline. The standard characterization of hard-core film describes the period between 1974 and 1984 as porn films' golden age.¹⁴ The films of that era were different from the shot-on-video productions that followed them; the later films were often far less complicated examples of filmmaking. However, the era of video

¹⁴ The duration of this 'golden age' is a matter of debate within the industry and the academic community. Often, especially among industry journalists, the debate takes on the tone of sports fans arguing over the best World Series or most exciting Olympic Games. Its similarity to the debate over Hollywood films at the height of the studio system as compared to those of independent auteur directors of the 1970s is also quite striking.

coincides with the industry's greatest growth. Only after a broad and deep review of the industry's films was I able to grasp the significance of this seeming contradiction. The video era films, by the nature of their site of consumption, met the needs of consumers to a greater degree than the earlier, 'better' films. This indicates that, perhaps, customers were not looking for entertaining motion pictures *with* explicit sex. Perhaps, competent depiction of explicit sex, unsullied by cinematic pretensions and distracting elements like plot, character, and dialogue were what the customers wanted. The 'fast-forward' feature on videotape remote control units became very useful. Additionally, I differ from much of the historiography on hard-core film by arguing that a close reading of the films might reveal less about the growth of the industry than does an examination of how the industry represented itself and its product to both its critics and its customers. Concentrating too closely on hard-core films' cinematic characteristics, might make as much sense as trying to understand Prohibition by analyzing individual bottles of bourbon.

"Pornography" has varied meanings for diverse people at different times, and designing a comprehensive definition acceptable to all would likely prove impossible. Walter Kendrick argued famously, "Pornography names an argument, not a thing."¹⁵ While accurate, Kendrick's is a definition of limited utility. Doug Rendleman points out, terms like obscenity, and pornography are perpetually vexing, "The assumption that language can be refined to distinguish the obscene from the merely explicit is

¹⁵ Walter Kendrick, *The Secret Museum: Pornography in Modern Culture*, (New York: Viking, 1987), 31.

probably,” he notes, “fallacious.”¹⁶ Pornography, reduced to its Greek roots, reveals *pornos* (harlots) and *graphos* (writings on or about). Clearly, this is another definition carrying unnecessary value judgments. For the purpose of this dissertation, I conceived “pornography” as sexual representations aiming to provoking a physical or psychological state of arousal. I am aware, however, that this definition encompasses a vast range of materials. Arousal is a personal and individualistic state. The varieties of image and contexts capable of sparking arousal are immense. Often, however, opponents of pornography employed definitions that were arguably even more capacious. A purely descriptive definition of pornography, limited to those films and videotapes showing vaginal or anal intercourse, cunnilingus, fellatio, anilingus, and masturbation, in which bodily penetration is clearly visible, accurately describes the films at issue, but again fails to essentialize either pornography’s operation, or its myriad possibilities. Perhaps definitions are unimportant, due to these constantly shifting standards of arousal. As Linda Williams notes, in discussing Walter Kendrick’s *The Secret Museum*, Kendrick does not define pornography, due to the “fickleness of all definitions: what today is a low-class, mass-consumed form was in the last century the exclusive preserve of elite gentlemen.”¹⁷

Obscenity, fortunately, is a terse legal term and referring solely to those materials that the state proscribes. But, identifying the line separating obscene

¹⁶ Doug Rendleman, “Civilizing Pornography: The Case for an Exclusive Obscenity Nuisance Statute,” *The University of Chicago Law Review*, Vol. 44, No. 3, (Spring, 1977), 559.

¹⁷ Linda Williams, *Hard Core: Power, Pleasure, and the ‘Frenzy of the Visible’*, (Berkeley, CA: University of California Press, 1989), 11.

pornography from non-obscene pornography remains an enduring legal mystery and theoretical problem.

Throughout this dissertation, various individuals and organizations, some defending the industry, others opposing it, will employ the terms; ‘pornography,’ ‘obscenity,’ and ‘hard-core,’ and define them differently, or not at all. For example, some free speech advocates, allied with the industry, often unwillingly attempted to distinguish between pornography and erotica. Al Goldstein, the publisher of *Screw*, illustrated the subjective nature of this distinction when he noted, “Pornography is what turns *you* on. Eroticism is what turns *me* on.”¹⁸ Malleable terms like filthy, lewd, lascivious, indecent, corrupting, and smut, appear interchangeably in much anti-porn literature, but just as often in early Federal and state legislation. I will often use these terms as the historical actors used them, and clarify only when necessary. Similarly, when discussing the defenders of pornographic films, it is necessary to make careful distinctions. Labeling individuals or groups as either pro or anti-pornography reduces the debate into a binary contest when, in truth, there were always more than two sides. In this dissertation, I use the terms pro-porn, anti-porn, or anti-obscenity in the broadest of contexts, and again I will make distinctions when appropriate.

The overarching question of why representations of nudity and intercourse exert a hold on male, female, straight, and gay imaginations is outside the scope of this dissertation. However, it is virtually impossible to write coherently on pornography without first reaching a basic position regarding the nature of

¹⁸ Joseph Slade, *Pornography and Sexual Representation: A Reference Guide, Vol. 1*, (Westport, CT: Greenwood Press, 2001), 30.

pornography's attraction. This is not a question of definitions, but rather a statement of an admittedly personal, subjective, opinion. I believe, however, it is necessary to offer this at the outset. The comments of Camile Paglia come closest to articulating my views regarding the fundamental nature of pornographic sexual representations. "Pornography," she declares, "shows the deepest truth about sexuality, stripped of the romantic veneer." Pornography, certainly in the context of the American porn industry, is an essentially disruptive, primal expression. That is probably the reason such representations are able to evolve and adapt to various technologies, respond to aesthetic change, and speak to succeeding generations. Additionally, I would add that this explains the offense it provokes. "Porn," Paglia writes, "dreams of eternal fire of desire, without fatigue, incapacity, aging, or death." Pornography venerates sexuality. It places sexuality outside of a procreative context, within which Judeo-Christian morality attempts to confine it. That this 'veneration' is often unwelcomed, unacknowledged, and proffered in forms and language that offends does not negate its reality. Pornography is a problem rooted firmly in perspective. For example, Paglia describes a "sleek pretty boy in cowboy boots spreading his buttocks for an up-close glimpse of his pink anus." "An alluring staple," she says of, "gay magazines." "In that world," the world of gay porn, "everyone knows this splendid creature is victor, not slave." Paglia perceptively links gay and straight porn together, something I attempt in this dissertation as well. In straight porn, where some see degradation in the depiction of a "woman's humiliating total accessibility in porn," Paglia sees "her elevation to high priestess of a pagan paradise garden...the body becomes a bountiful fruit tree...growth and harvest are simultaneous." Paglia repositions the roots of

pornographic expression in a “pre-Christian idolatry of beauty and strength.” She is not blind to the inequality that is inherent in this, but takes the “view that equality is a moral imperative in politics but that the arts will always be governed by the elitism of talent and the tyranny of appearance.”¹⁹

At the center of much criticism of pornography lies the issue of objectification. Pornography, by its nature, appreciates a severely limited range of human attributes; however, it is important to note that pornography does not necessarily argue that all human beings are always only those attributes. It is also useful to remember that the 2nd wave feminist critique of porn, against which Paglia is clearly arguing, does not apply to women only. Some gay men make many of the same objections about gay porn. Legal scholar Christopher Kendall asserts, for example, “Gay male pornography is, quite simply, homophobic.”²⁰ The primal elements in pornography portray in imagery that arouses as often as it repels, the “profanation and violation that are part of the perversity of sex.” “Pornography shows us,” Paglia writes, “nature’s daemonic heart, those eternal forces at work beneath and beyond a social convention.”²¹ One need not accept this sweeping characterization of pornography as primal and pagan to concede the robust power of its attraction. Neither does accepting her characterization preclude one from advocating restrictions on pornographic expression. Paglia celebrates the fact that, “Profanation and violation are part of the perversity of sex,” which she believes

¹⁹ Camille Paglia, *Vamps and Tramps: New Essays*, (New York: Vintage Books, 1994), 65-67.

²⁰ Christopher N. Kendall, *Gay Male Pornography: An Issue of Sex Discrimination*, (Vancouver: UBC Press, 2004), 129.

²¹ Camille Paglia, *Sexual Personae: Art and Decadence from Nefertiti to Emily Dickinson*, (New Haven: Yale University Press, 1990), 24-25.

“never will conform to liberal theories of benevolence.” She recognizes that through pornography, “Every model of morally or politically correct sexual behavior... *will be subverted*, by nature's daemonic law.” Acknowledging the offense that this project entails for those who do not share her identification with the pagan past, Paglia also sees nothing inherently wrong with reasonable restrictions on public display.²²

However, accommodating diverse viewpoints, and avoiding needless offense, for her, does not mean accepting censorship. The elemental nature of pornography is too valuable. “Pornography is human imagination,” she states, “in intense theatrical action.” She even allows that, “The banning of pornography” is “rightly sought by Judeo Christianity,” but believes that successful suppression would be a triumph, “over the West's stubborn paganism,” and would achieve nothing more than driving pornography underground.²³ Oddly enough, when Paglia states, “Pornography is about lust,” and “our animal reality that will never be fully contained by love,” she is making an assertion that many who were opposed to pornography made. Many opponents of pornography would agree that, “Lust is elemental, aggressive,” and “asocial.” Where they would likely draw the line is with Paglia’s claim that, “pornography allows us to explore our deepest, most forbidden selves,” and her belief that this is good.²⁴

The issue of ‘offense’ permeates the discussion of pornography. From the traditionalist anti-pornography stance, the offense derives from multiple sources;

²² Paglia, *Sexual Personae*, 24-25.

²³ Paglia, *Sexual Personae*, 34-35.

²⁴ Paglia, *Vamps and Tramps*, 110.

primarily that the sexual activities are occurring in an extra-marital/non-procreative context; and that pornography commercializes the intimate sexual relationship between married couples. The more recent feminist objections draw upon both the offensiveness and inequality inherent in objectifying individuals, and on the harm coming from this gendering. Paglia speaks to the issue of respecting individuals' rights in the public space. My own position mirrors Paglia on this point. On the other hand, the mere assertion that one is 'offended' by something someone else expresses has attained near totemic power in the culture. Stephen Fry articulated a succinct and, viscerally satisfying response during a *Guardian*/Hay Festival debate on a proposed British law outlawing blasphemy. "It's now very common to hear people say, 'I'm offended by that,'" he remarked, "as if that gives them certain rights...It has no meaning, it has no purpose, it has no reason to be respected as a phrase. 'I am offended by that.' Well, so fucking what?"²⁵

While Paglia can discuss pornography with an unambiguous clarity, clarification is often in short supply when societies attempt to deal with porn. Terms, such as hard-core pornography or obscenity, continue to bewilder. In 1973, after 16 years of issuing confusing plurality decisions, a majority on the Supreme Court settled on what they believed to be a clear-cut, usable definition of obscenity in *Miller v. California*.²⁶ The *Miller Test* held that for material to be obscene it had to satisfy three criteria. First, a jury, putting themselves in the hypothetical position of an

²⁵ "Listen to Stephen Fry and Christopher Hitchens Debating Blasphemy at Last Year's Guardian Hay Festival," Culture/Vulture Blog, *Guardian Unlimited*, http://blogs.guardian.co.uk/culturevulture/archives/2006/05/08/listen_to_steph.html, (accessed June 21, 2006).

²⁶ *Miller v. California*, 413 U.S. 15 (1973).

average person, applying contemporary community standards, had to find that the work, “taken as a whole,” appealed to “the prurient interest in sex.” Second, the jury had to find the material portrayed, “in a patently offensive way, sexual conduct specifically defined by the applicable state law.” Finally, that the material, again taken as a whole, did not have, “serious literary, artistic, political, or scientific value.”²⁷ While the Court explicitly noted that the appeal to prurient interest and patent offensiveness would vary according to community standards,²⁸ it was vague on the issue of whether a material’s “serious value” should reflect local or national standards. It was not until 14 years later, that the Court stated definitively that the standard was national.²⁹ Even then, the Court declared that they thought they had already made themselves clear on this point in 1977.³⁰

Where culture and existing law collide with each other, recourse to politics is a natural response. Both opponents and defenders of hard-core sought to capture the political high ground. Whitney Strub argues that American’s have a history of “ambivalence toward sexuality.” Periodically, sexuality concerned them profoundly. Americans’ inclination to “respond to moral entrepreneurs,” makes pornography “a salient issue for politicians.”³¹ Political support for hard-core was non-existent. I have been unable to track down a single political figure on the local, state, or Federal

²⁷ Ibid, at 15.

²⁸ The Court did not define *community*, leaving courts to wonder whether it meant city, county, state, or nation.

²⁹ *Pope v. Illinois*, 481 U.S. 497 (1987).

³⁰ *Smith v. United States*, 431 U.S. 291 (1977).

³¹ Whitney Vincent Strub, “Perversion for Profit: The Politics of Obscenity and Pornography in the Postwar United States,” (Ph.D. diss. University of California, Los Angeles, 2006), 11.

level, publicly supporting the hard-core film industry. Many longstanding defenders of free expression drew the line at frankly pornographic material. By 1970, Ernst Morris a founding father of the American Civil Liberties Union and the successful defender of James Joyce in *United States v. One Book Called "Ulysses"*,³² was arguing for restraints on free speech. For Ernst, defending a legitimate author like Joyce did not “mean that the four-letter word, out of context, should be spread and used—or sodomy on the stage or masturbation in the public arena here and the world over.”³³ At times, the most the industry could count on, from its non-industry allies, was a tepid defense of their First Amendment rights.³⁴ Even the tepid nature of this defense was diluted somewhat as anti-porn forces rallied their strength in the mid-1980s.³⁵

Understanding the factors leading to the mainstreaming of hard-core film requires drawing upon work from multiple perspectives, utilizing work done in film studies, as well as political, intellectual, medical, and legal history. Initially, I anticipated a close study of the films would reveal a sequence of changes in the content and style of the films. Further, I expected that these changes in content would reveal some part of the answer to my preliminary question: how did hard-core film, when it appeared in public venues, move so rapidly into the mainstream? Hard-core’s

³² *United States v. One Book Called "Ulysses"*, 5 F.Supp. 182 (S.D.N.Y. 1933).

³³ Irving Spiegel, “Censors’ For Sees Need for Limits to Freedom: Lawyer Who Argued for ‘Ulysses’ Assails ‘Display of Sex and Sadism,’” *New York Times*, (Jan. 5, 1970), 46.

³⁴ The tone of defenders, at best, approximated H. L. Mencken, who once wrote, “The trouble with fighting for human freedom is that one spends most of one’s time defending scoundrels.” H. L. Mencken, Editorial, *The American Mercury*, (Apr. 26, 1924).

³⁵ The most articulate and compelling arguments opposing the radical feminist critique of pornography came, not surprisingly, from other feminists.

growth, however, was not explained by the changes in content; its growth was due to the changing context of its consumption.

The stag films were the first motion pictures to display penetrative sexual intercourse, and were a quintessential example of what Tom Gunning calls, “the cinema of attraction,” a cinema characterized by “its ability to show something.”³⁶ In the case of the stags, that ‘something’ was actual sex acts performed by real people. The stags revealed to the spectator penetration of mouth, vagina, or anus by penis, finger, hand, tongue, or various objects. The stag films rarely crossed over into what Gunning calls the ‘cinema of narrative,’ where story or character becomes central, or at least more important than the presentation of any remarkable imagery. While even the most basic film representation contains some narrative structure, the narrative elements in stag films seldom exceeded the minimum necessary to explain why the sex was occurring. Only in the period of their feature-length theatrical release did hard-core pornographic films develop appreciable storylines and rudimentary character development. These innovations, while possibly nothing more than a nod to the legal requirement calling for redeeming artistic or social value, allowed the hard-core films of the 1970s to mimic mainstream Hollywood products. Although narrative elements imparted the possibility of legal defense during hard-core film’s emergence into the public space, their consumption in theatrical venues restricted audiences from utilizing fully the films’ prurient potential. Only when the films moved out of the public space into the privacy of the home, via videotape technology, could the films come into their own. The privacy of the home facilitated private

³⁶ Tom Gunning, “The Cinema of Attraction: Early Film, Its Spectator and the Avant-Garde,” *Wide Angle*, Vol. 8, No. 3-4, (1986), 64.

masturbation. As the site of consumption shifted, in a remarkably short period, the films changed again. The narrative elements fell away considerably; the focus returned to the mechanics of intercourse and the so-called ‘golden age’ of hard-core film ended. By the mid-1980s, the industry was shooting directly on videotape in most cases, selling their product by mail order or renting it out of so-called ‘Mom & Pop’ video rental stores, and bypassing theatrical release entirely. The once omnipresent ‘dirty movie’ theater became a hard to find relic. Theatrically released hard-core films represent a key but brief phase in the history of the genre.

The importance of the site of consumption, remains largely under examined—at least, in reference to consumption’s influence on the growth of the industry. Even in the most comprehensive studies of hard-core film, one often gets only a brief acknowledgement of what people likely did or do when they watched porn. Even partisans and opponents of the industry tend to skirt the centrality of masturbation. The issue permeates the debate, but does so obliquely. The anti-pornography side employs euphemisms about corruption of innocents and the films having no decent purpose, while the hard-core industry, and their dependent fan magazines, rhapsodize over ‘exciting,’ ‘arousing,’ and ‘hot’ films. When representatives of the two camps came to court, (the defendants and the state), the rhetoric changed. As an industry journalist conceded, “They can’t say it’s really about masturbation, and we can’t say it’s only about masturbation...They have to say it’s harmful, we have to argue on free speech.”³⁷

³⁷ Mark Kernes, Senior Editor, *Adult Video News*, interview by author, Chatsworth, California, June 20, 2007.

Harry Kalven, Jr., writing early in the Supreme Court's engagement with what Justice John Harlan would later call the "intractable obscenity problem,"³⁸ lists possible justifications for obscenity legislation; "incitement of antisocial conduct;...psychological excitement;...arousing of feelings of disgust and revulsion;" and the "advocacy of improper sexual values." He dismisses them, one by one. Neither "disgust" nor "revulsion" would apply in a consensual exchange, there is no evidence linking obscenity to "antisocial conduct." Singling out "sexual values" in the "realm of ideas" was hard to justify constitutionally. That left "psychological excitement." Ironically, Kalven buries his analysis in a footnote:

"It is one of the ironies of discussion of obscenity that it has been too polite to put the point that must be involved. The talk is of 'arousing sexual thoughts.' Presumably what is meant is a physiological (sexual) response to a picture or the written word. And one suspects the real fear is one everyone, except Anthony Comstock, has been too reticent to mention, the fear of masturbation."³⁹

The fear of the effects of masturbation, coupled with the fear that even discussing masturbation might serve as an incitement, likely explains this reticence. Moreover, the reticence about masturbation serves to obscure its centrality to both anti-pornography activism and legal doctrine of obscenity that it spawned.

Kalven's suspicion concerning the 'real fear' behind obscenity law indicates that pornography, and especially hard-core film after the video shift, operates on the level of what the historian Rachel Maines calls a, "socially camouflaged technology." These are products whose purpose is tacit. In her 1989 article, "Socially

³⁸ *Interstate Circuit, Inc. v. Dallas*, 390 U.S. at 704.

³⁹ Harry Kalven, Jr., "The Metaphysics of the Law of Obscenity," *The Supreme Court Review*, Vol. 1960, (1960), 3-4, note, 21.

Camouflaged Technologies: The Case of the Electromechanical Vibrator,” Maines ties the appearance of the electromechanical vibrator to the need of nineteenth century American physicians to reduce the time they spent treating female hysteria. ‘Hysteria’ was a catch-all diagnostic label for a cluster of symptoms: “anxiety,” “wandering of attention,” “tendencies to indulge in sexual fantasy, insomnia, irritability, and ‘excessive’ vaginal lubrication.” This malady was thought to afflict between 50 and 75 percent of some doctors’ female patients. The approved treatment of the day called for inducing a crisis—a hysterical paroxysm—usually by means of manual vulvular massage. As occasionally, some female patients might require as much as an hour of stimulation before achieving their orgasm, Maines notes that some specialists found themselves spending literally seventy-five percent of their time engaged in manual labor. The irony, of course, is that female masturbation was one of the ‘illnesses’ 19th-century physicians treated by induction of hysterical paroxysm.⁴⁰ Technological innovation led first to coal-fired, steam engine apparatus. Unwieldy, yet doubtless highly effective, these primitive devices gave way to less cumbersome electrically powered office instruments, before becoming convenient, hand-held appliances running on home current, in the early twentieth-century. Maines’ central point is not to dwell on the hypocrisy, but rather concerns the ambiguous rhetoric employed in mail order catalogs advertising these vibrators. The masturbatory purpose, while not openly admitted, was neither a secret. So long as the marketing avoided direct and explicit language, a wink was as good as a nod. “Sexuality” was “never explicit,” Maines, writes. Advertisements were “vague but provocative.” One manufacturer promised the customer would “tingle with the joy of

⁴⁰ Maines, “Socially Camouflaged Technologies,” 4.

living.” Maines points out that modern vibrators, now explicitly marketed for their masturbatory purpose, are virtually identical to these earlier therapeutic devices, observing that the “social context of the machine, however, has undergone profound change.”⁴¹

Sources and Methodology

This dissertation does not attempt to refute, or overturn, the extremely large body of work on either pornography or hard-core films; rather, I utilize this material to support my larger contention that the industry’s growth was driven by multiple, intersecting factors, not all of which have received due consideration. I address a distinct aspect of the history of hard-core films; the factors leading to their rapid growth in the 1970s and 1980s; the events of those decades, however, are insufficient to fully explaining hard-core film’s growth. The importance of the video shift is widely recognized as important. In Peter Lehman’s *Pornography: Film and Culture*, Chuck Kleinhans notes, “In the 1980s a drastic change took place in U.S. commercial, moving-image pornography.” He cites the virtual disappearance of the “previously dominant form, the dramatic feature-length theatrical film,” and “changes in the sociopolitical environment, such as the new wave of sexual image censorship, changes in sexual practices and ideologies due to the AIDS crisis, and the increased visibility of previously stigmatized sexualities.” Kleinhans asserts that, “contextual and technological changes produced a set of conditions for analyzing porn,” and calls for “new forms of analysis.” Kleinhans believes that, “Adequate data simply does not

⁴¹ Rachel Maines, “Socially Camouflaged Technologies: The Case of the Electromechanical Vibrator,” *IEEE Technology and Society Magazine*. June (1989): 3-11, 23. Also see: Rachel Maines, *The Technology of Orgasm: “Hysteria,” The Vibrator, and Women’s Sexual Satisfaction*, (Baltimore: Johns Hopkins University Press, 1999).

exist for a complete study.”⁴² I agree, but go farther. The economic data on hard-core films for the 1970s and first half of the 1980s is unwieldy and imprecise. Estimates for the income generated by hard-core film, and even the number of films produced in a given year, vary. One 1977 newspaper article reported weekly, nationwide receipts at \$3.5 million.⁴³ By 1986, the *Attorney General’s Commission on Pornography: Final Report* claimed that the yearly revenue from hard-core theaters was \$500 million.⁴⁴ This would indicate an impressive jump from the \$182 million yearly draw of 1977. Yet, *Adam Film World*, an industry magazine, in 1977, exultantly claimed, “Adult movies, X-rated films, erotic cinema, porno movies, skin-flicks, sex movies, dirty films, and fuck-‘n’-suckers—call them whatever you want...grossed a whopping \$455 million” in 1979. At least that was the claim of David Friedman, the president of the Adult Film Association of America, who reported the industry was, “selling 2.5 million tickets a week at an average price of \$3.50 at 780 box-offices across the nation.”⁴⁵ The numbers for videotape rentals, sales, or films produced in a given year are similarly sketchy, but do reveal the broad outlines of an industry that grew quickly, and especially so after the advent of videotape. In recent years, the industry numbers have become far more reliable, but they remain less than authoritative. The dearth of reliable data for the 1970s and

⁴² Chuck Kleinhans, “The Change from Film to Video Pornography: Implications for Analysis,” in, *Pornography: Film and Culture*, edited and with an introduction by Peter Lehman, (New Brunswick, NJ: Rutgers University Press, 2006), 154.

⁴³ Jill Stewart, “The Bottom Line in Blue Movies,” *San Francisco Examiner and Chronicle Sunday Magazine*, (Aug. 20, 1977), 16-18.

⁴⁴ Attorney General’s Commission, *Attorney General’s Commission on Pornography: Final Report*, <http://www.porn-report.com/408-production-distribution-sexually-explicit-material.htm>, (Accessed May 17, 2006).

⁴⁵ “\$455 Million Adult Box Office Take,” *Adam Film World*, Vol. 7 No. 5, (July 1979), 4.

1980s, explains, and perhaps justifies, the theoretical, content focused concentration of so many works on hard-core film. An element of generational reticence concerning the earthier aspects of porn consumption, however, likely plays a part as well. Certainly, consumption in theaters, in 1970s porno chic era, was large. However, as David Hebditch and Nick Anning's *Porn Gold*, and Eric Schlosser's *Reefer Madness* reveal, as profound as theatrical porn consumption was in this period, it paled in comparison to the traffic in the thousands of peep show booths located in adult arcades and bookstores across the country. Hebditch and Anning base their assessment on interviews with Alberto Ferro, who as 'Lasse Braun' produced and directed a vast number of loops for the peep booths controlled by Reuben Sturman. "Over the next four years [1970-1974], they made a million copies... fifty million copies in all...if Sturman's associates used all those films in peep shows (and that is the only conceivable explanation for the number of copies involved)" the peep booths may have generated as much as "\$2 billion."⁴⁶ Schlosser's work estimates the peep show revenues being "perhaps even four or five times larger" than that generated by theatrical hard-core film.⁴⁷ Clearly, the availability of a private venue for pornographic film consumption vastly increases the consumption.

I started my research with few assumptions, but armed with several widely accepted basic facts concerning the industry, and several related questions. Was it plausible that the central tenet of the anti-pornography activists was correct? Were hard-core films primarily concerned with sexual arousal? Were the industry's claims

⁴⁶ David Hebditch and Nick Anning, *Porn Gold: Inside the Pornography Business*, (London: Faber and Faber, 1988), 203-204.

⁴⁷ Eric Schlosser, "An Empire of the Obscene," Chapter 3 in Schlosser, *Reefer Madness: Sex, Drugs and Cheap Labor in the American Black Market*, (New York: Houghton Mifflin, 2003), 131.

of inherent value merely an attempt to dodge this issue? What are the implications if both questions prove true? Prior to 1968, hard-core film was clandestine and illegal. Significant growth occurred between 1968 and 1990. The period of most rapid growth occurred in the 1980s. This period of growth coincided with the shift to videotape technology, an energetic Federal prosecution regime, and vociferous anti-pornography activism. How was it possible that a socially suspect commodity, so recently illegal, achieved relative security and financial success, in the face of sustained attacks from so many quarters? Clearly, the films were satisfying needs for a substantial number of people. The most fruitful approach, therefore, indicated assessing the industry as a business supplying a commodity meeting customers' needs. What was it that people 'got' from those movies?

However, even close study of the films often reveals little concerning those needs. For the stag era films, this is especially true. Take, as an example, *Art of Love*, a stag film made sometime between 1920 and 1931. The text on the inter-titles, only five existing stags from the pre-1965 era had sound, address the viewer pedantically.⁴⁸ One frame informs the viewer, "usually one position gives the man and girl more intense pleasure than any of the others, they should experience which position they enjoy best." Poorly lit, with extremely tight close-up shots; the stag is maddeningly devoid of eroticism. The final seconds of the movie show the participants cleaning themselves of sweat, and bodily fluids.⁴⁹ Produced long before

⁴⁸ Joseph W. Slade, "Eroticism and Technological Regression: The Stag Film," *History and Technology*, Vol. 22, No. 1 (March 2006), 27.

⁴⁹ *Art of Love*, No Director noted, Affectionate Pictures, 1920-1931 (1925). The studio names, when available, are completely facetious, as are any references to directors, writers, and cast. Hot Cha Pictures did not really produce *The Gay Count*, a straight stag film made in 1925, nor were Terra Titzoff and Seemore Hare the stars of *Bellboy 19*, another straight stag made between 1934 and 38.

the days when even paltry evidence of ‘redeeming value’ could protect explicit films, *Art of Love* could not have been trying to cobble together a legal justification. The last minutes containing the cleanup likely represent nothing more than available footage of still naked flesh, and thus were worthy of inclusion. These films seem to confirm Gunning’s concept of cinema as spectacle. Audiences watched the stags, when they had the opportunity, because *it* was there, and you did not get to see it very often. Other films, *Darkie Rhythm*, for instance, avail themselves of a variety of interpretations, all tenuous.⁵⁰ A single African-American woman, reading erotic literature, becomes aroused. She intentionally plugs up the sink, and calls a plumber. The plumber arrives. He is also an African-American, and the couple quickly engages in sex. At several points, the woman uses one of the dismantled drainpipes as a sex toy, comparing it at times with the man’s penis. We know that the principal audience for the stags was primarily white, and middle-class.⁵¹ How should we read the film? Is it a comment on the stereotype that assigned hyper-sexuality to blacks, both male and female? What of the comparison between the pipe and the penis, is this an example of a simple play on words, pipe/penis or is it an attempt to speak to racist ideas concerning the endowment of black men? Is it a subtle attempt to assuage white male insecurities regarding penis size, since in this film the pipe is clearly larger than the ‘pipe’? Even were we to know the filmmaker’s intent, this would not tell us that all audiences got the message. My own estimation is that

⁵⁰ *Darkie Rhythm*, Director unknown, 1928-1930.

⁵¹ Arthur Knight and Hollis Alpert, “The History of Sex in Cinema: Part 17: The Stag Film,” *Playboy*, Vol. 11, No. 10, (November 1967), 270.

Darkie Rhythm was aiming for amusement based on a series of stereotypes. Ribald humor was a reliable standby in most stags.

In the golden age of 1970s porn, the needs of a theater patron are easier to identify, but again, varied depending upon the circumstances. Was the viewer watching alone, or with a companion? Did the companion come to the theater with the viewer—a couple seeking inspiration?—or were they strangers meeting in the theater—an opportunity for sex? The needs the film met might also vary contingent upon whether the sex between the strangers occurred in the theater or later, to say nothing of whether the viewers were both male, male and female, or two women.

In the case of a 1920s stag night, the act of viewing, aside from any educative opportunity concerning sexual technique and anatomy, likely provided an opportunity for male bonding, and socialization to dominant sexual mores.⁵² Because of the homosocial setting masturbation was possibly less likely to occur. This would vary over time, however, as group size and nature of the relationships between viewers would often license such interaction.⁵³

My initial research familiarized me with films. First, I traveled to the Kinsey Institute⁵⁴ to view a substantial number of the existing stag films. I viewed over 300, starting with *El Satario*, made between 1907 and 1912 and *Arcade “E”* made in 1968. I watched the films in as close to a chronological order as possible. The names

⁵² See: Thomas Waugh, “Homosociality in the Classical American Stag Film: Off-Screen, On-Screen,” *Sexualities*, Vol. 4, No. 3, (2001), 275-291.

⁵³ Porn films occasionally employ the narrative line where watching porn leads to group masturbation, and then sex. In a case of the genre coming full circle, one of the more popular current internet porn sites geared to gay male viewers, hosts groups of straight-identified, college-aged men, masturbating together while watching straight hard-core porn. See: www.Fratpad.tv

⁵⁴ The Kinsey Institute for Research in Sex, Gender, and Reproduction at Indiana University, in Bloomington, Indiana.

of filmmakers, distributors, production dates, indeed any firm data concerning stag films is virtually nonexistent. When the Kinsey records supply this data, it is often conditional and imprecise. This is understandable and unavoidable; these films were illegal items.⁵⁵ Many films are compilations. Scenes, and portions of scenes shot and screened in one decade, regularly appear in stags put together decades later, cut and pasted into as it were, without attribution. For the films made after 1968, I viewed over 500 feature-length straight, gay, lesbian, or bisexual films. The bulk of these, fully 80 percent, are from the pre-1990 period. I viewed films made after 1990 because I wanted to gain a sense of the films' evolution, if any, in the years since. In selecting the films to watch, I intentionally sought to place myself in the position of the consumer. I did not want to keep the films, or the viewers, at arms length. Nor, did I want to presume that the viewers were in any sense victims of an addictive pathology. Indeed, a core goal of this dissertation is to reclaim the voices of the hard-core industry and its customers. As much as possible, I tried to take the films on their own terms, and on the terms of the average viewer.

The films I viewed, therefore, are largely those that the fans of hard-core self-selected as significant, through attendance in theaters, or by their video purchases/rentals. Popularity, however, was not the only criteria I employed when selecting films, though I believe that the consumers voted with their wallets; this

⁵⁵ *El Satario*, 1907-1912, and *Arcade "E"*, 1968. See Dave Thompson, *Black and White and Blue: Adult Cinema from the Victorian Age to the VCR*, (Toronto, Ontario: ECW Press, 2007), 273-301. Thompson notes: "It is impossible to compile an accurate record of every stag film made, or even those known to have survived." He provides an impressive listing of commercially available on DVD from Classic Stags and Vintage Erotica, numbering in excess of 400 DVDs, each containing numerous stag films. Although I viewed some of the remarketed stags, my citations reference the Kinsey Institute's holdings.

endorsement is important. I also relied upon critical reviews,⁵⁶ and industry magazines geared toward the fans, both straight⁵⁷ and gay consumers.⁵⁸

Industry publications enjoyed a close relationship with the producers of hard-core. Far closer, perhaps, than the one the magazines shared with the consumers. The magazines operated on several levels, depending upon their emphasis. Even those primarily marketed as masturbatory aids, containing full-page, photographic still shots taken during production provided some information concerning the films.⁵⁹

⁵⁶ Among the many critics, whose reviews I consulted, three stood out. Jim Holliday, *Only the Best: Jim Holliday's Adult Video Almanac and Trivia Treasury*, (Van Nuys: CA, 1986), William Rotsler, *Contemporary Erotic Cinema*, (New York: Penthouse/Ballantine, 1973), and Robert H. Rimmer, *The X-Rated Videotape Guide I*, originally published by Harmony Books, 1984, (Amherst, NY: Prometheus Books, 1993), and *The X-Rated Videotape Guide II*, (Amherst, NY: Prometheus Books, 1991).

⁵⁷ *Adult Video News* and *Adult Video News Confidential* were my principal sources. There are a considerable number of publications aimed explicitly at the straight hard-core consumer. I consulted the following, though I was unable to access complete publication runs: *Adult Erotica*, *Adult Film Stars*, *Adam Film World*, *Adam Film World Guide: Porn Star Annual*, and *Adult Cinema Review*. Also: *Cinema Blue*, *Cinema Sex*, *Cinema X*, *Erotic Film Guide*, *Fast Forward*, *Film Scene*, *Flick*, *Girls of Swedish Erotica*, *Girls of X-Rated Movies*, *High Society*, *Hottest Film Scenes*, *Hottest Porn Stars*, *Hottest X-Rated Film Scenes*, *Swank's Hottest X-Rated Scenes*, *Hot Videos Illustrated*. In addition, I found *Hustler*, *Inside X-Rated Video*, *Knight Magazine*, *Original Porn Legends*, *Penthouse*, and *Playboy* useful. *Porn Action Bonanza*, *Porn Heat Showcase*, *Porn Queen*, *Porn Stars*, *Porn Star Confidential*, *Porn Star Extravaganza*, *Porn Stars Hottest Scenes*, *Porn Stars in Action*, and *Porn Superstars*, were obvious choices. As were, *Satin*, *Sexiest Mouths in X-Films*, *Sexiest Stars in X-Films*, *Sexiest New Stars in X-Films*, *Sexiest Scenes*, *Sex Partner Film Guide*, *SEXPIX*, *Skin Flicks*, *Superstars of Sex*, *Superstars of the X-Rated Screen*, and *Swedish Erotica*. *Uncensored Porn Stars*, *Video Erotica*, *The Best of Video Erotica*, as well as, *Video X*, *X-Rated Cinema*, *X-Rated Directory of Porn's 'Dirtiest' Stars*, *X-Rated Fantasies*, *X-Rated Film Action*, *X-Rated Films*, *X-Rated Porn Couples*, *X-Rated Stars in Action*, *X-Rated Superstars*, and *XXX Movies*, provided their own takes on the industry's product.

⁵⁸ *Manshots*, and *Adam Gay Video Directory*, *Hot Male Review*, *Stars*, *Studflix*, and *XXX Showcase* were indispensable for understanding the dynamics of the gay pornographic film industry. Male performers in gay films appeared in numerous non-cinema magazines catering to the gay audience. Reviews and commentary on film appear in these publications only periodically. Nonetheless, *Advocate Men* (later, *Men*), *All-Man*, *Bear Magazine*, *Blueboy*, *Bound & Gagged*, *Bronc*, *Colt*, *Drummer*, *Freshmen*, *Heat*, *Honcho*, *Inches*, *Jock*, *Mandate*, *Numbers*, *Obsessions*, *Playguy*, *Skin*, *Stallion*, *Stroke*, *Torso*, *Uncut*, were extremely useful. Magazines marketed towards straight women often attracted a gay male audience, and often performers in gay porn films appeared in their pages under different names than they used in gay porn. *Playgirl* and *Viva* were the principal venues. It is virtually impossible, absent a declaration, to identify sexual orientation, and even then it remains only a declaration. The dynamic of 'gay for pay' is as old as the stag films, and continues to the present.

⁵⁹ The industry calls these image rich masturbatory magazines 'stroke books.'

They most often served as buying guides for the consumers, reviewing individual films, occasionally chronicling the national debates over hard-core, and familiarizing the customers with the persona of the industry. As the industry aged, retrospectives appeared, devoting significant space to analysis of particular actors and the oeuvre of noteworthy directors.

In this respect, several of the publications resembled the standard Hollywood fan magazines such as *Silver Screen* or *Photoplay*. Within their pages, the editors and writers presented hard-core performers as stars deserving adulation; sexual artists meriting respect, and ‘real people’ concerned with their fans. In addition to ‘inside’ stories about the industry, which often amounted to thinly disguised press releases from the studios; most articles relied heavily upon photographs taken during filming of movies. This was a constant practice, and continues to this day.⁶⁰ Additionally, the advertising in the magazines was enormously revealing. Classified ads for masturbatory aids and telephone sex lines filled the back pages of many of these magazines. I found masturbatory ads in men’s magazines as early as 1964, well before the appearance of hard-core in theaters. After the shift to video, the number of ads increased profoundly.

The editorial thrust of the hard-core fan magazines, and the industry trade publications, was fourfold. First, that the viewer had an absolute right to view the films. Second, the difference between a good film and a bad one turned on its capacity to arouse. Third, opposition to hard-core film was always wrong. Opponents might be sexually repressed, or excessively moralistic; they might be honestly naïve concerning modern standards, or intentionally repressive of views with

⁶⁰ Nowadays, the photos are more likely to end up on the internet than in the pages of a magazine.

which they disagreed, but they were always wrong. Finally, the performers in the films deserved admiration. The criteria for admiration were physical attractiveness, sensuality, and technical erotic competence. Clearly, the magazines objectified the performers. However, it is important to remember, sexual prowess, or the ability to simulate it, constituted a skill set for these performers. Once inured to the explicit language in articles praising Crystal Breeze for her capacity to “ride hard dick with youthful energy;”⁶¹ Koyoto for being able to “suck like a Toshiba car vacuum;”⁶² and Mike Henson for his “boyish charm combined with a voracious appetite for man flesh,”⁶³ it was difficult to see any essential difference in the objectification of porn stars from the more ‘acceptable’ objectification of athletes in *Sports Illustrated*, musicians in *Rolling Stone*, or mainstream actors in *Photoplay*.⁶⁴

Additionally, I found a variety of internet-based sources to be particularly helpful in the selection process, and for research in general. The principal sites I consulted were Internet Adult Film Database (IAFD), and its affiliate Cyberspace Adult Video Reviews, Adult Film Database, X-Biz, Talking Blue TV, Adult FYI, Alpha Blue Archives, Atomic Cinema, and the extremely valuable collection of

⁶¹ “Profile of Crystal Breeze,” *Adam Film World Guide: Porn Star Annual*, Vol. 2, No. 5, (May 1985.), 49.

⁶² Erica Eaton, “Out of the Can,” *Cinema-X*, Vol. 2, No. 1, (Jan. 1981), 59.

⁶³ “Mike Henson Profile,” *Adam Gay Video: 1994 Directory*, Vol. 2, No. 4, (Feb. 1994), 20.

⁶⁴ Al Di Lauro and Gerald Rabkin make a similar point when they dispute the claim that pornography degrades the people in the films, because of the “specialization of their performance” arguing, “its as sensible as claiming that clowns, acrobats, or ball players are degraded because as performers they are not visible in their full humanity.” Al Di Lauro and Gerald Rabkin, *Dirty Movies: An Illustrated History of the Stag Film, 1915-1970*, (New York: Chelsea House, 1976), 27.

articles, reviews, and comments at RAME (rec.arts.movies.erotica).⁶⁵ For information specifically focused on gay hard-core film, ATKOL Gay Video, the Gay Erotic Archives, and Lavender Lounge were indispensable resources.⁶⁶ Online industry commentators, though they do concentrate heavily on the current business, occasionally supplied clarification on past films or actors. In this regard, the website maintained by J.C. Adams (Ben Scuglia) was particularly helpful.⁶⁷ In the final selection of films, the division skewed heavily towards straight hard-core. Next in prevalence came gay, then bisexual, and finally, lesbian films.⁶⁸ Jim Holliday's *Only the Best* provided an informed insider's opinion on the best and most historically significant hard-core films produced between 1970 and 1986. This period virtually matches the scope of this dissertation, and overlaps the so-called golden age of hard-core films. The 251 films Holliday included in his selection comprised the core of the films I viewed.

Only after viewing a substantial number of films, and acquiring a rough familiarity with the often arcane world of hard-core film, did I consider myself sufficiently informed to expand my research into the fields of anti-pornography activism, and legal doctrine concerning obscenity. Here, too, the primary focus was on the relationship of activism and the law to the growth of the industry. This was

⁶⁵ Internet Adult Film Database, <http://www.iafd.com>; Cyberspace Adult Video Reviews, <http://www.cavr.com>; Adult Film Database, <http://www.adultfilmdatabase.com>; X-Biz, <http://www.xbiz.com>; Talking Blue, <http://www.talkingblue.com>; Adult FYI, <http://www.adultfyi.com>; Alpha Blue Archives, <http://www.alphabluearchives.com>; Atomic Cinema, <http://atomiccinema.com>, and RAME, <http://Rame.Net>.

⁶⁶ <http://atkolforums.com>, <http://smutjunkies.com>, <http://www.lavenderlounge.com>

⁶⁷ For the current straight industry, I cautiously used Luke Ford's website, <http://lukeford.com>. An earlier iteration of the site is available at Luke is Back, <http://lukeisback.com>. For current gay films, the Adams Report, <http://www.gaypornwriter.blogspot.com> was indispensable.

⁶⁸ 'Girl on girl' action is a staple of straight hard-core films, but the body of films aimed explicitly at the lesbian viewer is comparatively small.

especially difficult, as the natural tendency is to illuminate fully the arguments and battles encountered. This dissertation does not attempt a comprehensive analysis of the feminist critique of porn, the history of anti-pornography activism, nor the legal history of film censorship.

The highly contested nature of the debates over pornographic film often drew upon the social science research into the effect of pornography upon consumers. I engage this literature, but again, do not attempt a comprehensive examination. The researchers themselves, it seems to me, have failed to establish the exact nature of, and the degree to which, exposure to pornography affects human beings; and a historian is clearly unqualified to pass judgment upon either their methodologies or their provisional conclusions. The social science findings reveal, not surprisingly, that varieties of pornography influence people in highly individual, ways. For example, researchers invariably concede that they cannot establish a clear causal relationship between exposure to pornography and violence. Some violent material, not all of which is pornographic, does appear to alter, in the short term, some men's attitudes regarding violence against women.⁶⁹ But the inexact and ambiguous nature of the available evidence has not prevented either advocates for the industry, or

⁶⁹ For a brief survey of the available data on the effects of pornography at the end of the 1980s, see Lynne Segal, "Pornography and Violence: What the 'Experts' Really Say," *Feminist Review*, No. 36 (Autumn 1990), 29-41, and Lynne Segal and Mary McIntosh, Eds. *Sex Exposed: Sexuality and the Pornography Debate*, (Brunswick, NJ: Rutgers University Press, 1993). Then see: Berl Kutchinsky, "Pornography and Rape: Theory and Practice? Evidence from Crime Data in Four Countries where Pornography is Freely Available," *International Journal of Law and Psychiatry*, Vol. 13, No. 4, (1990), 14, 47-64; Edward Donnerstein, "Pornography: Its Effect on Violence Against Women," in Neil M. Malamuth and Edward Donnerstein, Eds., *Pornography and Sexual Aggression*, (New York: Academic Press, 1984), 53-81. Dolf Zillmann, and Jennings Bryant, "Pornography, Sexual Callousness, and the Trivialization of Rape," *Journal of Communication*, Vol. 32, No. 4, (Fall, 1982), 10-21, and Edward Donnerstein, Daniel Linz, and Stephen Penrod, *The Question Of Pornography: Research Findings And Policy Implications*. (New York: Free Press, 1987). Again, it is important to note that several of these studies assess a range of pornographic expressions, and hard-core film was only one of these.

opponents, from making sweeping declarations concerning effects. It does, however, inspire caution when writing on pornography and assessing the arguments made by partisans to the debates.

Anti-pornography activism divided along several lines. Not all activism focused on explicit materials. Some concentrated on mainstream media, highlighting materials of borderline indecency. Most activism contained a religious component. This could be explicit, as in the case of the Catholic Legion of Decency, or broadly ecumenical. No activist organization I surveyed excluded people based on their faith, but neither was I able to identify any organization that espoused a strictly secular position, until later, when a strand of activism grew out of 2nd wave feminism. In the same sense that this dissertation recovers the voices of hard-core consumers and producers, I sought to reclaim the voice of anti-porn activism. Preferring primary sources, and with intersecting varieties of activism from which to choose, I sought out an anti-pornography organization with longevity, national scope, involvement with hard-core films, and documented connections with state and Federal government pornography efforts. Two organizations stood out, Citizens for Decent Literature (CDL) and Morality in Media (MIM). In many respects, CDL and MIM were identical. Both, were ecumenical, roughly contemporaneous, and led by a motivated, influential leader over several decades. Charles Keating, a devout Catholic, founded CDL in Cincinnati, OH, around 1955 or 1956. Keating patterned the CDL after the much older National Organization for Decent Literature (NODL), founded by The Catholic Bishops of America, in 1938. Father Morton Hill was one of a group of

clergy founding MIM (then known as Operation Yorkville) in 1962.⁷⁰ Both groups spawned nationwide networks of affiliated chapters, engaged the political process to achieve their goals, and both Keating and Hill served on the Presidential Commission on Obscenity and Pornography.⁷¹ In the end, I opted for MIM because CDL was too closely associated with Keating, and Keating's public history introduced extraneous issues into the narrative. Surveying the forty-year run of MIM's newsletter provided detailed, and contemporaneous evidence on how one of the most important anti-pornography activist groups viewed their purpose, articulated their goals, characterized their opponents, and assessed their progress or failure in the war against pornographic materials. While my primary focus is the hard-core film industry, a complete reading of the entire run enabled me to contextualize MIM's concerns and reactions. What became apparent was the emphasis MIM placed on pornography's presence in the public square. Their activities demonstrated a desire to drive pornography from public view after the late 1950s, and reliance upon law to effect this goal. Due to these aims, the anti-porn activist movement was profoundly important if inadvertent factor driving hard-core film towards private consumption.

Absent political and prosecutorial support, activists would have had little to show for their efforts. Therefore, I needed to engage the story of obscenity prosecution, as well. By the mid-1980s, a close relationship had developed between activist organizations, and the Justice Department. Justice Department officials either

⁷⁰ Although active from the start, Operation Yorkville's official co-founders, were Fr. William T. Wood, S.J., pastor of Hill's parish St. Ignatius Loyola, Rev. Robert E. Wiltenburg, pastor of Immanuel Evangelical Lutheran Church, and Rabbi Joseph Lookstein, of Congregation Kehilath Jeshurun. In later years, MIM publications give the impression that Hill was the principal, if not sole founder of the organization.

⁷¹ Lyndon Johnson appointed Fr. Hill to the Commission in 1968. Richard Nixon appointed Charles Keating in 1969, when Kenneth Keating (no relation) resigned to serve as Ambassador to India.

came to government service from activist organizations, or joined such groups after leaving Federal employment. Some of these individuals returned to Justice under the George W. Bush Administration (2001-2009).⁷² I started my research on prosecutions by consulting the secondary literature. Several hundred state-level, municipal, or Federal obscenity cases occurred between 1970 and 1990. Of special interest were nationwide Federal investigations covered in the mainstream press, such as Miporn, Postporn, Wormwood, and Blue Darcy. To assess the industry side of the prosecution story, works written by the targets of the prosecution and attorneys involved in the cases that followed provide an excellent perspective.⁷³

The hard-core industry, when it appeared in 1969, operated within boundaries defined by governing obscenity laws. To understand the evolution of those laws, and the legal challenges sparked by various Federal, state, and municipal plans to limit the industry's growth, I have relied upon Supreme Court opinions and law journal commentary. The period of primary focus starts in 1957, with *Roth v. United States*,⁷⁴ and *Alberts v. California*,⁷⁵ and concludes with *Ft. Wayne Books, Inc. v. Indiana*, in 1989.⁷⁶ I examined additional cases to place the Court's reasoning in

⁷² Patrick Trueman and Judge Bruce Taylor were prosecutors in the Department of Justice (DOJ) during the height of the Federal crackdown on hard-core. Trueman is senior legal counsel for the James Dobson's Family Research Council, and Special Counsel to the Alliance Defense Fund. Taylor worked for the National Law Center for Children and Families after leaving the DOJ in 1994. In 2004, he returned as senior counsel to the Assistant Attorney General. In 2006, President Bush appointed him to a Federal Immigration Judgeship. Both supplied documentary material, and answered email inquiries.

⁷³ Dawn LaRose, Jeffrey J. Douglas, ed., *Know Censorship: The Guide to Obscenity Prosecution in America*, 2nd Ed. (Know Censorship, Inc., 1995), and Philip D. Harvey, *The Government vs. Erotica: The Seige of Adam and Eve*, (Amherst, NY: Prometheus Books, 2001).

⁷⁴ *Roth v. United States*, 354 U.S. 476 (1957).

⁷⁵ *Alberts v. California*, 354 U.S. 476 (1957).

⁷⁶ *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, (1989).

context. Obscenity law intrigued some of the Justices, but not all. Justice William Brennan was interested and his papers at the Library of Congress reflect this interest. Additionally, his longevity on the Court, and the fact that his tenure on the Court (1956-1990) almost perfectly overlaps the period this dissertation covers made his papers singularly important.⁷⁷ Here, too, the impact of obscenity, and associated display rulings, served to move hard-core towards private modes of consumption.

To access the concerns of the hard-core industry, and especially its consumers, I used many of the same sources I employed when selecting films to view. *Adult Video News* was the primary source for tracking challenges the industry faced, the tactics the industry employed to address these challenges, and for gauging the industry's own assessment of its successes and failures, and trends and turning points. In addition, there were a number of organizations, some directly linked to the industry⁷⁸ others generally supportive of its efforts,⁷⁹ that opposed restrictions on hard-core. Although I preferred documentary resources, a number of individuals in the industry provided me with the opportunity to conduct extended interviews. Assessing consumer's needs, and the industry's efforts to meet them, however, proved problematic. The illegal, and later illicit, nature of hard-core meant that few people were willing to talk, and when they agreed, with rare exceptions, I was

⁷⁷ The papers of Chief Justice Earl Warren, and Justices Hugo Black and William O. Douglas, at the Library of Congress, reflect similar scope and interest.

⁷⁸ The Free Speech Coalition. <http://www.freespeechcoalition.com>.

⁷⁹ Feminists for Free Expression, National Coalition Against Censorship, American Booksellers Association, and the American Civil Liberties Union.

reluctant to rely on their assertions. There are a number of industry memoirs,⁸⁰ but most are either limited in scope, or frankly designed to titillate fans. A rare few covered the business aspects of the industry. Self-promotion or rationalizations were recurring themes in many works. Biographies of porn stars could offer only limited data, and very few cited sources. Additionally, many of the leading figures in the porn industry are dead. Alcohol and drug related deaths remain an occupational hazard. The AIDS epidemic cut down many directors, producers, and performers, especially in the world of gay porn. Internal marketing materials proved unavailable, and likely do not exist for the period in question. The legal environment during the 1970s and 1980s precluded any frank and open documentation by producers, distributors, or retailers. These businesspersons had little reason to produce a paper trail at the time, detailing either financial arrangements or their unvarnished feelings about the products they sold. Moreover, due to the industry's current illicit status, many remain uncommunicative. With notable exceptions, those who might have something of value to report, remain silent. Those willing to talk often had little access to reliable information. Fortunately, a few informed individuals did speak

⁸⁰ Jim Bentley, *Last Time I Drew A Crowd: The Autobiography Of Jim Bentley*, (Self Published, 2005); Jerry Butler, *Raw Talent: The Adult Film Industry As Seen by Its Most Famous Male Star*, (Amherst: Prometheus Books, 1990); H. A. Carson, *A Thousand and One Night Stands: The Life of Jon Vincent*, (Bloomington, Authorhouse, 2001); Dolph Crawford and Rusty Fischer, *One American Boy: The Dolph Crawford Story*, (Lincoln, NE: iUniverse, Inc. 2004); Roger Edmonson, *Casey Donovan, All American Sex Star*, (Los Angeles: Alyson Publications, 1998); Charles Isherwood, *Wonder Bread and Ecstasy: The Life and Death of Joey Stefano*, (Los Angeles: Alyson Publications, 1998); David Jennings, *Skinflicks: The Inside Story of the X-Rated Video Industry*, (Bloomington: Authorhouse, 2000); Traci Lords, *Traci Lords: Underneath It All*, (New York: Harper Entertainment, 2003); Legs McNeil and Jennifer Osborne, *The Other Hollywood: The Uncensored Oral History of the Porn Film Industry*, (New York: Regan Books, 2005); Scott O'Hara, *Autopornography: A Memoir of Life in the Lust Lane*, (New York: Haworth Press, 1997), and Annie Sprinkle, *Annie Sprinkle: Post Porn Modernist: My Twenty-Five Years as a Multimedia Whore*, (Cleis Press: San Francisco, 1998).

from their unique experiences.⁸¹ In the end, I found using a combination of the best available memoirs, biographies, industry publications, and the relevant academic literature to be the most useful approach, supplementing these sources with interviews when possible.

Additionally, I visited several hundred websites maintained by hard-core film fans. These sites are devoted to both straight and gay films, some focus on actors, some on specific body types, and still others concentrate on particular sexual practices. Some sites track the work of favorite studios or directors. One particularly helpful set of sites is accessible through the Yahoo! and Google Groups portals. These groups are analogous to fan clubs, and address aspects of hard-core film in great variety.⁸² Each site provides individual members the ability to post messages,

⁸¹ Sharon Abbott makes the argument, and a compelling one, that absent the views of people working in the industry, discussions concerning “consumption, effects, gender sexual socialization, and content are incomplete.” Sharon Anne Abbott, “Careers of Actresses and Actors in the Pornography Industry,” (Ph.D. diss. Indiana University, 1999), 8. The following individuals were of significant assistance: Mark Kernes is the Senior Editor, *Adult Video News*, Board of Directors, Free Speech Coalition; Jeffrey J. Douglas is Chair, Board of Directors, Free Speech Coalition, and industry defense attorney, member of the ACLU Foundation Board of Southern California; Nina Hartley has been an actor in hard-core films since 1984, industry spokesperson, and former board member of the Free Speech Coalition; Dr. Sharon Mitchell is the Executive Director, Adult Industry Medical Healthcare Foundation (AIM), and was an actor in over 2000 hard-core films since 1974. Also, William Margold is a former hard-core film actor, and director, and a current industry advocate; Reed Lee is an attorney with the Free Speech Coalition; Benjamin Scuglia, aka J.C. Adams, is editor of *Adam Gay Video Directory*, chief of production for Studio 2000, a gay film production studio, and an active writer, reviewer, and blogger on many aspects of the gay film industry. Scuglia is currently preparing his own history of the gay hard-core industry, tentatively titled, *It Just Happened*; and Gregory A. Piccionelli, a leading adult entertainment attorney.

⁸² See: <http://groups.yahoo.com> and <http://groups.google.com>. Locating the groups can be daunting. In April 2001, in response to complaints organized by the American Family Association, Yahoo! deleted all adult groups from their search directory making it necessary to know, in advance, the complete and exact name of the specific adult group one wished to visit. One month earlier, Yahoo! removed pornographic videos from their shopping area. John Schwartz, “Yahoo Goes Beyond Initial Plan against Adult Sites,” *The New York Times*, May 16, 2001, C6. Because of Yahoo’s action, searching by keywords—entering an actor’s name or the title of a film, for example—will often produce the response, “Sorry, no matches were found for...” Fortunately, the internet contains solutions to its own problems. An enterprising individual created Wingman’s Adult Group Lists. This site serves as useful portal to Yahoo’s adult groups: <http://www.adultgrouplists.com>. Google Groups adult sites remain searchable through Google’s platform.

links to other sites on the web, photographs, and short files containing videos.⁸³ Sites hosted on private servers were also useful.⁸⁴ I approached these sites cautiously, recognizing that the opinions on them reference experiences decades old.

The Federal government made two attempts at assessing the scope of the pornography industry, and the effects of pornography on Americans. President Johnson convened a commission in 1967,⁸⁵ and William French Smith, Attorney General under President Reagan, did so again in 1985.⁸⁶ The bulk of the materials at the Johnson Library concern the social science studies commissioned from outside research organizations. At the time of the Johnson Commission, hard-core film constituted an insignificant proportion of the available pornography in America. The papers for the Attorney General's Commission on Pornography (AGCP) while a much smaller collection by comparison do address hard-core film production and distribution in detail. Both Commissions were attempts to circumvent and placate anti-pornography activists, and I utilize them primarily to address the activist base's calls for Federal intervention and the unintended consequences that resulted. The PCOP called for the abolition of restrictions, something the activists had not expected or desired. The hard-core industry consistently bruited these findings over the years.

⁸³ The most common formats used for streaming media in these groups are, Windows Media Video, Audio Video Interleave, and RealMedia. The file name extension at the end on the link identifies the format: (.wmv .avi or .rm).

⁸⁴ For example, BJ's Video Collection, <http://bjland.ws/videocollection.html> and The Christopher Rage Collection, <http://www.christopherragevideo.com>, and Vintage Erotica Forum, <http://vintage-erotica-forum.com>.

⁸⁵ The PCOP consisted of eighteen members, from academia, law, social research, and clergy.

⁸⁶ The AGCP consisted of eleven members drawn from academia, law, municipal government, and clergy.

The mainstream press largely dismissed the AGCP as a pandering effort on the part of the Administration, because of its composition, methodology, and perceived biases.

The hard-core industry's publications mercilessly attacked the more censorial AGCP.⁸⁷

The Form of the Dissertation

The initial focus of the anti-pornography activists, reducing the availability of materials they believed spurred masturbation, profoundly shaped society's conception of obscenity. The obscene meant material appealing to a prurient interest in sex, especially material that might spur masturbation. This conception possessed intellectual coherence, however, only as long as masturbation retained its illicit status. The explicit anti-masturbatory foundation of obscenity law endured for quite a while, and while anti-pornography activism, especially in the post World War II period, concentrated on eliminating pornography from the public square, the courts made little effort to alter the underlying doctrine. While the publicly screened hard-core films, in the period after 1970, attempted to replicate mainstream film in its use of narrative, plot, and character development, attracted the lion's share of attention; it was the loops, in peep show booths, which constituted the principal site of hard-core consumption. The advent of videotape technology in the late 1970s reduced

⁸⁷ For an excellent comparative analysis the two Commissions, see: Gordon Hawkins and Franklin E. Zimring, *Pornography in a Free Society*, (New York: Cambridge University Press, 1988). My citations, when quoting from the Attorney General's Commissions Final Report, rely upon the on-line version, available at <http://www.porn-report.com/>.

consumption within the peep booths, but they continue to linger on in truncated form to the present.⁸⁸

As this dissertation argues, in part, that hard-core feature films when they first appeared encountered an already existing anti-pornography activist movement, and a confused legal environment, Chapter Two commences with an account of activism from the time of Anthony Comstock through the end of the 1950s. I explain the role that the masturbation panic played in both inspiring the earliest activism, and framing early obscenity law. The resilience of the masturbation panic through the 20th-century, and its role in the future obscenity debate is difficult to accept without first comprehending its power in the 19th-century. Noting the disturbing practices advocated and undertaken during the panic's heyday establishes both the intensity of the panic and argues for its continued influence through the 1950s when the Supreme Court laid out the foundations of modern obscenity doctrine in words and strictures that seemed to reproduce these earlier fears.

Chapter Three addresses the initial decade of Supreme Court obscenity decisions and notes the emergence of a revitalized anti-pornography activism. I use *Morality in Media*, and its dissatisfaction with the both the liberalizing trend of Supreme Court decisions, and the growing availability of sexually explicit materials to establish the character of the opposition which would await hard-core film upon its arrival. MIM, and other groups, pushed Congress and the Johnson Administration to create a national obscenity commission. Fr. Morton Hill, S. J., President of MIM, was a Commissioner, and a strong voice for a report that would clearly condemn

⁸⁸ Anahad O'Connor, "X-Rated Store, Peep Booths and All, Tests Limits of a Tolerant Village," NYT, (April 13, 2006).

pornography. The Commission's final report, however, did the opposite, consequently infuriating the activist base, which read it as a "Magna Carta for the pornographers."⁸⁹ Hard-core film made its first public appearance in the wake of the Court's decisions, as the Commission was issuing its Report telling Congress and the country that pornography was not a problem, and that virtually all restrictions on its dissemination and consumption should cease.

Chapter Four backtracks to address the stag film phenomenon. I briefly discuss stag film production, content, distribution, and especially consumption, from the early 20th-century to 1970, when feature-length hard-core films supplanted them, and moved the stags into adult book stores containing coin-operated 'peep-show.' I then move on to appearance of feature-length hard-core film, and the beginnings of the current industry. By 1973, New York City, San Francisco, and Los Angeles had become centers of production, serving several hundred theatrical venues. The Supreme Court moved quickly to address growing market in pornographic materials, and the apparent inability of the Roth test to stem the tide. In 1973, the new Burger Supreme Court decided the case of *Miller v. California*, and placed the determination of obscenity, with few restrictions, in the hands of local juries.

Chapters Five and Six concentrate on consumption of hard-core from the middle of the 1970s to the first years of the 1990s. During the 'golden age of porn,' the industry experienced rapid growth. I address both gay and straight hard-core film consumption, the transition to videotape technology, and the changes this brought to the industry, in terms of consumer use. The relocation to the private home marked

⁸⁹ President's Commission on Obscenity and Pornography, *Report of the Commission on Obscenity and Pornography*, (Washington, DC: Government Printing Office, 1970), 385.

the beginning of hard-core film's mainstreaming. Videotape lessened the public nature of hard-core films, afforded a greater degree of anonymity to consumption, and decreased opportunities for causing offense. The industry accelerated its movement towards the mainstream, while simultaneously fending off attack and responding to new consumer needs. The advent of the AIDS epidemic, with its effects on sexual behavior, also spurred sales. A radical feminist anti-pornography critique grew during these years. It sparked a response from both the industry, and a pro-sex, anti-censorship segment of the feminist movement. Largely associated with the work of Andrea Dworkin and Catharine MacKinnon, anti-porn feminists experienced only limited and temporary success, and then only in municipal settings. While extremely influential on a national level in Canada, due to its rejection by the U.S. Federal courts, the feminist critique of pornography had little lasting effect on the industry's growth.

Anti-pornography activism reached its high-water mark and seemed poised to inflict a fatal blow to the industry. The Reagan Administration convened the Attorney General's Commission on Pornography.⁹⁰ The Commission adopted the anti-porn feminist stance equating pornography with inequality, and called for an aggressive program of Federal prosecution, but the Supreme Court refused to hear an appeal from the state of California, letting stand a state Supreme Court decision declaring hard-core models and producers were neither prostitutes nor panderers.⁹¹ Freeing producers from the threat of prosecution when making films, this decision

⁹⁰ While Attorney General Edwin Meese appointed the commissioners, his predecessor, William Smith, convened the Commission. The press quickly labeled the body "The Meese Commission."

⁹¹ California v. Freeman, 488 U.S. 1311 (1989).

accorded a measure of protection to the industry in California, and production moved above ground in Los Angeles County. A large portion of the industry subsequently moved south from the relative safety of San Francisco, and operated openly in the Los Angeles area, where they continue to film, today. Trying another tactic, Federal prosecution used multiple jurisdictional prosecutions and the Racketeer Influenced and Corrupt Organizations Act (RICO)⁹² to threaten the industry's survival. The Justice Department experienced a crippling setback, however, when Federal courts ruled against this practice, in 1990 and again in 1992.⁹³ In addition to press accounts, and the secondary literature on hard-core, these chapters rely upon the industry's own publications—fan magazines, and *Adult Video News (AVN)* and *Adult Video News Confidential (AVNC)*—in an attempt to access the consumer's experience.

In Chapter Seven I summarize my conclusions tying them to the industry's experiences since 1990. Large-scale prosecutions tapered off when the Clinton Administration assumed office and concentrated its attention on child pornography, and effectively left mainstream hard-core alone. The activist base, having tied itself to the Reagan and Bush Administrations, held little influence within the new Administration and continued its criticism of the industry and government inaction from the sidelines. Simultaneously the porn industry moved aggressively into the digital world. Again, growth followed privacy. This relocation, and the lack of widespread prosecution during most of the Clinton Administration, helped solidify the tacit agreement American society and the hard-core industry reached at the beginning of the decade. If the industry exerted reasonable efforts to keep hard-core

⁹²18 U. S. C. § 1961-1968.

⁹³PHE v. Department of Justice, 743 F. Supp. 15 (D.C. D.C. 1990), and United States v. PHE Inc., et al., 965 F. 2d, 8489 (10th Cir. 1992).

film away from the unwilling and underage, and restrained the more extreme varieties of hard-core—a protean description—the majority of Americans tolerated consumption by consenting adults. This deal came under attack soon after the 2000 election of President George W. Bush, when the new Attorney General, John Ashcroft, signaled his intention to revive the Reagan/Bush assault on pornography. The attacks of September 11, 2001, and the subsequent war in Iraq, however, only temporarily retarded this project.⁹⁴ The Justice Department and the White House limited themselves to largely rhetorical anti-pornography efforts until 2005 when the new Attorney General Alberto Gonzales established the Obscenity Prosecution Task Force.⁹⁵ The decision to divert agents and funding from terror related investigations displeased some in Federal law enforcement. “I guess this means we've won the war on terror... We must not need any more resources for espionage” remarked one FBI agent.⁹⁶ The decision to concentrate resources on mainstream porn was implemented only partially. By 2007, in the wake of Attorney General Alberto Gonzales’ firing of several U.S. Attorneys, the Department of Justice’s point man on pornography prosecution cited failure to aggressively pursue pornography prosecution as one of the justifications for the firing of some of those attorneys.⁹⁷

⁹⁴ Joe Mozingo, “Obscenity Task Force’s Aim Disputed,” *Los Angeles Times*, (Oct. 9, 2007), B1.

⁹⁵ President George W. Bush, “Protection from Pornography Week, 2003,” Presidential Proclamation, October 25, 2003, <http://www.whitehouse.gov/news/releases/2003/10/20031025-1.html>, (accessed, June 19, 2006). Department of Justice, “Obscenity Prosecution Task Force Established To Investigate, Prosecute Purveyors Of Obscene Materials,” Press Release, (Thursday, May 5, 2005), http://www.usdoj.gov/opa/pr/2005/May/05_crm_242.htm, (accessed, June 19, 2006).

⁹⁶ Barton Gellman, “Recruits Sought for Porn Squad,” *The Washington Post*, (Sept. 20, 2005), A21.

⁹⁷ Max Blumenthal, “The White Houses’ Porn Plot Against Prosecutors,” *The Nation*, (March 20, 2007), <http://www.thenation.com/doc/20070402/Blumenthal>, (accessed, Feb. 1, 2009).

Chapter 2: Anti-Pornography Activism and the Masturbation Panic

Starting With Comstock

This chapter establishes the foundations of the legal and cultural background that existed when publicly screened hard-core films first appeared at the end of the 1960s. The laws regarding pornography and the cultural assumptions regarding masturbation were inextricably meshed. To understand why pornographic film faced such vociferous opposition, in such an otherwise remarkably liberal decade as the 1960s, one must grasp the fears that made suppression seem rational and necessary.

The mainstreaming of hard-core pornographic film in the latter part of the twentieth-century occurred within the context of social liberalization of sexual behaviors, and an uneven legal relaxation of restrictions pertaining to sexual representation. The creators of a variety of increasingly more explicit materials used opportunities during this period to market their products to a growing audience of willing consumers. With the first appearance of theatrical release hard-core films, a backlash arose from the anti-pornography activist organizations. The anti-pornography activist base bewailed the social and cultural shift away from the sexual reticence of the previous generations. During the period after the *Roth* decision in 1957 and before the *Miller* case of 1973, less and less filmed material fell within the definition of proscribable obscenity. This period, often viewed as one of rapidly expanding legal toleration, echoed 19th-century concerns. Cultural and legal standards did not keep pace. This is not surprising; they rarely change in tandem. Material that shocks one generation is often acceptable to the next. In the case of sexual representations, however, the disparity was unusually acute.

To understand why the legal restraints against sexually arousing materials remained in place, in the face of growing cultural acceptance of progressively more explicit materials requires examining the roots of organized anti-pornography activism. Pornographers have always moved within limits, changing and tenuous, set by the law. This is not to suggest that obscenity law precedes the appearance of potentially obscene pornography. An essential characteristic, however, of pornographic materials is that they are simultaneously sexually arousing and culturally taboo. While the courts determined the position of the boundary line between allowable and obscene, anti-porn activists articulated long-term, albeit receding, social concerns. While even the earliest anti-porn activists could not control absolutely the amount of available pornography, they helped define the boundary lines and supplied the rationale for exclusion.

In this chapter, I argue that the principal concern of the first organized anti-pornography activist organizations was controlling materials appealing primarily to a prurient interest in sex. The fundamental rationale behind eliminating pornographic material was to preclude its use as a spur to masturbation. The successful movement sparked by Anthony Comstock serves as the primary example of this activism. Comstock was unconcerned whether masturbation was the intention of the reader purchasing pornography or the unfortunate consequence of accidental exposure. To prevent, or reduce, the incidence of masturbation, pornography had to go. By the end of Comstock's life, some of the legal and cultural restraints lifted from literature and art. The rationale behind the prohibitions remained, however, and would structure the way society and the courts engaged pornography for another century.

Before hard-core films ever emerged as a potential target, sexually charged photographs, daguerreotypes, stereopticons,¹ and text distressed reform-minded activists. Each new communication technology lent itself to pornographic purposes, and in turn provoked renewed opposition. Anti-pornography activism appears to be a constant corollary to Slade's Law: "Whenever one person invents a new communication technology, another person will invent a sexual use for it."² The context of the opposition, however, varied over time. Henry H. Foster dates the "first recorded American prosecution for obscenity" to 1821, but notes earlier efforts concerned themselves more with blasphemy.³ Foster notes earlier British prosecutions, such as the 1727 case, *Rex v. Churl*, but argues that 18th-century law was far more likely to consider obscenities, written, spoken or graphic, to be a violation of canon law, and the responsibility of religious authorities. While most European nations prohibited a range of sexually explicit printed material, in America, seditious or sacrilegious obscenity was the first target. Earlier pornographies, whose 'invention' Lynn Hunt locates in texts and drawings as early as the 1500s, while they might be incidentally arousing, were polemical in nature. Sexualized ridicule of secular and religious authorities was their primary goal. Therefore, while not an absolute demarcation line, the nineteenth-century represented a shift in the purpose of

¹ U.S. v. One Case Stereoscopic Slides, 27 F. Cas. 255, (D. Mass., 1859).

² Joseph W. Slade, *Pornography and Sexual Representation: A Reference Guide*, Vol. 1, (Westport, CT: Greenwood Publishing Group, 2001), 44.

³ Commonwealth v. Holmes, 17 Mass. 336 (1821). Forster argues that the work at issue was John Cleland's *Fanny Hill: or Memoirs of a Woman of Pleasure*. Henry H. Foster, Jr. "The 'Comstock Load'. Obscenity and the Law," *The Journal of Criminal Law, Criminology, and Political Science*, Vol. 48, No. 3. (Sept.-Oct., 1957), 246, note 8. Lynn Hunt identifies the first conviction in the United States as occurring in Pennsylvania, in 1815. Commonwealth v. Sharpless. Lynn Hunt, ed. *The Invention of Pornography: Obscenity and the Origins of Modernity*, (New York: Zone Books, 1993), 12.

sexual imagery and text, and consequently the rationale for its suppression. An appeal to prurience, of course, existed in earlier materials. Samuel Pepys, in late 17th-century England, and Jean Jacques Rousseau, in mid-18th-century France, had intimate familiarity with, “books to be read with one hand.”⁴ Still, textual, graphic, and various photographic pornographies during the nineteenth-century reveal a greater emphasis on arousal and a diminished concern with cleaning up the political discourse.⁵

The earliest American restrictions on sexual imagery and text addressed both religious and sexual concerns. A colonial Massachusetts statute, for example, seemed equally troubled by blasphemy. “Evil communication,” it commenced, “wicked, profane, impure, filthy and obscene songs, composures, writings or prints do corrupt the mind and are incentives to all manner of impieties and debaucheries, more especially when digested, composed or uttered in imitation or in mimicking of preaching, or any other part of divine worship.”⁶ A brief survey of colonial, and state statutes from the early republic, as well as the notable absence of Federal restrictions for the first 70 years following Independence, indicates that obscenity was largely a state concern, and may not have been a particularly pressing one.⁷

⁴ Lynn Hunt, *Invention of Pornography*, 110.

⁵ The political utility of pornography never completely disappeared. The Supreme Court case of the *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988) was an excellent and recent example of pornographic political satire.

⁶ Province Laws, 1711-12, Ch. 6, Section 19, cited in President’s Commission on Obscenity and Pornography, *Report of the Commission on Obscenity and Pornography*, (Washington, D.C.: Government Printing Office, 1970), 300. (The *Report* of the President’s Commission is an excellent source, and far exceeds the *Final Report* of the later Attorney General’s Commission on Pornography in terms of scope, depth and quality of research).

⁷ Vermont in 1821, Laws of Vermont, 1924, ch. XXIII, No. 1, Section 23 (1821); Connecticut in 1830, Stats. of Conn. (1830), p. 182-184 (1834); and Massachusetts in 1835, Mass. Rev. Stat. (1835), ch.

The Federal government finally roused itself to engage obscenity, as it did so many newly perceived problems, in the wake of the Second Great Awakening. In 1842, Congress empowered the Customs Service to interdict “indecent and obscene prints, paintings, lithographs, engravings, and transparencies.”⁸ The Postal Service Act of March 3, 1865 expanded the Federal reach to include an internal traffic in obscene materials. “No obscene book, pamphlet, picture, print, or other publication of a vulgar or indecent character, shall be admitted into the mails of the United States.” The law authorized a fine of “not more than five hundred dollars, or imprisonment not more than one year, or both” for violators.⁹ The spur behind the 1865 statute, appears to have been the ease with which the Federal post distributed shockingly large quantities of obscene materials to Civil War soldiers.¹⁰ These early Federal attempts at control, however, pale when compared to the work of Anthony Comstock.

Comstock continues to exert a durable attraction for historians and non-academic writers. A wide, cross-disciplinary treatment of Comstock extensively documents his life and influence, demonstrating his centrality to the early story of obscenity activism and government censorship.¹¹ Comstock’s four-decade long

130, Section 10. Cited in notes 27, 28, and 29 in President’s Commission on Obscenity, *Report of the Commission*, 300.

⁸ Tariff Act of 1842, c. 270, § 28, 5 Stat. 566.

⁹ Act of March 3, 1865, c. 89, § 16, 13 Stat. 507.

¹⁰ Edward de Grazia, *Girls Lean Back Everywhere: The Law of Obscenity and the Assault on Genius*, (New York: Random House, 1992), 4, citing David G. Loth, *The Erotic in Literature: A Historical Survey Of Pornography As Delightful As It Is Indiscreet*, (London: Secker & Warburg, 1961), 143.

¹¹ On Comstock, first see: Paul S. Boyer, *Purity in Print: Book Censorship in America from the Gilded Age to the Computer Age*, (Madison, WI: University of Wisconsin Press, 2002). Then, Nicola Kay Beisel, *Imperiled Innocents: Anthony Comstock and Family Reproduction in Victorian America*,

crusade against obscenity deeply influenced the way the law would engage pornography over the following century, and Comstock's concerns were a direct product of the nineteenth-century's masturbatory panic.

While religious objections to masturbation were a constant, and clearly buttressed Comstock, his contemporaries, such as the New England Watch and Ward Society,¹² and his ideological successors, Citizens for Decent Literature, and Morality in Media, shared those beliefs to a remarkable degree; it was the secular, scientific objection to masturbation that had the greatest influence over time.

Anthony Comstock was born in New Canaan, Connecticut, in 1844. One of eight surviving children, Comstock grew up on his parent's farm, imbued with their Congregationalist faith. Following the death of an elder brother at the Battle of Gettysburg, Comstock enlisted into the Union Army, serving most of his time in Florida.¹³ Most accounts of his early life leave the impression that his personality

(Princeton, N.J.: Princeton University Press, 1997); Heywood Broun and Margaret Leech, *Anthony Comstock, Roundsman of the Lord*, (New York: Albert & Charles Boni, 1927); and Elizabeth Bainum Hovey, "Stamping Out Smut: The Enforcement of Obscenity Laws, 1872-1915" (Ph.D. diss. Columbia University, 1998) and Anna Louise Bates, *Weeder in the Garden of the Lord: Anthony Comstock's Life and Career*, (Lanham, MD: University Press of America, 1995). See, also: Robert W. Haney, *Comstockery in America: Patterns of Censorship and Control*, (Boston: Beacon Press, 1960) and David J. Pivar, *Purity Crusade: Sexual Morality and Social Control, 1868-1900*, (Westport, Conn.: Greenwood Press, 1973). Jeffrey Weeks, *Sex, Politics, and Society: The Regulation of Sexuality since 1800*, (London: Longman, 1981), and, Jeffrey Weeks, *Invented Moralities: Sexual Values in an Age of Uncertainty*, (New York: Columbia University Press, 1995) is excellent, as well.

¹² Originally, The New England Society for the Suppression of Vice, founded five years after Comstock's patron, The New York Society for the Suppression of Vice. After multiple mergers and reconfigurations, the Watch and Ward Society continues to exist today, under their new name, Community Resources for Justice, an advocacy and assistance organization for paroled prisoners, juvenile delinquents and the developmentally challenged.

¹³ Charles Gallaudet Trumbull, *Anthony Comstock, Fighter: Some Impressions of a Lifetime of Adventure in Conflict with the Powers of Evil*, (New York: Fleming H. Revell Company, 1913), 19-34.

contained near equal measures of priggishness and self-loathing.¹⁴ While in the Army, he likely did not endear himself to his fellow soldiers when he conspicuously poured his daily whisky ration on the ground, rather than distributing it among those of his fellows who might appreciate the extra tot. Staunch attendance at religious services, sometimes nine times per week, often organizing them himself, opposition to smoking, and chewing tobacco round out the picture of an abstemious and devout youth.¹⁵

The importance of masturbation in Comstock's worldview quickly becomes apparent in accounts of his early life. Comstock's own highly approving biographer, C. G. Trumbull raises the issues of Comstock's youthful corruption by suspect materials: "While the boy's childhood days were chiefly filled with the things that make for good, yet there were vicious characters in school and on the farm, -- some of the hired help being abundantly so, which was a great sorrow to the mother. Mr. Comstock bears testimony to the common experience of many when he says that certain things that were brought into his life in those boyhood days started memories and lines of temptation that are harder for him to overcome than anything that ever came into his life in later years."¹⁶ Comstock's diary entries, too, covering the period before his military service, while not explicitly mentioning masturbation, imply some

¹⁴ Primary sources from Comstock's youth are few. Comstock kept a diary, but the only works that accessed that document directly were the authorized biography by Trumbull and the highly readable polemic by Broun and Leech. After Broun and Leech consulted the diary for their 1927 book it was withdrawn, never published, and may no longer even exist.

¹⁵ Broun and Leech, *Roundsman of The Lord*, 36-58; Paul S. Boyer, *Purity in Print*, 2-3; Elizabeth Bainum Hovey, "Stamping Out Smut," 32-33; Milton Rugoff, *Prudery and Passion*, (New York: G. P. Putnam's Sons, 1971), 123-124 and Beisel, "Upper Class Formation," 105.

¹⁶ Trumbull, *Anthony Comstock, Fighter*, 30.

familiarity with the secret vice.¹⁷ “I debased myself in my own eyes today by my own weakness (sic) and sinfulness, was strongly tempted today, and oh! I yealded (sic) instead of fleeing to the ‘fountain’ of all my strength. What sufferings I have undergone since, no one knows. Attended pr. meeting yet found no relief; instead each prayer or Hymn seemed to add to my misery.”¹⁸ Comstock’s battle against personal sin was a war with recurring engagements. “Again tempted and found wanting. Sin, sin...seemed as though the Devil had full sway over me today, went right into temptation, and then, Oh such love, Jesus snatched it away out of my reach...I deplore my sinful weak nature...If I could but live without sin, I should be the happiest soul living.” Sometimes, Comstock succeeded, “Today Satan has sorely tried me; yet by God's grace did not yeild (sic).” Sometimes, not, “This morning were severely tempted by Satan and after some time in my own weakness I failed.”¹⁹

Discharged from the Army, in 1865, Comstock, after a brief stay in New Canaan, headed to New York City. By 1868, Comstock was married to the slightly older, highly respectable Maggie Hamilton and clerking in a dry goods store.²⁰ That same year, Comstock secured his first capture. Charles Conroy, who lived a block away from Comstock’s place of employment, sold one of Comstock’s friends some indecent material. Buying a sample of his own—for evidence—and “in a spirit of

¹⁷ The Trumbull biography, the work by Broun and Leech, and most subsequent works reach this same conclusion. Trumbull had personal access to Comstock, and published before Comstock’s 1915 death. Also see: Gay Talese, *Thy Neighbor's Wife*, (Garden City, NY: Doubleday & Company, Inc., 1980) p. 53, Marjorie Heins, *Not In Front of the Children: Indecency, Censorship, and the Innocence of Youth*, (New York: Hill & Wang, 2001), 30.

¹⁸ Broun and Leech, *Roundsman of the Lord*, 39.

¹⁹ *Ibid.*, 55-56.

²⁰ Beisel, *Imperiled Innocents*, 37.

bitter resentment,” Comstock fetched the local police.²¹ Comstock was not a rogue crank, but reflected the publicly articulated morals common to men of his class and religious affiliation. His membership in the Young Men’s Christian Association likely gave focus to his already existing evangelical views regarding confronting sin. The YMCA, a leading force behind recently enacted New York State obscenity statutes, provided the organizational context for his future work.

Between 1868 and 1873, Comstock became the YMCA’s in-house, New York obscenity hunter.²² Comstock’s debut on the national scene came with the Henry Ward Beecher/Tilton scandal and Comstock’s conflict with Victoria Woodhull, in the fall of 1872.²³ While the Woodhull case progressed, Comstock served as the Washington representative of the New York YMCA’s Committee for the Suppression of Vice. As such, his was the principal voice urging Congress to pass a vigorous and comprehensive anti-obscenity law, addressing importation, movement through the mails, and possession.²⁴ With the 1873 passage of the “Comstock Act,” as it was

²¹ Trumbull, *Anthony Comstock, Fighter*, 51.

²² Comstock’s activities appear in New York City press accounts. See: “A Raid upon Dealers in Obscene Merchandise,” *New York Times*, (Mar. 16, 1872), 2 and “The Obscene Literature Cases Examination before Commissioner Osborn,” *New York Times*, (Aug. 29, 1872), 2.

²³ The trial and appeal process of Woodhull and her sister, Tennessee Claflin, on obscenity charges for publicizing the Beecher/Tilton affair continued through the spring of 1873. See: “The Woodhull Scandal,” *New York Times*, (Nov. 10, 1872), 3. For more on Beecher-Tilton see: Richard Wightman Fox, “Intimacy on Trial: Cultural Meanings of the Beecher-Tilton Affair,” in *The Power of Culture*, ed. Richard Wightman Fox and T. J. Jackson Lears, (Chicago: University of Chicago Press, 1993); Richard Wightman Fox, *Trials of Intimacy: Love and Loss in the Beecher-Tilton Scandal* (Chicago: University of Chicago Press, 1999). Also see: Helen Lefkowitz Horowitz, “Victoria Woodhull, Anthony Comstock, and Conflict over Sex in the United States in the 1870s,” *The Journal of American History*, Vol. 87, No. 2 (Sept., 2000), 403-434.

²⁴ See: Broun and Leech, *Roundsman of The Lord*, 128-144. Also see: James C. N. Paul, “The Post Office and Non-Mailability of Obscenity: An Historical Note,” *U. C. L. A. Law Review*, Vol. 44 No. 8, (1961), 44-61 on the legislative debates concerning the passage of the Comstock Act. James C. N. Paul and Murray H. Schwartz, “Obscenity in the Mails: A Comment on some Problems of Federal Censorship,” *University of Pennsylvania Law Review* Vol. 106, No. 2 (Dec., 1957), 214-253 addresses,

widely known, anti-pornography activism wielded governmental authority.²⁵ In recognition of his expertise and zeal, Comstock received a Federal commission as a ‘special agent’ of the Postmaster General. Thereafter, he had the legal authority to call for arrest warrants, impound materials, and provoke prosecutions. In an effort to further insulate his crusade from the interfering hands of bureaucrats whose standards might be less exacting than his own might, Comstock and the newly created New York Society for the Suppression of Vice (NYSSV) refused government funding. Since the NYSSV supplied his salary of \$100 per month, there was no organizational budget to attract bureaucratic control, or oversight.²⁶ While Comstock could not render final judgments concerning a material’s legal obscenity, his choice of targets often determined the scope of the law’s reach. In recent years, a constant complaint of anti-pornography activists concerns lack of enthusiasm by law enforcement, at all levels, to pursue obscenity prosecutions aggressively. This reluctance existed in Comstock’s time, as well. It is important to note that Comstock, and his allied organizations took the lead in pursuing obscenity. New York Police and Federal marshals were responsible for initiating a relatively small proportion of nineteenth-century prosecutions in that city.²⁷ Comstock found the malefactors and the courts convicted them.

in part, whether the Comstock Act even “authorized an independent ‘censorship’ program as well as criminal enforcement of the proscriptions.” note 12, 218.

²⁵ Law to Suppress Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use, Chap. 258, Sec. 2, 17 Stat. 598, 599 (1873) (hereafter Comstock Act).

²⁶ Trumbull, *Anthony Comstock, Fighter*, 100-104.

²⁷ Hovey, “Stamping Out Smut,” 16.

The Comstock Act, in one sense, merely built upon already existing postal and customs legislation, passed in 1872.²⁸ The scope, however, was significantly greater, including, “Whoever shall sell, or lend, or give away, or in any manner exhibit, or shall offer to sell or to lend,” the proscribed materials. The range of outlawed materials was similarly broad. “Any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing or other representation, figure or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature.” The ban included birth control materials, “Any drug or medicine, or any article whatever for the prevention of conception or for causing unlawful abortion,” or providing information leading to such information. The penalties were strong. “He shall be imprisoned at hard labor in the penitentiary for not less than six months nor more than five years for each offense, or fined not less than one hundred dollars nor more than two thousand dollars, with costs of court.”²⁹ The Act also amended the earlier 1872 postal law, by barring these materials from the U.S. mail, describing the banned items in roughly the same language as used in Section 1.³⁰

Quite quickly, the constitutionality of the Comstock Act became secure. The Supreme Court upheld the Act because it neither required nor permitted inspection of “letters, or sealed packages...without warrant...oath or affirmation.” Employing somewhat tortured logic, the Court drew a distinction without a difference when it held that since the Act’s intent was not interference with press freedom, but simply

²⁸ Act of June 8, 1872, ch. 335, 17 Stat. 302 (1872).

²⁹ Comstock Act, Sect 1.

³⁰ Comstock Act, Sect 2.

controlling material “injurious to the public morals” it was constitutional.³¹ The effect of the Act was to limit expressive freedom, the Court judged The Comstock Act, and its postal provisions, afforded the Federal Government wide but not total reach. Fortunately for the anti-pornography forces, state legislatures followed the Federal government, and by 1885, twenty-four so-called ‘little Comstock’ acts were on the books.³²

The influence of Comstock, and the judicial decisions his activities provoked, was immense and long-lasting. A great deal of attention has focused, rightly, on Comstock’s impact upon women. His later actions against Margaret Sanger, Angela Heywood, and others, employed obscenity law like a cudgel against women attempting to assert their reproductive rights. The work of the historical sociologist Nicola Kay Beisel, however, challenges accounts that characterize Comstock and his movement as principally concerned with regaining control over women. Comstock’s chief goal was neither one of forcing women into motherhood, nor of protecting men from their wives’ “victimization” by means of illicit abortions.³³ Comstock’s opposition to obscenity, and the widespread social support he enjoyed, she argues, sprang from a genuine fear that exposure to pornographic materials would lead first to masturbation and from there to either a shortened life, or one of self-destructive sexuality. In either case, corruption via pornography would render the children of

³¹ Ex Parte Jackson, 96 U.S. 727, at 735 (1878).

³² Janet Farrell Brodie, *Contraception and Abortion in Nineteenth-Century America*, (Ithaca, NY: Cornell University Press, 1994), 257.

³³ Beisel, *Imperiled Innocents*, 38-39, citing Leta S. Hollingworth, “Social Devices for Impelling Women to Bear and Rear Children,” *The American Journal of Sociology*, Vol. 22, No. 1 (Jul., 1916), 19-29; Carroll Smith-Rosenberg, *Disorderly Conduct: Visions of Gender in Victorian America*, (New York: Alfred A. Knopf, 1985) and Janet Farrell Brodie, *Contraception and Abortion in Nineteenth-Century America*, (Ithaca, NY: Cornell University Press, 1994).

elite Americans unable to assume the same privileged status occupied by their parents.³⁴

Beisel re-orders Comstock's hierarchy of concerns. For Comstock, the best bar against the moral corruption transmitted by pornography was to insure women filled their important role of "moral mother."³⁵ Additionally, Beisel interprets Comstock's opposition to birth control information as arising out of his belief that birth control was "an outcome of unnatural passions aroused by reading obscene literature." Contraception and abortion thus allowed "young people, afflicted with lust from reading pornography, to sin while affording themselves and their partners' protection from disease and pregnancy."³⁶ Thomas Laqueur makes a similar connection in reference to Comstock's opposition to family planning when he argues that as birth control explicitly meant sex for pleasure, not procreation, there was, in the end, no essential difference between non-procreative sexual acts and masturbation.³⁷

Beisel argues that the major support for Comstock's crusade did not spring from "segments of the middle class experiencing erosion of their position in the hierarchies of wealth or social status," as one might expect if anti-pornography activism were an outgrowth of status anxiety.³⁸ Instead, she finds that support came

³⁴ Ibid., 4, 5.

³⁵ Ibid., 39.

³⁶ Ibid., 40.

³⁷ Thomas W. Laqueur, *Solitary Sex: A Cultural History of Masturbation*, (New York: Zone Books, 2003), 48.

³⁸ Here, Beisel argues against the work of Joseph Gusfield, whose *Symbolic Crusade: Status Politics and the American Temperance Movement*, (Urbana, IL: University of Illinois Press, 1963), that

primarily from the elite families of New York anxious about their sons.³⁹ Beisel argues further that Comstock's supporters were in positions of power and influence already, not in danger of losing their status, and acted out of sincere, rational convictions. Rational for the times, that is. When placed in the context of the culturally dominant medical discourse concerning masturbation, the intensity of Comstock's crusade against pornography makes sense. When the object was protecting the next generation of business, civic and cultural leaders from shortened, blasted lives, and the danger so immediate and scientifically grounded, where would one draw a line? Wealth and the social position of the parents were unreliable insurance against obscene literature contaminating their children. Interactions with lower class children in cities or moral contagion from already corrupted peers at boarding schools threatened "all children, including those with wealthy parents." Comstock warned that even faculty at boarding schools were a potential source of infection.⁴⁰ The only way to protect the elites was to eradicate the threat pornography posed to all.

The recent work of Elizabeth Bainum Hovey confirms aspects of Beisel's argument, and notes the impact this focus had on obscenity law in the years following

characterizes the motivations of the early temperance movement in terms of a conflict between status groups. Beisel finds Gusfield lacking when she applies his explanations to the early anti-vice movement, and introduces class conflict into her analysis. Beisel, *Imperiled Innocents*, 206-216. I agree with Beisel on the Comstock era. By the time feature-length hard-core films make their appearance, however, Gusfield's notion of status anxiety as a motivation, buttressed by research commissioned by the President's Commission on Obscenity and Pornography, is far more applicable.

³⁹ Ibid., table 3.1, 50.

⁴⁰ Ibid., 57-63.

the passage of the Comstock Act.⁴¹ Two cases initiated by Comstock, one against Ezra Heywood and the other targeting Deboigne M. Bennett, resulted in the adoption by American courts of the new British Hicklin test for obscenity. Heywood published a free-love tract, *Cupid's Yoke*,⁴² and subsequently Bennett republished the item. In both cases, the trial judges instructed the juries that they must judge the material's potential obscenity in view of its *possible* effect on innocent children who *might* encounter the publication. Moreover, the juries were not to judge the work as a whole, but could consider isolated passages. The judges, in both cases, barred defense attorneys from introducing selections from *Cupid's Yoke* that might have placed the author's views in context. Indeed, the respective judges each ruled that the author's intent was wholly irrelevant. When Bennett appealed his conviction,⁴³ Judge Samuel Blatchford's opinion affirmed the lower court's decision and reached across the Atlantic for a precedent.⁴⁴ The precedent, the recently adopted *Hicklin* standard, became a part of American obscenity law.⁴⁵ It would remain there until abandoned by the Supreme Court, in 1957.

⁴¹ See: Hovey, "Stamping Out Smut," 83-85.

⁴² Ezra Heywood, *Cupid's Yokes, Or, The Binding Forces Of Conjugal Life : An Essay To Consider Some Moral And Physiological Phases Of Love And Marriage, Wherein Is Asserted The Natural Right And Necessity Of Sexual Self-Government*, (Princeton, MA: Co-operative Publishing Co., 1878).

⁴³ United States v. Bennett, 24 Fed. Cas. 1093, No. 14571 (2nd Cir. 1879).

⁴⁴ Coincidentally, Blatchford was the same judge who directed the jury to return a verdict of 'not guilty' in the earlier case that Comstock instigated against Victoria Woodhull and her sister Tennessee Claflin.

⁴⁵ Hovey, "Stamping Out Smut," 241-243.

The *Hicklin* case involved the publication of an anti-Catholic tract, “The Confessional Unmasked.”⁴⁶ A London magistrate convicted Henry Scott, the publisher, of violating the obscenity provisions of the Obscene Publications Act of 1857.⁴⁷ Scott appealed, and Benjamin Hicklin, the Recorder of London, overturned the conviction because the “pamphlet’s intent and theme justified its publication.”⁴⁸ The crown appealed Hicklin’s reversal, and Lord Chief Justice Cockburn decided in favor of the crown. Cockburn declared that the test for obscenity turned on the issue of, “whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.”⁴⁹ With Judge Blatchford’s articulation of the *Hicklin* standard, American courts now had a definite test for identifying obscenity. In addition, prosecutors and anti-pornography activists acquired a remarkably low hurdle to clear. Hicklin enabled activists and their willing prosecutorial allies to “reduce our treatment of sex to the standard of a child’s library.”⁵⁰

Beisel argues that Comstock and his elite supporters in New York identified immigrants as a significant conduit of corruption, and notes a similar response by elites in Boston.⁵¹ Philadelphia, however, which lacked comparable immigrant populations, failed to develop an lasting anti-vice movement. While Beisel is

⁴⁶ *The Confession Unmasked: Shewing of the Depravity of the Romish Priesthood, the Iniquity of the Confessional, and the Questions Put to Females in Confession*, (London: Protestant Electoral Union, No Publication Date).

⁴⁷ Obscene Publications Act, 20 & 21 Vict. c.83, 1957, also known as Lord Campbell’s Act.

⁴⁸ Hovey, “Stamping Out Smut,” 244.

⁴⁹ *Regina v. Hicklin*, L.R. 3 Q.B. 350 (1868).

⁵⁰ Judge Learned Hand, in *United States v. Kennerley*, 209 Fed. Rep. 119, 121 (S.D.N.Y. 1913).

⁵¹ Bostonians acted through the New England Society for the Suppression of Vice.

primarily concerned with establishing that parental fears about their children's future social position made Comstock's movement attractive to the elite;⁵² her work also establishes the clear connection between the intense masturbatory panic of the nineteenth-century and anti-pornography activism.

Comstock was refreshingly clear about pornography. "It breeds lust. Lust defiles the body, debauches the imagination, corrupts the mind, deadens the will, destroys the memory, sears the conscience, hardens the heart, and damns the soul...plunging the victim into practices that he loathes."⁵³ The effects of these "practices" were palpable and life threatening. "There are many, *many* young people who...have been led into practices that have enervated their bodies and brought weaknesses and disease."⁵⁴ As alarmed as Comstock was by the damage he believed masturbation caused, its prevalence in society seemed equally disturbing. The signs of masturbation were all around him, and one can get some sense of his anxiety by reading his pleas to parents. "Fathers and mothers, look into your child's face," he implored. The warning signs were there, "The vigor of youth failing, the cheek growing pale, the eye lusterless and sunken, the step listless and faltering, the body enervated, and the desire to be much alone." "When close application to work or study becomes irksome, and the buoyancy of youth gives way to peevishness and irritability," then the parent must act. "Secret practices," have "sapped the health of mind and body." Although this catalogue of clues sounds suspiciously like

⁵² See Beisel, *Imperiled Innocents*, 104-157.

⁵³ Anthony Comstock, *Frauds Exposed; or, How the People Are Deceived and Robbed, and Youth Corrupted* (New York, 1880), 416.

⁵⁴ *Ibid.*, 307.

unremarkable adolescence, dismissing Comstock on that account may be unfair. He cites, “an eminent professor in a Southern college” who believed that “seventy-five if not ninety percent of our young men are victims of self-abuse.”⁵⁵ If masturbation was as common in Comstock’s era, as it appears to have been in most periods, the professor may have been underestimating his students.⁵⁶

Comstock also took aim at what he described as medical “quacks.” In the same sense that his objection to birth control was that it offered sexually active individuals an escape from the consequences of their behavior, his opposition to advertised cures for masturbatory ailments circumvented Comstock’s sense of justice. If one could alleviate the effects of masturbation, by any means other than ceasing to masturbate, it would remove the reason for objecting to masturbation, in the first place.⁵⁷ Usually couched in terms of treating “spermatorrhea,”⁵⁸ the nostrums

⁵⁵ Anthony Comstock, *Traps for the Young*, Robert Bremner, Ed., (Cambridge, MA: The Belknap Press of Harvard University Press, 1967), 154.

⁵⁶ According to a 1980 article drawing on a 1976 study, 97 percent of men and 78 percent of women masturbate. This study addresses a pre-videotape world; the current numbers are likely even higher. See: Donald E. Greydanus and Barbara Geller, “Masturbation: Historic Perspective,” *New York State Journal of Medicine*, (November, 1980), 1893 citing William R. Miller and Harold I. Lief, “Masturbatory Attitudes, Knowledge and Experience: Data from the Sex Knowledge and Attitude Test (SKAT),” *Archives of Sexual Behavior*, Vol. 5, No. 5 (Sept. 1976), 447-467.

⁵⁷ A variation of this argument is currently playing out in the controversy over compulsory vaccination against the human papillomavirus, or HPV, which often leads to cervical cancer. As most, but not all, HPV infections come from sexual activity and girls must receive the vaccine prior to becoming sexually active, some activists argue that by protecting young women against a potentially deadly virus the vaccine could undercut parental efforts to encourage abstinence before marriage. See: Jennifer Siegel, “Conservatives Fight Vaccine for Students,” *Forward*, New York, (Jun 2, 2006), 3, and Denise Grady, “A Vital Discussion, Clouded,” *NYT*, (Mar 6, 2007), F5.

⁵⁸ Spermatorrhea was the excessive flow of seminal fluid.

included tinctures and pills containing ‘secret ingredients,’ which often turned out to be nothing more efficacious than rosewater or sarsaparilla.⁵⁹

Some of Comstock’s targets over the ensuing forty years of his career would encourage commentators to ridicule him, as an outrageous example of Americanized Victorian propriety run amok. In part, this is probably due to the expanding nature of the Comstockian enterprise. He kept the support of his backers in his battle against pornographic obscenity, but many hesitated to follow him, when he took what he no doubt thought of as logical next steps. His attacks on classical literature, and artistic nudes collided with the elite project of enhancing their social standing by arts patronage. It was one thing to suppress the clearly pornographic. Going after ‘real’ art was a different matter.⁶⁰ Comstock did not always conflate nudity with obscenity, invariably. Nudity in aid of arousal was his principal concern. When he visited the 1904 World’s Fair in St. Louis, Missouri, celebrating the centennial of the Louisiana Purchase, Comstock encountered the naked Igorot natives of the Philippine Islands. One might expect Comstock to have demanded either immediate closure of the exhibit, or clothing for the Igorot. He called for neither. Whether this was due solely to nudity being the Igorot’s cultural norm, or an inability on his part to comprehend the erotic potential in bare brown skin, Comstock saw the naked Igorots as ‘authentic’ and consequently not obscene.⁶¹

⁵⁹ For examples of the type of advertisement very common in the mid-19th-century press, see: “Classified Ad 6,” *NYT*, (Aug. 15, 1861), 6 and “Classified Ad 9,” *NYT*, (March, 25, 1858), 7.

⁶⁰ Beisel, “Morals Versus Art”, Chapter 7, *Imperiled Innocents*, passim.

⁶¹ “Anthony Comstock Sees Naked Igorots,” *Ogden Standard*, (7 July, 1904).

However comforting, it would be inaccurate to imagine that Comstock brought himself down by overreaching. While Comstock's arrests often provoked critical comment in the press he remained largely unrestrained. In 1887, Comstock arrested Herman Knoedler, a "reputable dealer in fine objects of Art." This provoked the *New York Times* to label him a "nuisance."⁶² Nearly a decade later, when Comstock arrested an "established and respectable" bookseller a critical *Times* editorial asked whether the kind of power Comstock wielded could "safely be reposed" in anyone, but especially someone like Comstock.⁶³

Broun and Leech's biography used the literary device of a 'consulting Freudian' to comment on the possible motivations behind Comstock's crusade. Entertaining as these observations are to read, and as accurate as they might be, it is still facile and fundamentally unfair to dismiss Anthony Comstock as a repressed individual sublimating his conflicted sexual energies by rooting out the devil from underneath everyone else's bed or from their bookshelves. The work of Alison Parker argues persuasively that the move towards censoring representations of sexuality was widely supported and that the support crossed gender, political and cultural lines.⁶⁴ To view Comstock as unique or even radical is to divorce him from the vast majority of nineteenth-century Americans who also feared masturbation; many of whom went far beyond censoring literature in their battle.

⁶² "The Comstock Nuisance," *NYT*, (Nov. 16, 1887), 44.

⁶³ "Comstock," *NYT*, (Nov. 21, 1895), 4.

⁶⁴ Alison M. Parker, *Purifying America: Women, Cultural Reform, and Pro-Censorship Activism, 1873-1933*, (Urbana: University of Illinois Press, 1997).

The Masturbation Panic

When Comstock sought to root out pornography, and thereby save society from masturbation's baleful effects, he acted in full accord with the prevailing medical wisdom of the day. He feared the consequences of masturbation because it was a common fear fed by a century of scientific and medical discourse. It is difficult to overstate the seriousness with which nineteenth-century Americans viewed masturbation. These medical fears were separate from, though reinforced by, a religious tradition reaching back to the story of Onan in the Book of Genesis.⁶⁵ It was, however, the appearance of a medical critique of masturbation, in the 1700s, that provided the rationale behind 19th-century masturbation panic.⁶⁶

The medical concerns originated first with the publication of *Onania*, and *L'Onanisme* (hereafter, *Onanism*).⁶⁷ In its earliest form, *Onania* was both a warning

⁶⁵ To avoid a digression of truly biblical proportions, suffice it to say Genesis 38: 3-10 appeared to reflect divine displeasure with masturbation. For an excellent examination of what the seven verses in Genesis do, and perhaps do not, prohibit, see: Laqueur, *Solitary Sex*, 111-179. Also, see: Pierre Hurteau, "Catholic Moral Discourse on Male Sodomy and Masturbation in the Seventeenth and Eighteenth Centuries," *Journal of the History of Sexuality*, Vol. 4, No. 1, (July, 1993), 1-26.

⁶⁶ First, see: Ronald Hamowy, "Medicine and the Crimination of Sin: 'Self-Abuse' in 19th Century America," *Journal of Libertarian Studies*, Vol. 1, (1977), 229-270. Also, see: Michael Stolberg, "The Unmanly Vice: Self-Pollution, Anxiety, and the Body in the Eighteenth Century," *Social History of Medicine*, Vol. 13, No. 1, (2000), 1-22, and "Self-Pollution, Moral Reform and the Venereal Trade: Notes on the Sources and Context of Onania," *Journal of the History of Sexuality*, Vol. 9, (2000), 37-61. Patrick Singy, "Friction of the Genitals and Secularization of Morality," *Journal of the History of Sexuality*, Vol. 12, No. 3, (July 2003): 345-364. Jean Stengers and Anne Van Neck, *Masturbation: The History of a Great Terror*, trans. Kathryn Hoffman, (New York: Palgrave Mcmillian, 2001). Allan Hunt, "The Great Masturbation Panic and the Discourses of Moral Regulation in Nineteenth and Early Twentieth-Century Britain," *Journal of the History of Sexuality*, Vol. 8, No. 4, (Apr., 1998), 575-615. Bryan Strong, "Ideas of the Early Sex Education Movement in America, 1890-1920," *History of Education Quarterly*, Vol. 12, No. 2, (Summer, 1972), 129-161, and Vern L. Bullough, "Technology for the Prevention of 'Les Maladies Produites par la Masturbation'," *Technology and Culture*, Vol. 28, No. 4 (Oct., 1997), 828-832.

⁶⁷ John Marten, *Onania, or the Heinous Sin of Self-Pollution, an All Its Frightful Consequences, in Both Sexes, Considered With Spiritual and Physical Advice for Those Who Have Already Injur'd Themselves by This Abominable Practice*, (London: Pierre Varenne, 1712?), and Samuel Auguste Tissot, *L'Onanisme, Dissertation sur les Maladies Produites par la Masturbation*, (Lausanne, 1758). For a useful, early English language version see: Tissot, *Onanism: or, A Treatise upon the Disorders*

against masturbation and an extended advertisement for medicines to cure its effects. Reissued and revised many times during the remainder of the century, the text grew to nearly six times its original sixty pages by the time of its sixteenth edition, 142 of which were supplemental letters from “sufferers and repented sinners.”⁶⁸ *Onania* clearly experienced a European vogue, spreading bad news across the continent. In 1758, a highly respected Swiss physician, Samuel Auguste David Tissot elevated the discourse with his work, *Onanism*. Tissot was not trying to sell worthless patent medicines; *Onanism* was a more straightforward medical text, effectively “advising readers never to begin masturbating or to give it up if they already had succumbed.”⁶⁹ Distancing his work from *Onania*, which damned masturbation as both sinful and physically devastating, Tissot accepted the spiritual harm, but concentrated his attention on the physical effects. Tissot had science behind him; he drew freely from Hippocrates and Galen, on the dangers of spermatorrhea, the damaging loss of the precious seminal fluid. Sperm, being the most concentrated of the bodily fluids,⁷⁰ required careful conservation. Sperm was also a distinctly male fluid. Some believed that if not discharged safely, sperm retention was almost as dangerous as reckless

Produced by Masturbation; or, The Dangerous Effects of Secret and Excessive Venery, trans. A. Hume, (London, J. Pridden, 1776; New York: Garland Publishing, 1985).

⁶⁸ Robert H. McDonald, “The Frightful Consequences of Onanism: Notes on the History of a Delusion,” *Journal of the History of Ideas*, Vol. 28, No. 3, (July, 1967), 425-425.

⁶⁹ Laqueur, *Solitary Sex*, 25-39.

⁷⁰ Body fluids appeared to have varying importance. That milk is the least important is apparent by the fact that women can nurse children; relinquishing substantial quantities of milk to little effect. Semen, however, is very concentrated. The logic is manifest when one contrasts the effect one experiences upon losing one ounce of semen. This generally reduces a man to the same state of exhaustion he would experience upon losing forty ounces of blood. Tissot, *Onanism*, 2.

discharge.⁷¹ Prior to Tissot, there was a division of opinion on how best to manage this balance. Some physicians entertained the notion of therapeutic masturbation to rid the body of the harmful excess sperm. Tissot circled the square by arguing that the body must naturally absorb excess semen, and that this recycling was likely the engine behind male secondary sexual characteristics, and all around vigor. Logic and dogma conjoined neatly to show that whereas masturbation was clearly a sin, and the Creator would never have designed a body whose health depended upon regular commission of sin, some natural, non-masturbatory biologic process must absorb or remove the offending essence.⁷² Tissot's ability to repackage longstanding religious prohibitions in the language of science, without requiring any revision of dogma, coupled with his "impeccable credentials, huge reputation, and widespread correspondence," helped spread the panic, and "definitively launched masturbation into the mainstream of Western culture."⁷³

European physicians and their American cousins such as Benjamin Rush,⁷⁴ contributed to the growing panic. The medical and scientific literature concerning the increasingly dire harms attributable to masturbation grew throughout the remainder of the nineteenth-century. The array of illnesses, conditions, disorders, complexes, and symptoms associated with masturbation, already large when Tissot wrote, only swelled.

⁷¹ See: Roy Porter and Lesley Hall, *The Facts of Life: Sexual Knowledge in Britain, 1650–1950* (New Haven, Conn.: Yale University Press, 1995), 144 - 45; Ellen Bayuk Rosenman, "Body Doubles: The Spermatorrhoea Panic," *Journal of the History of Sexuality*, Vol. 12, no. 3, (July, 2003), 365–99.

⁷² See: Singly, "Friction of the Genitals," 351-354, and Stolberg, "The Unmanly Vice," 5-7.

⁷³ Laqueur, *Solitary Sex*, 40.

⁷⁴ Benjamin Rush, *Medical Inquiries and Observation upon Diseases of the Mind*, (Philadelphia: John Grigg, 1830).

By the time, Comstock lobbied Congress for a national obscenity law, science taught that masturbation was responsible for spermatorrhea and nerve weakness. These, in turn, caused insanity, blindness, tuberculosis, epilepsy, brain fever, mental excitation, mental retardation, and cancer. Masturbators could suffer from both an inability to concentrate and obsessive fixations. They could display blotchy reddened skin or unnaturally pale complexion; suffer from deafness or acute sensitivity to sound. Headaches, memory loss, toothache, indigestion, ulcers, sore limbs, weak joints, stunted bones, bowel cramps, and extreme lassitude were their lot.⁷⁵ Less than a century after Tissot, American widely believed that masturbation could both drive you mad, and then take your life.⁷⁶

The medical response to the masturbatory panic, with its access to surgical procedures and restraint devices, was both durable and chilling.⁷⁷ When concerns over masturbatory spermatorrhea were paramount, staunching the flow of the vital “seminal liquor” became the prime objective. Silver nitrate, introduced via a tube

⁷⁵ Lesley A. Hall, “Forbidden by God, Despised by Men: Masturbation, Medical Warnings, Moral Panic, and Manhood in Great Britain, 1850-1950,” *Journal of the History of Sexuality*, Vol. 2, No. 3, Special Issue, part 1: The State, Society, and the Regulation of Sexuality in Modern Europe, (Jan., 1992), 383.

⁷⁶ Alfred Hitchcock, “Insanity and Death from Masturbation,” *Boston Medical and Surgical Journal*, Vol. 26, (June 8, 1842), 285.

⁷⁷ For a survey of the more medically inclined 19th-century works, see first, William Acton, *The Functions and Disorders of the Reproductive Organs in Youth, Adult Age and Advanced Life, Considered in their Physiological, Social and Psychological Relations*, (London: Churchill, 1857). Then, see: Robert Bartholow, *Spermatorrhea; its Causes, Symptoms, and Treatment*, (New York: W. Wood & Co., 1871); Claude François Lallemand, *On Involuntary Seminal Discharges*, trans. William Wood, (Philadelphia: A. Waldie, 1839) and Edgeworth M. Lazarus, *Involuntary Seminal Losses; Their Causes, Effects, and Cure*, (New York: Fowlers and Wells, 1852). Also, see: William Leech, *A Practical Treatise on Nervousness and Debility, Resulting from Spermatorrhea*, (London: Simpkin, Marshall, and Co., 1855). Also see: Thaddeus Warsaw Williams, *Be Not Deceived, or, Instructions to Young Men on Spermatorrhea, or Seminal Weakness, &c., From Solitary Abuse, and Other Causes: Designed to Disabuse the Minds of Those Who have Erred in Youth, or are Afflicted with Involuntary Seminal Losses, of the Imaginary Evils and Unfounded Apprehensions Excited by Quacks for Mercenary Purposes*, (Milwaukee, WI; 1868).

into the urethra and producing a chemical cauterization, could render, “beneficial results,” but they were “temporary” and “dearly paid for by the intense suffering from caustic application which invariably ensues.”⁷⁸ Trapping the penis within the foreskin—infibulation—seemed a logical stopgap measure, and seemed to offer temporary hope. The procedure “consisted of piercing the prepuce at the root of the glans with a silver needle, the ends of which are then tied together. The result... was erections so painful as to be practically impossible.”⁷⁹

As grisly as the stories of splints, braces, bound arms, and ensnared genitalia are, Ronald Hamowy recounts efforts to stop masturbation that went much farther. In 1894, Dr. F. Hoyt Pilcher, the Superintendent of the Kansas State Institution for Feeble-Minded Children castrated eleven boys, “on the grounds that they were confirmed masturbators.” While some in the popular press criticized his actions, the *Kansas State Medical Journal*, the *American Journal of Insanity*, and the *Pacific Medical Journal* lauded them. Hamowy notes that while Pilcher and his supporters justified the castrations as a “therapeutic measure,” other motivations might exist, and cites an article written a year before the Kansas castrations, by a Dr. F. E. Daniel. Daniels urged castration, “as a *punishment* for *all* sexual perverts, including habitual masturbators.”⁸⁰ Of course, the nineteenth-century alarm over masturbation was part of a broader anxiety concerning a range of minority sexual behaviors. The literature condemning masturbation often confused or intentionally conflated masturbation with

⁷⁸ Joseph W. Howe, *Excessive Venery, Masturbation and Incontinence*, (New York: E. B. Treat, 1887), 206.

⁷⁹ Hamowy, “Medicine and the Crimination of Sin,” 241.

⁸⁰ Hamowy, “Medicine and the Crimination of Sin,” 243-244.

homosexuality, or even excessive heterosexual sex.⁸¹ Racial stereotyping of African-American males no doubt made it even easier for Dr. P. C. Remondino, a San Diego physician and advocate of circumcision, to recommend the procedure for all African-American males, as a preventative for rape.

“We have seen this act as a valuable preventative measure in cases where an inordinate and unreasoning as well as morbid carnal desire threatened physical shipwreck.... We cannot see why it should not—at least in a certain beneficial degree—also affect the moral stamina of a race proverbial for the leathery consistency, inordinate redundancy, generous sebaceousness and general mental suggestiveness and hypnotizing influence of an unnecessary and rape, murder and lynching breeding prepuce.”⁸²

The most abiding medical by-product of the masturbation panic in America is the practice Dr. Remondino advocated, infant male circumcision for non-religious reasons. Its adoption in the United States, expressly for the purpose of desensitizing the glans penis and thus deterring masturbation, dates from the mid-19th-century. While no longer explicitly justified on these grounds, roughly 55 percent of newborn males in the United States endure this medically worthless procedure, usually without anesthesia.⁸³ There is an ongoing dispute regarding circumcision’s usefulness in

⁸¹ Vern Bullough and Martha Voght, “Homosexuality and Its Confusion with the ‘Secret Sin’ in Pre-Freudian America,” in Charles O. Jackson, ed, *The Other Americans: Sexual Variance in the National Past*, (Westport, CT: Praeger, 1996), 82-92, and Hall, “Forbidden by God, Despised by Men,” 374-375. David F. Greenberg, *The Construction of Homosexuality*, (Chicago: University of Chicago Press, 1988). Laqueur, *Solitary Sex*, 254-60, addresses the longevity of this conflation.

⁸² P. C. Remondino, quoted in an editorial, “Circumcision for the Correction of Sexual Crimes Among the Negro Race,” *Maryland Medical Journal*, Vol. 30, No. 16, (Feb. 10, 1894), 345.

⁸³ On the influence of the masturbation panic on American circumcision practices, see: Robert Darby, “Lallemand, Spermatorrhea, and the Rise of Circumcision,” *Journal of the History of Medicine and Allied Sciences*, Vol. 60, No. 3 (2005), 283-319. Then see: Darby, “The Masturbation Taboo and the Rise of Routine Male Circumcision: A Review of the Historiography,” *Journal of Social History*, Vol. 36, No. 3, (Spring 2003), 737-757. Also see: Karen Ericksen Paige, “The Ritual of Circumcision,” *Human Nature*, Vol. 1, No. 5, (May, 1978), 40-48. Representative works from the 19th and early 20th-century on circumcision, include; Peter Charles Remondino, *History of Circumcision from the*

limiting the transmission of the HIV virus to men by promoting the keratinization⁸⁴ of the glans and rendering it less permeable to infection. Condoms are a far-more effective means of protection.⁸⁵

The female masturbator received equal attention. Cauterization, inflicted with corrosive agents or heated implements, electric shock to the genitals, and surgical removal of the clitoral hood were the medical options. Occasionally, surgeons excised the entire clitoris. Usually, this occurred only after persuasion, threats and physical restraint failed. Excision of the clitoral hood, and clitoris, became an accepted though infrequent treatment in the United States soon after its introduction in Great Britain, in the 1880s. It only disappeared fully from the medical repertoire in the late 1940s.⁸⁶ Less drastic methods were available. One contemporary account lauds the use of “muriate of cocaine”, applied topically as a numbing agent noting,

Earliest Times to the Present: Moral and Physical Reasons for its Performance, (Philadelphia and London: F.A. Davis, 1891), Jonathan Hutchinson, “On Circumcision as a Preventative of Masturbation,” *Archives of Surgery*, Vol. 2, (1890), 267-9.

⁸⁴ Keratinization is the drying and hardening process that occurs when mucosal skin is permanently exposed. There is an accompanying desensitizing effect.

⁸⁵ Condoms, however, are a form of birth control. Many of the advocates of circumcision as a prophylactic against HIV do so because of the scarcity of condoms in areas heavily infected by the pandemic. It must be noted, however, that some make the case for circumcision because it is not a contraceptive practice and does not endorse the use of condoms which is something some people apparently consider worse than contracting AIDS.

⁸⁶ Robert Darby and J. Steven Svoboda, “A Rose by Any Other Name?: Rethinking the Similarities and Differences between Male and Female Genital Cutting,” *Medical Anthropology Quarterly*, Vol. 21, No. 3, (Sept., 2007), 312. René Spitz, “Authority and Masturbation: Some Remarks on a Bibliographical Investigation,” Chap. 16 in Irwin M. Marcus and John J. Francis, *Masturbation: From Infancy to Senescence*, (New York: International Universities Press, 1975), 390-93. Also, E. H. Hare, “Masturbatory Insanity: The History of an Idea,” *Journal of Mental Science*, Vol. 108, No. 452, (Jan., 1962), 10, Greydanus and Geller, “Masturbation: Historic Perspective,” 1893, and Hamowy, “Medicine and the Crimination of Sin,” 239-41.

“The effect was wonderful; the vagina at once behaved as well as the most virtuous vagina in the United States.”⁸⁷

The severity of the medical responses masturbation supports the notion that late 19th-century concern over pornography was more than a mere disagreement over acceptable forms of expression. Lester Dearborn, identifying the means by which the myth of masturbatory harm remained entrenched in American society well into the 20th-century, singles out the popular works on youth, adolescence, and married life by G. Stanley Hall, Winfield Scott Hall, and Sylvanus Stall as key texts. “I believe these books are still found in more homes, schools, and libraries than are any of the modern discussions of this subject [masturbation] and thus their influence still persist.”⁸⁸ Stall warned young men that in addition to seriously compromising their mental and physical strength masturbation would hasten death. Should the young man survive masturbation long enough to father children, he warned, his masturbation-weakened semen would produce physically defective children.⁸⁹ G. Stanley Hall, told parents, self-abuse by their adolescent was “far more injurious” than even excessive heterosexual sex.⁹⁰ By no means were these extreme or unique works. They fit

⁸⁷ Hamowy, “Medicine and the Crimination of Sin,” 242, citing: Theophilus Parvin, “Nymphomania and Masturbation,” *The Medical Age*, Vol. 5, (Feb., 10, 1886), 49.

⁸⁸ Lester W. Dearborn, “The Problem of Masturbation,” *Marriage and Family Living*, Vol. 14, No. 1, (Feb., 1952), 49. G. Stanley Hall, *Adolescence: Its Psychology and its Relations to Physiology, Anthropology, Sociology, Sex, Crime, Religion and Education*, 2 Vol. (New York: D. Appleton and Company, 1924); Sylvanus Stall, *What a Young Man Ought to Know*, (Philadelphia: Vir Publishing, 1905), and Winfield S. Hall, *From Youth Into Manhood*, (New York: YMCA Press, 1909). Also see: R. P. Neuman, “Masturbation, madness, and the Modern Concepts of Childhood and Adolescence,” *Journal of Social History*, Vol. 8, No. 3, (Spring, 1975) 1-27 and Ben Barker-Benfield, “The Spermatoc Economy: A Nineteenth Century View of Sexuality,” *Feminist Studies*, Vol. 1, No. 1 (Summer, 1972), 45-74.

⁸⁹ Stall, *What a Young Man Ought to Know*, 80-83.

⁹⁰ Hall, *Adolescence*, vol. 1, 440.

within a vast body of literature, most produced for a mass audience, warning potential or active masturbators of the certainty of harm. Parents were a special audience who needed to recognize the signs of masturbation in their children. The cultural diffusion of the masturbation panic throughout American society was profound, brisk, and remarkably resilient.

Even today, the notions that fed the panic appear in unlikely spots. Long after many turn of the century works lost currency, their echo remained in other texts.

Winfield S. Hall, whom Dearborn identifies as an enduring conduit of the masturbatory myth, is a good example. *Woodcraft and Indian Lore*, written by one of the founding leaders of the Boy Scouts of America, Ernest Thompson Seton, has long been a standard text in the Scouting movement, never going out of print since its 1912 publication. Literally, millions of American youths, their parents, and scout leaders have read the work; it is a core text of scouting. In addition to the information the title promises, Seton's work offered moral and physical guidance. "Half of our diseases, mental and physical, come from ignorance and subsequent abuse of our sexual powers," He warns. "We have long known and realized vaguely that virtue and strength are synonymous...Rest assured of this, more nations have been wiped out by sex abuse than by bloody war." "The nation that does not bring up its youth with pure ideals is certainly going to destruction." Having sufficiently alerted everyone, Seton points them to the expert, "Every leader of boys should talk frankly to his charges and read to them or have read to them: 'From Youth to Manhood,' by

Dr. Winfield S. Hall.” What is most revealing is that the passage cited remains in the newly released 2007 edition from Skyhorse Publishing.⁹¹

It might be tempting to dismiss works aimed at Boy Scouts, or the admittedly extreme works of mid-19th-century quasi-medico cranks like, Sylvester Graham, of cracker fame, the author of *A Lecture to Young Men*,⁹² or his methodological heir John Harvey Kellogg, of corn flake fame, who authored the best selling *Plain Facts for Young and Old*.⁹³ However, these accessible, widely read authors influenced millions. The views of Graham and Kellogg, as well as Hall, Stall, and Hall, and others, benefited from a multiplier effect, operating through the physicians who conscientiously circulated their rational, mainstream views on masturbation, until they thoroughly saturated the culture with the tenets of the panic.

The dominant religious and medical discussions of masturbation left little room for viewing the practice as anything other than both sinful and physiologically harmful. Even the late 19th-century insights into the psychological components of sexual behavior, pioneered by Sigmund Freud, and Havelock Ellis, neither of whom could be accused of working to support religious orthodoxy, fed the concerns attending masturbation. Sometimes, the putative effects of masturbation verge on the

⁹¹ Ernest Thompson Seton, *Woodcraft and Indian Lore*, (Garden City, NJ: Doubleday, Page & Co., 1912), 323-324. In the new edition, (New York: Skyhorse Publishing, 2007), see: 239-240.

⁹² Sylvester Graham, *A Lecture to Young Men, on Chastity: Intended also for the Serious Consideration of Parents and Guardians*, 4th ed. (Boston: Gordon W. Light, 1838). Also, see: Stephen Nussbaum, *Sex, Diet, and Debility in Jacksonian America*, (Westport, CT: Greenwood Press, 1980).

⁹³ John Harvey Kellogg, *Plain Facts for Young and Old*, (Burlington, IA: Segner & Condit, 1881), especially, 315-418. While religious considerations profoundly color many 19th-century health tracts addressing masturbation, the Seventh Day Adventist tradition, from which Kellogg arose, is a particularly rich. The online Adventist publication, *Spectrum*, offers an interesting assessment of the anti-masturbation writings of one of the faith’s early luminaries, Ellen White at: “Revisiting Ellen White on Masturbation,” http://www.spectrummagazine.org/articles/column/2008/08/06/revisiting_ellen_white_masturbation.

ridiculous. In the second volume of his work on the psychology of sex, *Sexual Inversion*, Ellis refers to the Pueblo Indians of New Mexico, the *mujerados*, as having been “intentionally effeminated in early life by much masturbation and by constant horse-riding.”⁹⁴

Freud retained his belief in some connection between masturbation and neurasthenia, a popularly diagnosed 19th-century ailment, now abandoned by medical science.⁹⁵ Neurasthenia encompassed a variety of symptoms, including headache, nervousness, listlessness, anxiety, and impotence. Freud drew a distinction between “neurasthenia proper” and “anxiety-neurosis”⁹⁶ and this does distance Freud from the American notion of neurasthenia, as George Miller Beard the ‘discoverer’ of the illness understood it.⁹⁷ Physical symptoms, attributed to masturbation in the past, were not the consequence of masturbation. Freud was able to go that far. Physical symptoms were the result of conflicts produced by either guilt over masturbatory practices, or welling up from frustrated sexual urges due to successful abstinence from masturbation. Freud was clear that one should expect masturbation in the ‘normal’ child during the oral and anal stages of development, and even during the

⁹⁴ In the second volume of his work on the psychology of sex, *Sexual Inversion*, Ellis refers to the Pueblo Indians of New Mexico, the *mujerados*, as having been “intentionally effeminated in early life by much masturbation and by constant horse-riding. Havelock Ellis, *Studies in the Psychology of Sex, Vol. II, Sexual Inversion*, 3rd Ed., (New York: F. A. Davis and Co., 1921), 17.

⁹⁵ Laqueur, *Solitary Sex*, 376.

⁹⁶ Leendert F. Groenendijk, “Masturbation and Neurasthenia: Freud and Stekel in Debate on the Harmful Effects of Autoeroticism,” *Journal of Psychology and Human Sexuality*, Vol. 9, No. 1, (1997), 74.

⁹⁷ George Miller Beard, *A Practical Treatise on Nervous Exhaustion (Neurasthenia): Its Symptoms, Nature, Sequences, Treatment*, (New Yor: William Wood & Company, 1880), and George J. Makari, “Between Seduction and Libido: Sigmund Freud’s Masturbation Hypotheses and the Realignment of His Etiologic Thinking, 1897-1905,” *Bulletin of the History of Medicine*, Vol. 72 No. 4, (1998), 638-662.

latent period before the adolescent moved fully into normal adult genital-focused sexual maturity.⁹⁸ He was, however, adamant about refusing to accept the normality of masturbation for the adult, despite fellow psychoanalyst Wilhelm Stekel urging that he do so.⁹⁹ For Freud, successfully battling the childish urge towards self-pleasure and assuming ‘normal’ genitally centered sexual relations was the “essential first step,” towards maintaining and advancing civilization. “Progressive renunciation is the master narrative of civilization...the enormous force of the sexual instincts properly sublimated...they cannot be denied, and their redirection can be painful.”¹⁰⁰ Well into the 1960s, orthodox psychoanalytic doctrine continued to sustain Freud’s characterization of adult masturbation as an immature form of sexuality.¹⁰¹ The slowness of the panic’s recession, even after Freud relocated the site of supposed damage from the body to the mind, is striking. As Laqueur notes, however, “no single discovery or set of discoveries ever destroys a single way of thinking about a problem until an alternative theory offers a different explanation.”¹⁰²

The dominance of the medicalized concern regarding masturbation and its effects in the 19th-century is well documented. The evidence for its survival

⁹⁸ Freud counseled his own son about giving up masturbation. Paul Roazen, *Brother Animal: The Story of Freud and Tausk*, (New York: Alfred A. Knopf, Inc., 1969), 41.

⁹⁹ See: Groenendijk, “Masturbation and Neurasthenia,” passim and Annie Reich, “The Discussion of 1912 on Masturbation and Our Present-Day Views,” *The Psychoanalytic Study of the Child*, Vol. 6, (1951), 80-94. Also, see: Wilhelm Stekel, *Auto-Erotism: A Psychiatric Study of Onanism and Neurosis*, trans. James S. Van Teslaar, (New York, Liveright Publishing, 1950).

¹⁰⁰ Laqueur, *Solitary Sex*, 390-391.

¹⁰¹ Laqueur, *Solitary Sex*, 381-397.

¹⁰² Laqueur, *Solitary Sex*, 369. Laqueur notes a second reason for the slowness with which the panic receded; the “ethical problem” remained. Here he refers to his argument that the initial 18th-century masturbation panic rose out of contemporary anxieties about fantasy, solitude, imagination, and credit. My reliance upon the severity and longevity of the masturbation panic does not depend upon the circumstances of its origin.

throughout a surprisingly large part of the 20th-century is less established. While the scientific world, particularly the psychological and psychiatric professions largely abandoned key elements of the panic by mid-century, nearly 150 years of an increasingly intense panic had left their mark. For example, as late as 1936, pediatric textbooks called for treating masturbation with, “circumcision for boys and cauterization of the clitoris for girls (and in some cases surgical removal of the clitoris as well).”¹⁰³ A 1959 survey of Philadelphia medical school *graduates* [emphasis added] indicated that nearly ½ of the students interviewed believed that masturbation was one of the causes of insanity.¹⁰⁴ Various religious denominations continued through the 1950s to mix both theology and 19th-century medical claims, in works aimed at parents and young people.¹⁰⁵ Certainly, numerous religious groups continue to condemn masturbation, but most that do so today object on strictly religious grounds.¹⁰⁶ Mid-century assertions that masturbation was physically harmless had to counteract a century and a half of medical advice to the contrary, and more than two millennia of religious teachings.

¹⁰³ John D. Shea, “Religion and Sexual Adjustment,” in John F. Schumaker, ed., *Religion and Mental Health*, (New York: Oxford University Press, 1992), 78.

¹⁰⁴ Hamowy, “Medicine and the Crimination of Sin,” 246, citing Ronald Walters, “Introduction,” *Primers for Prudery: Sexual Advice to Victorian Americans*, Ronald Walters, ed., (Englewood Cliffs, NJ: Prentice-Hall, 1974), 15.

¹⁰⁵ As representative examples, see: Harold Shryock, *On Becoming a Woman: A Book for Teen-Age Girls*, (Washington, DC: Review and Herald Publishing Association, 1951), and Shryock, *On Becoming a Man: A Book for Teen-Age Boys*, (Washington, DC: Review and Herald Publishing Association, 1951)

¹⁰⁶ For an example of two distinct views, see: “Persona Humana - Declaration on Certain Questions Concerning Sexual Ethics,” (Rome: Sacred Congregation for the Doctrine of the Faith, Dec. 29, 1975). “Teaching about Procreation and Chastity,” *Family Home Evening Resource Book*, (Church of Jesus Christ LDS: Salt Lake City, 1997), 253 refers the reader to a pamphlet, based on a 1976 address entitled, “To Young Men Only,” by Boyd K. Packer, General Conference Priesthood Session, (October 2, 1976).

There were signs however, by the middle of the 20th-century, of a growing awareness among physicians and mental health providers that the most troubling aspect of masturbation was simply the continued adherence of society to the myths surrounding the practice. In 1952, when physician Lester Dearborn called for “every sex education program” to contain an unambiguous statement on the “normality” of masturbation, he said that it “should be given to adults as well youth,” to stop the handing down of “superstitions.” He suggested the following concise statement. “Masturbation, according to the best medical authorities causes no harm physically or mentally. Any harm resulting from masturbation is caused entirely by worry or by a sense of guilt due to misinformation.”¹⁰⁷

But as the 1960s dawned, the key elements of the panic continued to lie just below the surface of American culture. Vaguely negative views regarding masturbation remained an unexamined part of the worldview of most people.¹⁰⁸ By the end of the decade, sex researchers, notably William Masters and Virginia Johnson, were lauding the benefits of masturbation.¹⁰⁹ It was only in the 1970s that an affirmative encouragement to masturbate appeared, thanks primarily to the sex-

¹⁰⁷ Dearborn, “The Problem of Masturbation,” 55.

¹⁰⁸ Relatively recent studies indicate that masturbation remained a widely shared, albeit less intense taboo into the 1990s. See: Robert T. Michael, John H. Gagnon, Edward O. Laumann and Gina Kolata, *Sex in America: A Definitive Study*, (Boston: Little, Brown and Company, 1994), 155-168.

¹⁰⁹ William Masters and Virginia Johnson, *Human Sexual Inadequacy*, (Boston: Little Brown and Company, 1970), and Shere Hite, *The Hite Report: A Nationwide Study on Female Sexuality*, (New York: Macmillan, 1976).

ositive feminist, Betty Dodson.¹¹⁰ A similarly frank book, actually advocating masturbation for men, was not available until the early 1990s.¹¹¹

Today, the overwhelming majority of physicians, psychologists, and perhaps even the majority of Americans would probably agree with some version the Dearborn statement on masturbation. Masturbation, always widely practiced, is no longer a source of dread, but neither is it openly accepted. Americans can apparently laugh about it, concede its ubiquity, and practice it extensively. What we have difficulty doing is discussing masturbation openly, without humor, or drawing rational conclusions about the practice. In 1994, President Clinton forced his Surgeon General, Joycelyn Elders, to resign for saying masturbation, “is a part of human sexuality and it’s a part of something that perhaps should be taught.” Elders made the remark at a United Nations conference on AIDS, in answer to a question about promoting masturbation as a form of safer sex. The tentative, conditional tone Elders employed—not her usual style—indicates even she recognized the precariousness of the ground beneath her. That her mild remark could force her from office nine days later indicates the masturbation panic’s resilience.¹¹²

The era of anti-pornography activism, pioneered by Comstock and his contemporaries, was an understandable, if not limited, response to a threat they had reason to perceive as significant. In the years following Comstock, activist groups

¹¹⁰ Betty Dodson, *Liberating Masturbation: a Meditation on Self Love*, (New York: Bodysex Designs, (1974).

¹¹¹ Harold Litten, *The Joy of Solo Sex*, (Salisbury, MD: Factor Press, 1993).

¹¹² Clearly, Elders’ history of controversial statements conspired to make her a target of opportunity in the wake of the 1994 mid-term elections, and President Clinton’s consequent need to make a public display of ‘family-values.’ Douglas Jehl, “Surgeon General Forced to Resign by White House,” *New York Times*, (Dec. 10, 1994), 1.

emphasized boycotts, and practiced moral suasion to both deter individuals from patronizing indecent entertainments, and spur government action. Comstock's ideological successors patrolled the margins of expression, ensuring that the mainstream of literature, and then motion pictures, remained relatively chaste and veered towards modesty. In the years after Comstock's death, the public's concern over pornography receded, but it never quite evaporated. The episodic, cyclical nature of the public's anxiety over sexual representation lends itself to various explanations, and they differ depending upon the degree of explicitness, and the medium.¹¹³ Additionally, while the states and the Federal government continued to prosecute frankly pornographic materials, when they found them, attacks on popular, mass consumed cultural products of less obvious pornographic nature, led to a subtle shift in the public's appraisal of the activist's motives and methods. Rochelle Gurstein addresses this shift in the public's support for anti-porn activities in her broadly argued, and meticulously researched work on the century-long battle between, what she labels, the parties of "reticence" and "exposure."¹¹⁴ World War I helped divert national attention from pornographic materials. The Americans of the immediate post World War I era seemed less concerned with controlling expression than they were in consuming a wide variety of sexually related materials. Paul Boyer describes the Americans of this period as having "settled down to enjoy themselves."

¹¹³ The sporadic, nature of the national concern with pornography, especially in the context of its reappearance in the late 1950s, clearly fits within James B. Gilbert's concept of an "episodic notion." I explore how the modern anti-obscenity movement arose in that decade, in Chapter 3. See: James B. Gilbert, *A Cycle of Outrage: America's Reaction to the Juvenile Delinquent in the 1950s*, (New York: Oxford University Press, 1986).

¹¹⁴ Rochelle Gurstein, *The Repeal of Reticence: America's Cultural and Legal Struggles over Free Speech, Obscenity, Sexual liberation, and Modern Art*, (New York: Hill and Wang, 1996).

He also notes a decided shift in emphasis, on the part of activists. The “over-the-counter book” ceded to the “magazines and the stage,” as the focus of activists.¹¹⁵

Jay Gertzman argues that even though the “anti-vice crusaders” throughout the interwar period were “well-endowed” with both “financial support” and “traditional codes of personal behavior,” they “could not stem the tide of revolution in manners and morals.”¹¹⁶ Public concern ebbed and flowed, depending upon the immediacy of national anxiety. During the 1930s, the pressing demands of living through the Depression, decreased activism’s ability to maintain society’s attention on dirty book.¹¹⁷ This does not imply that the activists or the government backed off their efforts to stem the traffic in pornography, merely, that their on-going efforts were neither the result of widespread angst nor a consuming public debate. One likely reason for the lack of a roused citizenry is the fact that most purveyors of cultural products knew the boundary lines dividing the clearly pornographic from the mildly tantalizing. The boundaries were constantly shifting, but relatively slightly.

The market for explicit pornography did not vanish, but its consumption remained largely private. Publicly marketed literature and publicly consumed entertainment negotiated a subtle balancing act through the first half of the 20th-century. The film industry, for example quickly came to heel.¹¹⁸ The story of

¹¹⁵ Boyer, *Purity in Print*, 125-126.

¹¹⁶ Jay Gertzman, *Bookleggers and Smuthounds: The Trade in Erotica, 1920-1940*, (Philadelphia: University of Pennsylvania Press, 1999), 10.

¹¹⁷ Boyer, *Purity in Print*, 270-271.

¹¹⁸ See: Daniel Czitrom, “The Politics of Performance: Theater Licensing and the Origins of Movie Censorship in New York,” in Francis G. Couvares, ed. *Movie Censorship and American Culture*, (Washington: Smithsonian Institution Press, 1996). Lee Grieveson, *Policing Cinema: Movies and Censorship in Early-Twentieth-Century America*, (Berkeley: University of California Press, 2004).

Hollywood films' evolution towards frank, but non-explicit, portrayal of sexual situations does not reengage hard-core materials until the above ground appearance of feature-length porn in 1970.¹¹⁹ Restricted and protected by self-administered monitoring organizations, mainstream film avoided the controversial, eshewed the risque and often pandered to the loudest voices¹²⁰ calling for morality in the industry and decency on the screen.¹²¹

Comstock's NYSSV continued through the early 1940s, with decreasing influence, before changing its name and dying of terminal irrelevance.¹²² Religious watch-dog groups had arisen during the 1930s, bringing a distinctly sectarian flavor

Gerald R. Butters, Jr., *Banned in Kansas: Motion Picture Censorship, 1915-1966*, (Columbia, MO: University of Missouri Press, 2007), and Andrea Freidman, *Prurient Interests: Gender, Democracy, and Obscenity in New York City, 1909-1945*, (New York: Columbia University Press, 2000).

¹¹⁹ In 1945, the MPPDA became the Motion Picture Association of America (MPAA).

¹²⁰ See: Gregory D. Black, *The Catholic Crusade Against the Movies, 1940-1975*, (New York: Cambridge University Press, 1998), and Una M. Cadegan, "Guardians of Democracy or Cultural Storm Troopers? American Catholics and the Control of Popular Media, 1934-1966," *Catholic Historical Review*, Vol. 87, No. 2, (2001), 252-282. Francis G. Couvares, "Hollywood, Main Street, and the Church: Trying to Censor the Movies Before the Production Code," *American Quarterly*, Vol. 44, No. 4, Special Issue: Hollywood, Censorship, and American Culture, (Dec., 1992), 584-616. Paul W Facey, *The Legion of Decency: a Sociological Analysis of the Emergence and Development of a Social Pressure Group*, (New York: Arno Press, 1974) James M. Skinner, *The Cross and the Cinema: the Legion of Decency and the National Catholic Office for Motion Pictures, 1933-1970*, (Westport, CT: Praeger, 1993). Also, see: O'Connor, "The National Organization for Decent Literature," 386-414.

¹²¹ Mark Vieira, *Sin in Soft Focus: Pre-Code Hollywood*, (New York: Harry N. Abrams, 1999) and Richard Maltby, "The Genesis of the Production Code," *Quarterly Review of Film & Video*, Vol. 15, No. 4, (Mar., 1995), 5-32. Also see: Stephen Vaughn, "Morality and Entertainment: The Origins of the Motion Picture Production Code," *The Journal of American History*, Vol. 77, No. 1, (June, 1990), 39-65 and Ruth Vasey, "Beyond Sex and Violence: 'Industry Policy' and the Regulation of Hollywood Movies, 1922-1939 (Rethinking the Production Code)," *Quarterly Review of Film and Video*, Vol. 15, No. 4, (March 1995), 65-85. Eric Schaefer, "'Thoroughly Vile and Disgusting': the Exploitation Film and Censorship," in Eric Schaefer, *"Bold! Daring! Shocking! True!": a History of Exploitation Films, 1919-1959*, (Durham, NC: Duke University Press, 1999), 136-64. For a unique perspective, see: Will H. Hays, *The Memoirs of Will H. Hays*, (New York: Doubleday & Company, 1955). For information on the impact of Joseph Breen, longtime head of the Production Code Administration, see: Thomas Patrick Doherty, *Hollywood's Censor: Joseph I. Breen & the Production Code Administration*, (New York: Columbia University Press, 2007) and Leonard J. Leff, "The Breeding of America," *PMLA*, Vol. 106, No. 3, (May, 1991), 432-445.

¹²² Strub, "Perversion for Profit," 16-18, Boyer, *Purity in Print*, 137-138, 245-246.

to their efforts. In December 1938, the Catholic Bishops of America founded the National Organization for Decent Literature. NODL, however, concentrated mostly upon publicly marketed print material, in much the same way that the Legion of Decency addressed publicly screened motion pictures.¹²³

During the period between the two world wars, literature gained increasing legal protection. In 1933, *United States v. One Book Called "Ulysses"*, and especially Judge John Woolsey's opinion indicated that literary treatment of sex, even when enacted with frankness and vulgar language would no longer be obvious obscenity.¹²⁴ The liberalization of literature, however, did not extend to frankly pornographic material. Those materials with no purpose other than to aid masturbation were still too dangerous. Widespread concern over pornography would not reassert itself until the mid-1950s. However, it was a significantly different species of concern from Comstock's crusade. In the late 1940s, ironically just as NYSSP was dying, a renewed concern over mass culture and juvenile delinquency emerged. As James Gilbert demonstrates, this was emblematic of "larger preoccupations." In part, the concern was a consequence of a democratization of culture occurring after the Second World War, and took the form of a belief that "popular culture was undermining American institutions." Concern over the effects of mass culture was not an anxiety peculiar to conservatives alone.¹²⁵ Its roots reached back to the 1930s, and implicated the shattered hopes of intellectuals for a

¹²³ Thomas F. O'Connor, "The National Organization for Decent Literature: A Phase in American Catholic Censorship," *Library Quarterly*, Vol. 65, No. 4, (Oct. 1995), 386

¹²⁴ *United States v. One Book Called "Ulysses"*, 5 F.Supp. 182 (S.D.N.Y. 1933).

¹²⁵ Gilbert, *Cycle of Outrage*, 5-8.

democratic mass society and culture.¹²⁶ Focusing at first on comic books, particularly those containing violent imagery, and given an intellectual patina by the work of Dr. Frederic Wertham,¹²⁷ the interest in the causes of delinquency widened gradually to include pornography. On the governmental level, this concern spawned a series of Congressional investigations.¹²⁸ The 1952 House Select Committee on Current Pornographic Materials, under Rep. Ernest C. Gathings of Arkansas, was the first to draw attention to the largely ignored pornography market.¹²⁹ The media attention Gathings generated likely helped inspire Tennessee Senator Estes Kefauver to convene his own investigation, lasting from 1954 to 1955.¹³⁰ Kefauver, in turn, likely inspired Pennsylvania Representative Kathryn E. Granahan, whose intermittent hearings before the Post Office subcommittee on Postal Operations ran for nearly three years.¹³¹ By the time, Granahan held hearings on protecting Americans from obscene mail and “communist propaganda” in June and July of 1963, a discernable

¹²⁶ See: Gilbert, *Cycle of Outrage*, 109-129, and Rochelle Gurstein, “Avant-Garde and Kitsch Revisited,” *Raritan*, Vol. 22, No. 3, (Winter, 2003), 136-158.

¹²⁷ Frederic Wertham, *Seduction of the Innocent*, (New York: Rinehart and Co., 1954).

¹²⁸ First see: Gilbert, *Cycle of Outrage*, passim, and particularly 143-162; Strub, “Perversion for Profit,” 21-77; and Andrea Friedman, “Sadists and Sissies: Anti-pornography Campaigns in Cold War America,” *Gender & History*, Vol. 15, No. 2, (Aug. 2003), 201-227.

¹²⁹ U. S. Congress, House Select Committee on Current Pornographic Materials, *Hearings before the Select Committee of the House of Representatives on Current Pornographic Materials*, (Washington, DC: GPO, 1952), and U. S. Congress, House Select Committee on Current Pornographic Materials, *Report*, ((Washington, DC: GPO, 1953).

¹³⁰ U.S. Congress, Senate Subcommittee To Investigate Juvenile Delinquency in the U.S. Juvenile, *Hearings before the subcommittee to Investigate Juvenile Delinquency Pursuant to S. Res. 62, and S. Res. 173*, (Washington, DC: GPO, 1954-1955), *Interim Report of the Committee*, (Washington, DC: GPO, 1956), and *Final Report*, (Washington, DC: GPO, 1957).

¹³¹ U.S. Congress, House Committee on Post Office and Civil Service, Subcommittee on Postal Operations, *Obscene Matter Sent Through the Mail*, (Washington, DC: GPO, 1959), *Circulation of Obscene and Pornographic Material: Hearings before the Subcommittee*, (Washington, DC: GPO, 1960).

new strain of anti-obscenity activism had emerged. Nearly one quarter of the witnesses before Granahan's subcommittee were affiliated with the recently formed Citizens for Decent Literature (CDL).¹³²

CDL was an ostensibly non-sectarian group, founded by a Cincinnati attorney, Charles Keating, in either 1955 or 1956.¹³³ While patterned after the Catholic Bishop's NODL, CDL and its main ally Operation Yorkville, stand in marked contrast to both the Comstockian variety of activism, and NODL. Both consciously aimed at making a clean break with the Victorianism associated with Comstock, and the "obvious Catholicism and...endorsement of censorship," of NODL.¹³⁴ Moreover, where masturbation fears explicitly motivated Comstock and NODL objected to material from an explicitly Catholic perspective,¹³⁵ both CDL, and Operation Yorkville, consciously distanced themselves from charges of sectarian bias, shunned boycotts, or lists, and emphasized battling obscenity by calling for the strict enforcement of existing obscenity laws.¹³⁶

The problem confronting CDL, Operation Yorkville, and oddly enough the future hard-core pornographic film industry, was that the obscenity doctrine that buttressed those laws was about to undergo a radical revision in the Supreme Court. While the Court would jettison the restrictive, 19th-century tactic of shielding children

¹³² Subcommittee on Postal Operations, Protecting Postal Patrons from Obscene and Obnoxious Mail and Communist Propaganda, June 25-27, July 10, 24, 1963, *Hearings*, (Washington, DC: GPO, 1963).

¹³³ I am indebted to Whitney Strub for his work on CDL. He too was unable to definitively pinpoint CDL's founding, noting that Charles Keating began by "building an informal base of friends...before reaching for public recognition." Strub, "Perversion for Profit," 161.

¹³⁴ *Ibid*, 161.

¹³⁵ O'Connor, "The National Organization for Decent Literature," 409.

¹³⁶ Strub, "Perversion for Profit," 164.

by banning even adult access to sexually themed materials, it would enshrine Comstock's conflation of obscenity with those materials lacking any other purpose than to spark lustful thoughts.

Explicitly pornographic material had as its core purpose the arousal of lustful thoughts. This inevitably placed masturbation at the center of the pornography conflicts that follow. All sides implicitly recognized this. The producers of pornography sought to create materials that would physically arouse their customers. The consumers sought material because of its capacity to arouse them physically. Anti-porn activists feared the masturbation they believed these materials would provoke. Since the middle of the nineteenth-century, legal and social conflicts over the production and consumption of sexually themed materials took the form of producers denying that this was the purpose of the sexually explicit materials they produced and of anti-porn activists attempting to establish that this purpose was manifestly obvious. What was remarkable was that while a material's masturbatory potential became the defining characteristic of obscene material, often all participants in the debate shirked from mentioning the word. This reticence would change, in revealing ways, over time. Masturbation had previously been widely discussed and openly opposed. Now it became the *elephant in the room*.

Chapter 3: Definition and Prohibition

In Court

This chapter argues that the obscenity doctrine in place when publicly screened hard-core film first appeared in 1969 grew by accretion over time. Motion pictures existed since the late 1890s yet publicly screened hard-core films did not appear until nearly 70 years later. In the intervening years hard-core film was absolutely illegal and consumed in private. This chapter examines the dialectic between the Court and the anti-pornography activist movement during those years. Often activism drove the law. But just as often the activists reacted to changes in the law. By alternating the narrative between the Court, the activist's, and the sporadic actions of the Legislative and Executive branches I endeavor to explain the confused legal and cultural environment that awaited hard-core film and made subsequent attempts at suppression so difficult.

The workings of the Supreme Court have never been completely transparent. The petitions for writs of certiorari; the briefs submitted by appellant, appellee, and amicus curiae;¹ oral arguments, opinions, dissents and concurrences are all available to the public. The internal discussions of the Court, however, are shrouded in secrecy. The primary sources for tracking the Court's deliberative process are the opinions it delivers after reaching a decision. Opinions appear only after multiple drafts circulate among the Justices. Memoranda traveled between the Justices as well

¹ A petition for a writ of certiorari is a request that the Court issue a directive to a lower court. These petitions initiate the process whereby the Court hears a case. An appellant is the party who asks the Court to overturn or modify a lower court's decision, the appellee opposes, and an amicus curiae (literally *friend of the court*), while not a party to the case, offers information they believe might be helpful to the Court's deliberations.

while an opinion was in the drafting stage. The Court operates under a rule of four when deciding whether to grant a petition to hear a case.² It follows a rule of five when deciding the case; a simple majority among the nine carries the day. Tracking the give and take among the Justices as they sought to construct a majority opinion makes for fascinating reading. The give and take is seldom visible in the final text of an opinion. By virtue of Justice William Brennan's longevity on the Court, and the fact that his tenure almost perfectly overlaps the Court's engagement with obscenity, his papers are singularly important. The profusion of materials in the collected papers of these Justices, most particularly Brennan's provide an exceptionally comprehensive look at the difficulties the Court encountered when interpreting obscenity law.

With the exceptions of Justices Black and Douglas, who took a near absolutist position on the First Amendment, almost all other members of the Court believed the Federal government or the states could ban hard-core pornography as obscene. Some gradually came to believe obscenity included only hard-core material. This conclusion grew out of the Court's difficulty in designing a workable obscenity test. Specifically, the Justices strove to find a way to allow some sexually explicit material to circulate while excluding only those materials that they believed had no other purpose than exciting lust in the reader. Even this distinction was fraught with difficulty because some of the Justices believed that, while Federal efforts encompassed efforts to limit hard-core material however the individual justice

² The Supreme Court received approximately 2000 petitions for writs of certiorari per year, by the end of the 1950s; as of 2008 it received about 10,000 per year. It currently 'grants cert' i.e. agrees to receive briefs and hear arguments, for approximately 100 cases per year. <http://www.supremecourtus.gov/about/justicecaseload.pdf>, (accessed Jan. 3, 2009).

defined that term, the states' reach went farther. States, according to this view, had the right to ban materials the Federal government had to tolerate. Eventually, a faction on the Court of Justices came to believe that aside from restricting access by minors and limiting exposure to unwilling adults, there should be no restrictions on the traffic in sexually explicit materials. Within this context, a group of Justices believed that local juries should be able to apply community standards when deciding the essential questions of prurient appeal and patent offensiveness; others believed those standards must apply nationally. The Court encompassed a wide range of views, but virtually all supported some restraints upon hard-core materials, however they individually defined that term.

It should not be surprising that none of the Justices was able to describe where the line between the allowable and the obscene lay; what constituted hard-core, nor that they were they unsuccessful, until very late in the process, in constructing any formula for lower courts to identify that line. Justice Potter Stewart famously evaded the task by writing: "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that."³ While the Court ostensibly deals with matters of constitutional law, sometimes the underlying issues force it to engage terms of moral definition. As Doug Rendleman pointed out in the *Columbia Law Review*, terms like obscenity, pornography, and explicit are perpetually vexing. "The assumption that language can be refined to distinguish the obscene from the merely explicit is probably fallacious. Minds can identify obscenity, but definition plays a

³ *Jacobellis v. Ohio*, 378 U.S. 184 (1964) at 197.

small role in the labeling process.”⁴ The seemingly clear-cut prohibitions on government actions contained in the Bill of Rights can become frustratingly vague when applied to real world situations. The First Amendment prohibits Congress from making laws “respecting the establishment of religion...or abridging the freedom of speech, or of the press.” The most neutral definition of obscenity, based on the Latin *Ob* for *against* and the Greek *Skini* for *stage* or *scene*, merely means something kept off the stage or out of sight. But what a culture decides is unfit for viewing in the public space implicates moral judgment from the start.

The secondary literature on the Supreme Court’s efforts to come to grips with the obscenity problem is deep and rich.⁵ Most histories of pornography and of obscenity law in particular follow a predictable storyline describing how literature

⁴ Doug Rendleman, “Civilizing Pornography: The Case for an Exclusive Obscenity Nuisance Statute,” *The University of Chicago Law Review*, Vol. 44, No. 3, (Spring 1977), 559.

⁵ See: Daniel S. Moretti, *Obscenity and Pornography, the Law Under the First Amendment*, (New York: Oceana Publications, Inc., 1984). Leon Friedman, ed., *Obscenity: The Complete Arguments Before the Supreme Court in the Major Obscenity Cases*, (New York: Chelsea House, 1983), Thomas C. Mackey, *Pornography on Trial*, (Santa Barbara, California: ABC-CLIO, 2002). Additionally, biographies of the Justices devote some space to the obscenity problem. Jack Harrison Pollack, *Earl Warren, The Judge Who Changed America*, (Englewood Cliffs, N.J.: Prentice Hall, 1979); Frank Michelman, *Brennan and Democracy*, (Princeton, N.J.: Princeton University Press, 1999); David E. Marion, *The Jurisprudence of Justice William J. Brennan, Jr.: The Law and Politics of “Libertarian Dignity”*, (Lanham, Md.: Rowman & Littlefield Publishers, 1997). William O. Douglas, *The Court Years, 1939-1975: The Autobiography of William O. Douglas*, (New York: Random House, 1980). Hunter Clark, *Justice Brennan: The Great Conciliator*, (Secaucus, N.J.: Carol Publishing Group, 1995). Kim Isaac Eisler, *A Justice for All: William J. Brennan, Jr., and the Decisions that Transformed America*, (New York: Simon & Schuster, 1993). Dennis Hutchinson, *The Man Who Once was Whizzer White: A Portrait of Justice Byron R. White*, (New York: Free Press, 1998); Roger K. Newman, *Hugo Black: A Biography*, (New York: Fordham University Press, 1997). Howard Ball, *Of Power and Right: Hugo Black, William O. Douglas, and America’s Constitutional Revolution*, (New York: Oxford University Press, 1992); Tony Freyer, ed. *Justice Hugo Black and Modern America*, (Tuscaloosa, AL.: University of Alabama Press, 1990); James, F. Simon, *The Antagonists: Hugo Black, Felix Frankfurter and Civil Liberties in Modern America*, (New York: Simon and Schuster, 1989). Melvin I. Urofsky, *Felix Frankfurter: Judicial Restraint and Individual Liberties*, (Boston: Twayne, 1991). Tinsley, E. Yarbrough, *John Marshall Harlan: Great Dissenter of the Warren Court*, (New York: Oxford University Press, 1992).

became free of the constraints of conventional morality.⁶ Accounts of the court battles over James Joyce's *Ulysses*,⁷ and Edmund Wilson's *Memoirs of Hecate County*, are obvious examples.⁸ Often, the lawyers in the cases provided the most interesting accounts.⁹ The Court's decisions also provided endless opportunities for law review articles to decipher the opinions and dissents, challenge their reasoning, and offered proscriptive advice.¹⁰

Few of such landmark obscenity cases concerned hard-core film. The industry, when it arrived, encountered an already established obscenity doctrine designed to address literature and photographs. Timothy Hagle, in a quantitative analysis of the factors that determined the outcomes of various obscenity decisions,

⁶ The narrative can become one of the liberation, see: Edward de Grazia, *Girls Lean Back Everywhere, the Law of Obscenity and the Assault on Genius*, (New York: Random House, 1992), or one of a decline into decadence, see: James Jackson Kilpatrick, *The Smut Peddlers*, (Garden City, NY: Doubleday & Company, 1960).

⁷ James Joyce, *Ulysses*, (London and Paris: Egoist Press, 1922). The Federal case surrounding the publication of *Ulysses* was *United States v. One Book Called "Ulysses,"* 5 F. Supp. 182, (Southern District of New York 1933). See: Paul Vanderham, *James Joyce and Censorship: The Trials of Ulysses*, (New York: New York University Press, 1998).

⁸ Edmund Wilson, *Memoirs of Hecate County*, (New York: Doubleday, 1946). Soon after publication, New York State charged the publisher with obscenity. Convicted, Doubleday appealed to the Supreme Court. In 1948, the Court, on a four—four vote, left the lower court's decision stand. *Doubleday & Co. v. New York*, 335 U.S. 848 (1948). Felix Frankfurter recused himself, which made the tie vote possible, because he was a close friend of the author.

⁹ See: de Grazia, *Girls Lean Back Everywhere*, and William Seagle, *To the Pure...: A Study of Obscenity and the Censor*, (New York: Viking, 1928), Morris L. Ernst and Alan U. Schwartz, *Censorship: The Search for the Obscene*, (New York: Macmillan, 1965).

¹⁰ See: William B Lockhart and Robert C. McClure, "Literature, the Law of Obscenity, and the Constitution," *Minnesota Law Review*, Vol. 38, No. 4, (March 1954), 295-395, William B. Lockhart and Robert C. McClure "Obscenity in the Courts," *Law and Contemporary Problems*, Vol. 20, No. 4, Obscenity and the Arts, (Autumn, 1955), 587-607, D. W. Abse, "Psychodynamic Aspects of the Problem of Definition of Obscenity," *Law and Contemporary Problems*, Vol. 20, No. 4, Obscenity and the Arts, (Autumn, 1955), 572-586, Donald F. Oosterhouse, "Constitutional Law: Due Process: Validity of Refusal to Permit the Showing of a Motion Picture on the Grounds of Obscenity," *Michigan Law Review*, Vol. 53, No. 8, (Jun., 1955), 1180-1183, and Henry H. Foster Jr., "The 'Comstock Load' Obscenity and the Law," *The Journal of Criminal Law, Criminology, and Political Science*, Vol. 48, No. 3, (Sep.—Oct., 1957), 245-258.

argues that the materials' medium had "little or no impact" on the Court. This was either because the differences in media did not make any difference to the Court, or the differences inhibited "the Court's ability to "draw consistent distinctions based on the medium employed."¹¹ A key element, for the Justices, was offensiveness. Offensiveness turned largely upon how explicitly a material portrayed sexuality. In this sense, a picture was worth a thousand words, and more. While the Court's earliest decisions addressed text and photographs, and only later became applicable to film, eventually, even some of the Justices who viewed highly explicit textual materials obscene backed away and came to believe that no text, however explicit or offensive, could be legally obscene.

Conventional language describes the Court in the singular; 'the Court said' or the Court decided.' It was not, however, a static or unified group. Justices come and go and the dominance of any perspective—when there is one—is temporary. At times, the membership of the Court remained constant for long periods, and then there might be rapid turnover. Often, 'the Court' producing an opinion one year changed its mind a few years later. Moreover, only rarely did any obscenity decision, even a majority decision, command a uniformity of reasoning. The obscenity cases generated a bewildering number of concurrences and dissents. This often left lower courts with a decision but little firm guidance as to application. This meant that obscenity law rests on forty years of often-conflicting opinions, concurrences, and dissents coming out of a Court with a shifting membership. The judicial principle of *stare decisis* is a shortened version of the Latin *stare decisis et quia non movere*

¹¹ Timothy, M. Hagle, "But Do They Have to See It to Know It? The Supreme Court's Obscenity and Pornography Decisions," *The Western Political Quarterly*, Vol. 44, No. 4, (Dec. 1991), 1049-1052.

meaning to adhere to decisions and not disturb what is settled. It is an absolute restraint on lower courts. In the case of the Supreme Court, however, it means the Court should feel bound by its earlier decisions until it decides that it should not.¹²

The composition of the Court that engaged obscenity in the forty years between *Roth v. United States* (1957) and the end of the 1980s changed radically and at times quickly. The initial Court was a mixed group in terms of experience. Broadly speaking, the 1957 Court was moderate to liberal. The largest contingent consisted of recent Eisenhower appointees, Chief Justice Earl Warren, John M. Harlan, William J. Brennan, and Charles Evans Whittaker. The longest serving Justices in 1957 were the three remaining Franklin Roosevelt appointees: Hugo Black, Felix Frankfurter, and William O. Douglas. Harry Truman appointees Harold Burton and Tom Clark rounded out the bench. The Court experienced rapid turnover during the sixteen years between *Roth* (1957) and *Miller v. California* (1973).¹³ By 1973, only Brennan and Douglas remained from the original *Roth* Court.¹⁴ In the years after *Miller*, the Court's composition was considerably more stable.¹⁵ The broadly liberal approach to expression reflected by *Roth* stands in contrast to the less

¹² See: Richard H. Fallon, Jr., "Stare Decisis and the Constitution: An Essay on Constitutional Methodology," *New York University Law Review*, Vol. 76, No. 2, (May 2001), 570-597.

¹³ *Miller v. California*, 413 U.S. 15 (1973).

¹⁴ Between 1958 and 1969, Potter Stewart, Byron White, Arthur Goldberg, Abe Fortas, and Thurgood Marshall replaced Burton, Whittaker, Frankfurter, and Clark; Fortas supplanting Goldberg after Goldberg had served less than three years on the Court. Between 1969 and the *Miller* case in 1973, Warren Burger replaced Earl Warren as Chief, Harry Blackman replaced Fortas, and Lewis F. Powell and William H. Rehnquist replaced Black and Harlan.

¹⁵ In 1975, John Paul Stevens replaced Douglas, and in 1981, Sandra Day O'Connor replaced Stewart. Chief Justice Burger retired in 1986 and Rehnquist moved to center chair with Antonin Scalia replacing Rehnquist. In 1987, Powell retired and Anthony Kennedy took his seat. At the end of the 1980s, only Brennan remained from the 1957 *Roth* Court, while Brennan, White, Marshall, Blackmun, and Rehnquist remained from the Court that settled the *Miller* case in 1973.

tolerant Court that heard *Miller* and the cases that followed. In other words, the Court's definition of obscenity potentially encompassed more material, after 1973.

The Supreme Court of 1957 did not cobble together obscenity law from whole cloth, nor were they the first Court to engage film. When film arrived on the national scene, censorship mechanisms already existed, ready to restrain excesses. At first, Federal courts denied all films constitutional protection because of their potential appeal to prurient interests. Eventually, through a series of Court decisions, mainstream films were accorded free speech rights, while "prurient interest films" were subjected to different regulations. In 1915, in *Mutual Film Corp. v. Industrial Commission of Ohio*, a national film distribution company, Mutual, contested an Ohio statute requiring prior approval by a state censorship board before public exhibition of its films. While Mutual based its appeal on First and Fourteenth Amendment grounds,¹⁶ the problem for Mutual was that the Ohio procedures collided with their distribution system. Objecting on First Amendment grounds was likely the most direct means of circumventing the bureaucracy. Mutual distributed films from a central location, much like a lending library, to a variety of theaters across the country. When the films entered Ohio, they were unpacked, screened for the censorship board, certified if acceptable, rewound on their spools, repacked in their crates, and then forwarded to the designated theater. The Ohio censorship statute stipulated that only films of a "moral, educational, or amusing and harmless character" could receive permission for public viewing.

¹⁶ Mutual cited the First Amendment, because of its freedom of speech provision, and the Fourteenth, because of its clause stating: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The Court decided that the First Amendment did not extend to motion pictures. “They indeed may be mediums of thought,” Justice McKenna wrote, “but so are many things... the theater, the circus...shows and spectacles.” If the First Amendment encompassed film, he noted, “Their performances may be thus brought by the like reasoning under the same immunity from repression or supervision as the public press.” McKenna’s “first impulse,” was to reject the notion. He felt, the argument was “strained which extends the guaranties of free opinion and speech to the multitudinous shows which are advertised on the billboards of our cities and towns.” Mutual was engaged in a business, “pure and simple.” Films were merely, “representations of events, of ideas and sentiments.” While they could be amusing and enjoyable, McKenna felt that they were also potentially evil, “because of their attractiveness and manner of exhibition.”¹⁷

All film remained outside of First Amendment protection until the Court reversed its 1915 *Mutual* decision in *Burstyn v. Wilson* (1952).¹⁸ During this period, mainstream films operated within a largely self-administered censorship system.¹⁹

¹⁷ *Mutual Film Corporation v. Industrial Commission of Ohio*, 236 U.S. 230, at 243, (1915).

¹⁸ *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952). *Burstyn* was also the first case to come before the Supreme Court that addressed film and the question of First Amendment protection since the 1925 case of *Gitlow v. New York*, 268 U.S. 652 (1925). *Gitlow* concerned political speech, and neither film nor obscenity played any part in the case. It is germane to obscenity law solely because it held that state legislatures had to abide by the First Amendment. Prior to *Gitlow* the First Amendment prevented Congress from passing laws restricting speech, it did not stop individual states from doing so.

¹⁹ See: Ford H. MacGregor, “Official Censorship Legislation,” *Annals of the American Academy of Political and Social Science*, Vol. 128, *The Motion Picture in Its Economic and Social Aspects*, (Nov., 1926), 163-174, and John Wertheimer, “Mutual Film Reviewed: The Movies, Censorship, and Free Speech in Progressive America,” *The American Journal of Legal History*, Vol. 37, No. 2, (Apr., 1993), 158-189. Also see: Harmon B. Stephens, “The Relation of the Motion Picture to Changing Moral Standards,” *Annals of the American Academy of Political and Social Science*, Vol. 128, *The Motion Picture in Its Economic and Social Aspects*, (Nov., 1926), 151-157.

Burstyn concerned the state of New York's ban of the foreign film, *The Miracle*, because it was sacrilegious.²⁰ Quickly dispensing with the notion, Justice Tom Clark wrote, "The state has no legitimate interest in protecting any or all religions from views distasteful to them which is sufficient to justify prior restraints upon the expression of those views." There were no dissenting opinions. Clark pulled motion pictures under the umbrella of the First Amendment, precisely because they were a "significant medium for communication" and noted that neither films' profit motive, nor the fact that films entertained lessened their protected status in any way.²¹ *Burstyn* relied heavily on a holding in *Winters v. New York* (1948) stating that "the 'line between the informing and the entertaining is too elusive'...What is one man's amusement, teaches another's doctrine."²² Additionally, *Burstyn* declared that New York's film licensing scheme amounted to a case of prior restraint, by preventing the screening of a film rather than punishing an exhibitor afterwards.

Frankfurter's concurrence is noteworthy; it is nearly three times as long as Clark's opinion, but arrived at the same conclusion. Frankfurter, however, constructed a far more elegant argument against using law to sustain religious tenets:

"To stop short of proscribing all subjects that might conceivably be interpreted to be religious, inevitably creates a situation whereby the censor bans only that against which there is a substantial outcry from a religious group...Consequently the film industry, normally not guided by creative artists, and cautious in putting large capital to the hazards of courage, would be governed by its notions of the feelings likely to

²⁰ *The Miracle*, "Il Miracolo," (a segment of the film *L'Amore*), Directed by Roberto Rossellini, Finecine, 1948.

²¹ 343 U.S. 501.

²² *Winters v. New York*, 333 U.S. 507, at 510 (1948). *Winters* concerned neither film nor obscenity, but as is often the case the Court relies upon holdings in one case to support its reasoning in another.

be aroused by diverse religious sects, certainly the powerful ones. The effect of such demands upon art and upon those whose function is to enhance the culture of a society need not be labored.”²³

Where *Burstyn* extended First Amendment protection to film, *Butler v. Michigan* (1957)²⁴ addressed obscenity. It did so, however, obliquely, by implicitly overturning the *Hicklin* standard that the Federal courts employed since Comstock’s time.²⁵ The *Butler* decision reversed a Michigan state conviction for selling “any book containing obscene language tending to the corruption of the morals of youth.” Felix Frankfurter found the Michigan statute overbroad for restricting adult access to materials “not too rugged for grown men and women in order to shield juvenile innocence.” “Surely,” he wrote, “this is to burn the house to roast the pig.” Selling obscenity to minors was already against the law, but the defendant had not sold his materials to minors. Frankfurter saw Michigan trying to “reduce the adult population of Michigan to reading only what is fit for children.”²⁶ Even though the *Butler* opinion did not mention the *Hicklin* test by name, it was clear that its days were numbered.

In the 1957 cases *Roth v. United States*, *Alberts v. California*²⁷, and *Kingsley Books, Inc. v. Brown*,²⁸ the Court’s principal concern was to clarify what was

²³ 343 U.S. 531, 532.

²⁴ *Butler v. Michigan*, 352 U.S. 380 (1957).

²⁵ The *Hicklin* test for obscenity turned on the issue of, “whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.”

²⁶ 352 U.S. at 380, 383.

²⁷ *Alberts v. California*, 354 U.S. 476 (1957).

²⁸ *Kingsley Books, Inc. v. Brown*, 354 U.S. 436 (1957).

allowable expression in printed textual and graphic material. This direct confrontation with obscenity was a long time in coming. In none of the cases before *Roth* or *Alberts* had the central question of whether the First Amendment protected obscenity come under review. The Court had limited themselves to issues of “statutory construction” or “procedure.”²⁹ *Roth* finally and completely overturned *Hicklin*, and substituted a new formula for defining obscenity. It is arguable, however, that *Roth* and its companions did nothing more than substitute mid-twentieth century standards for the Victorian standards of *Hicklin*.³⁰ Each of the three cases turned on the broad question of obscenity, but differed on specific questions such as the applicability of the First Amendment to the individual states. *Roth*, moreover, was the result of an all but direct plea to the Supreme Court from Judge Jerome Frank of the U.S. Court of Appeals for the Second Circuit, to bring some sense to obscenity law. The initial charges against Samuel Roth, a long-time pornographer and sometime novelist, resulted in a Federal trial in New York that Roth lost. He also lost his appeal at the Court of Appeals for the Second Circuit. It was there that Judge Frank, who concurred in the result, because established precedent compelled him to concur, penned a separate opinion containing a plea to the Supreme Court to address the obscenity question definitively. Frank wrote, “It may seem almost frivolous to raise any question about the constitutionality of the obscenity statute at a time when many seemingly graver First Amendment problems confront

²⁹ Justice Douglas noted this in the midst of the obscenity decade, in *Ginsberg v. New York*, 390 U.S. 629, at 652 (1968).

³⁰ “More Ado About Dirty Books,” *Yale Law Journal*, Vol. 75, No. 8. (July, 1966), 1373. “Under Roth everything still depended on the disgust threshold of the judge and jury, now dignified as their measurement of ‘prurient appeal.’”

the courts.” Nonetheless, Frank identified two problems with existing obscenity law. First, that “no one can now show...with any reasonable probability obscene publications tend to have any effects on the behavior of normal, average adults,” and second, “punishment is apparently inflicted for provoking, in such adults, undesirable sexual thoughts, feelings, or desires—not overt dangerous or anti-social conduct, either actual or probable.” Here, Frank is clearly referencing and rejecting the masturbation argument. At the end of his concurring opinion, Frank attached a lengthy appendix that addressed virtually all the issues that would bedevil the Supreme Court in the coming years. In the appendix, Frank posed a compelling question, one the Court would consistently evade over the following decades. It went to the heart of any scheme to separate obscenity from allowable expression. Congress could punish the mailing of books, Frank wrote, because of the “mere thoughts or feelings about sex” they evoked, because Congress considered those thoughts, “dangerous,” but Congress would be acting in the “absence of any satisfactory evidence” that these “thoughts or feelings” lead to “socially harmful deeds.” What was to stop Congress then, Frank wondered, from punishing the distribution of books stirring up “thoughts or feelings, about religion or politics,” that Congress also considered “dangerous.”³¹ It is intriguing to contemplate the kind of obscenity doctrine that might have developed under Frank’s approach, but sadly, he died on January 13, 1957 the day before the Supreme Court granted the writ of certiorari agreeing to hear Roth’s appeal.

³¹ U.S. v. Roth, 237 F.2d 796 (1956).

In a memo to Chief Justice Warren regarding granting the writ, a clerk admitted a personal belief that “general obscenity statutes are unconstitutional” because their vagueness forced each obscenity trial jury to end up acting like a “little legislature.” The clerk argued that the “problem does not have to be so handled. It is possible to define legitimate aims of penal legislation and to devise statutes to meet the problem.” Future Court decisions called the clerk’s assertion into question. Warren, in a handwritten notation on the top of the clerk’s memo wrote, “Grant—if we are ready to consider the whole problem—we already have three other cases on special phases. This is the basic question.”³²

The basic question, for Warren, what Justice William Brennan would call the “dispositive question,” was “whether obscenity is utterance within the area of protected speech and press.”³³ Brennan concluded that it was not. Brennan drew this conclusion from the historical record, as well as from prior decisions limiting expression. He declared, “Sex and obscenity are not synonymous.”³⁴ He rejected the *Hicklin* test by name, and its method of “judging obscenity by the effect of isolated passages upon the most susceptible persons.” Brennan reasoned the *Hicklin* test “might well encompass material legitimately treating with sex” and was thereby “unconstitutionally restrictive of the freedoms of speech and press.”³⁵ Recognizing that courts required a coherent, usable statement describing what constituted

³² “Memorandum from Reitz to Chief Justice Earl Warren re: No. 582, 1956 Term, Roth v. United States Cert to CA #2.” Chief Justice Earl Warren papers. Box 437. Folder: Conference memorandum O.T. 1956, Appellate #576-600. Library of Congress, Washington, DC.

³³ 354 U.S. at 481.

³⁴ *Ibid.* at 487.

³⁵ *Ibid.* 489.

obscurity Brennan drew upon a work on obscenity law completed by the American Law Institute (ALI). The ALI, founded in 1923, sought to aid lawyers and judges through publishing works designed to clarify complex and uncertain issues in the legal system.³⁶ One of the ALI's on-going projects was the drafting of a *Model Penal Code (MPC)*.³⁷ ALI submitted a tentative draft of the *MPC* sections addressing obscenity to its membership at their Annual Meeting on May 22-25, 1957.³⁸ The *MPC* defined obscene as follows:

“A thing is obscene if, considered as a whole, its predominant appeal is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters.”³⁹

In his majority opinion in *Roth*, Brennan held that that juries trying obscenity cases could decide whether, “to the average person, applying contemporary community standards, the dominant theme of the material, taken as whole, appeals to prurient interest.” Prurient interest, Brennan explained in a footnote, meant that material possessed “a tendency to excite lustful thoughts,” and pruriency meant ““itching; longing; uneasy with desire or longing; of persons, having itching, morbid, or lascivious longings; of desire, curiosity, or propensity, lewd.””⁴⁰

³⁶ American Law Institute, “Overview: Creation of the Institute,” <http://www.ali.org/doc/thisIsALI.pdf>, 2. (accessed Oct. 12, 2008).

³⁷ The ALI started the Model Penal Code project in 1950 and completed it in 1962. American Law Institute, “Past and Present ALI Projects,” http://www.ali.org/doc/past_present_ALIprojects.pdf, 4. (accessed Oct. 12, 2008).

³⁸ Since the Court announced the *Roth* decision on June 24, 1957, and Supreme Court Justices are ex-officio members of the ALI, Brennan almost certainly based his opinion on working drafts of the *MPC*.

³⁹ American Law Institute, *Model Penal Code*, 207.10 (2) (Tent. Draft No. 6), (Philadelphia: ALI, 1957), 1

⁴⁰ 354 U.S. at 389.

The *MPC* specifically rejected a simple “tendency to arouse lustful thoughts” test, because it was believed the society “plainly” tolerated “erotic interest in literature, advertising, and art.” Moreover, the *MPC* explicitly locates the state interest in controlling obscenity in the “tension” that exists when the “ordinary person” in society is “caught between normal sex drives and curiosity...and powerful social and legal prohibitions against overt sexual behavior.” The “principal objective” of the code was to “prevent the commercial exploitation of this psychosexual tension.”⁴¹

Legal historian Henry Monaghan argues, however that Brennan divorced the issue of harm from the justification for banning obscenity. “Obscenity, wrote Mr. Justice Brennan, is unprotected by the First Amendment not because it is harmful, but because it is worthless.”⁴² Brennan’s opinion employed what Harry Kalven calls a “two-level theory” of speech. Some forms of expression do not merit protection, and obscenity belongs to that class of unprotected expression.⁴³ Brennan also drew support from language in an earlier free speech case, *Chaplinsky v. New Hampshire* (1942). *Chaplinsky* established the ‘fighting words’ exemption to the First Amendment, and held that there were “certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem.” Among those classes were “the lewd and obscene,

⁴¹ ALI, *MPC*, *Draft No. 6*, 10.

⁴² Henry P. Monaghan, “Obscenity, 1966: The Marriage of Obscenity Per Se and Obscenity Per Quod,” *The Yale Law Journal*, Vol. 76, No. 1, (Nov., 1966), 131.

⁴³ Harry Kalven, Jr., “The Metaphysics of the Law of Obscenity,” *Supreme Court Review*, Vol. 1960, (1960), 1-45.

the profane, the libelous, and the insulting or ‘fighting’ words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.”

Brennan’s use of *Chaplinsky* in the *Roth* opinion was a clear case of selective quotation; he stopped with the word “obscene” and neglected to include the rationale behind the exclusion of these “limited classes of speech.”⁴⁴ Namely, that fighting words “inflict injury or tend to incite an immediate breach of the peace.”⁴⁵ The *Chaplinsky* opinion itself drew upon the work of Zechariah Chafee, one of the founders of the American Civil Liberties Union. Chafee’s justifications for the exclusion of obscenity from First Amendment protection rested on the assertion that obscenity was “no essential part of any exposition of ideas.” Therefore, it was of “such slight social value as a step to truth that any benefit” that it provided was “clearly outweighed by the social interest in order and morality, the training of the young,” and, “the peace of mind of those who see and hear.”⁴⁶ Implicit in *Chaplinsky*, upon which *Roth* so tenuously sat, rested the issue of offense. Expression, because it offended listeners, was liable to prosecution.

Therefore, Brennan did not explicitly rest his exclusion of prurient sexual material on the putative harm obscenity might inflict. Both Brennan and the *MPC* located the government’s right to suppress obscene material in a concern over commercial exploitation of the human appetite for sexually excitement. Admittedly, commercial exploitation is still a species of harm, but of a more uncertain, problematic and detached sort than *Chaplinsky* envisioned. Temporal context

⁴⁴ *Chaplinsky v. State of New Hampshire*, 315 U.S. 568 (1942).

⁴⁵ Monaghan, “Obscenity, 1966,” 131-132.

⁴⁶ Zechariah Chafee, Jr., *Freedom of Speech*, (New York: Harcourt, Brace and Co., 1920), 170-171.

mattered in *Chaplinsky*. Fighting words could provoke an instantaneous response, a breach of the peace, which the state had an interest in preventing. What instantaneous response to obscene material did the state have an interest in preventing? I believe that Brennan's opinion reflected widely shared assumptions about what people were likely to do while consuming sexually exciting material. The endurance of both a cultural disdain for masturbation, and a general disapproval of materials thought to spur masturbation, therefore, is a plausible explanation for the definition of obscenity Brennan created.

While broad in its sweep, and attractive in its confidence, if not logic, Brennan's exclusion is more arbitrary than commonsensical. Historian Steven Gey believes pornography, by virtue of its position outside normative discourse is "anarchic and anti-social" and "for those very reasons," it is "within the range of concerns that should be considered worthy of protection by the first amendment."⁴⁷ Even Chief Justice Warren, agreeing with Brennan to affirm, objected to the scope of Brennan's opinion and wanted to decide the cases on far narrower grounds. For Warren, the *Roth* and *Alberts* defendants, "plainly engaged in the commercial exploitation of the morbid and shameful craving for materials with prurient effect." It was simply a question of whether the states or the Federal government could punish such behavior. That was "all that these cases present to us, and that is all we need to decide." Warren also feared the generalized language in *Roth* might "eventually be applied to the arts and sciences and freedom of communication generally." He was unsure that the Court could draw a line "dividing the salacious or pornographic from

⁴⁷ Steven G. Gey, "The Apologetics of Suppression: The Regulation of Pornography as Act and Idea," *Michigan Law Review*, Vol. 86, No. 7, (June 1988), 1566.

literature or science,” the same material could “have a different impact, varying according to the part of the community it reached.” It was the “conduct of the defendant” not the “obscenity of a book or picture” that was at issue. Context changed a material’s “color and character.”⁴⁸

John Harlan, stepping even farther away from Brennan’s reasoning, agreed with the *Alberts* decision and dissented on *Roth*. A tone of frustration with his fellow justices permeates both his concurrence and his dissent. Brennan “has not been bothered,” he wrote, “by the fact” that the state and Federal statutes at issue are different. Nor had Brennan considered that the Court’s scope of review was greater regarding Federal statutes than in state matters. Harlan seems vexed with Brennan’s “bland assurance” that his new obscenity formulation, “a thing is obscene if, considered as a whole, its predominant appeal is to prurient interest” was the same as the state and Federal statutes. The California statute referred to a book’s “tendency to deprave or corrupt its readers” and the Federal law said a work must “stir sexual impulses and lead to sexually impure thoughts.” Harlan cited the same ALI paragraph from which Brennan drew his formula, and showed that it explicitly rejected both of these criteria. Concurring with the judgment in *Alberts*, Harlan argued that the Court’s reach was narrow; their only job was to decide whether California’s law was “a rational exercise of power.” Harlan agreed that Brennan’s rejection of *Hicklin* should bind states, but beyond that, state law need not be “wise” nor must California prove harmful effects, only that it was a debatable point and that the state acted within a range of rational choices. Deciding more, was an offense against Federalism. In *Roth*, Harlan dissented, declaring the Federal Government did

⁴⁸ 354 U.S. at 495.

not have the same freedom of action that the states enjoyed. The Federal right to restrict expression was weakened by the distance separating the Federal Government and the behavior at issue. “Congress has no substantive power over sexual morality,” he wrote, its right was “attenuated.” The states were the proper actors for protecting individuals from obscenity’s potential harm. Moreover, Federal action carried potential for serious harm. Harlan saw no “overwhelming danger” if states banned certain works, but a national standard concerned him. Harlan balanced the problem. The “fact that the people of one State cannot read some of the works of D. H. Lawrence seems to me, if not wise or desirable, at least acceptable. But that no person in the United States should be allowed to do so seems to me to be intolerable, and violative of both the letter and spirit of the First Amendment.” If all the states, acting individually, banned a work, it would be regrettable but constitutionally acceptable. Since *Roth* was a Federal case, a “deadening uniformity” might spring from a nationwide censorship scheme. Federal reach should extend no farther than “hard-core” material, and Harlan refused to characterize the material Samuel Roth was selling as such. Harlan also noted that the *Roth* trial judge had not used Brennan’s definition in the trial. That court, Harlan noted, convicted Roth for offering books that tended to “stir sexual impulses and lead to sexually impure thoughts.” Harlan could not believe any book doing that was “utterly without redeeming social importance.”⁴⁹

For William Douglas and Hugo Black, the *Roth* and *Alberts* decisions made “the legality of a publication turn on the purity of thought which a book or tract instills in the mind of the reader.” Douglas thought it was impossible to adhere to the

⁴⁹ 354 U.S. at 496-507.

new Brennan standard “and be faithful” to the First Amendment. Brennan’s new formula profoundly offended Douglas, especially the notion that “punishment is inflicted for thoughts provoked, not for overt acts nor antisocial conduct.” The First Amendment forbade any abridgement of expression unless, and then only to the extent that, “it is so closely brigaded with illegal action as to be an inseparable part of it.” In making this point, Douglas was merely rearticulating the argument of Pennsylvania judge Curtis Bok from nearly a decade before.⁵⁰ Douglas ended his dissent with characteristically ringing language:

As a people, we cannot afford to relax that standard. For the test that suppresses a cheap tract today can suppress a literary gem tomorrow. All it need do is to incite a lascivious thought or arouse a lustful desire. The list of books that judges or juries can place in that category is endless. I would give the broad sweep of the First Amendment full support. I have the same confidence in the ability of our people to reject noxious literature as I have in their capacity to sort out the true from the false in theology, economics, politics, or any other field.⁵¹

Brennan’s rationale presupposed that obscenity was a worthless form of expression. His evaluation rested on pornographic obscenity’s manifest goal of exciting lustful thought. Clearly, it was not because obscenity was likely to cause an immediate breach of the peace. Nor did Brennan argue that government could ban obscenity solely because of its offensiveness. He likely recognized what feeble grounds offensiveness would be for an obscenity doctrine. The range of images and language capable of causing offense is immense and varies greatly among individuals. The easily imagined consequences of privileging some vague right not to be offended over the right to free expression could not have escaped Brennan.

⁵⁰ Commonwealth v. Gordon, 66 Pa. D. & C. 100 (1949).

⁵¹ 354 U.S. at 515.

Moreover, it would fly in the face of established First Amendment law. As Georgetown University law professor David Cole argues, “Society may not censor expression merely because it finds it offensive, morally or otherwise.”⁵² This was the same conclusion that Clark reached in his 1952 *Burstyn* decision. Nor is it likely that Brennan was intentionally seeking to impose a religious code of morality on obscenity law, though this was one of the unintended results, because of the relationship between religion and culturally sanctioned views of normative sexuality. Brennan, therefore, faced a profound dilemma. He could extend First Amendment protection to obscene materials, or he could try to define obscenity in terms of demonstrable and manifest harm. He did neither. I suspect that Brennan could not bring himself to assert harm when there were no empirical grounds for doing so, but nor do I believe he could he shed a resilient cultural repugnance of masturbation. The quandary facing Brennan was dire. As Columbia University law professor Louis Henkin pointed out only a few years after the *Roth* decision, “It asks much of the Supreme Court to tell legislators, and communal groups behind them, that what has long been deemed the law’s business is no longer, that even large majorities or a ‘general consensus’ cannot have their morality written into official law.”⁵³

None of the Justices raised the issue of masturbation in the opinions, concurrences, or dissents in either *Roth* or *Alberts*. Brennan’s *Roth* opinion, perhaps assumed what might follow having “lustful thoughts,” and he apparently considered it

⁵² David Cole, “Playing by Pornography’s Rules: The Regulation of Sexual Expression,” *University of Pennsylvania Law Review*, Vol. 143, No. 1, (Nov. 1994), 177.

⁵³ Louis Henkin, “Morals and the Constitution: The Sin of Obscenity,” *Columbia Law Review*, Vol. 63, No. 3, (March 1963), 413.

an axiomatic evil. While Warren's concurrence in *Alberts*, spoke approvingly of the California statute, which characterized obscenity as having a "substantial tendency to corrupt by arousing lustful desires," this does not establish a direct connection to masturbation.⁵⁴ However, Warren's argument that the focus of obscenity law ought to be on the conduct of the person selling pornographic material, rather than the material itself, is intriguing. Had the Court followed Warren the explicit nature of books, films, or photographs would not matter as much as the intention of the person selling the materials. Were the seller appealing to a customer's desire for sexually arousing material many materials might fall foul of the law. Conversely, extremely explicit material would be legal to buy and sell if aim educative or similarly innocent. Several problems arise from Warren's approach. First, demonstrating any non-prurient motivation for wanting the material would be as difficult as proving a prurient interest. Second, the central justification behind any obscenity restriction would remain unaddressed. What compelling state or Federal interest existed for preventing the excitement of lust? As legal scholar Louis Schwartz, one of the leading figures behind the ALI's *Model Penal Code* that Brennan drew upon, suggested six years after the *Roth* case what "truly distinguishes the offenses commonly thought of as 'against morals' is not their relation to morality but the absence of ordinary justification for punishment by a non-theocratic state."⁵⁵

⁵⁴ 354 U.S. at 494.

⁵⁵ Louis B. Schwartz, "Morals Offenses and the Model Penal Code," *Columbia Law Review*, Vol. 63, No. 4, (April 1963), 669-689.

Over and above the problem of defining obscenity lay the question of identifying the victim in the crime. By concentrating on the elements that characterized obscenity, the Court sidestepped the issue of whom the material harmed. Pornography consumption was a classic example of a ‘victimless’ crime. Anti-porn activists rebelled against seeing the label ‘victimless’ applied to material they considered corrupting to individuals and debasing on a societal level.⁵⁶ However, it qualifies as one due to the absence of a clearly identifiable injured party. Obscenity certainly offends, but it seems to offend most strongly merely by virtue of its existence. The knowledge that others are looking at obscenity, or could look, is often enough to encourage activists. The argument that obscenity coarsens society is one applicable to a variety of expressive materials. The claim that it leads to illegal acts remains unproved. In his *Columbia Law Review* essay, legal scholar Andrew Koppelman effectively argues that while obscenity probably does contribute to a variety of moral harms, the law is “too crude a tool for the task” of preventing them.⁵⁷ Koppelman cites Justice Marshall in *Police Dept. of Chicago v. Mosley* (1972), “Government has no power to restrict expression because of its message, its ideas, its subject matter, or its content,”⁵⁸ before noting the various exceptions to Marshall’s sweeping assertion. The First Amendment does not protect libel, fraud, inciting violence, or threats, but obscenity law is different, Koppelman observes, because it is

⁵⁶ “Psychiatrist Sees Obscenity as Direct Cause of Sex Crime,” *OYN*, (Feb. 1964), 1. “Psychiatrist Labels Obscenity ‘Pimple’ on Face of Society,” *OYN*, (June-July 1964), 8. “Pornography: You Are The Victim,” *MIMN*, (May 1981), 1, 4.

⁵⁷ Andrew Koppelman, “Does Obscenity Cause Moral Harm?” *Columbia Law Review*, Vol. 105, No. 5, (June 2005), 1636.

⁵⁸ *Police Dept. of Chicago v. Mosley*, 408 U.S. 92 at 95 (1972).

concerned with “preventing the formation of certain thoughts... in the minds of willing viewers.”⁵⁹

Masturbation, as a probable consequence of the thoughts incited by various obscenities, is inescapable. What is interesting is that obscenity law targets obscene materials, and the distributors and creators, but not the recipients. Yet obscenity-spurred masturbation is apparently the behavior that the law wants to prevent, and it is legal. No one risks fine or imprisonment for private masturbation. However, obscenity laws, by their existence, presuppose a belief that masturbation is inherently harmful. It is so harmful that producing or distributing materials that might encourage masturbation justifies legal restraint.

The cultural contempt the act carries is explicit in the lengths to which individuals go to avoid discussing it, as well as the inventiveness that they bring to creating euphemisms for it. While psychologist Timothy Jay, argues that “some forms of sexuality can be discussed through euphemism...there is no way to talk about some aspects of sexuality without being offensive,”⁶⁰ this obviously does not hold true for masturbation.⁶¹ Self-abuse, one of the oldest of the euphemisms for masturbation, is extremely revealing. It reveals the victim that obscenity law actually endeavors to defend. The failure of any of the Court’s obscenity decisions to make this admission, however, reveals the central problem with modern obscenity law: its creators could not risk articulating the reason they believed the laws were necessary.

⁵⁹ Koppelman, “Does Obscenity Cause Moral Harm?” 1636-1637.

⁶⁰ Timothy Jay, *Why We Curse: A Neuro-Psycho-Social Theory of Speech*, (Amsterdam, The Netherlands: John Benjamins Publishing, 2000), 128.

⁶¹ The Masturbation List, <http://www.masturbationlist.com>, (accessed Feb. 1, 2009) offers 1045 euphemisms for male masturbation.

The divided Supreme Court of the *Roth* and *Alberts* cases remained divided in *Kingsley Books, Inc. v. Brown*, decided the same day. Here, Frankfurter's opinion upheld the New York's confiscation and destruction of a quantity of allegedly obscene booklets. The issue in the case turned on a question of prior restraint. The Court held that it was not, but as in *Roth* and *Alberts*, focusing on the materials disturbed Warren. For the Chief, the offense lay in the use to which some person might put the material, and absent a criminal charge concerning conduct, Warren felt *Kingsley* smelled "too much of book burning."⁶² Brennan, in this case, joined Douglas and Black in dissenting. Black and Douglas objected to New York's use of an injunction enjoining the publication of materials before a hearing established their legal obscenity. The pending injunction New York employed, might be "only a little encroachment," but was nonetheless both "prior restraint and censorship at its worst." Under the New York statute once one municipality established the material's obscenity, the publisher faced the state's "contempt powers" if he offered the material anywhere else in the state. Douglas and Black believed publishers were "entitled to defend every utterance on its merits and not to suffer today for what he uttered yesterday...The audience that hissed yesterday may applaud today, even for the same performance." In this dissent, Douglas and Black clearly anticipate the dynamic of varying standards, possibly within the same community, or state. They wanted to ensure as many conceivable chances for a defendant to argue on behalf of material, before as many judges or juries as possible. Brennan objected to the lack of a jury in the *Kingsley* case. Since an obscenity determination, under the new *Roth* standard, rested on contemporary views, Brennan felt that juries were especially useful. New

⁶² 354 U.S. at 446.

York's statute made juries optional and Brennan considered that a "fatal flaw."⁶³ What *Kingsley* demonstrated was that the *Roth* test was insufficient on the day Brennan announced it.

Within days of the decisions, reactions appeared in the press. The major papers of record merely noted the changes; the death of *Hicklin*, and Brennan's new test.⁶⁴ *The Charleston Daily Mail* in West Virginia, however, ran editorials that lambasted the decisions over two consecutive days. Brennan's reliance upon assessing the nature of the thoughts engendered by material drew particular scorn: "Just what, one wonders, is an 'impure sexual thought' and how can the court tell when Citizen X, shall we say, is having one?" Brennan's failure to define his terms meant, "The whole weight of his opinion turns upon the difference between what the court does not know and dare not attempt to define."⁶⁵ However, the apparent lack of controversy over the grounds upon which Brennan rested his *Roth* decision speaks to their general acceptance within the public. *The Charleston Daily Mail* identified a point that Brennan had left unanswered, and which no one other than Douglas or Black addressed. How could anyone tell what a particular piece of erotica might instill in a reader's mind?

⁶³ 354 U.S. at 446-447.

⁶⁴ "High Court Rule Bars Obscenity," *The Washington Post*, (June 25, 1957), A12, and "Free Speech No Protection for Obscenity, Court Rules," *The New York Times*, (June 25, 1957), 1.

⁶⁵ "On a Matter of Definition, the High Court Wanders Off Into the Wild, Blue Yonder," Editorial, *The Charleston Daily Mail*, (June 27, 1957), 14. The following evening's editorial contrasted *Roth* with earlier decisions granting communists freedom of expression. The editor found the communists much more dangerous than "writers of trash." "Between Propaganda and Trash, the Court Draws a Line which is Plain Invisible," Editorial, *The Charleston Daily Mail*, (June 28, 1957), 8.

Brennan rested his objection to obscenity solely on its purported worthlessness. He did so, because of unexamined, widely shared assumptions that provoking lustful thoughts was illicit, and that material with that purpose ought to be illegal. Louis Henkin argues that the Constitution “denies to government and to majorities the domain of the non-rational, leaving private morality to Church, and Home, and Conscience.”⁶⁶ While attractive from a libertarian perspective, this reliance upon private actors to uphold a widely shared moral code is not without its own perils. As a 1958 *Duke Law Journal* analysis of the decisions asked, would private censorship with all of the “vigilante connotations” such a scheme entailed be more equitable than relying upon “an open judicial hearing”?⁶⁷ Of course, the line between private advocacy and vigilantism can depend upon point of view. Organizing a boycott is invariably legal and under most circumstances, picketing a business is as well. The targeted business owner might still feel damaged. Certainly, the charge of vigilantism was a frequent response to boycotts and pickets organized by Catholic groups, such as the Legion of Decency and the National Organization for Decent Literature (NODL).⁶⁸ The likelihood of any boycott or picket being labeled as vigilantism, of course, varies greatly depending upon the target of the action.⁶⁹

⁶⁶ Henkin, “Morals and the Constitution,” 412.

⁶⁷ “Obscenity and the First Amendment: The Search for an Adequate Test,” *Duke Law Journal*, Vol. 7, No. 2, (Spring, 1958), 123.

⁶⁸ See: Una M. Cadegan, “Guardians of Democracy or Cultural Storm Troopers? American Catholics and the Control of Popular Media, 1934-1966,” *The Catholic Historical Review*, Vol. 87, No. 2, (April 2001), 252-282, and Harold C. Gardiner, S.J., *Catholic Viewpoint on Censorship*, (Garden City, NY: Hanover House, 1958).

⁶⁹ Citizens for Decent Literature and Operation Yorkville intentionally shunned the use of boycotts and picketing, because of the reactions these tactics had generated when employed by the Legion of Decency and NODL, since the 1930s. Even as CDL and OY relinquished the use of boycotts and

Over the next 15 years, the ambiguity of *Roth* necessitated guiding the lower courts, via the appeals process, through the meaning of *Roth*. The *Roth* test's inherent vagueness made this inevitable. When lower courts construed *Roth* in ways the Supreme Court believed inappropriate, the Court stepped in and refined their definition; explaining anew what they thought they had said in *Roth*. The first case to do this was *Kingsley Pictures Corp. v. Regents* (1959).⁷⁰ This case carries special significance for hard-core film, although the film in the case was not hard-core, much less pornographic. Based on D. H. Lawrence's novel, of the same name, *Lady Chatterley's Lover*⁷¹ ran afoul the Motion Picture Division of the New York Education Department because it portrayed adultery as "proper behavior." Justice Potter Stewart, reversed New York, and noted that the state had not objected to the manner in which the film made its argument; obscenity was not the issue. Rather, New York found the idea the film advocated to be illicit. Stewart pointed out that this is the reason for the First Amendment; the "basic guarantee...of freedom to advocate ideas."⁷² While no one dissented in the *Kingsley Pictures Inc.* decision concurrences blossomed profusely. Frankfurter wanted a more restrained decision; Harlan objected to striking down the statute entirely; Black and Douglas again sounded their near absolutist argument. The plethora of concurrences was unfortunate, primarily

picketing these methods became powerful tools for the civil rights movement. The Montgomery Bus Boycott of 1955-1956 and the 'sit-ins' at Woolworth lunch counters are memorable examples of the efficiency of both. In the 1980s, anti-apartheid groups organized boycotts against corporations with investments in South Africa. In August 2008, the American Family Association initiated a boycott of the Hallmark Card Company for offering same-sex wedding announcements.

⁷⁰ *Kingsley Pictures Corp. v. Regents*, 360 U.S. 684 (1959).

⁷¹ *Lady Chatterley's Lover* (L'Amant de Lady Chatterley), Directed by Marc Allégret, Orsay Films, 1955.

⁷² 360 U.S. at 688.

because it was potentially confusing to lower courts. Also, because making “nitpicking” distinctions in a concurrence, as opposed to merely signing on to the majority opinion, risked offending the Justice authoring the majority opinion. While a Justice had every right to agree, concur, or dissent, they were also aware of the potential the options possessed for causing annoyance.⁷³

Smith v. California (1959)⁷⁴ overturned the conviction of a bookseller (Smith) because the Municipal Code of the City of Los Angeles made no allowance for a seller’s innocent ignorance of a material’s potential obscenity.⁷⁵ Brennan did not elaborate on what would constitute legal liability, contenting himself to state that California went “to the extent of eliminating all mental elements from the crime.” Insisting that a bookseller know absolutely that none of his material was obscene a seller would “tend to restrict the books he sells to those he has inspected; and thus the State will have imposed a restriction upon the distribution of constitutionally protected as well as obscene literature.” Brennan feared caution would lead merchants to hold back from the public legal materials. Self-censorship would become general censorship, “hardly less virulent for being privately administered...both obscene and not obscene, would be impeded.” Brennan, quoting himself from *Roth*, and again missing the paradox his statement created, argued that

⁷³ Justice Black addresses this concern in a handwritten note to Justice Douglas dated 12 June 1959, William O. Douglas papers, Box: 1211, Folder: 394(c) Kingsley v. Regents N.Y., vote of court, Library of Congress, Washington, DC.

⁷⁴ *Smith v. California*, 361 U.S. 147 (1959).

⁷⁵ § 41.01.1 of the Municipal Code of the City of Los Angeles. The legal term of the broader issue in *Smith* is *scienter*, or knowledge on the part of the defendant of the wrongness of an act. For example, a person unwittingly passing counterfeit currency is not legally liable. In the context of obscenity, an individual selling material without knowing, or without having sufficient reason to suspect, that the material is obscene might not be guilty.

the door “barring Federal and state intrusion into this area cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests.”⁷⁶

For Black, although he agreed to reverse, Brennan’s opinion was inadequate. “I read ‘no law . . . abridging’ to mean no law abridging.”⁷⁷ When he concurred, Douglas echoed Black, but conceded that Brennan’s opinion, to a “small degree,” acted as a defense for merchants by “making those who patrol bookstalls proceed less high handedly than has been their custom.”⁷⁸ Harlan concurred and dissented; disagreeing with Brennan that the trial judge needed to admit *expert* testimony regarding “contemporary community standards” but agreed that refusing to admit *any* evidence on community standards was sufficient grounds for reversal.

The refinements and elaborations made to *Roth* within its first five years were natural and virtually inevitable considering the questions it left unaddressed. In *Manual Enterprises v. Day* (1962),⁷⁹ the Court added the concept of “patent offensiveness” to the obscenity test. *Manual* also clarified the issue of whose “prurient interest” was at issue. The physique magazines *MANual*, *Trim*, and *Grecian Guild Pictorial*, clearly aimed their appeal at a gay male audience. Posing straps and strategically draped cloth drew attention to what could not yet see the legal light of day. Appealing their obscenity convictions, the magazines claimed, that since their

⁷⁶ 361 U.S. at 155.

⁷⁷ *Ibid* at 157.

⁷⁸ *Ibid* at 169.

⁷⁹ *Manual Enterprises v. Day*, 370 U.S. 478 (1962).

magazines obviously would not appeal to the prurient interest of the “average person” they could not actually be obscene. Harlan and Stewart addressed this point by tying prurient interest to the targeted audience, but then reversed the conviction anyway because the materials were not on their face patently offensive. Much of the Harlan and Stewart *Manual* opinion is an attempt to correct Brennan’s *Roth* decision. The patent offensiveness requirement came from Harlan and Stewarts’ reading of the Federal legislation. The language was virtually unchanged since Comstock’s time, and barred from the mail material that was “obscene, lewd, lascivious, indecent, filthy, or vile.”⁸⁰ Harlan and Stewart read this to mean material, “so offensive as to make it unacceptable under current community mores.” This minimized the importance of pruriency but retained it as an element of the test. Harlan asserts that Brennan must have meant a national community, when it came to making assessments, as the law reached, “all parts of the United States.”⁸¹ Brennan, Warren, and Douglas voted to reverse on procedural grounds.⁸² While not as intellectually intriguing as the concept of ‘patent offensiveness,’ Brennan’s reversal would have a significant impact upon the hard-core film industry by insisting that the Post Office create and then consistently employ a clear and constitutionally justifiable process for banning materials, Brennan opened the door for producers to pursue dual defensive tracks. Hard-core distributors, starting in the 1970s and continuing through the end of the century, won their cases, when they won them, either on the issue of vagueness, or on procedural grounds. Tom Clark authored the only dissent in *Manual*. He

⁸⁰ 18 U.S.C. § 1461.

⁸¹ 370 U.S. at 492.

⁸² *Ibid.* at 519.

completely rejected both Harlan and Brennan's opinions, believing that the effective result of the two was to require "the United States Post Office to be the world's largest disseminator of smut."⁸³

The *Manual* decision profoundly disturbed Clark. His fury became even greater with *Jacobellis v. Ohio* (1964),⁸⁴ which concerned the conviction of a theater manager in Cleveland Heights for possessing and exhibiting Louis Malle's *Les Amants*.⁸⁵ The plurality opinion, by Brennan, joined by Goldberg, contained several major holdings. First, that the Supreme Court would have to review every case in which a lower court judged material to be obscene. Second, material was not obscene unless, "utterly without redeeming social importance." Promoting ideas or demonstrating "literary or scientific or artistic value" protected materials. Third, obscenity could not rest on some "weighing" of the material's "social importance against its prurient appeal," since obscene materials had to be "utterly without" value. Brennan also adopted Harlan and Stewart's *Manual* criteria that material "go substantially beyond customary limits of candor." Brennan conceded "community standards" meant national standards. Local juries would decide cases, but they had to broaden their views. Brennan also held that the state interest in protecting children was not a sufficient reason for complete repression of adult material.⁸⁶ Black and

⁸³ Ibid. at 519.

⁸⁴ *Jacobellis v. Ohio*, 378 U.S. 184 (1964).

⁸⁵ *Les Amants* (The Lovers), Directed by Louis Malle, Nouvelle Editions de Films, 1958.

⁸⁶ 378 U.S. at 195.

Douglas concurred.⁸⁷ Stewart concurred in the reversal, and entered history when he said he would try to define what he meant when he said hard-core, “But I know it when I see it, and the motion picture involved in this case is not that.”⁸⁸ Warren and Clark dissented, with Warren writing the dissent. Warren held that “community” did not mean national, but as to the size of this less than national community, Warren kept his own counsel. There was “no provable ‘national standard,’ and perhaps there should be none.” The Supreme Court had not been able to define one, “and it would be unreasonable to expect local courts to divine one.” Local communities might well end up banning material “obscene in one community but not in another,” but he concluded that the nation was made up of diverse communities and that the Court’s task was one of “reconciling conflicting rights.” Warren again called for judging the “use to which various materials are put.” Finally, he asked for a general acceptance of lower courts’ determinations on obscenity and for the employment of a “sufficient evidence” test. “Any” evidence would not suffice, but demanding “substantial” evidence seemed onerous. This seemed the best way to avoid being “Super Censor of all the obscenity purveyed throughout the Nation.”⁸⁹ Harlan dissented, echoing the view that states had greater leeway than the Federal Government. Also dissatisfied with the Courts’ efforts, he wrote that obscenity determinations would depend on how material “happens to strike the minds of jurors or judges and ultimately those of a

⁸⁷ Ibid. at 196.

⁸⁸ Ibid. at 197.

⁸⁹ Ibid. at 199.

majority of the members of this Court.” The tests “must thus necessarily be pricked out on a case-by-case basis.”⁹⁰

Operation Yorkville

In the fall of 1962, just as the Supreme Court was adopting Harlan and Stewart’s patently offensive addition to the *Roth* test; material showing up in the hands of Manhattan schoolchildren was profoundly offending some parents and area clergy. Teachers at a local school caught some boys with pornographic magazines. Whether the children found the magazines in public trashcans or some local newsstands were selling to minors, is unclear. Additionally, the exact nature of the magazines is difficult to assess, as none of the press reports supply titles. It is likely, however, that they were on a par with either *Playboy* or *Gent*, though it is possible that they were even tamer than these were. Bare breasts and buttocks were the norm, but it is unlikely that the magazines revealed more.⁹¹ Teachers notified the children’s parents, the parents sought out their respective clergy, and soon a small core of concerned citizens organized themselves to confront the problem in their midst.⁹²

Operation Yorkville (hereafter OY) was not an ecumenical effort at its inception, although it quickly became one. Nor is it strictly accurate to say that it grew out of the kind of spontaneous citizen activism recounted above. This was the

⁹⁰ Ibid. at 204.

⁹¹ Material showing penetration would have to come from photo sets. These were collections of highly explicit pictures, often taken during the filming of a stag film, and sold either individually or in sets.

⁹² “Pornography—A \$2 Billion Trade,” *Manhattan East*, Vol. 3, No. 14, (Dec. 13, 1962), no page. This account of the founding of Operation Yorkville draws heavily from the press clippings, wire service copy, and letters contained in a scrapbook I examined at the Morality in Media headquarters, 475 Riverside Drive, Suite 239, New York, NY. (hereafter MIM Headquarters). Many of the clippings, unfortunately, lack dates, page numbers, and occasionally even the name of the publication from which they were clipped.

official account of OY's founding, and while no evidence exists to cast doubt on the story of children with dirty magazines, one clipping in the OY scrapbook references an October 8, 1962 meeting between Fr. William T. Wood, S. J., pastor of St. Ignatius Loyola Catholic Church and Charles Keating, Chairman of Citizens for Decent Literature (hereafter, CDL). At the meeting, Keating is reported having made an "earnest plea" to Woods for abolition of "salacious" literature, and called for his help in organizing some sort of local action in Manhattan against outlets selling such materials.⁹³ Whether Keating's visit was the actual spark behind OY, or not, Fr. Wood's initial efforts occurred in a parish context. During the late Fall of 1962, over 200 area mothers mailed post cards to Supreme Court Justices relating their "experience or observation concerning obscene literature in the community." This program, "Operation Feather"⁹⁴ also included reaching out to other religious denominations.⁹⁵ While the mothers of St. Ignatius were scolding William Douglas, "the fathers," came to believe the women's efforts would have "limited" effects. They organized themselves into a 14-man committee and suggested to Fr. Wood a "community-wide" meeting. Wood agreed, and on December 3, about 200 "community leaders" attended public meeting at the parish hall, on the Upper East Side of Manhattan.⁹⁶ Sometime between the start of Operation Feather and the December 3 meeting, the solicitation of other religious organizations started to pay off. An organizing committee consisting of Fr. Wood, Rabbi Joseph Lookstein, of

⁹³ "Posters Ask 'Who is the Killer?'" *The Trumpet*, (February 1963), no page.

⁹⁴ "Community Acts to Sweep Smut from Yorkville Streets," *Manhattan East*, Vol. 3, No. 14, (Dec. 13, 1962), 9.

⁹⁵ "Posters Ask," *The Trumpet*, no page.

⁹⁶ "Community Acts to Sweep Smut," *Manhattan East*, 1, 9.

Congregation Kehilath Jeshurun, and the Rev. Robert E. Wiltenburg, pastor of Immanuel Evangelical Lutheran church met and formed Operation Yorkville.⁹⁷ Fr. Wood apparently was delegating much of the ongoing organizing work during this start up phase to one of his priests, Fr. Morton Hill, S.J. As “spokesman” for OY, Fr. Hill spoke to the reporter from *Manhattan East* of the group’s goals and aspirations, one of which was to become “the largest anti-smut community organization ever to be undertaken.”⁹⁸ The December 1962 meeting generated considerable coverage in New York, New Jersey, and Pennsylvania,⁹⁹ and at least one foreign paper.¹⁰⁰ OY planned a future meeting for March,¹⁰¹ hoping to be able to screen the new CDL film *Perversion for Profit*.¹⁰² *Perversion for Profit* was a brief informational film about the scope and threat of pornographic materials in America. In the mean time, they enjoyed the endorsement of New York’s Lt. Governor Malcolm Wilson, and New

⁹⁷ “Neighborhood Campaign Against Obscenity Winning Wide Support,” *NCWC News Service* (Domestic), (Jan. 14, 1963), 9. Almost immediately after the first flurry of press reports, the question of just who actually founded OY becomes cloudy. After the first few months, articles and OY publications list Rabbi Julius Neumann of Congregation Zichron Moshe, Fr. Hill, and Rev. Wiltenburg as the founders. Eventually, MIM material leaves the strong impression that Fr. Hill founded OY, and “recruited” Wiltenburg and Neuman to help. Fr. Wood becomes an unnamed “Jesuit pastor” who asks Hill to “look into” the problem of children with dirty magazines, and Rabbi Lookstein fades away from the story entirely. See: “Odyssey of a Concerned and Determined Leader,” *MIMN*, Memorial Issue, Vol. 24, No. 8, (Dec. 1985), 3.

⁹⁸ “Community Acts to Sweep,” *Manhattan East*, 1.

⁹⁹ “‘Operation Yorkville’ New York Community Organizes Against Smut,” *Catholic News*, (Dec. 15, 1962), no page. “Led by Minister, Rabbi, Priest, Yorkville to Fight Salacious Literature,” *The Tablet*, (Dec. 15, 1962), no page. “Yorkville to Expand Smut War,” *New York Standard*, (Jan. 14, 1963), no page.

¹⁰⁰ Gavin Young, “Fighting the ‘Muck Merchants’,” *London Observer*, (no date, or page).

¹⁰¹ “Posters Ask,” *The Trumpet*, no page. “Guy Savino, ‘Manhattan’s Ant-Smut Fight Goes Grass Roots,’” *Newark Sunday News*, (Jan. 27).

¹⁰² *Perversion for Profit*, Citizens for Decent Literature, 1962. Numerous sources date this film between 1962 and 1965; however, a proposed March screening of the film indicates 1962 as the most likely year of production.

York City Mayor Robert F. Wagner, Jr., who offered the fledgling organization words of encouragement.¹⁰³

At first, it might seem odd that even before the March meeting, OY was on its way to becoming a nationally known organization. However, OY was neither the first, nor the only group mobilizing against ‘smut.’ Charles Keating’s Cincinnati based CDL was already the preeminent anti-pornography organization in the nation, and coordination between OY and CDL would continue through the 1980s. The network of affiliate organizations established and nurtured by CDL relayed news of similar groups’ successes and programs. Assisted by this network, word of OY’s program spread quickly beyond the greater New York area. In February, a Republican Congressman from Nebraska, Glenn Cunningham, endorsed their efforts.¹⁰⁴ The March 4 event went off as planned; the principal outcome of the meeting was an agreement to send a telegram to President Kennedy “urging action.” An “action committee” formed to “guide” OY.¹⁰⁵ New York’s Governor, Nelson Rockefeller joined the political figures praising OY’s activism.¹⁰⁶

The increasingly professional appearance of OY’s Newsletter indicates something of the rapidity of their growth. The *Operation Yorkville Newsletter*

¹⁰³ “Antismut Project Spurred by Interfaith Committee Praised,” *NCWC News Service* (Domestic), (Dec. 117, 1962), 3, “Interfaith Group’s Anti-smut Project Praised,” *The Catholic Standard and Times*, (Dec. 21, 1962), no page. Letter to Fr. Morton Hill from Lt. Gov. Malcolm Wilson, New York, Dec. 28, 1962. OY Scrapbook, MIM, Headquarters. “‘Operation Yorkville’ Wins Approval of Lt-Governor,” *Catholic News*, (Jan, 20, 1963), no page.

¹⁰⁴ “Bucks Smut Drive, Congressman Hails Yorkville Plan,” *Newark Sunday News*, (Feb. 24, 1963), no page.

¹⁰⁵ *Operation Yorkville*, flyer, no date, OY Scrapbook, MIM, Headquarters, NY.

¹⁰⁶ “Governor Lauds Drive Against Obscenity,” no publication name, date or page available. OY Scrapbook, MIM, Headquarters. The article mentions OY’s telegram to President Kennedy, so Rockefeller’s endorsement likely came in the aftermath of the March 4 meeting.

(hereafter *OYN*) of April and May of 1963, was an eight-page, mimeographed, folded mailer, with handwritten or typed headlines.¹⁰⁷ By June, it was a clean, six-page mailer, reproduced with offset printing and containing photographs. In April, however, *OYN* was still in the process of articulating its “chief aims.” At this stage of the organization’s development it obviously had no influence on the Supreme Court. The initial letter writing campaign of the parish mothers, despite the fact that they were addressed to the Justices, was probably similarly inconsequential. OY was just one of many ad-hoc anti-pornography groups rising up across the country. Some would become parts of larger organizations, many would wither over time. A few would last and exert political influence through advocacy and pressure on a national level. While the Court is designed to be insulated from political and social turmoil, it inevitably responds to the crises in the large society. OY had a hand in generating the sense that pornography represented a crisis.

In 1963, however, its stated purpose was providing a “vocal expression of our community standards.” OY, moreover, denied that it was “a boycott group or a vigilante committee.” They did not advocate either “mob action or book burning or censorship.” Nor did they consider themselves “puritanical stuffed shirts,” but rather, “community leaders and anxious parents” who were “merely” asking for “police enforcement of existing laws” and for “convictions from judges sworn to apply the law.”¹⁰⁸ OY consciously avoided assuming the role of a would-be censor, going so far as to declining to appear in debates if it believed the organization would be

¹⁰⁷ OY issued Bulletins prior to April 26, 1963. Bulletin #17, dated April 3, 1963, was the last, and the earliest publication I was able to locate in the MIM archives.

¹⁰⁸ “Our Community Standards,” *OYN*, (April 3, 1963), 3.

expected to articulate, or risk becoming identified with, a “pro-censorship” position.¹⁰⁹ This is partly because OY simply did not see its proposals as censorship. They saw their purpose as insisting on enforcement of existing statutes, encouraging stores to refuse to carry objectionable materials, and persuading publishers to elevate their standards. OY believed customers had both the right to know which stores carried such materials, and to avoid patronizing them. OY did not, however, officially organize, instigate, or endorse boycotts. In this, their public position was identical to that of CDL, which noted in its *Procedures Handbook*, “CDL...is not a censorship group, does not publish lists of books, does not participate in or encourage organized boycotting of stores selling objectionable materials. The law is our weapon.”¹¹⁰

The initial tone of OY reporting often reflected irritation with critics, and could turn unpleasant when recounting how “pseudo-sophisticates,” engaged OY spokespersons. The April 3, 1963 *OYN* describes one encounter between an unnamed “former attorney” for the ACLU in New York City, as a “diatribe of abuse, threats, and insults to a clergyman present.” OY could accuse opponents of employing the language of “legal mumbo-jumbo.” A psychiatric expert, if disagreeing with OY, could become “SICK-iatrist” who argued that, “magazines encouraging masturbation are not truly harmful, because masturbation is perfectly natural, and he who does not masturbate is sick.”¹¹¹ This heated rhetoric subsided rather soon, however.

¹⁰⁹ “OY Turns Down ‘Censor’ Role,” *OYN*, (April 1964), 4.

¹¹⁰ Citizens for Decent Literature, *Procedures Handbook*, (No Date), 2.

¹¹¹ “Defend Us from the Defenders,” *OYN*, (April 3, 1963), 3.

The last thing OY desired apparently was to appear either extreme¹¹² or sectarian, presenting itself as “an interfaith, community campaign” whose sole goal was to “keep obscene literature out of the hands of children.” However, interfaith is not the same as secular. OY’s “Policy Statement” makes that clear. “Obscenity is a militant defiance of God...Scriptures teach obedience to God through Commandments” and “cesspool publishers” defied “the 10 Commandments.” The availability of pornographic materials as a violation of the parental right to “educate” their children; as such, it was a form of “insidious interference.” The recent comic book panic of the 1950s provided OY with a ready-made linkage between print and delinquency. One article claimed, “Psychiatrists have declared that there is a link between obscenity and the appalling rise in juvenile crime.” An interesting gloss on the argument, noted that since “crime costs America 22 billion dollars per year. Rising crime rates mean rising taxes.”¹¹³ Eliminating smut could lower your taxes.

Aside from the occasional lapses into ad hominem language, or indulging in charges of guilt by association, such as when OY criticized the ACLU for its investigation of an incident where New York City police shot an armed suspect,¹¹⁴ OYN quickly settled into a standard and highly predictable format. Current affairs,

¹¹² This would change. In the early 1960s, they batted smut on Manhattan newsstands, by the mid-1970s their membership considered The Carol Burnett Show to be one of the ten most offensive shows on television. *The Waltons* and *Little House* topped the list for best shows while Carol Burnett came in 8th for the worst, behind *Maude*, *Cher*, ‘crime shows,’ *All in the Family*, ‘prime time movies,’ and *Kojak*. *Police Woman/Johnny Carson*, tied for 7th place. “MIM TV Poll Results,” *Morality in Media Newsletter* (hereafter *MIMN*), (Dec. 1975), 1 By the end of the 1970s, the organization opposed *Monty Python’s The Life of Brian*, on grounds of blasphemy. “Christians & Jews Rally in N.Y. Against Blasphemous ‘Brian’ Film,” *MIMN*, (Oct. 1979), 1. *Life of Brian*, Directed by Terry Jones, HandMade Films, 1979.

¹¹³ “O.Y. Policy Statement,” *OYN*, (April 26, 1963), 2.

¹¹⁴ “Defenders of Pornography Now Champions of Killers?” *OYN*, (Sept. 1963), 2.

with an emphasis on news related to pornography, morals, and violent crime news drove the content of *OYN*. Typical stories included mainstream news commenting favorably on activism; public pronouncements condemning objectionable movies, or books; any announcement, particularly from clergy, but also from physicians, politicians, or law enforcement either praising activism or damning traffickers, and stories linking pornography to crime.¹¹⁵

OYN cast a wide net when defining target materials. Legal obscenity was a preferred target, but the suggestive, lewd, immoral, violent, sexy, and tasteless were just as likely to get space. Other constants were the laudatory profiles of either a “Man,” “Lady,” “Young Man,” or “Young Lady of the Month,” and the identification of a “Target of the Month.” The Person of the Month feature was always a positive article. In the first years, when the *Newsletter* published several issues a month, they sometimes chose a person of the week. Invariably, this was someone active in the fight against obscenity, such as a prosecutor or judge. Often it was one of the leaders of OY, occasionally one of the children of an OY activist, or a person whose behavior the organization wished to applaud. The “Target of the Month” could range from a person of influence, someone with access to such a person, or a specific goal.¹¹⁶

¹¹⁵ See: “Psychiatrist Sees Obscenity Direct Cause of Sex Crime,” *OYN*, (Feb. 1964), 1; “Cardinal Lashes Out At Pornography Traffic,” *OYN*, (June/July, 1964), 1, “Doctors, Laymen Appeal to Clergy for United Stand,” *OYN*, (April/May, 1965), 1, “Psychiatrists Reject ‘Outlet’ Argument,” *OYN*, (Feb./March, 1966), 1.

¹¹⁶ “Man of the Week: John M. Braisted, Jr., Richmond County District Attorney,” *OYN*, (June 1964), 4. “Man of the Month: Judge Benjamin Gassman,” *OYN*, (Dec. 1963), 5. “Man of the Week: Rev. Robert E. Wiltenburg,” *OYN*, (May 1963), 6. “Young Person of the Month: Joshua M. Neumann,” *OYN*, (May 1966), 6. “Lady of the Month, Mrs. Yetta Panken-Clean Dealer,” *OYN*, (Jan. 1964), 3. “OY Target of the Month, Jack Valenti,” *MIMN*, (Nov. 1970), 3. “OY Target of the Month, Raise Ass’t D.A.’s Pay,” *OYN*, (Dec. 1967), 3. “OY Target of the Month, Local Radio Stations, Ask them to Broadcast OY Series,” *OYN*, (Dec. 1966), 3.

The manner of OY's advocacy mixed seemingly reasonable goals, with an accessible rhetorical style. OY representatives employed anecdotal stories to buttress their assertions. At one meeting of New York State District Attorney's Association, Fr. Hill, by then the group's leading public face, told the assembled lawyers that while it would be "helpful" to have proof that pornography was harmful, such evidence was actually "unnecessary." "Certitudes" regarding some issues need only "implicit proof." People knew, Hill explained, that exposure to pornography was both corrupting and dangerous. He related a story, from Peter Howard's *Britain and the Beast*¹¹⁷ of how a chance exposure to pornography turned Oscar Wilde into a homosexual. Afterwards, Hill continued, Wilde would write pornography and leave it in bookstores with the goal of corrupting others. According to Hill, "Wilde believed and proved books can corrupt." On the legal problem of trying obscenity cases, Hill wondered why, after a prosecutor establishes a prima facie case, the accused pornographer was not compelled to "prove that his material does not cause harm."¹¹⁸

Two constant themes for OY were its growing exasperation with the Supreme Court, and its desire for a national commission to study obscenity. OYN either intentionally misstated, or misunderstood the admittedly convoluted Supreme Court position regarding 'community standards and obscenity. In a front-page article, after New York's Supreme Court found the 18th-century novel *Fanny Hill* to be obscene, but before an almost identical case in Massachusetts reached Washington that would free *Fanny*, OYN offered its interpretation of the *Roth* Test. Obscenity prosecution

¹¹⁷ Peter Howard, *Britain and the Beast*, (London: Heinemann, 1963).

¹¹⁸ "'Proof' is Unnecessary Says OY Secretary," *OYN*, (April, 1966), 2.

depended on the community's standards, "If the community tolerates and accepts immorality, violence, and perversion, the courts will not disagree."¹¹⁹ Throughout the decade, whenever the Court narrowed its obscenity definition, OY would denounce the ruling. OY sought every opportunity to cast its activities in a positive light and demonstrate how popular opinion and the law supported its cause. This sometimes led OY to employ tenuous logic in making its case. When the Supreme Court ruled, in June of 1963, that organized prayer and bible readings in public schools were unconstitutional OY reported the ruling as a validation of its position concerning parental rights. OY claimed the decision "clarified, developed, and protected the natural and inalienable parental right to educate children, and thus defined the parental right as a civil right." OY declared that the Court's school prayer ruling made "obscenity distribution... a violation of a [parent's] civil right."¹²⁰ When Senators Jack Miller, of Iowa, Karl Mundt of South Dakota introduced bills, in 1965, calling for the President to convene a pornography commission, OYN placed the news on the front page.¹²¹ An issue of OYN carrying the announcement of Sen. Mundt's bill, also reported on Fr. Hill's attendance at a national conference on pornography in Washington. Hill, who served as Chairman of the Resolutions and Actions Committee, called for establishing "three full-time, permanent headquarters," in New York, Chicago, and Los Angeles to assist law enforcement in combating obscenity. The conference sent a "suggestion" to President Johnson that since the

¹¹⁹ "OY Founders' Statement," *OYN*, (April 1964), 1.

¹²⁰ "Supreme Court Ruling Expands 'Parental Right' to Civil Right," *OYN*, (Aug. 1963), 2.

¹²¹ "Commission and Mail Bills Introduced," *OYN*, (March, 1965), 1-2, "Senator Mundt Introduces Commission Bill," *OYN*, (April/May, 1965), 1-2. Both bills died when the session ended.

“forces of amorality” were so established and organized in the country, a “sweeping investigation by the FBI” might be required. The conference finished with a call for either a congressional or Presidential commission on pornography.¹²² While OY and Fr. Hill importuned Washington, the Supreme Court was preparing for its next round of obscenity cases.

Back in Court

In 1965, the Court decided a case that held far-reaching significance for the future of hard-core films. *Freedman v. Maryland*¹²³ concerned a Baltimore theater owner’s refusal to submit a film, *Revenge at Daybreak*,¹²⁴ to the Maryland State Board of Censors for approval, before exhibition. Brennan’s opinion held that for a film licensing scheme to avoid “constitutional infirmity” it had to avoid being a “censorship system.” Any licensing system had to locate the burden of proof on the censor and the board’s decision could not “lend an effect of finality” its any conclusions regarding a film’s constitutional status. The exhibitor must have the opportunity to challenge the decision in a timely manner. Brennan pointed to the *Kingsley Books* case of 1957 as an acceptable design for Maryland to follow.¹²⁵

On March 21, 1966, the Court delivered fourteen separate opinions, concurrences and dissents in a group of three obscenity cases: *Ginzburg v. United*

¹²² “Anti-Obscenity Conference Convened in Washington, D.C.,” *OYN*, (April/May, 1965), 3.

¹²³ *Freedman v. Maryland*, 380 U.S. 51 (1965).

¹²⁴ *Revenge at Daybreak* (Original title, *La Jeune Folle*), Directed by Yves Allégret, Hoche Productions, 1952.

¹²⁵ 380 U.S. at 60.

States,¹²⁶ *Memoirs v. Massachusetts*¹²⁷ and *Mishkin v. New York*.¹²⁸ *Memoirs* addressed the question of whether all elements of the *Roth* test needed to be proved prior to making an obscenity determination, and *Ginzburg* turned on the question of what information could be used to determine obscenity, in a borderline case. *Mishkin* addressed the issue of whose prurient interest was being excited. Where *Manual*, in 1962, tied prurient interest to the targeted audience, and reversed due to the material's non-obscenity, Brennan found *Mishkin*'s book obscene. Brennan wrote the opinions in every case. In *Memoirs*, the Chief and the newly appointed Abe Fortas joined Brennan's opinion, and declared that Massachusetts had gone astray. Obscenity rested on the work being "utterly without redeeming social value." If the material had clear prurient appeal, was patently offensive, but had even a modicum of value, it was protected and this was the case with the novel. Social value could "neither be weighed against nor canceled by its prurient appeal or patent offensiveness."¹²⁹ The problem of granting primacy to the question of social value, and additionally demanding proof of its absolute absence seems to have escaped Brennan. While Brennan apparently believed that it was possible to identify some material being "utterly without" value, this was a logical impossibility. As political scientist Richard Funston asked, "How can entertainment, even if for no other purpose than diversion or escape from the workaday world, be declared to be utterly without redeeming

¹²⁶ *Ginzburg v. United States*, 383 U.S. 463 (1966).

¹²⁷ *Memoirs v. Massachusetts*, 383 U.S. 413 (1966).

¹²⁸ *Mishkin v. New York*, 383 U.S. 502 (1966).

¹²⁹ 383 U.S. at 419.

social value?”¹³⁰ The problem with “value” is that it is, fundamentally, a relative term. The consumer of porn clearly values the material, however much the censor may believe it is worthless.

Brennan’s opinion in *Ginzburg* (1966) relied heavily upon a brief line from Justice Goldberg’s *Jacobellis* concurrence. Then, Goldberg agreed to reverse because he believed it wrong, under any “arguable standard,” to prosecute exhibitors, “unless the exaggerated character of the advertising rather than the obscenity of the film are to be the constitutional criterion.”¹³¹ The Federal District Court for the Eastern District of Pennsylvania convicted Ralph Ginzburg for mailing three publications, obscene in their “production, sale, and attendant publicity.” Brennan saw Ginzburg’s actions as marketing materials on the “basis of their salacious appeal.” Ginzburg attempted to obtain mailing privileges from the towns of Intercourse and Blue Ball in Pennsylvania, and Middlesex in New Jersey. His advertising language, and the arrangement of the materials in one of the magazines, led Brennan to hold that even essentially non-obscene materials might become obscene if their method of marketing appealed to a customer’s prurient interest. In short, Ginzburg was selling materials and doing so in such a manner as to make them *seem* obscene. Brennan said in a close case, a judge or jury could take a defendant at his word and hold the materials obscene. Here, Brennan was harking back to Warren’s argument in *Roth* for taking the manner of distribution into account. Brennan’s search for a rationale that would allow him to affirm Ginzburg’s conviction provoked some of his former allies on the

¹³⁰ Richard Funston, “Pornography and Politics: The Court, the Constitution, and the Commission,” *The Western Political Quarterly*, Vol. 24, No. 4, (Dec., 1971), 652.

¹³¹ *Jacobellis v. Ohio*, 378 U.S. at 198.

Court. Stewart noted that Brennan’s opinion found Ginzburg “guilty of ‘commercial exploitation,’ of ‘pandering,’ and of ‘titillation.’” Unfortunately, no one had charged Ginzburg with those crimes, and to affirm now on those grounds, was to “deny him due process of law.”¹³² Harlan wrote that Brennan’s ‘pandering’ test seemed “a mere euphemism” for punishing a person mailing legal material “just because a jury or a judge may not find him or his business agreeable.”¹³³ Douglas found it ironic that the Court upheld Ginzburg’s conviction for using the same kind of marketing methods openly used by Madison Avenue. “Sexy advertisement neither adds to nor detracts from the quality of the merchandise being offered for sale,” and Douglas could not see how it could in reference to printed material.¹³⁴

The shift towards a more inclusive definition that Brennan evidenced in his *Ginzburg* opinion is difficult to reconcile with his narrower *Memoirs* opinion. Ginzburg was an offensive character; certainly, his demeanor and public statements rubbed the some of the Justices and clerks the wrong way. When the Justices were still crafting their respective opinions Douglas received a short note to this effect from one of his clerks. “I have been hearing rumors (through the often inaccurate grapevine) that Justice Brennan may change his mind and vote to reverse in *Fanny Hill* [*Memoirs v. Mass*]. I wouldn’t be surprised if Justice Brennan doesn’t know anything about this, but if that does happen, I don’t think it would be at all difficult to give the same treatment to Ginzburg. Ginzburg may not be as attractive a pornographer as John Cleland—perhaps only because Cleland isn’t around to shoot

¹³² 383 U.S. at 500.

¹³³ *Ginzburg v. United States*, 383 U.S. at 494.

¹³⁴ 383 U.S. at 483.

off his mouth—but the record in his case has a lot of expert testimony like that in the Mass. case.”¹³⁵ Regardless of Ginzburg’s demeanor, it is difficult to understand how Brennan could so clearly change course and widen the reach of obscenity law.¹³⁶ Law professor and First Amendment litigator Edward de Grazia identifies Ginzburg’s “mistake” in “stressing the interest they [Ginzburg’s publications] held for persons wanting to see sex in print.” Of course, “claiming that he had ‘taken advantage’ of the American judiciary’s ‘permissive’ obscenity decisions to go as far as he could without falling afoul of the Supreme Court’s definition of what was obscene” could not have endeared him to Brennan, either.¹³⁷

When Ginzburg sought subscribers for *Eros*, he conducted a mass mailing. He attached postage paid response cards to the mailing. The responses give some indication of the depth of feeling pornography could stir. The anti-Semitic and anti-African American sentiments expressed on some of the cards are frankly breathtaking. “Let your Jew daughters suck Black pricks,” read one. Another card had a Star of David with a swastika in the center scrawled one side, the words: “Too bad Adolph didn't get your asses too! Integrationist dick sucking shit head lousy nigger lover—fairy Jew bastard—Fuck you—you money sucking perverted Kike Bastard,” on the other. Neither of these two cards was atypical, although occasionally, Ginzburg’s mailing paid off. “If your magazine is permitted to be sent

¹³⁵ Memorandum from J.B.F. to William O. Douglas, undated, RE: upcoming *Fanny Hill* and *Ginsberg* dissents. William O. Douglas papers. Box 1368. Folder No. 368(d) *Fanny Hill v. A.G.*, Law Clerk. Library of Congress, Washington, DC.

¹³⁶ Justice Fortas admitted later that his vote may have been influenced by his revulsion at Ginzburg’s “slimy qualities.” Richard F. Hixson, *Pornography and the Justices: The Supreme Court and the Intractable Obscenity Problem*, (Carbondale, IL: Southern Illinois University Press, 1996), 69.

¹³⁷ De Grazia, *Girls Lean Back*, 502.

through the mails without controversy or censorship I would be interested in subscribing to it; otherwise I would not be interested” Some responses are oddly poignant. One woman, obviously unaware of the nature of a mass-mailing list, thought her past had caught up to her. “I have worked for the good. I am not a prostitute anymore. My name should not be on anybody's list as of five years ago!!”¹³⁸

Whatever the motivation behind Brennan’s judicial assault on Ginzburg, some acclaimed the ruling as a sign that the Court was finally moving in the right direction, while OY found the fact that the three elements of *Roth* remained in effect, a cause for disappointment.¹³⁹ Observers that viewed the rulings as a sign that increased prosecutorial activity was in the offing were more accurate.¹⁴⁰ Some viewed the rulings as relatively neutral. As constitutional historian C. Peter McGrath argued, in 1966, while there was no likelihood that the Court could abandon all anti-obscenity restrictions, it was not out of the realm of possibility that the Court might decide to restrict bans to hard-core alone.¹⁴¹ Legal scholar Raymond Sebastian writing in the immediate aftermath of *Ginzburg* argued that “no obscene work, absent a showing of clear and present danger of criminal conduct could be prohibited, and no distributor could be prosecuted unless he caused the material to be distributed to an unwilling receiver who was offended by it.” Sebastian assumed that some form of obscenity

¹³⁸ Eros Archive, Series I, Box I, Folder I, Kinsey Institute Library.

¹³⁹ Irving Spiegel, “Clergymen Hail Obscenity Bans,” *NYT*, (May 2, 1966), 30, “High Court Upholds Smut Peddlers’ Convictions, but lets Stand Three Original Tests,” *OYN*, (April, 1966), 1.

¹⁴⁰ Sidney E. Zion, “The Ginzburg Decision,” *NYT*, (March 24, 1966), 31, Fred P. Graham, “High Court Rulings on Criminal Law Prompt Cases on Fall Term’s Docket,” *NYT*, (June 26, 1966), 50.

¹⁴¹ Peter C. McGrath, “The Obscenity Cases: Grapes of Roth,” *The Supreme Court Review*, Vol. 1966, (1966), 69-77.

regulation would exist, at least for the near future. He argued that the Court should discard the pandering “commercial-exploitation” element, since a finding on grounds other than content violated the First Amendment. In addition, he favored making “credible” expert testimony conclusive in determining “social importance,” and including some “patent-offensiveness” assessment, as well as making all requirements independent. “Even minimal social importance,” he wrote should trump “patent offensiveness and prurient appeal”; “social importance” could be cancelled out only by a finding of “clear and present danger of illegal action (sexual or otherwise) or of destruction of the moral fiber of society.” Finally, Sebastian argued that the Supreme Court should restrict itself to cases where either the social-importance element “has been misapplied to...a serious work” or where “a serious and potentially provable allegation of clear and present danger has been made.”¹⁴²

The Supreme Court decision in *Redrup v. State of New York* (1967)¹⁴³ was the Court’s belated recognition that it could not reach consensus on obscenity. Decided in May 1967 along with *Gent v. Arkansas*¹⁴⁴ and *Austin v. State of Kentucky*¹⁴⁵ *Redrup* concerned the New York conviction of a newsstand clerk for selling a racy paperback novel to an undercover police officer. *Austin* concerned sales of the magazines *High Heels*, and *Spree* in Paducah, Kentucky. The *Gent* case rose from an Arkansas injunction against the sale of the men’s magazines, *Gent*, *Swank*, *Bachelor*,

¹⁴² Raymond F. Sebastian, “Obscenity and the Supreme Court: Nine Years of Confusion,” *Stanford Law Review*, Vol. 19, No. 1, (Nov., 1966), 187-189.

¹⁴³ *Redrup v. State of New York*, 386 U.S. 767 (1967).

¹⁴⁴ *Gent v. Arkansas*, 384 U.S. 937 (1967).

¹⁴⁵ *Austin v. State of Kentucky*, 384 U.S. 916 (1967).

Modern Man, Cavalcade, Gentleman, Ace, and Sir. The Court commingled the cases and delivered one *per curiam* decision. Noting that none of the cases concerned distribution to minors, or unwilling recipients, the opinion stated that whichever of the Justices' standards were employed the result would be the same, "the judgments cannot stand."¹⁴⁶ Harlan dissented from *Redrup* on the grounds that the Court was ignoring the issues which they said they were going to address and was deciding issues that they had excluded when they granted cert. "These dispositions do not reflect well on the processes of the Court." He chose to withhold his own views "until an occasion when the Court is prepared to come to grips with such issues."¹⁴⁷ *Redrup* initiated a period where the Court issued multiple reversals of obscenity convictions, without explaining their reasons, aside from citing *Redrup*. The case became a verb. The process of *redrupping* took up a considerable amount of time.¹⁴⁸ However, it did not resolve the ongoing impracticality of *Roth*. Eventually, 31 cases would be redrupped by the Court between 1967 and 1971.¹⁴⁹

¹⁴⁶ *Redrup v. New York*, 386 U.S. at 771.

¹⁴⁷ *Ibid.* at 772.

¹⁴⁸ Since the Justices settled on a process of *per curiam* decisions, based on majority vote with each Justice applying their own peculiar standards, the Court merely had to review the suspect materials and vote. This necessitated organized, regular viewings of the materials by the Court. See: Bob Woodward and Scott Armstrong, *The Brethren*, (New York: Simon and Schuster, 1979), 193-200.

¹⁴⁹ *Keney v. New York*, 388 U.S. 440 (1967); *Friedman v. New York*, 388 U.S. 441 (1967); *Ratner v. California*, 388 U.S. 442 (1967); *Cobert v. New York*, 388 U.S. 443 (1967); *Sheperd v. New York*, 388 U.S. 444 (1967); *Avansino v. New York*, 388 U.S. 446 (1967); *Aday v. New York*, 388 U.S. 447 (1967); *Books, Inc. v. United States*, 388 U.S. 449 (1967); *A Quantity of Books v. Kansas*, 388 U.S. 452 (1967); *Mazes v. Ohio*, 388 U.S. 453 (1967); *Schackman v. California*, 388 U.S. 454 (1967); *Potomac News Co. v. United States*, 389 U.S. 47 (1967); *Conner v. City of Hammond*, 389 U.S. 48 (1967); *Central Magazine Sales, Ltd. v. United States*, 389 U.S. 50 (1967); *Chance v. California*, 389 U.S. 89 (1967); *I. M. Amusement Corp. v. Ohio*, 389 U.S. 573 (1968); *Robert-Arthur Management Corp. v. Tennessee*, 389 U.S. 578 (1968); *Felton v. City of Pensacola*, 390 U.S. 340 (1968); *Henry v. Louisiana*, 392 U.S. 655 (1968); *Cain v. Kentucky*, 397 US 319 (1970); *Bloss v. Dykema*, 398 U.S. 278 (1970); *Walker v. Ohio*, 398 U.S. 434 (1970); *Hoyt v. Minnesota*, 399 US 524, (1970).; *Childs v.*

The President's Commission

The spring of 1967 must have encouraged avoidance behavior in Washington, DC. A month before the Supreme Court adopted its redrupping strategy; White House Aide Jim Gaither sent a short memo to Joe Califano, Special Assistant to the President. "As you may be aware," he wrote, "Karl Mundt and Glenn Cunningham have been pushing for a Commission on Obscenity." Hearings were already in progress before the Education and Labor Committee. Gaither reminded Califano that the Justice Department and Health Education and Welfare had "avoided direct opposition for fear that it would be read as pro-obscenity." The Budget office had previously asked the White House to "kill the Commission quietly," and its Assistant Director for Legislative Reference Wilf Rommel was again concerned, "fearing it may pass this year." Gaither noted that if established, the Commission would "probably attack the courts and might make proposals which we can't live with on constitutional grounds." "Nonetheless, since active opposition from the Administration would probably be read as pro-pornography" he recommended that the White House "stay out of this." Califano marked the memo signaling his agreement. A scribbled note across the bottom of the memo indicates that Rommel should get Justice and HEW should "try quietly to kill" the Commission.¹⁵⁰

Whatever Rommel attempted in the way of mayhem did not work. Jack Miller, Republican Senator from Iowa, successfully shepherded his bill through

Oregon, 401 U.S. 1006 (1971); Bloss v. Michigan, 402 U.S. 938 (1971); Burgin v. South Carolina, 404 U.S. 809 (1971); Hartstein v. Missouri, 404 U.S. 988 (1971); Wiener v. California, 404 U.S. 988 (1971).

¹⁵⁰ Jim Gaither to Joe Califano, 24 Apr. 1967, White House Central File (hereafter WHCF), box 373, folder: FG619, Lyndon B. Johnson Presidential Library, Austin, TX, (hereafter, LBJ).

Congress calling for a pornography commission. A former professor of law, Miller took special care to insist that any plan for regulating obscenity to come out of the Commission should respect Constitutional rights.¹⁵¹

Public Law 90-100, passed in October 1967, called for the creation of a Commission to study Obscenity and Pornography, because it was “a matter of national concern.” The enabling legislation called for an eighteen member Commission, appointed by the President. The Commission had four charges. First, they were to “analyze the laws pertaining to obscenity...and evaluate and recommend” definitions of both obscenity and pornography. Second, they should investigate the “distribution” and the “nature and volume” of the traffic. Third, they were to study the “effects” of pornography, particularly on minors; and its “relationship to crime and other antisocial behavior.” Fourth, they were to recommend such action they “deem necessary to regulate the flow” of pornography, without violating constitutional rights.¹⁵²

The activist base responded with enthusiasm.¹⁵³ Almost immediately, the lobbying for seats commenced. The Commission’s archived papers reveal a few individuals nominated themselves; these were all unsuccessful. A massive campaign aimed at securing a seat for Charles Keating of CDL, failed as well. An undated draft memo from special assistant to the president E. Ernest Goldstein to Lyndon Johnson explained some of the concerns regarding Keating. The Justice Department felt that

¹⁵¹ See: Jack Miller, *Creating a Commission on Obscenity and Pornography*, Hearing, Select Subcommittee on Education, House Committee on Education and Labor, (Washington, DC; GPO, 1967).

¹⁵² Public Law 90-100, 90th Cong. S. 188, Oct. 3, 1967.

¹⁵³ “Congress Passes Bill Establishing Commission,” *OYN*, (Oct. 1967), 1.

putting Keating on the Commission would “be a mistake;” this was also the view of Monsignor Francis T. Hurley of the United States Catholic Conference, “as well as other groups, Protestant and Jewish.” Goldstein added that it was “certainly my own view.” Goldstein explained that he tried, “as much as is possible” to “avoid the naming of people who have become “vocal” and “publicly identified” with “one extreme view or another.” While this is likely true, I suspect that Goldstein also received warnings concerning Keating and his potential for disrupting the work of the Commission. Certainly, Morton Hill of OY was only slightly less prominent than Keating in the anti-porn movement and Goldstein made a point of noting that Hill had not been “automatically disqualified” because Hill had worked with Keating.¹⁵⁴

Goldstein’s memo made it clear that the White House recommended Hill reluctantly. Goldstein mentioned in the memo that Operation Yorkville had selected Mrs. Johnson as their “Target of the Month” for November, asking members to write the First Lady and ask her use her influence on the President in reference to the pornography commission even as the White House was vetting prospective Commissioners.¹⁵⁵

The President drew the Commission members from a broad cross section of the American public. Commission members came from the ranks of the clergy, the social sciences, criminology, publishing, journalism, motion pictures, medicine, and the law.¹⁵⁶ The conflict between the anti-pornography activism movement and those

¹⁵⁴ Ernest Goldstein, Draft Memorandum for the President, no date, “Commission on Obscenity and Pornography,” Box 300, Folder “Keating, Charles, H., Jr.” Office files of John Macy, LBJ Library.

¹⁵⁵ See: OY Target of the Month, Mrs. Lyndon B. Johnson,” *OYN*, (Nov. 1967), 3. This was a consistent practice, see: “MM Target of the Month, Mrs. Rosalynn Carter,” *MIMN*, (March, 1979), 3.

¹⁵⁶ The Commission consisted of 18 individuals: Barbara Scott, Associate Counsel for the Motion Picture Association of America; Dr. Edward D. Greenwood, a psychiatrist from the Menninger Clinic; Kenneth Keating, Associate Judge on the New York Court of Appeals; Thomas Lynch, the Attorney

adopting a less dire view of pornography's impact and importance became evident soon after the President named the Commission members. While five months passed between the appointments and the first full Commission meeting, meeting, Fr. Hill contacted Dean Lockhart within weeks of their respective appointments. In a letter to Lockhart, dated Feb. 3, 1968, Hill asked Lockhart, as "temporary Chairman" to send a note to the members regarding a possible meeting in New York City. Hill believed that such a meeting would "insure group thinking" on important matters, such as the "qualifications of candidates for chairman and vice-chairman, as called for in the law."¹⁵⁷ Lockhart, in a letter to the White House liaison for the Commission, E. Ernest Goldstein, took Hill's letter as an "implied threat...to unhorse me," but given Goldstein's assurance that the other Commissioners indicated they "approved" of Lockhart as chair; Hill's letter did not appear to bother Lockhart. "If a majority" preferred Hill as Chair, Lockhart would "gladly step down." Subsequent communications between Hill and Goldstein apparently made it clear to Hill that Lockhart's appointment as chair was not a "mistake."¹⁵⁸

General of California; Thomas Gill, Senior Judge for the Juvenile Court in Hartford, Connecticut; G. William Jones, Professor of Broadcast-Film Art, Southern Methodist University, Dallas, Texas; Morris Lipton, Professor of Psychiatry, University of North Carolina, Chapel Hill; Freeman Lewis, Executive Vice President of Pocket Books; Rabbi Irving Lehrman, Temple Emanu-El, in Miami Beach; Florida; Otto Larsen, Professor of Sociology, University of Washington, Seattle; Dr. Joseph Klapper, Director of Social Research at CBS; Rev. Winfrey Link, Executive Director of the Four-Fold Challenge, Nashville, Tennessee; Cathryn Spelts, Professor at the South Dakota School of Mines; Dr. Frederick Wagman, Director of the University of Michigan Library; Dr. Marvin Wolfgang, Director of the Center for Criminological Research, at the University of Pennsylvania; Edward Elson, President of the Atlanta News Agency; Fr. Morton Hill, Executive Secretary of Operation Yorkville, and Chairman of the Commission, William Lockhart, Dean of the University of Minnesota School of Law. While not members of the Commission, Paul Bender, General Counsel, and Dr. W. Cody Wilson, Executive Director and Director of Research, played significant roles in both the Commission's work and Lockhart's conflicts with Hill, Link, and Keating.

¹⁵⁷ Letter to William Lockhart, dated Feb. 3, 1968, WHCF, box 373, folder: FG619, LBJ Library.

¹⁵⁸ Letter to E. Ernest Goldstein, dated Feb. 7, 1968, WHCF, box 373, folder: FG619, LBJ Library.

The exchange between Hill and Lockhart, serves as a minor indication of the seriousness with which Hill, and by extension the anti-obscenity movement, viewed the Commission's work.¹⁵⁹ How the Commission decided to accomplish its duties, and what aspects of pornography they chose to study, would significantly determine the character of the Commission's final report to Congress and the President.

Lockhart later noted in the Forward of the Commission's nine-volume technical report, that while most immediate attention would "focus" on the "findings and recommendations of the Commission and its four panels," the research would have "greater long-range importance."¹⁶⁰ Hill recognized that a social science approach of the Commission potentially threatened the unexamined consensus supporting many obscenity beliefs.

In June 1969, President Nixon nominated Commissioner Kenneth Keating as his Ambassador to India. This resulted in an opening on the Commission. Charles Keating, of CDL, was Nixon's choice to fill the position. Charles Keating quickly allied himself with Fr. Hill and Rev. Link. He shared their view concerning the

¹⁵⁹ Hill's conflicts with Lockhart pale in comparison to the later clashes between Lockhart and Charles Keating, who joined the Commission in June 1969, after Kenneth Keating resigned to become Ambassador to India. Charles Keating's behavior; rapidly escalated from brusque to obstructive. He represented himself as "the representative of the Nixon Administration." Letter to Lockhart from Keating, August 16, 1970, PCOP, Box 32, Folder, Charles Keating, LBJ Library. Keating demanded biographical material on staff, Letter to W. Cody Wilson from Charles Keating, Feb. 18, 1970, PCOP, Box 32, Folder, Charles Keating, LBJ Library. Keating demanded the right to send CDL's counsel to Commission meetings and panels as his personal representative with full proxy power. Letter to Lockhart from Keating, Sept 22 1969, PCOP, Box 25, Folder, Lockhart, LBJ Library. Keating refused to be bound by the Commission's confidentiality agreement, Letter from Lockhart to Charles Keating, dated Nov. 14, 1969, PCOP, Box, 39, Folder, Commission Correspondence, LBJ Library. When Keating's a motion to defer publication of the report failed at a meeting of the Commission, for lack of a second vote, Commission Minutes, Aug. 26, 1970, PCOP, Box 50, Keating filed suit in Federal court to halt the release of the report. Richard Halloran, "Dissenter Seeks Smut Report Ban," *NYT*, (Sept. 9, 1970), 8. Keating's attempt was initially successful. Richard Halloran, "Report on Smut held Up by Court," *NYT*, (Sept. 10, 1970), 23. The exchange between Keating and Lockhart can be traced in Box 25, William Lockhart, Papers of PCOP, LBJ Library.

¹⁶⁰ PCOP, *Technical Report*, Vol. 1, (Washington, DC: GPO, 1970), v.

uselessness of the Commission's social science approach, and was not averse to expressing it. Almost immediately after joining the Commission, he recognized a fundamental divide separating the anti-pornography position and the goals of the Commission, as constituted under Lockhart's leadership. "We are in basic conflict," he wrote to the Chair. "Congress passed legislation" with the "underlying rationale that there was a serious problem, about which something must be done." Keating saw the Commission "engaged in debate," over whether a problem even existed. Tipping his hand, and revealing what I believe might be an essential characteristic of the entire obscenity debate, Keating continued, "Recourse to factual information, legal advice, and philosophical theory from the academic community never appealed to me as a method of learning about the obscenity problem or controlling the pornographers."¹⁶¹

The activist base understood that even the most meticulous research would likely reveal little empirical evidence connecting pornography and crime. Even before the Commission reported its findings, outside observers commented on this concern.¹⁶² The Commission contracted for an impressive array of studies, and opted to forgo "imposing generally accepted standards of scientific reporting." This was not an attempt at 'cooking' the research, W. Cody Wilson described it as an effort to "insure" that the Commission not impose any "ideological standards" on the research product which received only "very minor editing" from the Commission staff.¹⁶³ The

¹⁶¹ Letter to Lockhart from Charles Keating, Nov. 22, 1969, PCOP, Box 32, Folder, Charles Keating, LBJ Library.

¹⁶² Jules Witcover, "Civil War Over Smut," *The Nation*, (May 11, 1970), 550-553.

¹⁶³ PCOP, *Technical Report*, Vol. 1, (Washington, DC: GPO, 1970), vii.

Commission's refusal to accept that obscenity or pornography was axiomatically harmful, and get on with the business of devising better means of suppression, rendered it suspect or complicit in the eyes of many activists.¹⁶⁴

In September 1970, after three years of work, the Commission released its final report, and it was everything that the activists feared, and the call for a comprehensive nationwide sex education program in the public schools was the least of the problems the report contained.¹⁶⁵ The *Report* stated that organized citizen groups (read the activists) were often responding to a "perceived" disintegration of "value systems and behavior standards." The Commission's research found most anti-porn activism occurred in large cities where sexually explicit material was relatively easy to encounter. A survey of law enforcement officials by the Commission revealed a close division of opinion as to the usefulness of anti-porn activism. A "slight majority" felt the activists were helpful. However, a "very large minority" believed the activists were "not of much help."¹⁶⁶ The Commission did recommend citizen activism in the area of sex education, but declared that censoring, coercing, and repressing "in order to promote a given set of views" were intolerable in American society.¹⁶⁷ The most sweeping recommendation of the Commission was that the Federal, state and local governments "not seek" to "interfere" with adults who want to read, purchase, or view sexually explicit materials.¹⁶⁸

¹⁶⁴ "Rabbi Says Libertarian Views Control Commission," *MIMN*, (May 1970), 2

¹⁶⁵ PCOP, *Report of the Commission*, (Washington, DC: GPO, 1970), 29-32, 47-49.

¹⁶⁶ PCOP, *Report*, 32-33.

¹⁶⁷ PCOP, *Report*, 49.

¹⁶⁸ PCOP, *Report*, 51.

Twelve of the eighteen Commissioners supported the *Report's* recommendations. Two, Lehrman and Spelts, concurred with the “bulk of the findings,” but believed the evidence was insufficient for the “repeal of all prohibitions” on adults that the Report advocated. Four Commissioners, Keating, Hill, Link, and Lynch dissented from the *Report*, but Lynch declined to join in either the Hill/Link or Keating dissent.¹⁶⁹ The *Hill-Link Minority Report* is still available from Morality in Media, and it was soon appearing in Supreme Court cases, cited with approval as an alternative to the Commission’s majority *Report*.¹⁷⁰ Keating’s dissent described a “Runaway Commission” under Lockhart and called for a Congressional investigation of the Commission, listing a series of grievances against Lockhart, General Counsel Bender, and Executive Director W. Cody Wilson.¹⁷¹ Keating’s dissent included a draft bill revising the Federal obscenity statutes, Title 18 and 28 of the US Code. Keating wanted to abolish the right of a judge to overturn a finding of obscenity by a jury, and the right of a superior court to “review, reverse, or set aside” any lower court’s obscenity decisions.¹⁷²

¹⁶⁹ Commission Chair Lockhart and Commissioners Wagman, Gill, Greenwood, Jones, Klapper, Lewis, Lipton, Scott, Larsen, Wolfgang, and Elson supported the majority report. Edward Elson’s support was conditional, on the understanding that before the abolition of any obscenity laws “there be prior public and governmental support for the Commission’s nonlegislative recommendations.” PCOP, *Report*, 51-52. Professors Larsen and Wolfgang while supporting the report additionally penned a statement that said Commission had not gone far enough. They saw no need for any restrictions curtailing unwanted mail, since postal regulations already required labeling and recipients could throw away erotic material unopened. They also believed there was little sense in shielding minors. Larsen and Wolfgang believed youths would encounter pornographic material anyway and would not harm them whenever the exposure occurred. PCOP, *Report*, 373-382.

¹⁷⁰ PCOP, *Report*, 383-509.

¹⁷¹ PCOP, *Report*, 517.

¹⁷² PCOP, *Report*, 535-536.

The Senate voted to reject the *Report*, less than a month after the Commission submitted it. Sen. John McClellan, Democrat of Arkansas, the sponsor of the resolution, said, “The Congress might just as well have asked the pornographers to write this report...although I doubt they would have had the temerity and effrontery to make the ridiculous recommendations.”¹⁷³ While the Commission’s recommendations drew Congressional ire, the activist base employed the Commission’s Report to their immediate benefit. First, it provided useful fodder for the mailers. It always had. Fr. Hill’s minority comments to the Commission’s interim Progress Report of August 1969, allowed Hill the chance to deplore the “orientation” of the Commission, and its emphasis on social science to study “effects” and MIM, because of Hill’s tie to the Commission, constantly channeled the views of Hill, Link and Keating.¹⁷⁴ In April 1970, when Hill must have known the kind of Report that was soon to emerge, he backed a call of a congressional investigation of the Commission.¹⁷⁵ The *Hill-Link Minority Report* received extensive coverage.¹⁷⁶ MIM trumpeted the Senate’s rejection, as well.¹⁷⁷ Buried under the dissents, and attendant outrage, however, lay the research. The funding had been substantial enough to produce significant scholarship, and many of the studies reappeared in

¹⁷³ “Senate Votes, 60-5, to Reject and Censure Obscenity Report,” NYT, (Oct. 14, 1970), 30.

¹⁷⁴ “Obscenity Commission Scored by MM President: Will Apply Bandaid to Cancer,” MIMN, (Oct. 1969), 1, 3, 4; “Man of the Month: Commissioner W. C. Link, MIMN, (March 1970), 1; “Commissioner Hill to Conduct Hearings,” MIMN, (Feb. 1970), 1, 2; “Hill Calls for Congressional Probe of Commission for ‘Barbaric’ Experiment,” MIMN, (April 1970), 1.

¹⁷⁵ “MM Target of the Month: Ask for Smut panel Probe,” MIMN, April 1970, 3.

¹⁷⁶ “Panel Suggests Repeal of Obscenity Laws Hill, Link, Keating Vigorously Dissent,” MIMN, (Oct. 1970), 1-7; “Hill, Link and Cline Testify on Commission,” MIMN, (Oct. 1970), 8.

¹⁷⁷ “Senate Rejects Report by 60-5 Reads Hill-Link Report into Record,” MIMN, (Nov. 1970), 1, 2, and “President Rejects Commission Report,” MIMN, (Nov. 1970), 1.

academic literature in the years following the Commission,¹⁷⁸ and constituted a wealth of citable material for future obscenity defendants. The finding provided an evidentiary response to the anti-porn activists' primarily emotional and anecdotal arguments. When the hard-core industry began to look to its defenses in an organized fashion in the mid-1980s, it was able to refer to the Commission's studies for support, but more importantly, the industry's advocates were able to characterize prosecutors, and their vocal activist supporters, as intentionally resisting evidence concerning pornography's effects. This was a powerful rhetorical advantage.

Back in Court Again

While the Commission was conducting its research, the Supreme Court was still actively engaged refining obscenity law. The *redrapping* practice that required the Justices to review materials condemned in lower court cases was becoming increasingly onerous. The image of Justices sitting through films, sifting through photographs or perusing text and then deciding whether the material appealed to their prurient interest, patently offended them, and lacked any redeeming value reveals the farcical elements inherent in the Court's obscenity project. The redrapping practice had not clarified obscenity doctrine it had merely provided a tedious means by which a splintered Court could process cases on which they could not agree. In 1968 the Court agreed to hear the arguments in *Interstate Circuit v. Dallas* (1968)¹⁷⁹ and *Ginsberg v. New York* (1968).¹⁸⁰ Both cases addressed the issue of distribution to minors. Here, the Court found greater, but not complete, agreement. In *Interstate*,

¹⁷⁸ For example, see the 16 articles in *The Journal of Social Issues*, Vol. 29, No. 3, (1973).

¹⁷⁹ *Interstate Circuit v. Dallas*, 390 U.S. 676 (1968).

¹⁸⁰ *Ginsberg v. New York*, 390 U.S. 629 (1968).

the Dallas Motion Picture Classification Board had declared a film “not suitable for young persons.” The Board believed that the film’s nudity exceeded the Dallas community’s candor limits and might incite sexual promiscuity amongst youths. Thurgood Marshall, in the majority opinion, declared that “sexual promiscuity” was vague and the Dallas ordinance’s lack of a “narrowly drawn, reasonable and definite standard” for officials to follow was a fatal flaw.¹⁸¹ Harlan dissented and quite logically noted that the Court was demanding “greater precision of language” from Dallas than the Court could muster itself, or expect in “this area of the law.”¹⁸² In *Ginsberg v. New York*, Brennan declared that New York had the right to establish restrictions for minors, even if the material was not actually obscene. This introduced the concept of ‘variable obscenity.’¹⁸³ Fortas dissented from Brennan’s opinion. He felt that the Court still needed to establish some standard by which to judge material in this context.¹⁸⁴

At the end of the 1968 term, Earl Warren submitted his resignation to President Johnson, to be effective at Johnson’s pleasure. This open-ended resignation would enable Johnson to choose the new Chief Justice before the November elections. Johnson was no longer a candidate for the Presidency and Warren, understandably, felt apprehension should a Republican win. One of Richard Nixon’s campaign issues was the liberal drift of the Court. Johnson nominated Fortas to replace Warren, and Judge Homer W. Thornberry of the United States Court of

¹⁸¹ 390 U.S. at 690.

¹⁸² *Ibid.* at 709.

¹⁸³ *Ginsberg v. New York*, 390 U.S. at 635.

¹⁸⁴ *Ibid.* at 673.

Appeals for the Fifth Circuit to take Fortas' seat.¹⁸⁵ Fortas should have easily won confirmation; he had won overwhelming approval when appointed an Associate Justice. Unfortunately, for Fortas his closeness to Johnson was a problem.¹⁸⁶ In addition, a lame duck President naming a Chief Justice galled some Senators.¹⁸⁷ The general impression that a Fortas Court would continue the Warren trend also provoked opposition.¹⁸⁸ Initially, however, it looked as though Johnson would be able to push his nominations through the Senate. What few people could have expected was that the Court's record of obscenity decisions would play a significant role in derailing Fortas. Opponents portrayed Fortas as emblematic of a Court weak on obscenity. Fortas reached the Court after *Roth* and *Jacobellis*, and while aligned with Warren and Brennan on *Memoirs* he had taken the comparatively hard-line hard stance of Earl Warren with his *Ginzburg* vote.

On June 22, James J. Clancy, of Citizens for Decent Literature, gave a presentation to the Senate Judiciary Committee arguing that Fortas was one of a group of Justices whose rulings favored pornography. Clancy wanted to run the film *0-7*¹⁸⁹ for the committee. In 1967, Fortas and four other Justices refused to declare *0-7* obscene, opting to redrup the case. The Committee did not take up the offer. Strom

¹⁸⁵ Fred P. Graham, "Johnson Appoints Fortas to Head Supreme Court; Thornberry to be Justice," *NYT*, (June 27, 1968), 1. Warren's story about his resignation and replacement varied; that he did not discuss a successor; that he recommended former Justice Goldberg; or that he merely reacted favorably to Johnson's floating the idea of Fortas. See Bernard Schwartz, *Super Chief: Earl Warren and His Supreme Court- A Judicial Biography*, (New York: New York University Press, 1983), 200-201.

¹⁸⁶ Marjorie Hunter, "'Cronyism' Scored on Court Choices," *NYT*, (June 28, 1968), 1.

¹⁸⁷ Fred P. Graham, "Warren to Leave Court: Some in G.O.P. Open Fight to Bar a Succession in '68," *NYT*, (June 22, 1968), 1.

¹⁸⁸ "Russell Long Says He Opposes Fortas to Head High Court," *NYT*, (July 14, 1968), 28.

¹⁸⁹ I have been unable to find any information on this film.

Thurmond, a Republican from South Carolina who opposed Fortas arranged a showing for the press in a nearby room.¹⁹⁰ While the Committee eventually reported out the nomination favorably, the lack of votes in the full Senate needed to override an imminent filibuster led Fortas to withdraw his name from consideration.¹⁹¹ Thornberry's nomination thus became void, as well. President Johnson did not submit another nominee to replace Warren, and the Chief's resignation awaited the new President Richard Nixon when he took office in January 1969. Nixon asked Warren to remain on the Court for a short time.

After the Fortas nomination drama, the Court added one final, liberalizing touch to its obscenity doctrine in *Stanley v. Georgia* (1969).¹⁹² *Stanley* was not a definitional refinement of obscenity doctrine, so much as a statement concerning fundamental rights. Georgia Police officers had entered Stanley's home with a valid warrant, seeking evidence of bookmaking activities. While searching, the police found canisters of movie film, and a projector. They promptly screened the film; it was a stag. Convicted of possessing obscene materials, Stanley appealed. The Court reversed Stanley's conviction, but did not address the issue of the film's obscenity; indeed, it is important to note that Stanley did not deny the film's obscenity. These were stag films whose obscenity was manifest, in 1968. Marshall wrote the opinion; Brennan and White joined Stewart's concurrence, and Black concurred separately.

¹⁹⁰ "Senate Panel Bids Officials Explain Pro-Fortas Memo," *NYT*, (July 23, 1968), 1. Laura Kalman, *Abe Fortas, A Biography*, (New Haven: Yale University Press, 1990), 342-344, Bruce Allen Murphy, *Fortas: The Rise and Ruin of a Supreme Court Justice*, (New York: Morrow, 1988), 441-444.

¹⁹¹ "Senate Panel Bids Officials Explain Pro-Fortas Memo," *NYT*, (July 23, 1968), 1, Kalman, *Abe Fortas*, 355, Murphy, *Fortas*, 525. Fred P. Graham, "2 Johnson Aides Refuse To Testify on Fortas Issue: Invoke Executive Privilege-Allott Says Justice Helped Them in Drafting a Law," *NYT*, (Sept. 17, 1968), 1.

¹⁹² *Stanley v. Georgia*, 394 U.S. 557 (1969).

The unanimity of opinion was striking; there were no dissents. Marshall said that nothing in *Roth*, or any subsequent opinion, addressed “mere private possession.” All of the cases since 1957 addressed state or Federal power to control “public actions.” Marshall declared that the Constitution “protects the right to receive information and ideas, regardless of their social worth and to be generally free from governmental intrusions into one's privacy and control of one's thoughts.” Further, the state could not “prohibit mere possession of obscene matter,” either on the premise that it “may lead to antisocial conduct,” nor because it might be essential to a law “prohibiting distribution.” Marshall’s opinion did not create a right to distribute. Harlan, in a memo to Marshall, when opinion was still circulating in draft form, specifically asked for changes to make it clear that Marshall’s opinion did not assert a right to distribute.¹⁹³ Marshall agreed to drop the offending words, from his text but retained the citations to *Martin v. City of Struthers*¹⁹⁴ and *Griswold v. Connecticut*,¹⁹⁵ which did use them.

¹⁹³“Dear Thurgood: I like your opinion in this case very much indeed and want to join it, without separate writing. I do have two suggestions to put to you before making a formal return. I would like to see the second and third sentences in the first paragraph on page 6 changed to read something like this: “Roth and its progeny certainly do mean that the First and Fourteenth Amendments recognize a valid governmental interest in dealing with the problem of obscenity. But the assertion of that interest cannot, in every context, be insulated from all constitutional protections. Again, on page 6, I suggest the desirability of omitting from the first sentence of the second paragraph the phrase ‘as well as to distribute.’ The reason for the first suggestion is of course to keep my wicket clear on the distinction which I have consistently drawn between Federal and State authority in this field. The reason for the second proposal is that the suggestion of a correlation between the right to distribute and the right to receive, might carry implications of dilution with respect to our other obscenity cases (which are concerned solely with the right to sell), which I am sure your opinion does not intend.” Letter from Justice John M. Harlan to Justice Thurgood Marshall dated 24 March 1969 Box No. 42. Folder No. 293, *Stanley v. Georgia*, Thurgood Marshall Papers, Library of Congress, Washington, DC.

¹⁹⁴ *Martin v. City of Struthers*, 319 U.S. 141, (1943).

¹⁹⁵ *Griswold v. Connecticut*, 381 U.S. 479, (1965).

If Marshall equivocated on the right to distribute, he did not on possession. “If the First Amendment means anything,” he wrote, “it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch. Our whole constitutional heritage rebels at the thought of giving government the power to control men’s minds.” Marshall also disputed that states deserved the benefit of the doubt on the issue of putative harmful effects. Where Harlan used the absence of definitive proof as a reason for deferring to states, Marshall countered, that considering how little we knew about effects, the states could “no more prohibit mere possession,” than they could ban “chemistry books” to preclude, “the manufacture of homemade spirits.” Marshall did not attack the basic premise of obscenity law; he likely knew this would cost him his majority, and he conceded Georgia’s interest in controlling illegal distribution. The relative unimportance of this interest, however, did not justify infringing an “individual’s right to read or observe what he pleases.” That right was so “fundamental to our scheme of individual liberty,” that restricting it was not justified by the need to ease administration of criminal laws¹⁹⁶ The activist base decried the decision.¹⁹⁷ The implications for hard-core films were profound, and grew out of *Stanley’s* inconsistencies. Production and distribution were illegal, but private possession was legal.

¹⁹⁶ 394 U.S. at 565.

¹⁹⁷ “High Court Says Smut at Home Legal,” *MIMN*, (April 1969), 1.

Within weeks of the *Stanley* decision, Fortas faced allegations of financial impropriety that led to his resignation from the Court on May 15, 1969.¹⁹⁸ Nixon now had two seats on the Court he could fill. On May 21, Nixon nominated Warren Burger, of the U.S. Court of Appeals for the D.C. Circuit, as Earl Warren's replacement.¹⁹⁹ Berger's nomination went through the Senate quickly, and within a month, he was sitting in the center Chair. The Senate subsequently turned down both Nixon's first and second nominees to fill the Fortas chair; a year passed before Nixon's third nominee, Harry Blackmun, took his seat.

Another year passed, before a full Court heard three cases that attempted to clarify *Stanley*.²⁰⁰ In 1971, *Blount v. Rizzi*,²⁰¹ *United States v. Thirty-Seven Photographs*,²⁰² and *United States v. Reidel*,²⁰³ gave the Court an opportunity to

¹⁹⁸ Fred P. Graham, "Fortas Quits the Supreme Court, Defends Dealings With Wolfson; Fee Is Explained Justice Concedes He Made Arrangement on a Life Stipend," *NYT*, (May 16, 1969), 1.

¹⁹⁹ "Announcement and the Judge's Reply," *NYT*, (May 22, 1969), pg 36.

²⁰⁰ The irony of the *Stanley* decision is that the Court unanimously arrived at the same result, recognizing a fundamental right to privately possess obscene materials, a decade earlier in *Mapp v. Ohio*, 367 U.S. 643 (1961). *Mapp* concerned a situation virtually identical to *Stanley*; a questionable search uncovering obscene material. The Court agreed to hear the case because of its connection to free speech issues under the First and Fourteenth Amendments. After the Court met in conference, and reached unanimous agreement that the Constitution protected private possession of obscene material. Earl Warren assigned the opinion to Justice Tom Clark, who then wrote the opinion for reversing *Mapp*'s conviction on the grounds of the illegality of the search. Justices Harlan, Frankfurter, and Whittaker, who were willing to reverse on First and Fourteenth grounds, dissented when Clark's opinion touched on extending Fourth Amendment rights to the states, via the Fourteenth's 'due process' clause. Had Clark written *Mapp* as an obscenity opinion, the Court would have reached the essence of the *Stanley* decision a decade early. See: Potter Stewart, "The Road to *Mapp v. Ohio* and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search and Seizure Cases," *Columbia Law Review*, Vol. 83, No. 6, (Oct. 1983), 1367-1368. Also, see: Schwartz, *Super Chief*, 391-398, and Memo to Justice Clark from Justice Harlan, May 1, 1961, Papers of Justice Tom Clark, Jamail Center for Legal Research, Tarlton Law Library, The University of Texas School of Law, Austin, Texas. Available on line at: <http://tarlton.law.utexas.edu/clark/files/1960-236/case-files/a115-06-03-01-1024.jpg>, (Accessed Oct. 29, 2008).

²⁰¹ *Blount v. Rizzi*, 400 U.S. 410 (1971).

²⁰² *United States v. Thirty-Seven Photographs*, 402 U.S. 363 (1971).

explain why the absolute right to possess obscenity did not confer corresponding rights to receive, distribute, or carry such materials on one's person or in luggage. Brennan, in *Blount*, foreclosed the possibility outright. White's *Reidel* opinion explained that while nothing the Court wrote since *Roth* insulated obscenity from "statutory regulation" neither, did the Constitution insist upon it. Yes, the states could ban obscenity; but the states were not compelled to do so.²⁰⁴ Marshall's dissent in *Reidel*, argued that his 1969 *Stanley* opinion already rejected the argument that antisocial conduct, or a state right to control thoughts underpinned obscenity law. The legitimate state interests turned on protecting children and unwilling adults, and these considerations only applied to public settings and it was "disingenuous" argue, that Stanley's conviction was "reversed because his home, rather than his person or luggage, was the locus of a search."²⁰⁵

William Douglas' dissent in *Thirty-Seven Photographs* highlighted a problem confronting the plurality, one rooted in the 1969 *Stanley* opinion.²⁰⁶ Stewart, Brennan, and White had overturned Stanley's conviction, on illegal search grounds. Their support, however, gave Marshall sufficient votes on the Court to assert a right to possess obscene materials. The *Thirty-Seven Photographs* decision, suggested to

²⁰³ United States v. Reidel, 402 U.S. 351 (1971).

²⁰⁴ 402 U.S. at 356. "It is urged that there is developing sentiment that adults should have complete freedom to produce, deal in, possess, and consume whatever communicative materials may appeal to them and that the law's involvement with obscenity should be limited to those situations where children are involved or where it is necessary to prevent imposition on unwilling recipients of whatever age...This may prove to be the desirable and eventual legislative course. But if it is, the task of restructuring the obscenity laws lies with those who pass, repeal, and amend statutes and ordinances. Roth and like cases pose no obstacle to such developments."

²⁰⁵ Ibid. at 360.

²⁰⁶ Chief Justice Burger, Justices Harlan, Brennan, Stewart and Blackmun joined White in Part I of his opinion, Burger, Brennan and Blackmun joined White in Part II, Harlan and Stewart each concurred separately.

Douglas that the plurality were reasoning “silently” that banning “importation of obscene materials for private” use was acceptable since such a ban was necessary to stop commercial dissemination. However, Marshall had rejected that very argument in *Stanley*. Douglas could count votes on the bench as well as anyone else, and his reading of the *Thirty-Seven Photographs* plurality’s opinion led him to conclude, “at least four members of the Court would overrule *Stanley* if given the chance. Perhaps, he reasoned, *Stanley* recognized a right to possess “only when a man writes salacious books in his attic, prints them in his basement, and reads them in his living room.” The plurality’s abandonment of the precedent set in *Stanley* confused Douglas. He wrote that he could not believe the plurality was “bowing to popular passions” or the “temper of the times.”²⁰⁷

²⁰⁷ 402 U.S. at 388.

Chapter 4: From a Smoke Filled Lodge to a Theatre Near You

Consumption not Content

This chapter examines the first decade of publicly screen hard-core film. In the same sense that grasping the legal and cultural environment awaiting the films necessitated an understanding of early anti-obscenity activism and the masturbation panic, understanding the impact of the feature-length hard-core films demands comprehension of the stag and exploitation films of the first six decades of the century. I then pick up the story of hard-core's appearance and follow the industry through its first fifteen years. During this time the Court reengaged obscenity. It sought clarity and achieved bewilderment. The activists witnessed what they believed was the natural consequence of lax enforcement and redoubled their efforts towards expunging obscenity from the public square.

The highly politicized national debate over pornography and the inescapable confusion inherent in a decade of conflicting Supreme Court obscenity decisions opened the legal and social environment to a small group of hard-core film entrepreneurs. Between 1970 and 1990, the hard-core film industry provided a product manifestly desired by a significant number of Americans. Consumption occurred in three distinct venues; the hard-core theatre, the peep-show booth, and the private home. During these two decades, demand withstood both public condemnation and rigorous Federal and state prosecution. Between the late 1970s and the early 1980s, the industry increasingly utilized videotape to augment income derived from theater ticket sales, and this moved hard-core film from the highly contested public space of the theatre to the more easily defended private space of the

home. Eventually, home video replaced theaters as the site of consumption. By lessening porn's public presence, video reduced the weight of one of the more compelling anti-porn arguments, shielding people from the unwanted imposition of sexually explicit material. Additionally, video porn lessened the potential embarrassment that still accompanied visiting a porn theater. Most important, video hard-core became a far more practical, real-time accompaniment to private masturbation.

Additionally, the Supreme Court's obscenity and zoning decisions, both before 1970, and in the two decades following, accelerated the movement of hard-core film into the private home. This relocation, however, did not reduce the fervor of the cultural debate over porn. Opponents continued to emphasize pornography's putative harms. These claims, especially in the aftermath of research conducted by the President's Commission, became harder to sustain. A feminist critique of porn shifted the focus from the moral harm to its power to create and maintain systems of patriarchy, and gender inequity. This was the civil rights argument. While this new critique enabled an unstable alliance between anti-porn feminists and traditional morals-based activists, it too ultimately proved ineffective in constraining the industry.

During the relatively brief period of theatrical screening, obscenity prosecutions continued. However, most jurisdictions required prodding from either activists or the Federal government before initiating cases. Notwithstanding the resurgence of religious fundamentalism in the late 1970s and 1980s, a cultural change had occurred in enough of the country to make obscenity convictions problematic.

Successful defense of pornographic films in some porn-tolerant regions of the country subtly undermined resolve among many municipalities lacking energetic anti-porn activism. Increasingly, Federal prosecution, allied with local law enforcement, employed venue shopping and multiple jurisdictional indictments to achieve their successes. Most ‘successful’ prosecutions, however, did not involve jury decisions, but came from plea bargain agreements driven by the financial weakness of the defendants. The need of Federal prosecutors to resort to these tactics, as well as the fundamental goal of driving hard-core enterprises out of business, as opposed to prosecuting them for specific violations, argues strongly for a collapsing consensus regarding suppressing film pornography. The landmark case, *United States v. PHE, Inc.*, effectively ended even this practice by 1992.¹

Explicit hard-core films showing genital penetration had existed since the beginning of the 20th-century. Until 1970, these films (the stags) were the only form of hard-core film. The appearance of publicly screen feature-length hard-core followed the stags chronologically, but did not evolve from them directly. This Chapter, after a brief examination of the stag film era, addresses the story of hard-core film during the period from its emergence from the shadow world of the stags, assisted by the marginally mainstream sexploitation film genre,² to its relocation, via videotape, to the sheltered privacy of the home. Hard-core film’s greatest growth

¹ *United States v. PHE., Inc.* 965 F.2d 848 (10th Cir. 1992). The necessity of the government to employ these tactics demonstrates the growing toleration for most varieties of hard-core material in much of the country. The decision barring these practices merely removed a weapon from the government’s arsenal; the fact that they had to use it in the first place shows how out of step they were.

² My discussion of the role of sexploitation films in the rise of hard-core feature films rests largely on Eric Schaefer, “Gauging a Revolution: 16mm Film and the Rise of the Pornographic Feature,” *Cinema Journal*, Vol. 41, No. 3, 2002, 3-26. Also, see: Schaefer, “*Bold! Daring! Shocking! True!*”: *A History of Exploitation Films, 1919–1959*, (Durham, N.C.: Duke University Press, 1999).

only came after the genre effectively jettisoned its 'golden age' cinematic pretensions. During this first decade, hard-core changed from being a small, illegal, privately consumed niche item to an increasingly available, variably tolerated, and publicly shown product, before again going private. Feature-length hard-core shunted the stag film into adult arcade peep show booths. There they served two functions, as a private masturbatory stimulant, for fans, and as an income generator for Reuben Sturman. The Attorney General's Commission on Pornography would later characterize Sturman as "the largest distributor of pornography in the world."³

The industry refers to the first decade of theatrical venue hard-core as its golden age, the period after videotape's arrival gets labeled silver. Perhaps both are inaccurate. A change in content notwithstanding, hard-core pornographic film was green; it sold well at the start, and increased its profitability through the end of the 1980s, when sales began leveling off. By 1985, a cohort of producers and directors, empowered by the comparative ease of video production, duplication, and distribution, began glutting the market with less expensive videotapes. Video became not only the dominant medium for viewing, but also the default method of 'filming.' The switch to video both saved and fundamentally changed the industry. Jack Horner, the pornographic filmmaker played by Burt Reynolds in *Boogie Nights*, resisting the switch describes the transition from the creative side, "You know if it looks like shit, and it sounds like shit, then it must be shit."⁴ Economic necessities forced many like the fictional Horner to make the switch anyway, and throughout this

³ Attorney General's Commission on Pornography, *Final Report*, <http://www.porn-report.com/404-organized-crime-and-pornography.htm>, (accessed May 14, 2006).

⁴ *Boogie Nights*, Directed by Paul Thomas Anderson, New line Cinema, 1997.

period, the fans remained constant, willing to accept virtually any artistic choice the industry offered—even the choice to excise ‘art’—so long as the films provided explicit sex.

This brief précis tracing the arc of the industry moving from stag nights to theaters to videotape players, appears in most academic and popular accounts of the industry; it is as familiar as it is uncontested. Missing from the story is the consumer of hard-core. How do we find him?⁵ While a few studies address the effects of porn consumption in controlled situations, their focus is upon the influence of the consumption. Examining the films and inductively constructing the hypothetical viewer potentially reveals more about the researcher than it does about the general consumer. The industry, however, had unique access to the consumer. The industry aimed at supplying what the consumer wanted. The fan magazines, and the industry trade paper *Adult Video News (AVN)*, constitute an overlooked link between the industry and the person buying theatre tickets, or watching videos, and a source for rediscovering the consumer. This is not to argue that, better than all other industries, hard-core film perfectly assessed its consumers’ desires. However, the publications do reveal a great deal about the industry’s beliefs concerning its consumers. Moreover, the magazines and *AVN* articulated, in plain, accessible language, the industry’s view of itself, its opponents, and the challenges facing the industry. The publications asserted that the consumer had an absolute right to view the films, that the industry deserved respect, and that this respect should encompass the performers. The men and women who appeared in hard-core films, according to the publications,

⁵ Couples porn was a small percentage of the industry, and lesbian porn was even rarer. Speaking of the porn consumer as overwhelmingly male is merely accurate.

were performers who merited admiration, consistent with the professionalism they brought to their craft. Good porn performers, and by implication good films, possessed a capacity to arouse the viewer. This was more important than technical filmmaking ability, originality of story, or character. Arousal was the primary consideration, the more arousing the better the film. This industry-wide view remains consistent and dominant to this day. This standard applied to hard-core films regardless of the gender or sexual orientation of the intended audience. Whether the films targeted gay, straight, or bisexual audiences, and regardless of whether the film sought to appeal to men solely or to couples or women, the film's capacity to arouse was its most important attribute.

Tracing the history of the straight and gay hard-core industry through its trade paper and the fan magazines, beginning in the 1970s, then continuing through the early 1990s, reveal the industry's perspective on challenges from the anti-porn activists, the courts, and the Federal government. It also recovers what the industry believed about its customers and their consumption of the films. Surprisingly, it becomes clear that despite the legal battles where the industry defended itself on First Amendment grounds, the filmmakers understood their films were primarily masturbatory aids. This is true before the video shift, but is even more explicit afterwards. While the ways the industry discussed and represented the films and the performers in the magazines gives ample circumstantial evidence for this contention, advertisements for masturbatory devices within the magazines, confirms it. Even before videotape dominated the market, ads for personal, super 8mm film viewers, prominently display the customer using the device with *one* hand, and stressing this

technology. Ads for artificial vaginas, vibrators, ‘blow job’ simulators, and life-sized male and female sex dolls filled the back pages of the fan magazines.

Tracing the history of the hard-core industry through its trade paper and affiliated industry publications reveals that the industry grew in direct relation to its ability to provide a product that facilitated private masturbation. The use of the films subtly changed with the location of consumption. While the publications do not cover the stag era, masturbation likely characterized home viewing, and it certainly occurred when stags relocated to the peep show booths of the 1970s and 1980s. Masturbation continued in a more restrained mode in theatrical venues, and so-called ‘couples porn’ notwithstanding, appears to be the principal purpose of hard-core film since the video shift.

In an ironic twist, the anti-pornography activist movement and their political allies assisted by a constitutional obscenity doctrine predicated on a 19th-century fear of masturbation, by applying consistent pressure, helped move hard-core film out of the theaters and into the privacy of the home. Only there, it could achieve its full potential, becoming the very thing Comstock and the original designers of obscenity law most feared. However, before porn films appeared in public view, it existed in the shadows.

Stag Films

In their time, roughly from the turn of the 20th-century until the late 1960s, the stags held a monopoly on the representation of live action sexual conduct. Their eight to fifteen minute, silent, black and white formats, however, could not compete with the feature-length films’ color, sound, and story. Their relationship to feature-

length hard-core films rests upon their role in establishing many of the conventions of hard-core film, and perhaps in providing a negative example of poor cinematography that later feature-length hard-core filmmakers sought to avoid. The earliest stag films were the first to encounter the many technological problems unique to pornography such as focus and lighting the necessary penetration shots that would later confront feature-length filmmakers, as well as establishing several of the plot devices used in explaining why the film characters were suddenly engaging in sex. It is also possible that the stags, far from being an example of an intellectually stagnant cinema, merely reflected the sameness so often present in the pornographic films of the video era. The imputed limitations in pornographic film could be either a consequence of there being only so many variations available to a genre devoted to a single subject, or reflect an enduring and perhaps essential quality which hard-core film must possess to qualify as hard-core. Sameness need not, however mean boring. Kenneth Tynan, in his introduction to Di Lauro and Rabkin's *Dirty Movies*, raises this issue when he refers to a common argument lodged against all pornographies, "Since the number of sexual positions is limited, pornography is doomed to ultimate monotony." Tynan dispenses with this by noting, "Dawn and sunset are likewise limited, but only a limited man would find them monotonous."⁶

While the documentation of mainstream cinema's history from the nickelodeon to the current Hollywood products is rich, this is less true for the stags. In most instances, we know next to nothing of an individual stag film's production, little more than the broad contours of the distribution systems, and only slightly more

⁶ Kenneth Tynan, Introduction, in Al Di Lauro and Gerald Rabkin, *Dirty Movies: An Illustrated History of the Stag Film, 1915-1970*, (New York: Chelsea House, 1976), 20.

of their audience's experiences while viewing. What little we do know, moreover, is conditional, resting on the documentary record of their suppression, and scattered contemporary references. While disagreements over whether the stags demonstrate a charming primitivism⁷ or an elemental misogyny⁸ occupy much of the literature, the broad outlines of the stag experience are widely accepted.⁹ How audiences consumed the stags, how the pattern of consumption changed and what this might tell us about the feature-length hard-core films' growth is the central concern of this introductory section.

The stags resided at the bottom of the cinematic ladder. Whether one considers the stag films crudely primitive, or intentionally amateurish they were a quintessential example of what Tom Gunning calls, "the cinema of attraction." They

⁷ Both Di Lauro and Rabkin's, *Dirty Movies*, and Dave Thompson, *Black and White and Blue: Adult Cinema from the Victorian Age to the VCR*, (Toronto, Canada: ECW Press, 2007) broadly adopt this approach.

⁸ Linda Williams, "The Stag Film," chapter 3 in Williams, *Hard Core: Power, Pleasure, and the "Frenzy of the Visible,"* (Berkeley: University of California Press, 1989), 92.

⁹ Useful works on the stag genre constitute a short list. My general discussion of stag films relies primarily upon the secondary literature and John J. Sampson's work for the President's Commission on Obscenity and Pornography. Sampson established contact with a former Indianapolis police officer, George E. Huntington, then a researcher at the Kinsey Institute, and gained valuable insight on the stag market in the post-war years. The principal sources are, Frank A. Hoffmann, Prolegomena to a Study of Traditional Elements in the Erotic Film," *The Journal of American Folklore*, Vol. 78, No. 308, (April-June, 1965), 143-145. Knight and Alpert, "The History of Sex in Cinema: Part 17: The Stag Film," 154-58, 170, 172, 174-76, 178, 180, 182-84, 186, 188-89 is uniformly excellent. Di Lauro and Rabkin, *Dirty Movies*, is only slightly less. Joseph W. Slade, "Eroticism and Technological Regression: The Stag Film," *History and Technology*, Vol. 22, No. 1 (March 2006), 27-52 argues that the primitive nature of the films was possibly intentional, with filmmakers aiming to confer an aura of authenticity. Linda Williams, "The Stag Film," chapter 3, Williams, *Hard Core: Power, Pleasure, and the "Frenzy of the Visible,"* (Berkeley: University of California Press, 1989), 58-92, is superb on the ways content and framing in the stags allowed male viewers to virtually elide the women in the films from the male interaction with the films. Thomas Waugh, *Hard To Imagine: Gay Male Eroticism in Photography and Film from Their Beginnings to Stonewall*, (New York: Columbia University Press, 1996), especially 284-363, is exceptional. Waugh refusal to pretend that the stags are wholly accessible to modern viewers, as well as the information he provides concerning the emergence of a small market in mail order stag movies geared explicitly towards a gay audience, sometime after World War II, makes this work extremely valuable. Dave Thompson, *Black and White and Blue: Adult Cinema from the Victorian Age to the VCR*, (Toronto, Canada: ECW Press, 2007), is useful, taking a quite appreciative view of the stags, declaring them cinema's "folk art."

were a cinema characterized by “its ability to show something.”¹⁰ In this case, actual sex performed by actual people. As Di Lauro and Rabkin note, stags “revealed graphically what was difficult to see in the dark confines of the back seat.”¹¹ At a basic level then, curiosity, pure and simple, might explain their existence. Stag filmmakers were employing a new communications technology for a pornographic purpose. There was nothing new or original in this.¹² Nor need there be narrative originality in the stags themselves, though the filmmakers occasionally tried to insert some semblance of plot. An exchange between the great French film director Marcel Pagnol and an assistant who Pagnol discovered making stag films reveals the core problem facing stag filmmakers. “Wasn’t it difficult to shoot naked people for a stag film?” Pagnol asked. “No...the problem was creating a story to make the sex credible.”¹³ Few filmmakers succeeded in solving the problem, though it is only fair to note, we have little evidence indicating audiences noticed, or if they did notice that they cared.

As early as 1965, Frank A. Hoffmann was able to identify three “peak periods” of production, “The mid-1920s, the few years before World War II, and the present.”¹⁴ The stag usually consisted of single reels of film, usually around 400 ft in length, with running times between 8 and 15 minutes. 35 mm was the standard

¹⁰ Tom Gunning, “The Cinema of Attraction: Early Film, Its Spectator and the Avant-Garde,” *Wide Angle*, Vol. 8, No. 3-4, (1986), 64.

¹¹ Di Lauro and Rabkin, *Dirty Movie*, 55.

¹² Slade, “Eroticism and Technological Regression,” 28.

¹³ Joseph W. Slade, “Flesh Need Not be Mute: The Pornographic Videos of John Leslie,” *Wide Angle*, Vol. 19, No. 3, (1997), 115.

¹⁴ Hoffmann, “Prolegomena,” 143.

format for both shooting and playing, quickly giving way to 16 mm after its introduction in 1923.¹⁵ The very earliest stags employed an “extremely unstable” nitrate film stock, that was highly flammable, and this might explain the relative rarity of original stags from the pre-1926 period. The introduction of 16 mm acetate stock made the films less dangerous, and conservable.¹⁶

Fortunately, the practice of copying, and thereby recycling films, even cobbling together movies with scenes from several different films, meant that elements from even the earliest films reappeared over the decades in various forms. *L' Enquete Delicate*, a heterosexual stag film from sometime between 1928 and 1934, for example, contains footage from the earlier straight films *The Golden Shower* and *Gay Count*, both made in the early 1920s.¹⁷ The shift to 16 mm was probably more a function of cost than safety, as 35 mm nitrate cellulose films endured in mainstream cinema until the late 1940s. The introduction of 16 mm had its greatest effect on stags in that it made both filmmaking and screening, especially home screening, less expensive and more widespread.

The cost of early cameras, and the technical expertise required to operate them suggests that the early years of stag production—the period before the mid-1920s—were likely the province of filmmakers associated with the more traditional film industry. Additionally, it is logical that individuals working in the ‘legitimate’ film industry, such as Pagnol’s wayward assistant, branched out into stags either as a sideline, or as an alternative when mainstream work was unavailable. Assessing the

¹⁵ Slade, “Technological Regression,” 36.

¹⁶ Slade, “Technological Regression,” 32.

¹⁷ *L' Enquete Delicate*, 1928-34 (31), *The Golden Shower*, 1922, and *Gay Count*, 1925.

degree of activity by mainstream filmmakers remains conjectural. Well-known mainstream directors or cinematographers may have dabbled in stag production before or during their careers. Slade argues that the great French filmmaker Bernard Natan started his career making stag films, before acquiring Pathé Films in the 1930s. Whoever made stag films, production would likely have been a hurried affair. The ever-present fear of apprehension during filming, to say nothing of the risk during development, reproduction, and transportation would lend itself to the creation of a product that often spent little time on ‘extraneous’ cinematic elements.

It is often difficult to discern much of the erotic in stags. Nor is it clear that audiences required it. The appearance of frankly unattractive people in many stag films raises several questions. It is unlikely that the morbidly obese woman and the elderly man in *Naked Truth*¹⁸ were an aesthetic choice on the part of the director. The stag filmmaker concentrated on capturing visible penetration. That came first; other considerations, such as the attractiveness of the actors, fell by the way. The available pool of willing participants was just too small. As Joseph Slade notes, although the illegal status of the films meant that the filmmakers were “free to perpetrate any outrage,” on film, the stags were, “rarely violent...mean spirited,” or “truly ugly.” Slade attributes this to the filmmakers having their finger on the pulse of their audience. Since the projectionist in the early days was often the filmmaker, appreciation of audience likes and dislikes was deep and immediate. The depiction of sex alone was “Sufficiently incendiary that no additional violations of taboo were

¹⁸ *Naked Truth*, 1925-1931.

called for.”¹⁹ Knight and Alpert quote a “Midwestern distributor” of stag films in the mid-1960s explaining that he could not market a stag with “Lolita-like nymphets” because the “middle-aged American men” found the young women “too reminiscent of their own daughters.” ““You get to know your audience,’ he said, ‘If I showed up with that reel for a smoker at the local Kiwanis or someplace like that, they’d skin me alive.’”²⁰ Stag films in the post World War II period, as well as the last stags shot in the 1960s, showed signs of being “more intelligently planned” but remained light on plot, relying on easily established situational settings to justify the sex.²¹

Distribution of stag films differed according to the shifting consumption site. In the case of group viewing, the traveling stag show was the usual method. Traveling stag men “rode a regular circuit,” playing 16mm films for “lodges, veteran groups, college fraternities,” or similar groups. The shows lasted about an hour, though this could vary, and the average cost for having stag films screened for such a group was approximately \$40.00. The price could increase if live entertainment rounded out the evening. Additionally, the length of the show or the size of the audience would also have an effect on the cost. By 1960, this market had “virtually disappeared.” During this same period, the transition from 16 mm to 8 mm film was “virtually complete.” Replacing the traveling stag man were ad hoc shows before small gatherings by people who acquired films on their own either through mail order

¹⁹ Slade, “Technological Regression,” 35-36. *El Satario*, (The Satyr), a straight stag film from around 1915, does depict an attempted rape, but then it was likely shot in Argentina around the time of Vaslav Nijinsky’s visit with the Ballet Russe; its plot is a clear homage to *L’Après-midi d’un faune*. Joseph W. Slade, “Violence in the Hard-Core Pornographic Film: A Historical Survey,” *Journal of Communication*, Vol. 34, No. 3, (1984), 151.

²⁰ Knight and Alpert, “The Stag Film,” 170.

²¹ Hoffmann, “Prolegomena,” 144-145. My viewing of stags confirms this.

sources or under the counter sales. Group viewing of stag films continued, but the career of the traveling stag film proprietor largely disappeared.²²

While it was certainly illegal to either own or show the stags, the risk of arrest depended on the circumstances of their exhibition. If local activists or law enforcement were actively pursuing such films, arrests often followed.²³ If, as was usually the case, local police were busy with more pressing concerns, stag nights were “tolerated in their individual communities as a necessary ritual of masculine emergence.”²⁴ In either case, the traveling stag man could not rely upon forbearance. When mail-order, or under the counter sales characterized the trade, the moment of handing over films to customers or intermediary distributors, such as bartenders or bookstore proprietors, approximated the transfer of any illicit item. Simple prudence based on experience in the trade would likely offset the risk of getting caught by the police.

The stags were more spectacle than erotic spur, at least in the majority of American viewing scenarios, before the advent of home projectors. While the European, Caribbean, and South American stag experience was more apt to occur in a brothel setting, the North Americans tended to take their stags with a large dose of

²² John J. Sampson, “Memorandum for File: Interview with George Huntington, Institute for Sex Research, Oct. 15, 1969,” Box: 63, Folder: Hard Core. PCOP, LBJ Library, Austin, TX, 3.

²³ “Film Show Raided at Park Theatre,” *NYT*, (Dec. 20, 1913), 1; “Accused for Obscene Film” *NYT*, (July 15, 1928), 24; “College Park Man Fined in Frat Smoker Case,” *The Washington Post*, (May, 1953), 22.

²⁴ Di Lauro and Rabkin, *Dirty Movies*, 54.

fraternal comradeship. The ‘smoker’ or stag night was a time-honored staple of groups such as the Elks, Moose, and the American Legion.²⁵

As Thomas Waugh observes, the social viewing of the stag films reduced the experience to an act of “getting together to collectively get aroused...not off.”²⁶ The social setting limited the range of possible responses. While group masturbation is not out of the question, and certainly occurs in some homosocial hard-core viewing nowadays, it was far less likely to have occurred during the classic stag era (1900-1940). The likely absence of masturbation during group stag consumption highlights the similarity stags share with theatrical venue hard-core, and their essential difference from the video porn experience.

Stags did enter the home market, and they did so with surprising speed once cheap projectors made such viewing financially possible for more Americans. Indeed, Eric Schaefer argues that stag films entered the home market to a far greater degree than previously believed.²⁷ “Amateur movie equipment was available from the earliest days of cinema,” he writes, “but home movies began in earnest with the introduction of 16mm and 8 mm equipment in the 1920s.” Eastman Kodak, introduced the 16mm Ciné-Kodak camera and a projector 1923, and by 1932, Ciné-

²⁵ Arthur Knight and Hollis Alpert, “The History of Sex in Cinema: Part 17: The Stag Film,” *Playboy*, Vol. 11, No. 10, (November 1967), 154, 158, 170.

²⁶ Thomas Waugh, “Homosexuality in the Classical American Stag Film: Off-Screen, On-Screen,” *Sexualities*, Vol. 4, No. 3, (2001), 278.

²⁷ Eric Schaefer, “Plain Brown Wrapper: Adult Films for the Home Market, 1930-1969,” in Jon Lewis and Eric Smoodin, ed., *Looking Past the Screen: Case Studies In American Film History and Method*, (Durham, NC: Duke University Press, 2007), 201.

Kodak 8 model 20 cameras were available for around \$30.00; a Kodascope 8 projector sold for around \$20.00.²⁸

Schaefer notes that the majority of film companies serving the home viewing market, such as Pacific Ciné Films and Nu-Art, supplied films for the home viewer, providing nude content but staying away from explicit, hard-core stag material. Schaefer quotes Nu-Art's own description of their material, "while these pictures contain nude models, the pictures had been made in such a way that they are not vulgar in the least...nothing objectionable shows." Such companies, nonetheless, received requests for stag material.²⁹ Despite the fact that these films were not what modern audiences would characterize as explicit hard-core, masturbation was a likely component of the viewing of even these films at home. "It is probably not too cynical to suggest," Schaefer writes, "that most viewers of mail order films were not sitting in their homes in front of the screen with a sketch pad or and easel and paints." These movies, "fodder for sexual fantasies...like pinups, spicy pulp magazines, and French postcards," were "probably" a "visual stimulus for masturbation."³⁰

Dwight Swanson, another historian of early film, confirms the increased practice of home viewing, and notes "most families did not sit around together watching *Teenage Orgy* or *The Perverted Dentist* like they did Laurel and Hardy shorts." Stag films, he writes, when not supplied there by "small-time exhibitors...hired to show an evening's worth of films for stag parties," were

²⁸ Schaefer, "Plain Brown Wrapper," 203, citing Alan D. Kattelle, *Home Movies: A History of the American Industry, 1897-1979*, (Hudson, MA: self-published, 2000), 82-83.

²⁹ Schaefer, "Plain Brown Wrapper," 206.

³⁰ Schaefer, "Plain Brown Wrapper," 207.

available via “individuals...who would build their own film collections, buying them under-the-counter at photographic supplies stores or through mail order from ads in the back pages of amateur motion-picture and photography magazines.”³¹ Swanson provides a tantalizingly vague second-hand description of stag consumption in his account of a woman who discovered her grandfather’s film collection and subsequently donated some of the material to Swanson. The woman told Swanson “her mother” still referred to the films as “those dirty movies.” Asked whether she had any other “family anecdotes” about the films, the woman said that “her father” said he would “splice in scenes” when screening “training films to recruits” in the Navy, “just to liven things up.” The donor, however, felt this story was “almost certainly apocryphal.” Swanson asked the woman if the family member belonged to a club or “service organization,” thinking that these might have been screening venues. She related that “friends” watched the films in the home. “In the words of the donor’s mother,” Swanson writes, “watching dirty movies ‘was just something that men did back then.’”³²

The Transition to the Public Screen

The relocation of hard-core sexual representation from stag films to feature length films in 1970 required an intermediary product. The increasing tolerance of sexual themes and flesh on display in mainstream film, especially after the Second World War, certainly played its part in the run up to hard-core’s theatrical debut, but hard-core films existed alongside but apart from mainstream product almost since the

³¹ Dwight Swanson, “Home Viewing: Pornography and Amateur Film Collections, A Case Study,” *The Moving Image*, Vol. 2, No. 2, (2005), 137.

³² Swanson, “Home Viewing,” 139

inception of motion pictures in the early 20th-century. Mainstream films demonstrated no inclination to strip off and cross the line. The so-called exploitation films, according to Schaefer, and particularly the ‘sexploitation’ films appearing at the end of the 1950s were the avenue of transfer. Exploitation movies had existed since the 1930s and had long provided viewers “sights forbidden by the Production Code.” They engaged a variety of “contemporary problems, educational tracts, or morality plays” and “maintained their position in the market by including moments of spectacle unlike anything seen in mainstream movies; scenes set in nudist camps, shots of striptease dances, and footage of childbirth, victims of venereal disease, and people engaging in a range of vices.” To avoid the legal prohibitions of the time, they often included “an introductory educational statement that explained how exposure of the problem in question was necessary to bring about its eradication.”³³ Sexploitation films focused on sexual situations. They trod a fine line, between story, and revelation. In doing so, they “achieved equilibrium.” The sexploitation film plots were “entertaining enough to keep the audience content when there was no nudity on screen,” and nudity was “plentiful enough to make up for any cinematic shortcomings.”³⁴

Schaefer argues that it was the “introduction of 16mm technology,” which, “precipitated a series of industrial adjustments,” leading to feature-length hard-core

³³ Eric Schaefer, “Gauging a Revolution: 16mm Film and the Rise of the Pornographic Feature,” *Cinema Journal*, Vol. 41, No. 3, (2002), 5.

³⁴ John Minson, “The Wages of Sin: The Irrepressible Rise of All-American Smut,” *Bright Lights Film Journal*, No. 58, November 2007, <http://www.brightlightsfilm.com/58/58porn2.html>, (Accessed July, 15, 2008).

films' appearance in 1968.³⁵ Filmmakers, unable to compete in the 35 mm exploitation film market, began shooting sexually explicit films on 16 mm. While not showing penetration, these films, around 1967, began appearing in small storefront venues. A short-lived niche genre within this 16 mm format, were the 'beaver' film. These crowded long established boundaries on representation, but stopped just short of actual intercourse. The name derived from the films' display of a woman, usually lying on her back and exposing her genitalia. Sometimes the woman would manually stimulate herself, thus making the film an 'action beaver,' and sometimes she would just spread the labial folds, making the film a 'split beaver.' The 'beaver' films constituted the penultimate stage before the appearance of the hard-core feature film. This intervening form of film, which possessed virtually no narrative element, was a strong indication that even in its first theatrical appearance, before the arrival of insertion shots, the masturbatory potential was recognizable to both filmmakers, theater owners and of course to the patrons who watched.

The sexploitation genre also included the so-called nudie-cuties.³⁶ Film critic Gene Ross, writing in *Adult Video News*, noted that the nudie-cutie era was one of "ageless sex titillation, beautiful naked women in all their black-and-white glory; laughable plots, questionable taste, abominable acting, five and dime production values, hysterical coming attractions, blonde heroines and heroes that looked like

³⁵ Eric Schaefer, "Gauging a Revolution," 3.

³⁶ The most noteworthy examples of this genre are the films of Russ Meyers, starting with *The Immoral Mr. Teas*, Directed by Russ Meyers, Pad-Ram Enterprises, 1959, and continuing on through the 1960s and 1970s with *Faster Pussycat! Kill! Kill!*, Eve Productions, 1965, *Cherry, Harry & Raquel!*, Eve Productions, 1966, *Vixen*, Coldstream Films, 1968, *Beyond the Valley of the Dolls*, 20th-Century-Fox 1970, *Supervixens*, RM Films International, 1975 and *Beneath the Valley of the Ultra-Vixens*, RM Films International, 1979. Also see: Jimmy McDonough, *Big Bosoms and Square Jaws: The Biography of Russ Meyer, King of the Sex Film* (New York: Three Rivers Press, 2006).

hairy Smurfs.” Ross was direct when identifying the essential quality of the films: “Naked female flesh...and every excuse in the world imaginable for showing it.”³⁷

Other varieties of the sexploitation genre included naturist films showing frolicking nudists, and the ‘white coaters.’ So-called for their white lab coat clad narrators, who affected a scientific approach, these films took refuge behind the Supreme Court’s obscenity exception for materials with redeeming value. At about the same time, a number of foreign films appeared on the scene. Marketed as an examination of how Scandinavia was addressing the on-going sexual revolution, these documentaries contained only nudity and simulated sex.³⁸

Stag films continued to be available via mail order through the 1970s and early 1980s, but their primary consumption site shifted with the appearance of the peep show booth. Production for the booths—the films became known as ‘loops’ after their method of display, cycling on the screen as long as the customer fed the machine quarters—existed in New York City, Los Angeles, and San Francisco areas.³⁹ The peep booth, as a site of consumption, is revelatory in relation to how viewers consumed hard-core.⁴⁰ David Hebditch and Nick Anning’s *Porn Gold*, and Eric Schlosser’s *Reefer Madness* note that theatrical porn paled in comparison to the

³⁷ Gene Ross, “Sexploitation Films: The 60’s Sexplosion!!!,” *AVN*, March, 1987, 82.

³⁸ *I Am Curious (Yellow)*, (*Jag är nyfiken - en film i gult*), Directed by Vilgot Sjöman, Sandrews, 1967 and *Language of Love*, (*Kärlekens språk*), Directed by Torgny Wickman, Paragon Films, 1969. For more on the exploitation genre, see: John McCarty, *The Sleaze Merchants: Adventures in Exploitation Filmmaking*, (New York: St. Martin's Griffin, 1995); Mike Quarles, *Down and Dirty: Hollywood's Exploitation Filmmakers and Their Movies*, (Jefferson, NC: McFarland and Co., 1993).

³⁹ Legs McNeil and Jennifer Osborne, with Peter Pavia, *The Other Hollywood: The Uncensored Oral History of the Porn Film Industry*, (New York: HarperCollins, 2006), 46-77, Harry Reems, *Here Comes Harry Reems*, (New York, Pinnacle Books, 1975), 33-67.

⁴⁰ Howard Thompson, “‘Loops’ Peeps Into 25-Cent Pornography Machines,” *NYT*, (August 3, 1973), 19.

traffic in the booths. Located in adult arcades and bookstores across the country, the viewer sat in front of a viewing screen, in privacy. Invariably, the booths had either curtains, or lockable doors. Hebditch and Anning base their assessment on interviews with the European porn director and producer Alberto Ferro. Ferro worked under the name of 'Lasse Braun,' and provided, a vast number of loops for the thousands of booths controlled by Reuben Sturman. Sturman became a dominant figure in virtually all aspects of pornography production, distribution, and retailing. He started as a magazine distributor working out of Cleveland, Ohio and branched into sexually explicit magazines, photosets and paperback novels quite soon after realizing the vast profits available.⁴¹ As Hebditch and Anning note, "Over the next four years [1970-1974], they [Sturman's business associates] made a million copies... fifty million copies in all" of the films Ferro supplied to Sturman. "If Sturman's associates used all those films in peep shows," and Hebditch and Anning believe this is the only "conceivable explanation for the number of copies involved" the peep booths may have generated as much as "\$2 billion."⁴² Schlosser's work estimates the peep show revenues being "perhaps even four or five times larger" than that generated by theatrical hard-core film.⁴³ The possibility of private consumption of pornographic film vastly increased consumption. Aside from his hard-core film production and distribution, Sturman also presided over the largest sex toy/masturbatory appliance manufacturing enterprise on record. His 'Doc Johnson' line of products, as of the

⁴¹ For more, see: Eric Schlosser, "An Empire of the Obscene," Chapter 3 in *Reefer Madness: Sex, Drugs and Cheap Labor in the American Black Market*, (New York: Houghton Mifflin, 2003), 109-210, and "Prince of Porn," *Cleveland Magazine*, (Aug. 1985), 78-82, 143-148.

⁴² David Hebditch and Nick Anning, *Porn Gold: Inside the Pornography Business*, (London: Faber and Faber, 1988), 203-204.

⁴³ Schlosser, "An Empire of the Obscene," 131.

mid 1980s, accounted for between, “seventy to seventy-five percent of the sexual device and paraphernalia market,” in the country.⁴⁴

While gay hard-core films had coexisted with the straight stags throughout the 20th-century, there were far fewer made, and those few were hardly likely to be screened at a stag night. The few instances of gay sexuality in the straight stags appeared in a comedic context, such as in, *The Exclusive Sailor* (1924) and *Le Telegraphist* (1921-26) which contains scenes of one man fucking another as punishment for having illicit sex with the first man’s wife or girlfriend. *Surprise of a Knight* ((1930) employed the conceit of disguise. That it was actually two men having sex does not become apparent until the end of the stag, when the penetrated ‘woman’ flashes his penis to the camera.⁴⁵ Gay hard-core followed a route from illegally circulated and privately consumed stag film to small theater venues. The mail order trade in gay stags closely resembled the distribution of straight films, in terms of remaining clandestine, both because of the penetration shots, but also due to the representation of homosexuality, which for over half of the century was de facto obscenity, regardless of how explicit the imagery. Of course, the few stag films explicitly produced for the gay viewer would hardly have appeared at the stereotypical stag night screening. Group viewing of stag films directed towards a gay viewer would have been extremely rare.

⁴⁴ Attorney General’s Commission on Pornography, “Production and Distribution,” *Final Report*, <http://www.porn-report.com/408-production-distribution-sexually-explicit-material.htm>, (Accessed Jan. 19, 2006).

⁴⁵ *The Exclusive Sailor*, 1924, *Le Telegraphist*, 1921-1926, and *Surprise of a Knight*, 1930, John R. Burger, *One-Handed Histories: The Eroto-Politics of Gay male Video Pornography*, (Binghamton, NY: Harrington Press, 1995), 7, and Waugh, *Hard to Imagine*, 359.

Gay hard-core can also claim partial descent from the physique or posing films, of the late 1950s through the 1960s. One of the more prominent physique film producers, Bob Mizer, of Athletic Model Guild, whose work never crossed over into hard-core, exerted a profound influence on the muscular, hyper-masculine appearance of many gay hard-core film performers late in the 1980s.⁴⁶ These non-explicit films had their own intermediary stage before showing penetration, which approximates the straight ‘beaver’ film. The ‘danglie’ film showed non-erect male genitals.⁴⁷

While far more developed forms of cinema, gay themed ‘art films’ provide another line of descent for gay hard-core. As Joe Thomas and Thomas Waugh both note, avant-garde filmmakers such as Andy Warhol, and Kenneth Anger produced and screened gay-themed, highly sexual, though non-explicit films since the early 1960s.⁴⁸ The connection continues in relation to venue, many of the same small venues screening Warhol and Anger in the 1960s would later screen the danglies, before eventually moving on to feature-length gay hard-core.

Hard-Core on the Public Screen

Although the Supreme Court would have difficulty throughout the 1960s in determining just what constituted hard-core material, film producers of publicly screened films did not share this indecision. Schaefer quotes one producer locating

⁴⁶ See; Bob Mizer, *Athletic Model Guild*, (Swaffam, UK: Gay Men’s Press, 1987), passim.

⁴⁷ Waugh, *Hard to Imagine*, 270.

⁴⁸ See: Joe A. Thomas, “Gay Male Video Pornography: Past, Present, and Future,” chapter 4 in Ronald Weitzer, ed., *Sex for Sale: Prostitution, Pornography, and the Sex Industry*, (New York: Routledge, 2000), 49-66, and Waugh, *Hard to Imagine*, 165.

the line at “insertion”⁴⁹ Whether, gay, or straight, vaginal, oral, or anal; the locus of insertion hardly seemed to matter. Any visible penetration constituted hard-core.

When hard-core actually crossed that bright line into feature length films, however, is maddeningly unclear. Joseph Slade states that the first appearance of a heterosexual hard-core film (no known title) occurred at the Hudson Theater in New York City in February 1968. He locates the first homosexual hard-core feature showing up in Los Angeles, in June of the same year.⁵⁰ Identifying the first feature length hard-core film depends upon whether one includes documentary films with scenes showing penetration. Alex de Renzy’s documentary *Pornography in Denmark* utilized a travelogue format; his *History of the Blue Movie* merely recycled old stag footage and adopted a retrospective approach. Gerard Damiano’s *Sex U.S.A.* and *(This Film is) All About*, used both recently shot stag footage and older material, but did not attempt serious narrative, nor did John Lamb’s *101 Acts of Love*. These films appeared in limited release in 1970 and 1971.⁵¹ *Mona (The Virgin Nymph)*, however, supplied both plot, and clearly visible penetration, and most noteworthy, achieved national release in 1970.⁵²

As the de Renzy, Damiano, and Lamb films indicate, the connection between publicly shown hard-core and stag production was close at the beginning. This connection would endure for several years. Many of the initial stars of feature length

⁴⁹ Schaefer, “Gauging a Revolution,” 17.

⁵⁰ Slade, *Pornography and Sexual Representation*, Vol. 1, 17.

⁵¹ *History of the Blue Movie*, Directed by Alex de Renzy, Graffiti Productions, 1970, *Pornography in Denmark*, Directed by Alex de Renzy, Graffiti Productions, 1970, *Sex U. S. A.*, Directed by Gerard Damiano, Vanguard Films, 1971, *(This Film is) All About*, Directed by Gerard Damiano, Arrow Productions, 1970, *101 Acts of Love*, Directed by John Lamb, Xerxes Productions, 1971.

⁵² *Mona (The Virgin Nymph)*, Directed by Bill Osco, Sherpix, 1970.

films, Jamie Gillis, Linda Lovelace, Eric Edwards, Fred Lincoln, and Harry Reems, began their careers in stag films prior to crossing over into feature-length porn. The same holds true for gay hard-core, as well. Falcon Studios, the dominant producer of hard-core gay films, initially produced short, stag-like films, for peep booth use. Shown in groups of three or four, one after the other, in a theatrical venue viewing, Falcon recycled them for video. These short films supplied the raw material for Falcon's initial 'video pac' series.

Feature-length gay hard-core effectively begins with Wakefield Poole's, *Boys in the Sand*.⁵³ Poole, originally a Broadway dancer who moved into choreography and assistant directing, worked on both stage and television. According to Poole, a visit with friends to a New York City gay porn theater resulted in his group decriing the film, and Poole deciding to try his hand at making a 'better' porn film.⁵⁴ *Boys in the Sand* opened in December 1971, at the 55th Street Playhouse. It consisted of three loosely connected gay scenes set on Fire Island, in New York.

Mainstream media was not sure how to address these new films. A mixture of tentative acceptance mingled with distaste prevailed. Some papers refused to carry ads, others welcomed the advertising dollars; initially, the *New York Times* carried advertisements,⁵⁵ and *Variety* even reviewed Poole's *Boys in the Sand*.⁵⁶ Curiosity

⁵³ *Boys in the Sand*, Directed by Wakefield Poole, Poolemar Productions, 1971.

⁵⁴ Wakefield Poole, *Dirty Poole: The Autobiography of a Gay Porn Pioneer*, (New York: Alyson Publications, 2000), 147-148.

⁵⁵ Such as, the XXX rated: *Barbara*, Directed by Walter Burns, Druidstone—Hottentot Films, 1970, see "Display Ad," *NYT*, (Aug. 31, 1970), 22. *School Girl*, *Boys in the Sand*, "Display Ad," *NYT*, (Dec. 27, 1971), 35.

and confusion, reflecting America's ongoing bewilderment about what constituted the pornographic, did not help the situation.⁵⁷ The early hard-core films were often forgettable; the only films that critic Jim Holliday considered significant in 1971 were *Hot Circuit*, and *School Girl*, both of which were San Francisco productions.⁵⁸ Films like *School Girls*, or the gay film *Bob & Daryl & Ted & Alex*,⁵⁹ were representative of the fare filling the now "proliferating porn houses" on Eighth Avenue and Seventh Street, in New York City."⁶⁰ Only with the arrival of *Deep Throat*,⁶¹ in June 1972, and the ensuing era of porno chic, would porn consumption acquire a new context, and enable curious Americans an opportunity to sample the films so many people were discussing.

Ralph Blumenthal coined the term 'porno chic' in his 1973 *New York Times* article discussing the phenomenon surrounding Gerard Damiano's *Deep Throat*. Blumenthal implies that curiosity, not necessarily prurient interest, drew crowds to *Deep Throat*. He identifies the signal change *Throat* represented; the audience was markedly different from the usual attendees of porn films. Aside from the celebrities,

⁵⁶ Poole, *Dirty Poole*, 145-164. Also see the biography of the star of the film, Cal Culver, whose nom de porn was Casey Donovan: Roger Edmondson, *Boy in the Sand: Casey Donovan, All-American Sex Star*, (New York: Alyson Publications, 1996), 70-84.

⁵⁷ A reader, writing to the editors of the NYT, demanded that they stop running ads for "simply pornographic filth with moronic characters and an impossible plot." He was upset about advertisements for *A Clockwork Orange*, Directed by Stanley Kubrick, Warner Brothers, 1971. "George B. Robinson, "No Ads for 'X' Movies," Letter to the Editor, *NYT*, (June 4, 1972), D5.

⁵⁸ *Hot Circuit*, Directed by Paul Glickler and Richard Lerner, Sherpix Productions, 1971, and *School Girl*, Directed by David Gerber, 1971.

⁵⁹ *Bob & Daryl & Ted & Alex*, Directed by Stan Preston, Fanrow Pictures, 1972.

⁶⁰ Vincent Canby, "Some Weeks It's Just Bah! Humbug!; Bah! Humbug! All Week Long," *NYT*, (June 11, 1972), D1.

⁶¹ *Deep Throat*, Directed by Gerard Damiano, (credited on film as Jerry Gerard), Arrow, 1972.

like Johnny Carson, Mike Nichols, and Truman Capote, off duty police attended. “Well-dressed, apparently well-to-do middle-aged women,” came to see the film that ‘everyone’ was discussing. “They left after 20 minutes.”⁶² The notoriety of the film conferred a form of viewing license to the crowds. People, who might not ordinarily go near a Times Square porno theater, apparently did not mind giving interviews while waiting on line to see *Deep Throat*, or after watching his hour-long joke. The plot is little more than a punch line, delivered a third of the way into the movie. The sexually frustrated lead, played by Linda Lovelace, discovers her failure to orgasm is because her clitoris is in the back of her throat. The Lovelace character could only achieve orgasm by performing oral sex on a well-endowed man.⁶³

The humor in *Throat*, sophomoric if not juvenile, which seems to be saying, “don’t be angry, or offended, we’re only joking,” probably explains the success of the film. Mixing explicit sex with humor seemed to take the edge off *Deep Throat*, it was neither the most original, nor the most erotically charged film of 1972. Damiano’s next film, *The Devil in Miss Jones*,⁶⁴ was far more complex and disturbing. Miss Jones, a lonely, celibate woman who slits her wrists in the opening scene, discovers herself in eternity’s antechamber barred from heaven and not quite deserving hell. She returns to earth to ‘earn’ her way into hell through lust. At story’s end, fully expecting flames, she finds Hell is worse, eternity in the company of a pathetically anxious man (played by Damiano) who refuses to touch her.

⁶² Ralph Blumenthal, “Porno Chic: ‘Hard-Core’ Grows Fashionable—and Very profitable,” *NYT*, (Jan. 21, 1973), 272.

⁶³ Damiano cut to footage of exploding fireworks at the moment of orgasm, making *Deep Throat* a pornographic homage of sorts to Alfred Hitchcock’s *To Catch a Thief*.

⁶⁴ *The Devil in Miss Jones*, Directed by Gerard Damiano, Arrow Productions, 1972.

The Mitchell Brothers' production, *Behind the Green Door*,⁶⁵ exceeded *Deep Throat* in terms of erotic transgression on many levels. This is understandable, as it was the 337th film, counting loops and other features that the brothers had made.⁶⁶ First, the plot concerning a woman, played by Marilyn Chambers, abducted and “lovingly” ravished, touched on both rape and domination fantasies, and attempted to eroticize both. Second, the central scene's coupling Chambers and former professional boxer Johnny Keyes provided an interracial pairing that employed imagery playing off themes of both primitivism and violation. Third, the orgy scene among the theater audience watching Marilyn's ravishment cut across age, race, and body image lines. Some of the performers, male and female, would not have looked out of place in a poorly funded 1930s stag film.

The Mitchell Brothers would go on to produce several financially successful hard-core films, *Resurrection of Eve*⁶⁷, *The Autobiography of a Flea*,⁶⁸ and *The Grafenberg Spot*,⁶⁹ and one unusually expensive fiasco, *Sodom and Gomorrah*.⁷⁰

⁶⁵ *Behind the Green Door*, Directed by Jim and Artie Mitchell, Mitchell Brothers Pictures, 1972.

⁶⁶ John Hubner, *Bottom Feeders: From Free Love to Hard Core-The Rise and Fall of Counterculture Heroes Jim and Artie Mitchell*, (New York: Doubleday, 1995), 175.

⁶⁷ *Resurrection of Eve*, Directed by Jon Fontana and Artie Mitchell, Mitchell Brothers Pictures, 1973.

⁶⁸ *Autobiography of a Flea*, Directed by Sharon McKnight, Mitchell Brothers Pictures, 1976.

⁶⁹ *The Grafenberg Spot*, Directed by Artie Mitchell, Mitchell Brothers Pictures, 1985. *Grafenberg* is noteworthy for the presence of Traci Lords, a 17-year-old minor at the time of filming. The re-released DVD versions does not contain any scenes with Traci Lords.

⁷⁰ *Sodom and Gomorrah, the Last Seven Days*, Directed by Jim and Artie Mitchell, Mitchell Brothers Pictures, 1975.

Eventually, drugs, alcohol, and mental instability coalesced in a 1991, resulting in Jim shooting Artie to death.⁷¹

These films, and many others of the porno chic era, attempted to merge explicit sex with plot and character. How well they succeeded in the attempt is at most an ancillary issue in the history of the hard-core industry. Changes in where viewers consumed the films, not in the content of the films, were a far more important factor in the industry's growth. It is worth noting that the virtually all hard-core film reviewers cite one film, *The Opening of Misty Beethoven*, as the greatest hard-core film ever made.⁷² Released in March of 1976, *Misty Beethoven* reinterprets the classic play, *Pygmalion*, by George Bernard Shaw. Sex researcher Seymour Love takes a Paris hooker, Dolores 'Misty' Beethoven, away from the drudgery of masturbating elderly porn theater patrons, and transforms her into a consummate sexual professional, schooled in the mysteries of seduction and erotic performance. Jamie Gillis plays Seymour Love and Constance Money plays Misty. The importance of *Misty Beethoven* is not that it was a critically praised example of hard-core filmmaking, but in the fact that it appeared in 1976, and no subsequent porn film ever earned such high praise. The hard-core industry reached its artistic height before

⁷¹ The saga of the Mitchell brothers inspired two excellent books. John Hubner's *Bottom Feeders*, and David McCumber's, *X-Rated: The Mitchell Brothers: A True Story of Sex, Money, and Death*, (New York: Simon and Schuster, 1992).

⁷² *The Opening of Misty Beethoven*, Directed by Radley Metzger, Crescent Films, 1976. *Misty* was named best picture of 1976 by the reviewers of *Screw*, *Adam Film World*, and *Hustler*, as well as winning top honors at the Adult Film Association of America yearly awards ceremony. Noted hard-core reviewers, such as Jim Holliday, William Margold, Jared Rutter, William Rotsler, and I. L. Slifkin, rated *Misty* at, or near the top of their individual lists of greatest hard-core films. Jim Holliday produced a composite list of the top 40 adult films, based on awards received and reviews, and again *Misty* sat atop the list. Jim Holliday, *Only the Best: Jim Holliday's Adult Video Almanac and Trivia Treasury*, (Van Nuys, CA: Cal Vista, 1986), 185.

it was a decade old; failed to maintain that standard, and never replicated it in the three decades that followed.

You Can't Please Everyone

The novelty of being able to see the explicit depiction of sex, not the higher production standards, was a likely factor behind some of hard-core's brief vogue with the larger viewing public. Porno was not chic with everyone, of course. MIM prominently displayed news from New York and around the country when either law enforcement, judges or community activists arrested theater owners, declared *Deep Throat* obscene, or rallied neighborhoods to fight public screenings.⁷³

Even in the middle of the porno chic era the Supreme Court attempted to refine its obscenity doctrine. In *Rabe v. Washington* (1972), the Court decided that states could not "criminally punish" exhibitors for showing a film where the statute did not give "fair notice that the location of the exhibition" was a "vital element of the offense."⁷⁴ Chief Justice Burger and the most recent appointee to the Court William Rehnquist joined in a separate concurrence in which they said that under a "narrowly drawn" statute they would be "unwilling" to deny a state the right to ban such exhibitions.⁷⁵

By 1973, there was a growing consensus among legal scholars that while the Court's many decisions resulted in a confusing amalgamation of holdings, several

⁷³ "Theater Pulls Film After Community Protest," and "'Deep Throat' Ruled Obscene in New York City," *MIMN*, (March 1972), 1.

⁷⁴ *Rabe v. Washington*, 405 U.S. 313 (1972).

⁷⁵ 405 U.S. at 316.

ways out of the obscenity problem still remained.⁷⁶ Some advocated clarifying *Roth*, but the anti-pornography activists hoped for a more expansive test. *Miller v. California* (1973)⁷⁷ provided an opportunity for the Court to revise *Roth*. In all respects, *Miller* was a watershed case. Brennan and Burger circulated detailed conference memoranda before the final decision. Brennan started with a series of confessions about *Roth's* inability to serve the Court. “Neither the *Redrup* approach nor the underlying effort in *Roth* can be allowed to continue further,” he wrote, since both were “inconsistent.” Brennan acknowledged that he agreed in *Reidel* that the “task of restructuring” obscenity laws were the responsibility of those who legislate. Brennan disassociated himself from that view. The Court “fashioned” obscenity law, and the Court had to clean up its own mess. Any definition of obscenity, he said, encroached on protected expression, and therefore, “obscenity could not be suppressed” without identifying some pressing “governmental interest.” Brennan said no such governmental interest existed. Government was not powerless to protect minors and unwilling adults, but there were limits. Only graphic “representations” of fundamentally offensive acts could be obscene;⁷⁸ text should be wholly exempt.⁷⁹ Various Justices indicated tentative agreement.⁸⁰

⁷⁶ John O. Rogge, “The Obscenity Terms of the Court,” *Villanova Law Review*, (Feb. 1972), 393-462.

⁷⁷ *Miller v. California*, 413 U.S. 15 (1973).

⁷⁸ Brennan’s examples were human sexual intercourse, masturbation, and sodomy.

⁷⁹ Memorandum from Justice William J. Brennan, Jr. to the Conference re: *Miller v. California*, June 1972. William J. Brennan, Jr. papers. Box Part I, 286. Folder No. Opinions No. 70-75 *Miller v. California* (1 of 5). Library of Congress, Washington, DC. 1 through 37.

⁸⁰ Memoranda from Thurgood Marshall, Potter Stewart, to Brennan. June 15, 1972. William J. Brennan, Jr. papers. Box Part I, 286. Folder No. Opinions No. 70-75 *Miller v. California* (1 of 5). Library of Congress, Washington, DC. “Dear Bill, I think I am in agreement with your memorandum.

Burger also indicated some agreement, noting they shared dissatisfaction with *Roth*, but Burger felt while imprecise definitions bred uncertainty, and hence made people cautious, a little “chill” would do the porn producers “no great harm.” In general, he agreed with Brennan’s text exemption, but thought Brennan relied too much on the *Report* of the Presidential Obscenity Commission; he questioned its “ripeness.” Burger closed his memo by suggesting the Court tackle the question of a “national standard” in the upcoming *Miller* case, and let the issues “marinate.”⁸¹

Another Burger memo in October 1972, conceded there was no “easy Judicial ‘solution.’” Moreover, the Court would “inevitably” need to make difficult rulings, and previous inability to design a test was no excuse to “abandon” responsibility and grant protection to everything. The First Amendment protected “commerce in ideas, not pornography.” He was even willing to allow people to carry obscene materials in their personal luggage or on their persons, but he expressly excluded theatres or commercial book dealers trading in “hardcore.”

The greatest disagreement turned on state interest in controlling obscenity. This went beyond protecting juveniles and the unwilling, and encompassed the general social environment. Therefore, Burger wrote, *Roth* was not worthless; it just needed refining. Stores purveying pornography rotted the commercial environment; ordinances limiting commerce were on a par with clean air and water statutes. Burger proposed abandoning “utterly without redeeming social value” and national standards

Sincerely, T.M.” “Dear Bill, I have read your memorandum in this case with much interest. It is a thorough and convincing piece of work and I am in basic agreement with it. Sincerely yours, P.S.”

⁸¹ Memoranda from Chief Justice Burger to Brennan. June 14, 1972. William J. Brennan, Jr. papers. Box Part I, 286. Folder No. Opinions No. 70-75 *Miller v. California* (1 of 5). Library of Congress, Washington, DC.

for prurience and offensiveness. Including “a bit of Shakespeare” in an otherwise worthless work should not “miraculously” protect it, and state standards did vary; “horse-theft in Wyoming may destroy a man’s livelihood, while merely threatening a luxury in New York.”⁸²

Douglas’s dissent in *Miller v. California*, already circulating in draft, raised an issue that no one had yet answered. To jail individuals for violating undefined standards that neither they nor the Court could understand, construe, nor consistently apply was outrageous in terms of due process. After circulation of memos, two camps coalesced. Burger, Blackmun, Powell, White, and Rehnquist in the majority; Brennan, Douglas, Stewart, and Marshall were now minority voices.

The defendant in *Miller* had mailed unsolicited and allegedly obscene advertising material. At trial, the judge told the jury to assess the materials by the “contemporary community standards of California.” They did, and convicted Miller, who appealed. The Supreme Court upheld the conviction. Burger wrote the majority opinion. The prurient interest requirement from *Roth* remained.⁸³ Burger took notice of Brennan’s conference memos, conceding the “inherent dangers” in controlling expression, and agreed that laws needed to be “carefully limited.” He did so by restricting obscenity regulation to works depicting or describing specific “sexual conduct.” The conduct would have to be “defined” by state law and the portrayal of the conduct would have to be both patently offensive, and lack “serious literary,

⁸² Memoranda from Chief Justice Burger to the Conference: re: U.S. v. 12 200-Ft. Reels of Super 8 mm film; U.S. v. Orito; *Miller v. California*; *Paris Adult Theatre I. v. Slaton*; *Alexander v. Virginia*; *Kaplan v. California*. October 31, 1972. William J. Brennan, Jr. papers. Box Part I, 286. Folder Opinions No. 70-75 *Miller v. California* (1 of 5). Library of Congress, Washington, DC.

⁸³ 413 U.S. at 24.

artistic, political, or scientific value.”⁸⁴ Burger asserted that under the new test, only those who sold or exposed obscene materials depicting “hard core” conduct would face prosecution, this provided, “fair notice” to dealers in erotica.⁸⁵

Burger declared “community” standards meant “local,” without specifying what “local” meant. Local standards inevitably meant First Amendment protection would vary around the country, but for Burger local assessment of standards was merely on a par with any other decision facing juries as “triers of fact.” The Court had not been able to articulate a national standard, and as Earl Warren noted years earlier, “it would be unreasonable to expect local courts to divine one.” It was “neither realistic nor...sound” to make the people of every state accept conduct found “tolerable in Las Vegas, or New York City.”⁸⁶

Burger felt equating the “free and robust exchange of ideas and political debate” with marketing “obscene material” debased the First Amendment. He did not reject the notion that the sexual revolution of the 1960s and 1970s “may have had useful byproducts in striking layers of prudery from a subject long irrationally kept from needed ventilation” but he would not go so far as to accept the argument that “hard core” materials were “needed or permissible.”⁸⁷

⁸⁴ Burger clarified himself further by describing the kinds of acts he had in mind: “(a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated. (b) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals.”

⁸⁵ Brennan disputes this characterization of his *Paris* dissent. “I defer expression of my views as to the scope of state power in these areas until cases squarely presenting these questions are before the Court.” Footnote #29, Brennan, Dissent, *Paris Adult Theatre I. v. Slaton*.

⁸⁶ 413 U.S. at 32.

⁸⁷ *Ibid.* at 36.

Douglas started his dissent with an attack on the notion that the offensiveness of material permitted government action. It placed, he said, “an ominous gloss” on press freedom. Burger’s test permitted any “benighted place” to ban whatever they found offensive to their local standards. The First Amendment was designed to protect the articulation of the offensive. If the majority of the population really wanted to eradicate the traffic in obscenity, their representatives should pass a constitutional amendment. Other countries restricted discourse to “religion and mathematics” and it “would be a dark day...if that were our destiny,” but the choice was there for the people to make. He hoped they would decide a “mature, integrated society” had to allow competition among ideas, he conceded, however, their right to choose otherwise. Whichever way the people went, it was preferable to the current situation where the courts had no guidelines, “except” the Supreme Court’s changing “predilections.”⁸⁸

Brennan saved the bulk of his objections to Burger for his *Paris Adult Theatre I v. Slaton* (1973) dissent, announced the same day as *Miller* and joined by Stewart and Marshall. The *Paris* case concerned an adult movie theatre that both warned prospective customers of the explicit nature of its films, and excluded juveniles. A local Georgia court dismissed efforts to enjoin the theater from showing its hard-core films, based on its reading of *Stanley*; reasoning that as only consenting adult patrons were involved, there were no grounds for banning the films. The Georgia court did not address the alleged obscenity of the film. The Georgia Supreme Court overturned the lower court, and stopped the films’ exhibition, as “hardcore pornography.” Burger held that privacy rights did not exempt obscene material in places of public

⁸⁸ Ibid. at 37 thru 47.

accommodation. Burger cited the 1964 Civil Rights Act, which clearly defined theaters as places of public accommodation. Moreover, Burger declared that when deciding prurience, offensiveness, and value juries did not have to hear expert opinions. He drew on Brennan's own opinion in *Ginzburg* (1966), for justification. In *Ginzburg*, the materials were "sufficient in themselves" for determining obscenity.⁸⁹

Douglas' *Paris* dissent stood alone. While now voting with Brennan, he continued to issue separate dissents. After Black's retirement Douglas was the last voice for a near absolutist interpretation of the First Amendment. He commended Brennan, conceding the films at issue in *Paris* too would likely offend him, but said he "never supposed" Government was empowered to judge either "tastes or beliefs."⁹⁰ Brennan's dissent was far more wide-ranging. Because he was relinquishing a position he had defended since 1957, there was a lot of explaining to do. The Court, "deliberately and effectively obscured the rationale" underlying its decisions. Any of the test relied on "indefinite" standards, and this produced a chilling effect on exhibitors, leading them to refrain from showing legal materials. Brennan then walked through possible alternatives: 1) A blanket ban, which he rejected this out of hand as "appallingly broad." 2) The *Miller* test, which he rejected since it abandoned the central assumption that obscenity was utterly worthless. 3) Allow juries to decide, and only set aside verdicts when there was evidence of an

⁸⁹ In *Paris Adult Theatre I. v. Slaton*, 413 U.S. 49, (1973), Burger reserved "judgment, however, on the extreme case, not presented here, where contested materials are directed at such a bizarre deviant group that the experience of the trier of fact would be plainly inadequate to judge whether the material appeals to the prurient interest."

⁹⁰ 413 U.S. at 72.

“extreme departure from prevailing standards.” He rejected this because it did not answer the vagueness question, and any “institutional gain” would be “more than offset” by the encroachment on the First Amendment. 4) Adopt the Douglas/Black approach. Brennan agreed this would reduce the Court’s review responsibilities, but he rejected it because this approach stripped the states of legitimate, constitutionally guaranteed powers. 5) Reassess the original *Roth* assumption that there was such a thing as identifiable obscenity. Brennan decided that it was probably not possible to define obscenity, and therefore, the game was no longer worth the candle. Only protecting juveniles and the unwilling from exposure seemed to be sufficiently important state interests.⁹¹

Almost as a postscript to *Miller* and *Paris*, the third case announced that day, *United States v. 12 200-ft. Reels of Film (1973)*,⁹² extended the *Miller* test to Federal cases. This had significant tactical impact upon Federal prosecutions of hardcore film. Federal prosecutors could now rely on local standards when trying Federal obscenity cases. This would encourage the practice of ‘cherry-picking’ favorable jurisdictions, and led to a sustained prosecutorial assault on the industry, in the 1980s.

⁹¹ 413 U.S. at 112.

⁹² *United States v. 12 200-ft. Reels of Film*, 413 U.S. 123 (1973).

Miller marked a turning point in the Court's obscenity saga.⁹³ As *Roth* defined the period between 1957 and 1973, *Miller* has guided the law since. At the time, *Miller* looked like an attempt by the Court's new conservative majority to quash a rising tide of obscenity. Looking at the hardcore pornographic film industry since *Miller*, however, leads to the inescapable conclusion that *Miller* was an abject failure, if its object was to slow the industry's growth. Hardcore film experienced its most impressive years, from a financial and consumption perspective in the years since *Miller*.

With the Court's adoption of the *Miller* test, the hard-core industry faced a perilous situation. Juries would decide whether a film was obscene, based on their understanding of their own contemporary communities' standards regarding appeals to prurient interest. The reactions to the decisions in the mainstream media were generally negative, and most also acknowledged that prosecutors would find it easier to convict pornographers. The anti-porn activists were largely thrilled.⁹⁴ MIM printed a special edition of its newsletter to explain the likely impact of the various decisions.⁹⁵ The widening of the obscenity definition and Burger pegging obscenity

⁹³ As in the case of the *Roth* decision, in 1957, the Court gathered three cases for argument and decision. This practice allowed the Court to hold over cases until they could join cases addressing similar issues. This afforded the Court the opportunity to be both comprehensive and coherent if possible, when clarifying a new approach. The Court heard the cases on October 18 and 19, 1972, and announced the decisions on June 21, 1973. *Miller v. California*, 413 U.S. 15 (1973); *Paris Adult Theatre I. v. Slaton*, 413 U.S. 49 (1973), and *Kaplan v. California*, 413 U.S. 115 (1973). *Kaplan* is noteworthy for explicitly keeping purely textual materials within the scope of obscenity laws. Brennan's conference memorandum raised the possibility that text would no longer be liable to prosecution, and Burger, in his conference memorandum, seemed open to the idea.

⁹⁴ Charles Keating, "Green Light to Combat Smut," *Reader's Digest*, (Jan. 1974), 147-150.

⁹⁵ "Common-Sense Look at Supreme Court Rulings," *MIMN*, (Oct. 1973), 1, "States May Move Now Under *Miller* Decision," *MIMN*, (Oct. 1973), 3.

decisions to popular, regional, and therefore varied notions of appropriate expression was a central element disturbing the press.⁹⁶

The decisions provoked objections from unexpected quarters, as well. Ayn Rand, no one's idea of a liberal, attacked Burger's reasoning, and did so in scathing terms. After making it clear that she personally abhorred pornography, she wrote a stinging rebuke, exposing the implications of the decision. "The court's decision asserts repeatedly...this ruling applies only to hard-core pornography or obscenity...other kinds of ideas...are protected by the First Amendment, but ideas dealing with sex are not. Apart from the impossibility of drawing a line between these two categories" she wrote, "this distinction is contradicted...in the text of the same decision." "Judges and juries...are empowered to determine whether a work...lacks *serious literary, artistic, political, or scientific value*." This meant, she recognized, the government is empowered to "judge" these values and to "suppress" works "accordingly." The Court's reliance upon free-floating labels disturbed her most. "Serious" she declared, "is an *unserious* standard." Who was to decide what was serious, "to whom, and by what criterion?" Absent any meaningful definition, she said, "one must assume that the criterion" was whatever an "average person

⁹⁶ "The Muddied Waters of Obscenity," Editorial, *Los Angeles Times*, (June 24, 1973); "Freedom & Obscenity," Editorial, *NYT*, (June 25, 1973), 32, "On Pornography," Editorial, *Wall Street Journal*, (June 27, 1973), "Censorship, Obscenity & A Mature People," Editorial, *The Washington Post*, (June 24, 1973), C6, Michael T., Kaufman, "Officials Seeking New Smut Policy," *NYT*, (June 27, 1973), 57, John P. MacKenzie, "New Definition is Established," *The Washington Post*, (June 22, 1973), A1, "Reversing Field on Obscenity," *NYT*, (June 24, 1973), 177; Lesley Oelsner, "Experts Agree Prosecutions Will Rise, but Differ on the Over-all Impact," *NYT*, (June 23, 1973), 65, Eric Pace, "Librarians Vote Smut Ruling Fund," *NYT*, (June 25, 1973), 46; Eric Pace, "Decisions Protested by Nation's Media," *NYT*, (June 23, 1973), 65, William Raspberry, "Obscenity Ruling: The Wrong Question," *The Washington Post*, (June 27, 1973), A31, Timothy S. Robinson, "Prosecutors Laud Court's Smut Ruling," *The Washington Post*, (June 23, 1973), B1, Tom Shales, "From 'Chaos' to 'No Effect,'" *The Washington Post*, (June 22, 1973), B1, and "Debating a Decisions: Hues, Cries & Silences," *The Washington Post*, (June 23, 1973), C2.

would find serious.” This struck her as inane. She asked the reader to “contemplate the spectacle of the average person as the ultimate authority” in art, literature, politics, or science. The idea revolted her, “I submit that no pornographic movie can be as morally obscene as a prospect of this kind.”⁹⁷

The cases that followed in the wake of *Miller* did not disturb its essential elements. By adopting the *Miller* test, the Court effectively threw up their hands and passed the problem to the juries, staying out of the matter unless a lower court banned works of manifestly serious value.⁹⁸ One year later, a Georgia court declared *Carnal Knowledge* obscene. The Supreme Court unanimously overturned the conviction.⁹⁹ Minor refinements to *Miller* continued throughout the 1970s and 1980s. In *Smith v. United States* (1977),¹⁰⁰ the Court said that state legislatures could not define community standards; individual juries had to define those themselves. In *Pope v. Illinois* (1987),¹⁰¹ the Court limited a jury’s use of community standards to questions of prurience and offensiveness. The appropriate question, according to Justice White, was not whether “an ordinary member” of a community might find value, but whether a jury believed that a “reasonable person” would.¹⁰² By 1987, Justice Antonin Scalia declared that he found it “quite impossible” to objectively assess literary or artistic

⁹⁷ Ayn Rand, *Philosophy: Who Needs It*, introduction by Leonard Peikoff, (New York: Signet, 1984), 175, 176.

⁹⁸ “Community Standards, Class Actions, and Obscenity under *Miller v. California*,” *Harvard Law Review*, Vol. 88, No. 8, (June 1975), 1840.

⁹⁹ *Jenkins v. Georgia*, 418 U.S. 153 (1974).

¹⁰⁰ *Smith v. United States*, 431 U.S. 291 (1977).

¹⁰¹ *Pope v. Illinois*, 481 U.S. 497 (1987).

¹⁰² *Ibid.* at 500.

worth, noting the “many accomplished people who have found literature in Dada, and art in the replication of a soup can.” Thought had little to do with evaluating esthetics, he said; the “reasonable man” was a nearly useless hypothetical entity and he suggested substituting a “man of tolerably good taste.” Better yet, just admit there is no disputing about tastes. If it was futile to argue over taste, Scalia could not see the value in “litigating about it.”¹⁰³

In the years since *Miller*, only one Supreme Court decision, in 1985, seriously struck at the core of modern obscenity doctrine. Ironically, it called into question the very premise that Brennan used when drafting *Roth* back in 1957, the appeal to prurient interest. In *Brockett v. Spokane Arcades, Inc* (1985),¹⁰⁴ the Supreme Court reversed a Ninth Circuit Court of Appeals decision striking down a moral nuisance law passed by the state of Washington.¹⁰⁵ When the Ninth Circuit Court struck down the state law in its entirety, Justice Byron White reversed the decision for going too far. Only part of the statute was flawed, and legislative efforts could have fixed its flaws. While on its face, the decision was a defeat for the adult arcade, in fact it was potentially liberating for hard-core overall. The case turned on the Washington state statute’s use of the word “lust.” It made no distinction between “normal” lust and the “morbid, shameful” variety. As written, the statute put material that merely aroused “normal sexual responses,” at risk in an obscenity trial; twenty-eight years after *Roth*, the Court was clearly exempting material seeking to excite lustful thoughts, so long as

¹⁰³ Ibid. at 505.

¹⁰⁴ *Brockett v. Spokane Arcades, Inc.*, 472 U.S. at 491 (1985).

¹⁰⁵ Wash. Rev. Code §§ 7.48A.010-7.48A.900 (1983).

those thoughts were “normal.”¹⁰⁶ By 1985, however, who could confidently say what ‘normal’ meant? The variety of sexual behaviors that Americans enjoyed, or tolerated when practiced by others, made problematic the task of proving that a film, for example, appealed only to morbid or shameful thoughts.¹⁰⁷

It took the Supreme Court until 1985 to explicitly exempt material appealing to ‘normal’ lust from the threat of obscenity charges. Judges and juries across the country, however, reached the conclusion that prurient ‘must’ mean something over and above garden-variety lust much quicker. In 1978, a Cleveland, Ohio jury acquitted Reuben Sturman, and six of his employees, of obscenity charges. The trial judge, obviously having read the *Roth* and *Miller* footnotes, defined prurient interest as “shameful or morbid.” The jury found that the films were “morbid, shameful and lewd,” but could not accept the notion that the average person was “capable” of having a “shameful or morbid” interest in sex.¹⁰⁸

In 1957, the Court began its engagement with “the intractable obscenity problem.”¹⁰⁹ The residual influence of the masturbation panic was still so strong that merely to excite lustful thoughts made something obscene. Belief in masturbation’s ill effects were still so widely accepted at mid-century, that the Court never felt the need to elaborate on why it thought rousing lust was illegal. In a sense, everything

¹⁰⁶ 472 U.S. at 501 (1985).

¹⁰⁷ My understanding of the importance of *Brockett v. Spokane* was significantly broadened by conversations and email exchanges with Lee Reed and Jeffrey Douglas of the Free Speech Coalition, on Dec. 21, 2007, and May 13, 2008, respectively.

¹⁰⁸ “Jury Acquits Seven in Obscenity Case in Cleveland,” *NYT*, (July 26, 1978), 10.

¹⁰⁹ *Interstate Circuit, Inc. v. Dallas*, 390 U.S. at 704, (1968).

after *Roth* and before *Brockett* was commentary on this simple, unexamined, and for virtually everyone on the Court, immutable fact. Neither Black nor Douglas challenged the underlying principle behind the prurience prong, merely denying the government's right to employ any test limiting expression, unless an extremely close tie existed between the expression and an identifiable illegal action.

When publicly screened hard-core film arrived in 1970, it encountered a 19th-century argument, based on an 18th-century panic, festooned with 20th-century liberal glosses and a confusing set of applications. Between 1957 and 1969, the Court had assiduously avoided the core question of why the prevention of thoughts was a legitimate state or Federal interest, contenting itself to imply merely that it was. Next, the Court added that obscenity needed to be "patently offensive," as well, and what had been a description, "utterly without redeeming social importance," became a definitional requirement. After that came the demand that all three elements exist in sufficient quantities, no preponderance of one element could compensate for the deficit in another. Standards had to be national, and then private possession became legal. With the arrival of the Burger and Rehnquist Courts, the *Roth* test gave way to *Miller*, which holds to this day.

While the Supreme Court provided the constitutional space within which prosecutions occurred, they could not provide the motivation. That had to come from energized politicians and citizen activists. The Court set the boundaries within which the battle raged. In a sense, it also determined how porn was produced, distributed, and consumed. It is worth remembering that at no time during the course of the

Court's engagement with obscenity did the Court ever abandon its fundamental premise that obscenity was a genre of expression outside the bounds of First Amendment protection. From its earliest attempts to establish guidelines, the Court ironically emboldened producers and merchants of sexually explicit materials. This was an unintended consequence of the Court's efforts to relieve writers and artists of constraint, and prevent abuse. What criteria work, however, when the issue at the bar is really a matter of taste? Does the majority in any community possess the right to tell a minority that there are thoughts it may not hold or express? Does it matter how large the majority is, or how offended they are by the minority view? The longer and deeper the Court probed the obscenity problem the more vexing they found it to be. The Court's efforts eventually amounted to an impossible quest. Embedded in the Court's attempts to read obscenity out of the culture was its consistent failure to recognize the degree to which the culture had changed by the end of the 1950s, how much it changed during the 1960s, or to anticipate the rapidity of cultural change in the years since.

Chapter 5: The View From Inside the ‘Wet Dream’ Factory

From the Theatre to the VCR

This Chapter re-examines, in part, the first decade of the industry. It does so, however, from the perspective of the industry. The Chapter then resumes the chronological narrative through the middle of the 1980s. I rely upon the hard-core film fan magazines and the industry trade papers *Adult Video News* and *Adult Video News Confidential* (*AVN* and *AVNC*) in hopes of uncovering the consumer experience. A close examination of the fan magazines and *AVN* & *AVNC* reveals that they did far more than just inform the consumer about new films; they also addressed the current legal problems facing the industry, the feminist critique of pornography, the Attorney General’s Commission on Pornography, and municipal, Federal, and state prosecutions. They were especially informative regarding the industry’s views on the impact of videotape on hard-core film content and consumption. While they address these issues from the industry’s perspective, they also do so in a way that potentially reveals the consumer’s experience. The industry’s trade papers and fan magazines warned, encouraged, and chastised both those within the industry and consumers. The manner in which these publications discussed the films and their consumption presupposes an understanding of how it believed the audience consumed the films. This Chapter also engages, in part, the feminist anti-porn movement. Particular emphasis is given to the failed efforts to establish municipal legislation based on the ideas of Andrea Dworkin and Catharine MacKinnon.

Very soon after the first appearance of nationally released hard-core films, in 1970, the various producers, distributors, and exhibitors took steps to protect

themselves from anticipated civic, and government efforts to strangle the industry at birth. This made sense. Law set the boundaries within which the industry hoped to operate, and collective industry action against an antagonistic government and vocal activist base offered the best hope for survival. Therefore, the story of the industry's efforts to navigate that changing legal environment is a necessary element in any explanation of the industry's growth. However, focusing attention on those anti-censorship efforts leaves the impression that the growth and eventual mainstreaming of hard-core was only a function of the industry successfully repelling prosecutors and activists. It leaves the consumer of hard-core silent and on the sidelines; reduced to a state of comparative impotence, waiting for one side, or the other to win. This was clearly not the case. An effective dialogue occurred between the industry and its customers. Based on both direct feedback, and a subtle appreciation of consumer desires, the industry believed that it understood what its customers wanted from the films and strove to supply them.

Attendance steadily increased after the initial appearance of publicly screened hard-core films in 1970. The term 'porno chic' serves as shorthand expression for the early burst of porn theater attendance. Attendance at theaters began declining as videotape technology provided an alternative site of consumption. Video merged privacy and pornography, and allowed hard-core films to reach their full potential. The privacy of the home both facilitated private masturbation and placed significant control over the images in the hands of the consumer. No longer locked into the theater's schedule the consumer could view hard-core material when he wished to do so. Even more importantly, video largely freed the customer from the film director's

control. The consumer could fast-forward through non-sexual narrative scenes, passing over plot and character development, and move directly to the sex scenes. The industry was well aware of its product's purpose. By 1980, they were actually printing it on the package. "It's everything you want! Have you ever awakened hot, wet and horny as hell after having a good old wet dream? Did you know there exists a wet dream factory – a place where hot, saucy dreams are manufactured?"¹

Tying private hard-core consumption to masturbation makes sense on an intuitive level. However, because of enduring cultural biases surrounding the solitary sin, evidence that consumers used hard-core pornography primarily as a masturbatory fantasy tool is rare. A century after the masturbation panic peaked, embarrassment about this normative sexual practice continues as social reticence. Few people are forthcoming about what they do while consuming porn, yet most people 'know' what everyone else is doing. This tendency to deny or downplay the manifestly obvious pertains to the consumption of a range of sexually explicit materials. The familiar demurral, 'I only buy *Playboy* for the articles,' is an obvious example of this dynamic. Other aspects of hard-core history are relatively open to analysis. Supreme Court opinions, for example, reveal a great deal about the logic behind various key decisions. The popular press tracked prosecutions, from indictment through to acquittal or conviction, and legislative action. The publications of anti-pornography groups shed light on their goals, and priorities. How can we access the changes in consumptive behavior that potentially influenced the growth of the industry? In one

¹ Advertising copy from the back cover of *F* (aka *Dream Girls of F*), Directed by Svetlana, VCX, 1980.

sense, the very privacy surrounding home use obscures the changing nature of the consumption.

The industry's own publications provide a unique perspective on consumption. It is, of course, possible that the industry was wrong in its estimation of its audience. No business can perfectly comprehend its consumers' needs. The industry initially underestimated the impact of video, believing that home viewing would support but not replace hard-core theaters. However, the phenomenal success of the industry during the 1980s indicates that, overall, the industry was aware of what the audience wanted. Moreover, focusing on the industry publications to access the audience offers a far greater likelihood of success than does relying upon an analysis of the films alone. The increasing number of hard-core films that became available with the video shift raises questions about characterizing the audience in essentialist terms through analysis of the films. Using the films as a route towards understanding the audience, unless the research encompasses a very large, broad, and deep selection of film types, runs the risk of 'cherry picking' films that support the researcher's theoretical assumptions.

This dissertation was, initially, just such a project. It was only after watching several hundred feature-length films from the post-stag film era, however, that it became apparent that surprisingly minor changes occurred in film content. The technical skill of the some filmmakers increased between 1970 and 1983, and again some demonstrated a marked development in video production occurred once that medium became dominant. The 'look' of some films, and the overall physical attractiveness of performers changed over time; beauty was always a premium for the

women performers, but in the mid-1980s, the beauty requirements for male porn stars increased also. However, the core similarities tying the films from the 1970s to the videos of the late 1980s were much greater than any differences that separated them. The apparent changes actually indicated a movement away from the developed narrative characterizing golden age hard-core.

This constituted, of course, a change in content, but a relatively minor one. Moreover, as a determining factor explaining increased consumption, it cannot withstand scrutiny. At the same time that the best of the videos became sleek, professional, and succinct, the overall number of hard-core videos increased dramatically, and in comparison, ‘quality’ among the new comers to the industry was rare. The pages of *AVN*, *AVNC*, and the fan magazines, steadily warned the industry about the ‘glut’ of shoddy, inexpensive, one-day-wonder videos crowding the shelves of retail outlets, and wholesale catalogs, undercutting video prices. Accounts written years later by industry insiders recall the sense of a wave of inferior videos overwhelming the industry. Even established producers/distributors of straight and gay hard-core increasingly had to cut production costs in hopes of breaking even.²

In the end, the conclusion was inescapable, if hard-core consumption increased with the video shift; it was not because of any significant ‘improvement’ in the films, as cinema. The industry’s growth was a function of the video shift and the changing mode of consumption. In this sense, this dissertation adds to, rather than refutes, the existing body of literature on hard-core film content. Therefore, these next Chapters concentrate on consumption of hard-core and utilize the underused

² David Jennings, *Skinflicks: The Inside Story of the X-Rated Video Industry*, (Bloomington, IN: 1st Books Library, 2000), 223-224.

resource of the industry fan magazines, and the industry trade paper as a means of grasping the industry's own understanding of this change. The widespread use of videotape, initially an industry decision driven by cost considerations, enabled the consumers to seize a significant degree of individual control over his viewing experience.

The hard-core fan magazines enjoyed a close connection with the industry. Always serving as effective buying guides for the consumers, they also familiarized customers with the persona of the industry, and articulated the standards by which fans likely judged the films and asserted the viewers' right to access hard-core. The difference between a good film and a bad one always rested on the power of the film to arouse the viewer. Arousal, and its likely outcome, was an issue the magazines spoke to, although often they did so at a slight remove. Advertising in the magazines was particularly revealing. Classified ads for masturbatory devices, and telephone sex lines where the fans could engage in masturbatory 'phone-sex' filled the back pages of most of these magazines. My research uncovered subtly worded ads for masturbatory devices in straight men's magazines as early as 1964, well before the appearance of hard-core in theaters. I have no reason to suspect this was the earliest appearance of such advertisements. With the arrival of publicly screened hard-core films, ads that were far more explicit used unambiguous language describing the masturbatory devices they offered. The overt quality of the ads only increased as

videotape became the established mode of consumption. These masturbatory aids remained a mainstay of the remaining print publications through the 1990s.³

The fan magazines and *AVN* were also remarkably coherent and consistent regarding the legal problems facing the industry and the viewers' right to consume. Additionally, the publications proved a remarkably useful source for tracking the growth of the industry, and its efforts at collective organization. *AVN* and *AVNC*, in particular, kept subscribers apprised of pending and resolved court cases, prosecutions, and anti-porn activist group initiatives. The adult industry's relationship with mainstream Hollywood was never easy, and the publications tracked both favorable and critical interactions. Even when discussing such matters, the issue of how the viewer consumed the films, specifically utilizing the films as masturbatory fodder, lay in the background.

This is particularly true of the industry's engagement with the feminist critique of pornography. The feminist critique of porn recognized the strong connection between masturbation and pornography, even though open discussion of masturbation to pornography generally continued to be taboo in the wider culture. Even the hard-core industry, which relied upon the masturbatory impulse and was quite comfortable discussing double anal penetrations and orgies, often employed euphemisms. The feminist critique of porn viewed the consumption of pornography as a sexual act, in addition to being a possible conditioning factor leading to rape. As

³ The majority of the research for this dissertation covered the period from the 1970s forward, but I surveyed some earlier magazines as well, to gain some sense of change over time. I address these advertisements in detail in Chapter 6.

Catharine MacKinnon bluntly noted, “Pornography is masturbation material.”⁴ The intuitive association between pornography and masturbation necessarily made defending pornography an implicit statement in favor of masturbation. On an essential level, all pornographic materials are by definition arousal-inducing commodities. As the theatre critic Kenneth Tynan notes, this is their exclusive purpose. He argues that masturbation differentiates pornography from literature that uses sex as a theme. Consequently, Tynan observes, “It’s difficult to be an enemy of pornography without also disapproving of masturbation.”⁵ The psychologists Paul R. Abramson and Steven D. Pinkerton make virtually the same observation when they write, “Advocating pornography is tantamount to admitting masturbation.”⁶

The industry publications also shed light on the relationship between the hard-core film and the increasingly sexual mainstream film industry. This relationship fluctuated. The arrival of feature-length hard-core in the early 1970s coincided with Hollywood’s release series of sexually provocative films such as *Midnight Cowboy*.⁷ While Hollywood’s eagerness to address sexual themes led some in the adult industry to contemplate some future embrace of explicit film by Hollywood,⁸ this was never a realistic possibility. In 1968, when the MPAA was still cobbling together their new

⁴ Catharine A. MacKinnon, *Only Words*, (Cambridge, Harvard University Press, 1993), 17.

⁵ Kenneth Tynan, Introduction, in Al Di Lauro and Gerald Rabkin, *Dirty Movies: An Illustrated History of the Stag Film, 1915-1970*, (New York: Chelsea House, 1976), 14.

⁶ Paul R. Abramson, Steven D. Pinkerton, *With Pleasure: Thoughts on the Nature of Human Sexuality*, (New York: Oxford University Press, 2002), 187.

⁷ *Midnight Cowboy*, Directed by John Schlesinger, United Artists, 1969.

⁸ The earliest such prediction I was able to find, was tentative, and is in Arthur Knight and Hollis Alpert, “The History of Sex in Cinema: Part 17: The Stag Film,” *Playboy*, Vol. 11, No. 10, (November 1967), 158. “It is conceivable,” they write, “that in the future, legitimate films may—without being pornographic—portray various forms of sexual activity with the same anatomical detail that is found in most stag films.”

ratings scheme, the group's president Jack Valenti opposed the 'X' rating for fear that designating the category conferred a sense of MPAA approval.⁹ Certainly, some theater owners wanted to establish a clear division between their businesses, and the hard-core world.¹⁰ As early as 1973, during the initial New York City run of *Deep Throat*, one porn producer announced his dreams of "producing a quarter-million-dollar hard-core film," describing it as a "Ben Hur of porno."¹¹ That did not happen.¹² Long before any melding of Hollywood and hard-core, the 'respectable' mainstream industry, acting in its own interests, moved to preclude such a merger. Drawing a clear line between hard-core and mainstream film, and the possibility of watching mature, 'legitimate' films and 'art films'¹³ probably contributed to the end of porno chic.¹⁴

⁹ Charles Harpole and Charles Musser, *History of the American Cinema*, (New York: Simon and Schuster, 1990), 271.

¹⁰ "Theater Chain Will Help Film Makers," *MIMN*, (Dec. 1975), 3. "League of Theaters: Please Stop Porn," *MIMN*, (April 1976), 1.

¹¹ Ralph Blumenthal, "Porno chic," *NYT*, Jan. 21, 1973, 272.

¹² The closest hard-core has come to realizing this dream was the 2005 production of *Pirates*, loosely based on the successful *Pirates of the Caribbean* series from Disney. *Pirates* (aka, *Pirates XXX*), Directed by Ali Joone, Digital Playground and Adam and Eve Productions, 2005. *Pirates* boasts a million dollar budget, extremely high production values, and a supplied a story sufficiently compelling to justify the release of an R-rated version, and a sequel, *Pirates II, Stagnetti's Revenge*, Directed by Ali Joone, Digital Playground, (projected release, Sept. 2008).

¹³ 'Art Film' is as difficult a term to define as either pornography or obscenity. "Something that hopes to sell itself by pretending not to be commercial," is one puckish, but workable, definition offered in, John Burdett's, *Bangkok Haunts*, (New York: Alfred A. Knopf, 2007), 26.

¹⁴ See: Jon Lewis, *Hollywood v. Hard Core*, (New York: New York University Press, 2000), 192-229.

While many customers were attending hard-core films in the mid-1970s, an energized activist base protested the films and demanded state and Federal action.¹⁵ This occurred in both large, generally porn tolerant communities,¹⁶ as well as smaller cities, particularly in the south.¹⁷ In 1976, *Time* magazine ran a cover story on the “The Porno Plague” engulfing the nation. “Pornography,” it quoted *Screw* publisher Al Goldstein was becoming “part of the mainstream of American life.” The signs of mainstreaming *Time* identified were the 780 hard-core theaters across the country, the fact that the star of *Deep Throat*, Linda Lovelace, was fodder for “suburban conversation,” that fans recognized her co-star Harry Reems on NYC streets, and John Holmes had “37 fan clubs.”¹⁸

The relative dearth of prosecutions reflects the difficulty some cities experienced in checking the spread of hard-core,¹⁹ as much as do locations where prosecutions did occur. A Seattle prosecutor lamented, “We filed case after case,” but juries were “so disparate” they had nothing to “guide police.” New York City’s district attorney complained that taking porn cases to trial was “lengthy, expensive and often pointless.” San Francisco effectively gave up trying to prosecute porn.²⁰ In the right community, prosecution might be a path to higher office. Some thought this was the reason behind the prosecution of *Deep Throat* and *The Devil in Miss Jones*

¹⁵ “Protesters (March on 42nd St to Smite Smut,” *MIMN*, (Feb. 1971), 1. “11 Times Square Smutshops Raided,” *MIMN*, (Feb. 1971), 1. “More Arrests in Times Square,” *MIMN*, (April 1971), 1.

¹⁶ “San Francisco Official Asks For Curb on Smut Films,” *MIMN*, (March 1971), 2.

¹⁷ “Savannah Theaters Taxed For Sex Films,” *MIMN*, (Feb. 1970), 3.

¹⁸ “The Porno Plague,” *Time*, (April 5, 1976).

¹⁹ James Sterba, “Fight on Pornography, Mired in Confusion, Lags Across Nation,” *NYT*, (Nov. 26, 1974), 82.

²⁰ “The Porno Plague,” *Time*.

brought by Larry Parrish, Assistant U.S. Attorney in Tennessee.²¹ In other locales, prosecutors saw the whole exercise as a waste of time and money.²²

The instances where aggressive prosecutors did pursue the industry are remarkable for their dogged determination and the scope of their reach.²³ Parrish indicted not only the distributors, producers and director of *Deep Throat* and *The Devil in Miss Jones*, but the actors, as well,²⁴ “For the first time we went after the people at the top of the pyramid,” he said. While he secured some convictions, Harry Reems’ trial and conviction brought mainstream Hollywood to his defense. Director Gerard Damiano and Linda Lovelace had their charges dropped because of an agreement to testify for prosecutors in a New York trial.²⁵ Between his indictment and conviction, Reems attained notoriety of a different sort, appearing with his defense attorney Alan Dershowitz on William F. Buckley’s television show *Firing Line*. Buckley had originally invited only Dershowitz, who declined unless his client could attend as well. Buckley conceded, but for most of the program refused to either question or respond to Reems.²⁶ When Parrish arrested *Miss Jones* star Georgina Spelvin in Maine, she fought extradition to Memphis. The attempt failed. Spelvin took her defeat with grace and put the prosecution in an interesting historical context

²¹ William Safire, “Porn Free,” *NYT*, (Dec 27, 1976), 23.

²² Burt Pines, “War on Obscenity a Wasteful Effort,” *Los Angeles Times*, (Sept. 1, 1974).

²³ “The Legal Picture, ‘Deep Throat’ Ruled Obscene in Nebraska Cty., Jury Conviction in Jefferson County, Ky., Jury Conviction in Rochester, N. Y.,” *MIMN*, (March 1974), 1. “D.C. Jury Rules ‘Deep Throat’ Obscene,” *MIMN*, (May 1975), 1.

²⁴ “Pornography on Trial,” *New York Times Magazine*, (March 6, 1977), *passim*.

²⁵ Tom Golden, “Notables Aid Convicted ‘Deep Throat’ Star,” *NYT*, (June 29, 1976), 26

²⁶ “Deep Throat and the First Amendment,” *Firing Line*, (Dec 13, 1976).

when she remarked, “Well, the 50th anniversary of the ‘monkey trial’ in Tennessee is coming up, so I guess they had to do something.”²⁷

While contending with prosecutions and an uncertain legal terrain, the industry was also benefiting from the technical expertise of filmmakers and the surfeit of nubile would-be starlets in the Los Angeles area. The porn industry often evidenced a love-hate relationship with its more legitimate twin. As hard-core grew in public awareness, it was inevitable that Hollywood would examine the industry in its films. When hard-core felt abused, they were direct about their anger. Similarly, they virtually beamed when ‘legitimate’ Hollywood figures noticed them. R. Bolla, a male porn star of the 1970s and 1980s, went to great lengths to demonstrate both familiarity with mainstream films, and mainstream film actors’ familiarity with him. “We also spent a great deal of time analyzing *Chariots of Fire*,” he said in an interview on the set of a film, “I know it’s not exactly what you’d expect to hear about on a porn set.” His brush with fame involved a chance meeting in a shower at the gym. “Someone else stepped in stark naked,” and Bolla recognized him, “You’re Robert Duvall.” Duvall supposedly responded, “Here’s an even better one. I know who you are. I have a collection of adult videotapes. I’m a fan.”²⁸ Even minor celebrities received respectful profiles if they could help foster the impression that hard-core was somehow analogous to Hollywood.²⁹ Aldo Ray, a former star from the

²⁷ “Jail for Pornographers?” *Time*, (Nov. 4, 1974).

²⁸ L. R. Goldman, “On the Set of an Adult Film: Not as Exciting as You Might Think,” *AVN*, Vol. 1, No. 13, (April, 1984), 10.

²⁹ Anti-porn activism took whatever celebrity support they could find, as well. “Chill Wills Deplores Sex-Violence Film Trend,” *MIMN*, (June 1973), 4.

1950s made his “comeback” of sorts in the hard-core film *Sweet Savage*.³⁰ Prior to agreeing to do the role, he insisted that he not appear in, or be on the set during, hard-core scenes. The article in *Adam Film World* recognized that Ray provided the “publicity value of having a famous name...in a porno film.” However, Ray’s agreeing to do the film perplexed even the article’s author, “how could it be a plus for Aldo?” Ray frankly admitted he did it for the money, but also the “adventure” of it. However, the actor felt the need to speak with his sons before doing the film; one of Ray’s justifications for doing the films was “so he could give them some nice presents for Christmas.” As the article made clear, his reputation in ‘legitimate’ film was already virtually non-existent, and the critics’ opinion of *Sweet Savage* would not matter, as the *Los Angeles Times* did not review porn or run porn ads. Furthermore, no one was going to notice a review in *Screw* magazine, anyway.³¹

When hard-core received a critical portrayal from Hollywood, as in the Paul Schrader film, *Hard-Core*³² starring George C. Scott, the industry rejected the portrayal as “completely phony.” The porn industry resented the film’s premise that adult filmmakers drugged young women to recruit them for porn films. As one industry insider remarked, “we have to beat them off with a baseball bat!” The porn industry saw Schrader “catering to the same curiosity and sensationalism,” that they served, but “doing it cloaked in the mantle of a major motion picture company.”³³

³⁰ *Sweet Savage*, Directed by Ann Perry, Superbitch Productions, 1979.

³¹ Ronald Rounds, “Aldo Ray goes X-rated,” *Adam Film World*. Vol. 7, No. 3, (March 1979), 24-26, 72. Aldo Ray won “Best Actor,” for his performance. Jules Griffon, “The Third Annual Erotica Awards,” *Adam Film World*, Vol. 7, No. 8, (Jan. 1980), 24-27.

³² *Hardcore*, Directed by Paul Schrader, Columbia Pictures, 1979.

³³ “Sound Stage,” *Adam Film World* Vol. 7 No. 5 July 1979, 4

Especially offensive was the implied connection the film made between porn, children, and coercion, “There are no such things as ‘snuff’ films and girls are not kidnapped to act in adult movies,” one industry representative declared.³⁴

Much of the hard-core industry’s depiction of Hollywood took the form of the gentle ribbing and obvious allusion. A porn film tentatively titled *Superwoman* provoked lawsuits from both DC Comics and Paramount Pictures for copyright infringement.³⁵ When the ads for the porn film, *Taxi Girls*,³⁶ described the lead actor, Nancy Suiter as a “Cheryl Ladd look-a-like” Cheryl Ladd filed suit, declaring she was a “wholesome, decent and morally upright individual,” and the ads were both “demeaning and demoralizing,” exposing her to “ridicule.”³⁷ Ladd was able to secure an immediate injunction banning the advertisements.³⁸ When her lawsuit went to trial, in 1983, she won \$300,000 in general damages and a further \$750,000 in punitive damages.³⁹ When Hollywood leaders engaged the issue of sex and violence, *Adam Film World* was particularly attentive. It reported, without comment, Jack Valenti, President of the MPAA, saying that if forced to make a choice between sex and violence, he would opt for violence. America was a “violent country,” he said,

³⁴ “George C. Scott in Hardcore,” *Adam Film World* Vol. 7, No. 5, (July 1979), 18-23.

³⁵ The movie was renamed *Ms. Magnificent*, Directed by Joe Sherman, Superfilms Ltd. and Jaacov Jaacovi Productions, 1979. *Adam Film World* Vol. 7 No. 7 November 1979, 4.

³⁶ *Taxi Girls*, Directed by Jourdan Alexander, Superfilms Ltd., 1979.

³⁷ “Soundstage,” *Adam Film World*, Vol. 7 No. 7, (Nov. 1979), 4.

³⁸ Jura Koncius, Jake Newman, “Personalities,” *The Washington Post*, (July 18, 1979), E3.

³⁹ Chuck Conconi, “Personalities,” *The Washington Post*, (December 22, 1983), C3.

and he found “explicit sex action...sweaty and boring.”⁴⁰ And hard-core celebrated its little victories in the competition with Hollywood even when the connection with hard-core was tenuous. Chuck Vincent, an adult film director,⁴¹ who successfully switched over to Hollywood, took Cannon Films Inc. to the arbitration panel of the Motion Picture Association of America (MPAA) when Cannon attempted to use the words ‘preppy’ or ‘preppies’ in the title of a teen comedy. MPAA ruled Cannon’s use of either word would constitute “a harmful similarity and conflict” with Vincent’s *Preppies*.⁴² As Chuck Vincent’s *Preppies* was a R-Rated feature film it is uncertain whether the MPAA would have been as quick to defend a hard-core filmmaker’s rights.

Beyond commenting on Hollywood, the hard-core industry also patterned itself on mainstream film in several ways. Cultivating fan familiarity with the stars, and their movies, was one of the easiest. In “Porn Movie Quiz: Are You an Expert on X-Rated Epics?” a series of questions tested the fan’s knowledge. “Which of the following is not a Vanessa del Rio film?” “Who wrote, and produced, and directed *Lickety-Split*?” “Who has the longest cock of the following porn film stars?” Familiarity must have been high for the editors to assume the fans could identify a film starring Jennifer Welles film, when the only clue was that “Jennifer fucks and sucks all the tuxedoed guests.” The article then quizzed the fan concerning the

⁴⁰ “Jack Valenti Prefers the Violence over Sex,” *Adam Film World*, Vol. 7 No. 8, (Jan. 1980), 70.

⁴¹ Vincent’s best-known hard-core film was *Roommates*, Directed by Chuck Vincent, Video X Pix, 1982.

⁴² “Soundstage,” *Adam Film World*, Vol. 10, No. 5, (Oct. 1984), 4. *Preppies*, Directed by Chuck Vincent, Playboy Channel, 1984. *Preppies* was clearly not hard-core pornography, but did use some hard-core actors, such as Jerry Butler who appeared under the name Paul Sutton.

subsequent scene. What does Jennifer do next? Does she pass out in a “pool of come,” have dessert and go home, fuck “all the Chinese waiters,” or eat the chef?⁴³

Gay hard-core fan magazines employed identical methods to gauge viewers’ knowledge. The February 1986 issue of *Studflix* tested fans’ familiarity with the recent releases. ““Bluemovie master William Higgins’ first glory hole⁴⁴ and leather scenes appeared in what recent release?” “Recently two all-male movies dabbled in father-and-son relationships. Name one of them.”⁴⁵

As activism against hard-core increased in the 1980s, it seemed always in the porn industry’s best interest to highlight stories drawing a distinction between their product, and the more violent Hollywood films. When communications researcher Edward Donnerstein reported that R-Rated films posed more danger for women than hard-core, the industry jumped on the news. “Researchers Say R-Rated Films Promote More Rape than X’ers,” read one account in *Adam Film World*. Subjects viewing brutal R-rated films, the story reported, became temporarily less sensitive to the issue of sexual coercion, than did other subjects who watched hard-core films, like *Debbie Does Dallas*. The article was quick to note that this was the case even when “the porno movies had some violent content.” “Pornography is not the issue,” it continued, “the issue is violence toward women, and how women are treated in the media.” The article reported Donnerstein as saying that Hollywood studios seemed aware of this distinction. A survey of an R-Rated movie brochure contained

⁴³ “Porn Movie Quiz: Are You An Expert On X-Rated Epics?” *Porn Stars: The Stag Erotic Series*, Vol. 1, No. 4, (Nov/Dec. 1980), 24-25.

⁴⁴ A ‘glory hole’ is an opening in the partition between restroom stalls through which one man could suck the penis of another.

⁴⁵ “Trivia,” *Studflix: A Movie Magazine for Men*, Vol. 4, No. 3, (Feb. 1986), 13.

advertising references to, ““*bloodthirsty butchers, killer drillers, crazed cannibals...sadistic slayers slash, strangle, mangle, and mutilate bare breasted beauties in bondage!*”” Only rarely were such themes included in hard-core film.⁴⁶

In addition to trumpeting social science research when it exculpated hard-core, the industry was quick to criticize members of the hard-core community itself when they turned on the industry, and implied that violence was a common trait in hard-core.⁴⁷

Later in the 1980s, the Attorney General’s Commission under Reagan made an explicit attempt to characterize hard-core movies as exceptionally violent. The adult industry objected because the films the Commission used as examples were, in fact, R-rated Hollywood films, not hard-core productions. John Paone, in an *AVN* editorial bemoaned the Commission’s efforts to damn porn as violent, and by implication give a free pass movies such as “*Texas Chainsaw Massacre* and *Friday the 13th Part 6*”. Paone was “definitely not condoning the censorship of ‘slasher’ or any other type of films that consensual (sic) adults watch.” The hypocrisy bothered him. “Censors give an R-rating to movies in which breasts are cut off, while movies that show breasts getting kissed get an X-rating.”⁴⁸

In addition to defensive moves, the hard-core industry intentionally adapted Hollywood marketing practices. Establishing a connection between the audience and the performers in hard-core was especially important, and here, Hollywood’s history

⁴⁶ “Researchers Say R-Rated Films Promote More Rape Than X’ers.” *Adam Film World*, Vol. 10 No. 1, (April 1984), 4. Also see: John Paone, “Editorial: Legislating Morality,” *AVN*, Vol. 1, No. 36, (March 1986), 3.

⁴⁷ Paul Fishbein, “Editorial: ‘Fallen Angels’: Why Doesn’t Somebody Make an Accurate Documentary?” *AVN*, Vol. 1, No. 37, (May 1986), 3.

⁴⁸ Hyperbole aside—you needed to do more than kiss breasts to get an X-Rating, Paone’s point seems valid. John Paone, “Editorial: Sex and Violence,” *AVN*, Vol. 1, No. 44, (Oct. 1986), 3.

provided a useful example. A staple of Hollywood film magazines from the 1930s and 1950s was the behind-the-scenes account of the hard working actors laboring away in the dream factory. How effective these stories about the workaday world of Hollywood stars were in making readers identify with the stars and subsequently develop brand loyalty is open to speculation.⁴⁹ Clearly, the hard-core industry believed such stories were useful. The similarity between star profiles in *Photoplay*, *Film Spectator*, or *Movie Mirror*⁵⁰ and profiles in hard-core film fan magazines is striking. The format hard-core employed was nearly identical. Personal studies of stars, interviews about life in front of the camera, industry gossip and rivalries, and articles published in anticipation of a new release were common. Articles could introduce new talent or support established stars. After a body of work accumulated, critics could even assess a star's oeuvre.⁵¹ Certainly, the criteria for praise differed from the Hollywood fan magazines in the 1930s and 1940s, but the structure was hardly different.

While imitative of 'legitimate' film, and sensitive to Hollywood's portrayal of hard-core, the industry occasionally adopted a self-reflexive stance, and assessed its own problems. Neil Wexler identified the enduring beliefs that characterized the industry's view of itself, as revealed in hard-core films. These included the belief that porn work largely precluded a crossover into 'legitimate' film. The non-porn world

⁴⁹ For an indication of the influence fan magazines can possess, see Elaine May, *Homeward Bound: American Families in the Cold War Era*, (New York: Basic Books, 1988), 34-38.

⁵⁰ For more on the classic Hollywood magazines, see: Martin Levin, *Hollywood and The Great Fan Magazines*, (New York: Arbor House, 1970).

⁵¹ "Annette Haven: A Porn Star is Born," *Knight Magazine*, Vol. 11, No. 11, (May 1977), 6-11. William Rotsler, "Eric Edwards: All American Stud," *Adam Film World*, Vol. 9 No. 9, (Oct. 1983), 48-50. "Interview with Kay Parker," *AVN*, Vol. 1, No 2, (March 1983), 1, 6.

was antagonistic towards hard-core. Making porn was just as difficult as making non-erotic movies. Hollywood looked down on hard-core, but especially on the performers; producers or directors could crossover. Finally, porn films often pretended that they existed in an “old-time Hollywood” world, where stars made millions for ‘studios,’ and consequently had power.⁵²

One of the ways hard-core perpetuated this belief was by exaggerating instances of crossover between the industries, while simultaneously complaining, “Porn and regular films rarely cross similar paths.” Porn stars were often “thrilled” when cast in soap operas, or “a split-second cameo in a ‘real’ movie.” However, exceptions occurred. Harry Reems, a star since *Deep Throat*, appeared in literally hundreds of hard-core films, videos and loops, but also made softcore films. This was true, as well for Ron Jeremy, and Sharon Mitchell. Porn film critic I. L. Slifkin, writing in *AVN*, drew comparisons between hard-core film stars and their Hollywood counterparts. This fed the industry’s illusion of a rough parity, and encouraged fans to conceive of their favorite porn stars in the same ways they viewed Hollywood stars. Slifkin considered Georgina Spelvin, star of *The Devil in Miss Jones*, the equivalent of Katharine Hepburn. Tracy Lords, with her “seductive, unapproachable, enticing lips” was porn’s version of Natassja Kinski.⁵³ Sharon Mitchell, “talented, funny, unpredictable” was Sandra Bernhard. Harry Reems, a “sophisticated leading veteran” stood for Carey Grant. Jamie Gillis, “creepy, unpredictable,” but a “fine actor” approximated Bruce Dern. Eric Edwards, “dependable, well-liked, handsome”

⁵² Neil Wexler, “How Porn Films View Porn.” *Samantha Fox’s X-Rated Cinema: Swank Special*, Vol. 9 No. 4, (August 1985), 66-69.

⁵³ This, of course, was before the revelation that Traci Lords made nearly hundred hard-core films while still a minor.

equated to Harrison Ford. Paul Thomas, “intense, intelligent” was Powers Boothe. Slifkin described John Holmes, as a “big star,” which could be read two ways, and as a “legend” before comparing Holmes to Charlton Heston. Ron Jeremy was the industry’s Jeff Goldblum, and the “young and upcoming” Tom Byron was its Matthew Broderick. Slifkin analogized directors, too. Anthony Spinelli, known as “consistent” and “great w/actors,” was a Sydney Lumet type. Gerard Damiano, though “sage-like,” by 1985 was “still going strong,” John Huston. Henri Pachard was erratic and known for his “hits and misses,” but still “prolific” like Arthur Hiller. Similarly, Alex De Renzy, “one of the best” hard-core directors, though known for going off “on a tangent lately” was porn’s Francis Ford Coppola. The Mitchell Brothers, whose willingness to try “something different,” reminded Slifkin of Robert Altman.⁵⁴ For would-be stars who dreamed of breaking into the industry, hard-core even offered career advice.⁵⁵ As the dominant faces in mainstream film changed over time, the hard-core fan magazines updated their comparisons. By 1987, *Adam Film World and Adult Video Guide* described porn newcomer Stacey Donovan as part Mariel Hemingway and part “early Shirley McLain.” Desiree Cousteau had a “comic sense akin” to that of Marilyn Monroe, while Richard Pacheco was “the Robert DeNiro of porn.”⁵⁶

Letters to the various magazines are interesting not just because they indicate that the fans possessed an impressive level of knowledge about the films, but because

⁵⁴ I. L. Slifkin, “The Hollywood Equivalents,” *AVN*, Vol. 1, No. 31, (Oct. 1985), 42, 46.

⁵⁵ “Breaking into X-Rated Films,” *Hustler Erotic Video Guide*, Vol. 1 No. 1, (May 1986), 71.

⁵⁶ “Coming Attractions,” *Adam Film World and Adult Video Guide*, Vol. 11, No. 10, (March 1987), 62-63.

they reveal something of their interests. The questions range from queries about locating hard-to-find films to requests for contact information for the porn stars. “Where can I purchase a videocassette of the Linda Lovelace films *Dog Fucker* and *Dog Lay Afternoon* and how much will it cost?” The short answer was that you could not.⁵⁷ Porn film critic Jim Holliday’s response to the request for contact is interesting. The fan would have less than a 1 in 10,000 chance. “Most requests,” according to Holliday, were, “sexual come-ons,” and while some “Hollywood stars live for their fans; most adult stars live normal, happy, almost-reclusive private lives...they aren’t interested in orgies or affairs with strangers...Their gift to their fans is performing on screen and nothing more.”⁵⁸

The financial side of hard-core was also a recurring topic in the magazines. Hard, authoritative data on the first decade of hard-core film is small. Assessing what the average person thought about either obscenity or hard-core films in particular, is even now difficult. Nation wide polling data is only partially illuminating. Questions regarding obscenity or pornography seldom defined terms, and while opposition often appeared great, there was seldom matching levels of support for suppression. The General Social Surveys,⁵⁹ for the period between 1970 and 1988, indicated that beliefs about the positive and negative effects of pornographic materials “changed little.”⁶⁰ In 1970, 61 percent surveyed believed pornography provided information

⁵⁷ *Dogorama* was the actual title of the loop, and as Jim Holliday informed the fan, “absolutely unavailable from any adult-video company that wants to stay in business.”

⁵⁸ “Ask the Experts,” *Hustler Erotic Video Guide*, Vol. 1, No. 1, (May 1986), 97.

⁵⁹ Conducted by the National Opinion Research Center (NORC), of the University of Chicago.

⁶⁰ Richard G. Niemi, John Mueller, and Tom W. Smith, *Trends in Public Opinion: A Compendium of Survey Data*, (Westport, CT: Greenwood Press, 1989), 188.

about sex, by 1988 the percentage dropped to 58 percent. In 1970, 56 percent believed that pornography led to a breakdown of morals, in 1988, this rose slightly to 62 percent. 49 percent of respondents believed pornography led to rape, in 1970; by 1988, the number rose to 56 percent. On the question of whether pornography provided an outlet for “bottled-up” impulses, 34 percent believed it did, in 1970, and nearly twice as many, 56 percent, believed so in 1988. On distributing pornography, the years between 1973 and 1988 reveal similarly static opinions. 42 percent believed that distribution should be illegal regardless of the age of the consumer, 47 percent believed it should be illegal for those under 18 years, and only 9 percent believed it should be completely legal. It is worth noting that this indicates in 1973, 56 percent of respondents believed consumption should be legal, at least for those over 18 years of age. In 1988, the numbers barely changed; 43 percent favored making distribution illegal regardless of the age of the recipient, 50 percent for those under 18, and 5 percent favored complete legalization.⁶¹

The demographer Susan Mitchell used the same survey material, and disaggregated the data by age, sex, and education of the respondents; she also included findings from the 1998 survey. On the question of distribution, she found that by 1998, 57 percent believed adults should have access, and only 38 percent favored making pornography illegal for everyone. The greatest disparities in opinion revealed themselves in terms of the age of the respondents, not in sex, although women did favor restrictions to a greater degree than did men. Moreover, these disparities remained constant over time. In 1978, 23 percent of people in their

⁶¹ Tables 9.10, 9.11, 9.12, 9.13, and 9.14, Niemi, et al., *Trends*, 197-200.

twenties, 37 percent of people in their thirties, and 46 percent in their forties favored restrictions regardless of the age of consumers, these numbers peaked in 1988, for those in their twenties and forties, 27 percent and 42 percent but dropped to 35 percent for those in their thirties. By 1998, those favoring restrictions dropped to 19 percent, 31 percent, and 35 percent respectively. In 1978, among people in their fifties, sixties, and seventies, 52 percent, 62 percent, and 67 percent favored banning distribution regardless of age. In 1988, the numbers actually shifted downward, slightly, for people in their seventies to 61 percent while rising, again slightly, to 59 percent and 53 percent for those in their fifties and sixties.⁶² A Gallup Poll, from August, 1986 shows a clear difference in attitudes between pornography and violence, when the options presented to the respondent are ban, no display, or no restriction. More than 50 percent favored either no display or no restriction, in reference to X-rated movies, and rental videos, while nearly 80 percent favored an absolute ban on violent movies and videos.⁶³ I have found no polling data concerning individual reactions to specific hard-core films or data referencing how the consumers characterized or quantified their own experiences with hard-core film.

The industry's view on the popularity of its product was clear. By the mid 1970s, the industry claimed that theatrically released straight and gay hard-core films generated in excess of \$2.0 million annually. By the end of the decade, the market apparently exploded; hard-core films became in the intervening years widely

⁶² By 1998, those in their seventies favoring bans nearly reached their 1978 level with 64% favoring an across the board restriction, while for those in their fifties and sixties, only 44% and 56% favored such limits. Susan Mitchell, *American Attitudes: Who Thinks What about the Issues That Shape Our Lives*, 3rd ed., (Ithaca, NY: New Strategist Publications, 2000), 367.

⁶³ Dennis A. Gilbert, *Compendium of American Public Opinion*, (New York: Facts on File Publications, 1988), 334.

available across most of the country. Again, the industry claimed that by 1981, income from theatrical releases alone reached, “roughly \$10 million a week.”⁶⁴ The ever-present legal threats facing the industry during the 1970s and 1980s precluded any frank or open documentation by producers, distributors, or retailers. At the time, these businesspersons had little reason to produce a paper trail detailing either their financial arrangements.

Some of the products offered in the fan magazines give an indication of both the significant growth in the number of films, and the strong level of interest fans might have had for the performers. By 1983, hard-core film was large enough to support reference guides for the serious aficionado. “Coming soon the most complete adult film reference book ever!” proclaimed one full-page notice for “*The Illustrated Who's Who in Adult Cinema, by Jim Holliday.*” The ad described Holliday as the “foremost adult film authority in the country” and promised “biographies and pictures on a further 300 adult stars.”⁶⁵ When describing the industry’s growth to fans easy to grasp topical comparisons were often useful. John Weston, an industry First Amendment attorney, employed the following analogy in AVN in 1985. He estimated some “55,000,000 rentals of adult videotapes” occurred in the previous year.⁶⁶ Weston assumed that individual consumers likely rented “more than one videotape during 1984,” and that each rental had multiple viewers. From this, he concluded there were “more sexually oriented consumer decisions...than decisions to

⁶⁴ Robert Rimmer, *The X-Rated Video Guide* (Amherst, New York: Prometheus Books, 1993), 6.

⁶⁵ “Who's Who in Adult Cinema,” Advertisement, *Adam Film World Guide X.-Rated Movie Handbook*. Vol. 1 No. 3, (1982), 9.

⁶⁶ “Conservatively based on a daily rental figure of \$5.00 per tape and extrapolated from a consensus of articles in major American magazines of general consumption published in 1984.” John Weston. “It’s the Law,” *AVNC*, Vol. 1, No. 4, (June 1985), 10.

vote for Mr. Reagan.” Noting that “voting is free” and porn was not, he found it hard to understand why nobody “proclaimed a landslide” for freedom of consumer choice in erotic materials.⁶⁷

While the number of consumers probably increased, it is also important to examine the nature of viewing. The social stigma connected to hard-core consumption did not evaporate during the porno chic era, but it clearly diminished. Attendance was now explainable as curiosity, no longer a de facto confession of prurience. A greater willingness to breach boundaries, in a period when those boundaries were in a state of flux, might explain the growth, as well. The science fiction author, and Temple University professor of English, Samuel R. Delany, provides an illustrative description of the early 1970s New York hard-core theater scene. He notes that there were, “some two dozen small theaters were given over as outlets for the nascent pornographic film industry: a handful between Sixth Avenue and Eighth Avenue along Forty-second Street proper, another handful on Broadway...another half dozen or so up along Eighth...Most of the theaters purveyed straight fare, but a few...provided gay features.”⁶⁸ What is immediately apparent is that the films, for many viewers, were incidental to their primary purpose in visiting the theater. Delany used the theaters as sites for sex with the male patrons, most according to Delany straight identifying. Delany saw hundreds of films over thirty years frequenting the theaters, which provided him a chance to draw informed conclusions about porn films, particularly about the male performers. “What made a

⁶⁷ Weston. “It’s the Law,” 10.

⁶⁸ Samuel R. Delany, *Times Square Red, Times Square Blue*, (New York: New York University Press, 1999), 17. Also, see: Joseph W. Slade, “Pornographic Theaters off Times Square,” *Transaction*, Vol. 9, No. 1-2 (Nov.-Dec. 1971), 37-43, 79.

good male porn star was not much different from what made a good male ballet partner.” Strength and an ability to maintain an erection, coupled with the technical knowledge that when receiving oral sex, “you pulled her hair back so the guys could see her face.” Repositioning yourself and your partner was often necessary, “You moved her arm or her leg—gently!—from between the action point and the camera.” Delany did not find the male performers sexually attractive, “Slender, waspy, willowy, understated, they are insistently amasculine, but this is what a successful male porn star needed in the realm of straight films during the 1970s.” The films, or rather some of the sexual acts performed within them, often provoked as many jeers as moans. This possibly indicated annoyance with the on screen narrative if it veered away from the viewer’s own fantasy. The problem of maintaining or achieving arousal when suddenly confronted by a sexual behavior on screen that the viewer found ridiculous or off-putting marks a signal difference between theatrical hard-core and the videos that followed. With video, the remote control provided the luxury of fast forwarding through the boring bits. Later, DVDs allowed the viewer to skip immediately to the next scene. Delany’s fellow audience members had to sit through it, but they did not sit silently. “For the first year or two in the theaters operated, the entire working-class audience would break out laughing at everything save male-superior fucking.” “At the fellatio, at the cunnilingus even more, and at the final kiss, among the groans and chuckles you’d always here a couple of ‘*Yuccchs*’ and ‘*Uhggggs*.’” Considering the amount of male/male sex occurring in the theaters, it is noteworthy that “save for the *most* occasional touches,” gay male sex was rarely seen on screen, in straight porn. Delaney believes the “absence” of gay sex on the screen

was what “allowed it to go on rampantly among the observing audience.” The dynamic of men like Delany, “sucking cock for our own pleasure, fellating other guys who were getting off on the straight screen action,” highlights the role of fantasy in the theatrical porn experience. The theater provided the opportunity for some patrons to partially dissociate from the surrounding audience, and fix their minds on the screen, placing them in the action, all the while receiving a blowjob from someone who was likely enacting his own fantasy.⁶⁹ Many audience members, conceivably, just watched the films, but as film critic Richard Corliss noted, “Like many people, I go to porn theaters to masturbate.”⁷⁰

While the first above ground appearance of a hard-core film occurred in 1968 and the first nation-wide release of a single film followed in 1970, there is no firm date establishing the formation of the industry, as a self-identifying entity. By the mid-1970s, most hard-core production and distribution retained elements of individuality, but also exhibited signs of collective action. Distributors, theater owners, and producers of exploitation films formed the Adult Film Association of America in 1969.⁷¹ By the mid-1970s, the Association expanded to encompass hard-core, and video as well, eventually changing its name in 1986 to reflect the

⁶⁹ Delany, *Times Square Red*, 76-79.

⁷⁰ Corliss wrote “Confessions of an Ex-Pornologist” for the *Village Voice*, sometime in the 1970s. Corliss mentions the article in, “That Old Feeling: Porn Again,” *Time*, (May. 7, 2005). David Edelstein quotes the line from the essay in, “We Might Know Whom Rush Limbaugh Threatened,” *New York*, (Oct. 17, 2007), http://nymag.com/daily/movies/2007/10/we_might_know_whom_rush_limbau.html, (accessed Feb. 20, 2007).

⁷¹ Harpole and Musser, *History of the American Cinema*, 282.

dominance of the latter to the Adult Film and Video Association of America.⁷² By 1979, the group could muster several hundred members for its annual meeting. “The Cannes Festival of adult movies,” according to one attendee, consisted of screenings and the exchange of gossip, and mutual concerns common to any large trade convention. “Our meetings are sedate,” claimed Ann Rhine, AFAA president, “We are very conservative people.”⁷³

The structure of the hard-core film industry defies easy characterization. It was a multi-layered production and distribution system. At the base were a number of quasi-independent directors who either released their films under the label of a specific studio, and through specific distribution companies. In the era of theatrical porn, the distributors reached agreements with theater owners concerning what films would play and for how long. This changed during the video era, though clearly the era of theatrical and video porn overlapped. Initially, after a theatrical run, distributors would transfer films onto tape, and release them through distributors to wholesalers, who in turn sold to retailers, or directly to customers. After video effectively erased the theatrical market, the route became one of producer to distributor to wholesaler to retail. Many producers and distributors, however, maintained a division that marketed their products to consumers directly. Isolating a clear dividing line between a video production ‘studio’ and a studio that distributed another production studio’s film is often difficult. As an example, *The Boys of San*

⁷² “Confidential News-Line,” *AVNC*, Vol. 1, No. 18, (Aug. 1986), 1.

⁷³ “Sound Stage,” *Adam Film World* Vol. 7 No. 5 July 1979, 4.

Francisco,⁷⁴ directed by William Higgins, was a gay hard-core film consisting of eight scenes. Higgins originally shot these scenes as loops for peep booth viewing, and for individual mail-order sale on 8 mm film. The production studio for *The Boys of San Francisco* was Laguna Pacific, which was a division of Catalina Video. Catalina distributed *The Boys of San Francisco*, but Catalina was itself also a production studio, founded by William Higgins. Catalina, moreover, also became the principal distributor of the films directed by Scott Masters, who previously distributed production through his own company Nova Films. Masters's short loops appeared on videotape as compilation tapes. This was a standard recycling method, especially useful if a group of loops featured the same actor. Eventually, however, Catalina, and the other gay 'studios' started producing feature length works expressly for the video market. The same amorphous producer/distributor/wholesaler structure existed in straight hard-core, though the large number of films initially shot for straight porn theaters, meant the straight industry transferred a correspondingly larger number of feature length films to video at first.⁷⁵

Soon after the first films appeared, the industry had to address the issue of identifying fan preferences. The first decade of films often reflected the personal idiosyncrasies of the filmmaker more than the audience's desires. Little information was available to the filmmakers, aside from the negative input that came in the form of poor box office receipts. This question of audience preference came up

⁷⁴ *The Boys of San Francisco* Directed by William Higgins, Catalina/Laguna Pacific, 1981.

⁷⁵ My understanding of the production/distribution route of films and videos is based on interviews, conversations, email, and telephone exchanges, in Los Angeles, Chatsworth, and West Hollywood; with Sharon Mitchell, Nina Hartley, Ira Levine, Mark Kernes, Ben Scuglia, William Margold, and most especially with Lee Reed and Jeffrey Douglas.

intermittently in the fan magazines. Sometimes, the selection of reader's views leaves the impression that the editors chose comments to accord with the films that were being produced, implying some correspondence between the industry's output, and the fan's desires. Just as often, however, the magazines ran letters from putative fans that ran counter to the tenor of available films. Throughout the 1970s, and 1980s, a constant charge leveled against hard-core addressed the violence of the films. However, as Joseph Slade has demonstrated, the profound lack of violence in the hard-core format is actually the most noteworthy characteristic. "Sadomasochism in ritualized forms...belong in the fetish category, and "gestures of affection" outnumber "bursts of anger" and even when present, their context renders them "deceptive."⁷⁶ The industry would emphasize this, as well, noting that far more violence and gore exists in mainstream films than ever appeared in hard-core film.⁷⁷ One reader, however, asked specifically for "Corruption of the innocent!" Asserting that this was what "really turns a guy on." It is impossible to know absolutely whether this was a call of films addressing 'first time' sexual experiences, or a thinly veiled request for child porn. Considering the existing premium the industry already placed on youthful appearing actors and its longstanding opposition to actual child-porn, however, it is possible that this one reader was actually concerned with plot. Another correspondent also asked for a particular context for his fantasy. "I have this thing about water," he wrote. The scene he wanted would be set in a large pool, "something really nice like a fancy hotel pool, only large." A "gorgeous blonde, big

⁷⁶ Joseph W. Slade, "Violence in the Hard-Core Pornographic Film: A Historical Survey," *Journal of Communication*, Vol. 34, (Summer 1984), 158.

⁷⁷ Rick Swan, "Murder isn't Sexy! The Sweetening of American Porn," *Adam Film World*, Vol. 12 No. 3 (Jan. 1987), 48.

boobs and a really terrific figure...a very small bikini, all black,” The woman is alone, and after removing her top, experiences a “feeling of freedom.” Removing the rest of her bikini, the reader envisions her just swimming alone. “She really enjoys the freedom.” Still another wanted a film with a “97-pound weakling of a female...suddenly set upon by three huge would-be muggers and rapists.” The expected cliché ending of violation and degradation does not follow. The reader wants to see the woman, “by means of her martial arts training,” toss them around like so many matchsticks,” and to prevent future attempts on other, less adept women, the reader asks that the heroine then force the assailants into a “daisy chain” where they then euphemistically, “remove the bullet from each other’s big guns.”⁷⁸

The fan magazines, while overwhelmingly devoted to a male readership, paid some attention to the issue of what women wanted from porn. Absent firm data, it is virtually impossible to determine just how many women constituted the viewing audience. Some accounts placed the women’s share of the market as high as 60 percent, in the early 1980s.⁷⁹ Others posit a more believable 40 percent of the viewers as women, but this was as of the late 1980s.⁸⁰ Even that strikes some as way too high.⁸¹ Moreover, the evidence for how women consumed porn is as circumstantial as the evidence for men, but even rarer. The relative paucity of women

⁷⁸ “The Porn Film I’d Most Like to See,” *Adam Film World* Vol. 7 No. 4, (May 1979), 16.

⁷⁹ Karen Haehne, “Confessions of a Female Porn Programmer,” *Film Quarterly*, Vol. 37, No. 1, (Autumn 1983), 9-16.

⁸⁰ John Leo and Scott Brown, “Romantic Porn in the Boudoir,” *Time*, (March 30, 1987), 63.

⁸¹ Chuck Kleinhans suggests that the quoted 40 percent figure must have been the result of a garbled telephone interview, and believes 4 percent is “far more likely,” but would consider a percentage as high as 14 percent. Chuck Kleinhans, “The Change from Film to Video Pornography: Implications for Analysis,” in *Pornography: Film and Culture*, edited and with an introduction by Peter Lehman, (New Brunswick, NJ: Rutgers University Press, 2006), 163.

audience members is not debatable once one moves past the porno chic era, but data on the absolute number of female viewers is murky, and the issue of video rentals further complicates the situation. Certainly, the industry claimed significant women viewers; and the interests of the industry, in this regard, were two fold. First, they would welcome additional customers, and second, the perception that women as well as men viewed hard-core provided a significant rhetorical plus. Absent data on rentals or sales, it is revealing that my survey of fan magazines, find frequent advertisements for vibrators and dildos. Many of these ads explicitly targeted women buyers.⁸² Occasional letters to the editor or advice columns also suggest the existence of some women readers.⁸³ The magazines, of course, might have faked the letters, and the devices work just as well on men as they do on women. It would be unwise to discount the possibility of a gay male readership, and consequently a market for such toys. Whatever actual percentage of viewership women comprised, the industry presented itself as concerned about women, and interested in validating their desires for sexual satisfaction. Often this took the form of noting sex-positive studies indicating that women enjoyed hard-core films and had their own opinions about content. One article cited a Southwestern University study, which surveyed female student volunteers who watched a selection of seven films depicting specific sexual activities. The students apparently favored films depicting, “heterosexual activity,” particularly those with romantic themes, but also, group sex with “three men and

⁸² For example, see; “A Rainbow of Sexual Enjoyment: ‘Doc Johnson’,” *Cinema Sex*, Vol. 4, No. 4, (Winter 1976-1977), 57, and “Forever Fantasy Products,” *Bleu Revue*, Vol. 1, No. 1, (no date), 19. Though undated, the back cover is a full-page ad of the film *Anna Obsessed*, Directed by Martin & Martin, VCA, 1977, so it is likely that this issue dates from 1977 or early 1978.

⁸³ “Trouble with Mr. Clean, Ask Madam X,” *Video X*, Vol. 1, No. 4, (June 1980), 43, and “Black Balled, Letters to Leslie,” *Cinema-X*, Vol. 1, No. 8, (Oct. 1980), 65-66.

three women,” both mild and strong sadomasochism, and films portraying “male homosexuality.”⁸⁴

The porn theater, the primary site of consumption for hard-core (after the peep booth), was a highly contested venue from the start.⁸⁵ The presence of organized crime figures, principally members of the Columbo family, in distribution throughout much of the 1970s, provided both an unsavory public face for porn and an inviting target for critics.⁸⁶ The legal battle over pornography, even as the Supreme Court had redefined obscenity, began to engage the issue of municipal zoning ordinances. With *Miller* in place, no one seriously expected the traffic in porn to go away, so cities often resorted to passing ordinances stipulating the number of adult business that could operate within a specific area, or insisting that there be a set distance between adult establishments and residential housing, schools, or another adult business. Between 1976 and 1981, the Supreme Court initially upheld the constitutionality of ordinances restricting the location of adult establishments,⁸⁷ before making it clear that the effect of any statutes could not be a total ban.⁸⁸ In 1986, the Court struck a tenuous balance, by holding, “‘Content-neutral’ time, place, and manner regulations”

⁸⁴ William Rotsler, “What Kind of Porn Movies Turn Women All On?” *Adam Film World*, Vol. 7, No. 4, (May 1979), 72.

⁸⁵ “Publishers Refusing Ads for X-Rated Films,” *MIMN*, (May 1970), 3. “3 ‘X’ Films Close as DA Vergari Acts,” *MIMN*, (Nov. 1971), 1. “Drive in Law Passed in Vermont,” *MIMN*, (May 1972), 2. “Refuses X Films, People Come to Aid,” *MIMN*, Nov. 1975), 2.

⁸⁶ Murray Schumach, “Sex Exploitation Spreading Here: Commercialization of Sex, Linked to Organized Crime, is Found Growing in Midtown Area,” *NYT*, (July 11, 1971), 1. “7 Are Convicted on Pornography Charges,” *New York Times*, November 6, 1971, 35. Ralph Blumenthal and Nicholas Gage, “Crime ‘Families’ taking Control of Pornography,” *NYT*, (Dec. 10, 1972), 1. “Crime Controls 90% of New York Porno, Grand Jury Hands Down Eighteen Indictments,” *MIMN*, (May 1972), 1. “2 New York Papers Report Mob’s Control of Pornography,” *MIMN*, Nov. 1975), 2.

⁸⁷ *Young v. American Mini Theatres*, 427 U.S. 50 (1976).

⁸⁸ *Schad v. Borough of Mount Ephraim*, 452 U.S. 61 (1981).

were allowable if they were “designed” to answer a “substantial” state interest and did not “unreasonably limit...communication.”⁸⁹ The impact, if not the intent, of the zoning laws was to exert gradual pressure on hard-core towards greater private consumption. However, the medium that facilitated this push towards privacy was videotape.

Videotape technology existed before the arrival of feature-length porn. The first attempt at merging film with video did not even anticipate a hard-core use. Andre Pillay, founder of Magnetic Video, in Michigan, tried distributing “major motion pictures” on tape in 1969.⁹⁰ While the peep booths and theatrical venues provided the principal income stream for hard-core in the 1970s, home video devices were still initially too expensive for most Americans. When the hard-core industry started transferring successful theatrical release films onto tape as a supplemental source of revenue, the total volume of tape sales, including hard-core, constituted about “one million cassettes.” Of this one million, hard-core films comprised the clear majority. However, the price for porn was high. Most hard-core videotapes sold in the range of “\$60-125 each,” while specialty tapes reached prices “as high as \$300.”⁹¹

It is remarkable that even as late as 1980, the hard-core industry did not recognize how important video would become. Nor did the industry comprehend the

⁸⁹ *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986) at 46-47.

⁹⁰ Frederick Wasser, *Veni, Vidi, Video The Hollywood Empire and VCR*, (Austin: University of Texas Press, 2002), 108.

⁹¹ Janet Wasko, *Hollywood In The Information Age: Beyond The Silver Screen*, (Austin: University Of Texas Press, 1995), 130.

devastating effect video would eventually have on theatrical porn venues.⁹² No one seemed to be aware of the long-term impact of video would have on porn theatre patronage. One industry insider, Maria Tobalina, the newly elected president of the AFAA, far from seeing video as a threat actually believed video would “boost” the theatrical hard-core market. *Adam Film World* reported on Tobalina’s views, and noted that there were some “800 X-rated movie houses” available across the nation. This news, they believed, would gladden the “raincoat set.”⁹³

The industry’s slowness to recognize the coming ascendancy was not unique. Anti-porn activists also noted the hard-core’s expansion into video,⁹⁴ but did not seem to appreciate what it would mean to the growth of the industry. While Morality in Media trumpeted indictments related to pornographic tapes as early as December 1979,⁹⁵ it might be best to see this as a function of MIM’s wide-ranging approach to covering pornography and especially pornography prosecutions, rather than an example of activist prescience concerning the potential of videotape.

By the winter of 1982, the industry started to recognize that videotape rentals and sales might be more than an additional revenue stream. When the fan magazine *Adult Cinema* reviewed the video tape re-release of the 1980 film *Taboo*,⁹⁶ it noted that while it was still a “major thrill” to watch porn on a “large screen” the experience

⁹² Hard-core theaters have not wholly vanished, but are extremely difficult to find. See: Laura Leu, “Grindhouse NYC: House of Whacks,” *Time Out New York*, No. 600, (Mar 29—Apr 4, 2007), <http://www.timeout.com/newyork/articles/features/1811/house-of-whacks>, (accessed June, 18, 2008).

⁹³ “Sound Stage,” *Adam Film World* Vol. 7 No. 11, (July 1980), 4.

⁹⁴ “Wrap—Up of 1978, Now—X Films on Tape,” *MIMN*, (Feb. 1979), 4.

⁹⁵ “Indictments on Porn Cassettes,” *MIMN*, (Dec. 1979), 4.

⁹⁶ *Taboo*, Directed by Kirdy Stevens, VCX, 1980.

did not match the excitement “of watching...in the privacy of your own bedroom.” *Taboo* was one of the first films re-released on videotape that *Adult Cinema* reviewed; noting that their review section devoted to video had previously concentrated on “8mm plotless shorts.” The title of the review section was “Loop Scoops.” After previewing some of the “made-for-TV fare” (the term *Adult Cinema* used for films made expressly for the video market) the reviewer noted that the “feature films on videotape” were of “excellent...quality” and it would “be a crime not to mention them.”⁹⁷

The industry was extremely cognizant of economic factors affecting the growth of hard-core production, distribution, and retail. Like any other industry, hard-core was susceptible to broader economic influences. The early 1980’s recession meant less ready cash for new productions. As activists and municipal zoning laws ratcheted up pressure on hard-core theaters, the economics of shot on video, as opposed to shot on film became one more way of trimming expenses. “Investors are less willing to pump \$300-\$400 thousand dollars into a sex film,” *Adam Film World* informed its readers, in May of 1983. Besides the savings straight-to-video production offered, the videotape was already becoming a significant medium for the industry. Hard-core theatrical releases, transferred to video, supplied a comforting stream of income. With home viewing possible, the preferences of the audiences were shifting, and the industry was becoming aware of this.

In a 1983 interview assessing changes in the adult industry over the preceding year, film critic Jim Holliday observed that films made “expressly to turn its audience on” had “limited but well-defined market potential.” “Keeping it nice and dirty,” he

⁹⁷ “Loop Scoops: Review of *Taboo*,” *Adult Cinema* Vol. 1 No. 9, (March 1982), 58.

said, “assures a certain hard-core audience.” While some filmmakers were producing “elegant, sophisticated and expensive” hard-core, Holliday noted, most were moving toward lightly plotted, “strongly sex-oriented productions.” Holliday saw a “definite split” developing “in the audiences.” On one side, Holliday saw “the ‘raincoat’ crowd,” those whose principal interest was in masturbatory material. On the other side were those who wanted “film-craft and art.” Holliday was not sure which audience would win out in the end. He offered up *Talk Dirty to Me Part II*⁹⁸ as an example of the sort of film that could potentially please both audiences because it offered, “strong, graphic sex,” as well as “acting, storyline and production values.”⁹⁹ Holliday’s identification of the ‘raincoat’ crowd as a significant part of the audience was one more confirmation of hard-core films’ enduring masturbatory reputation even in an era when the films’ cinematic qualities were supposedly the factor driving increased viewership.

The films of the later 1970s and early 1980s surely differed from the first rough efforts of Damiano and de Renzy. An appreciable slickness became apparent. The films were becoming reliable and predictable. The growing popularity of video production, however, more than mounting competence or artistic innovation among pornographic filmmakers, accounted for a widening variety in the erotic caliber of the films. The ease of shooting on video, and the reality of catering to a variety of community standards, thanks to Chief Justice Burger’s *Miller* decision, encouraged the revenue-multiplying innovation of “three-in-one” filmmaking. Three rough

⁹⁸ *Talk Dirty to M: Part II*, Directed by Tim MacDonald, Dreamland Home Video, 1982.

⁹⁹ Steve Tyler, “X-Rated Movie Year in Review,” *Adam Film World Annual Guide to X-Rated Movies and Video*: Vol. 1 No. 8 (May, 1983), 30.

divisions existed. “Hard-X” was the standard, visible penetration, visible cum shot style of films common to theaters, “Soft-X,” showed “simulated” intercourse and supplied the “cable and foreign markets.” The industry could market the always-legal R-rated version anywhere. The financial benefits of getting three marketable versions from the same shoot are obvious, but simply cutting out the nasty bits was not as easy as it sounds. The issue of what remained was a problem. To be marketable, an R-rated film required “superior production values, story-line, and acting.” On the other hand, success in the hard-core market depended upon “a lot of graphic sex,”¹⁰⁰ to play in the three fields of Hard, Soft, and R-rated film, the raw product from which a producer cut his three versions had to possess story and significant production values at the start. Of course, some municipalities objected to even these relatively mild versions.¹⁰¹

By 1983, the shift towards video as the primary medium for viewing pornographic movies was firmly established. Writing in 1987, Jim Holliday held “The thing that changed everything was the development and growth of the home video industry.” New markets opened to the industry. Even where local opposition prevented porn theaters from operating, video, via video rental outlets or mail order, supplied customers’ needs. Holliday cited Al Goldstein, the publisher of *Screw* magazine, who said in the early days of video, “If he owned an adult theater, he would tear it down and build a parking lot.”¹⁰²

¹⁰⁰ Tyler, “X-Rated Movie,” 33.

¹⁰¹ “Jacksonville Stores Forced to Remove ‘Cable-Versions,’” *AVNC*, Vol. 1, No. 9, (Nov. 1985), 1, 3.

¹⁰² Jim Holliday, “The Changing Face of Adult Video 2,” *AVN*, (March 1987), 15, 88.

Getting ‘Mobbed Up’

With the shift to video, the relatively simple structure of the hard-core world also began to change, and the industry commented on this. Previously, the major components of the industry were the exhibitors, the producers, and “a few large companies” run by “old school moguls,” who “circulated” the movies to various porn theaters across the country.¹⁰³ This admittedly vague description comes from David Jennings, who is frank about the role of organized crime figures in the hard-core industry during the period before the complete dominance of videotape. Starting early in the 1970s, the Bonnano, Gambino, DeCavalcante, Luchese, and Colombo families acquired influence in both production and distribution of hard-core film.¹⁰⁴ Jennings witnessed some of the mob’s impact during his years working for S and L Distributors, which was under the protection of Mickey Zaffarano, of the Bonnano family. Jennings worked in S and L’s subsidiary, Video Cassette X (VCX), before starting his own company, Superior Video.

While it would be rash to dismiss organized crime’s influence on aspects of the industry, it is important to note that the mob was tangential to the question of the film’s mainstreaming. Organized crime’s interest in porn was in both extracting money from an increasingly lucrative trade in the form of theatre receipts and in using porn outlets to launder money from even more illicit sources. Theatres and peep booth arcades were both cash dependent enterprises. The thousands of peep booths yielded nearly limitless numbers of untraceable quarters. An arcade or theatre owner

¹⁰³ Jennings, *Skinflicks*, 4-5.

¹⁰⁴ Attorney General’s Commission on Pornography, *Final Report*, <http://www.porn-report.com/404-organized-crime-and-pornography.htm>, (accessed May 12, 2006).

could skim cash off the top and keep it as untaxed income. Additionally, the mob could funnel cash revenue from drug sales or loan sharking through an arcade reporting it as legal income.

The mob was the focus of one of the first FBI pornography operations, MIPORN, based out of Miami. Later, the Attorney General's Commission on Pornography concentrated a great deal of attention on links between organized crime and hard-core. However, Jennings contends that while it is true VCX, aided by mob muscle, "bullied its way" to the top, "by 1985, VCX was bankrupt." Mob influence lessened as "video software dealers" multiplied "like mushrooms after a rainstorm" in the early 1980s, and organized crime could no longer control distribution. Where "furtive...theater operators" could be threatened, "suburban retailers" called the police.¹⁰⁵ In the long term, the importance of the mob in pornographic film came from the Federal government's decision to employ the Racketeer Influenced and Corrupt Organizations Act (RICO)¹⁰⁶ when pursuing otherwise 'legitimate' pornographers.¹⁰⁷ In addition, the importance of the mob lay in the usefulness of connecting organized crime to hard-core in the public mind. Both the mainstream media and the activists emphasized the mob connection to hard-core.¹⁰⁸ In the case of

¹⁰⁵ Jennings, *Skinflicks*, 5.

¹⁰⁶ 18 U. S. C. § 1961-1968.

¹⁰⁷ The Federal government used RICO laws against pornographers on the premise that obscenity was a crime, and the industry was 'organized at various levels (production, distribution, and retail). Carried to its logical conclusion, RICO statutes were appropriate tools for all crimes involving more than one person.

¹⁰⁸ Eugene Meyer, "Area Porn Distributor Indicted," *The Washington Post*, (Feb 15, 1980), A4. Caroline Rand Herron, Michael Wright and Daniel Lewis, "The F.B.I. Switches From Politics to Pornography," *NYT*, (Feb 17, 1980), E4. Les Ledbetter, "Two Slain and One Hurt In a Mob-Style Shooting; 2 Are Killed By Gunmen In Brooklyn," *NYT*, (Jan 5, 1982), B1.

the activists, this characterization of porn as a mob-influenced business would feature prominently during the hearings of the Attorney General's Commission on Pornography (1985-1986).¹⁰⁹

Back to Business

As noted above, most of the hard-core videotapes available before 1980 were tapes of previously released theatrical features, or compilations of peep booth loops. Several adult industry commentators recognized that a relatively large percentage of all videos, including Hollywood's product, in the late 1970s and early 1980s were hard-core pornography. Exact figures are difficult obtain. From inside the industry, film critic Jim Holliday claimed that prior to 1980 "adult films controlled 90% of the national video market." However, he made this claim in 1987, and cited no supporting data.¹¹⁰ In 1984, industry film critic Robert Rimmer claimed that by 1979 hard-core films constituted half of all videotapes.¹¹¹ Whether the hard-core share of the nascent videotape marketplace was 90% or 50%, it was a significant component.¹¹² By 1983, the "shot-directly-on-video projects" outnumbered shot-on-

¹⁰⁹ "NY Gang Rise Tied to Movies and Media," *MIMN*, (Feb. 1975), 2. "Mob Moves in on Chicago Porn Stores," *MIMN*, (Oct. 1976), 3. "'Mob' Blamed in Killing of Chicago Porn Theater Owner," *MIMN*, (Nov. 1976), 2. "Federal Action in Miami," *MIMN*, June 1974, 1. "Pornographer Shot Mob-Style on Brooklyn Street; Son is Slain," *MIMN*, (Feb. 1982), 1.

¹¹⁰ Jim Holliday, "The Changing Face of Adult Video 2," *AVN*, (March 1987), 88.

¹¹¹ Robert Rimmer, *The X-Rated Videotape Guide*, (New York, NY: Harmony Books, 1984; reprint, Buffalo, NY: Prometheus Books, 1993), 2.

¹¹² There continues to be a lively debate concerning the exact degree to which hard-core pornography determined the dominant video format in the 1980s. In short, the question turns on whether Sony's decision to deny their Betamax technology to porn video manufacturers explains that format's eventual extinction and the success of the Video Home System (VHS) format of the Victor Company of Japan (JVC). However, the initial hour-long format, and higher cost per unit of Betamax tapes and players might also partially explain why VHS won out in the end. The introduction of rival high-definition digital technologies in the mid-1990s reproduced this competition over formats. Sony's Blu-Ray has apparently won this battle against the competing HD-DVD format. It is worth noting that Sony did not ban porn producers from using Blu-Ray.

film hard-core. The economics of video vs. film dictated the shift. One film cost five times as much as a video production, and “consumers seemed not to care.” Money was always the primary consideration, but even were it not, time constraints worked against film. A hard-core film could take up to nine days to shoot; video took half as long or less. Small start-up production companies found video a much easier method of entering the market. A. H. Stevens, the President of Vivid Video, at the time a small production company credited Vivid’s success to its packaging, his partner’s experience in the adult industry, his relationship with distributors, and his main star, Ginger Lynn.¹¹³

Two of Stevens’ stated reasons for Vivid’s success (packaging and Ginger Lynn) are particularly interesting when assessing the role of video in the mainstreaming of hard-core. Linda Williams notes how in the age of shot on video porn, the tape “slips onto the shelf,” without the “notoriety” that previously came from theatrical release. Williams sees the “sociological or historic impact” of the movie fading into the “background” because of this.¹¹⁴ She is correct, in the sense that there is no “collective” memory of the film in a theatrical venue attached to the film. Its production and marketing, if any, are quite public, but its consumption is not. The nature of videotape distribution, however, places the film in a quite specific context, in which the packaging Stevens mentioned becomes far more important. The packaging, specifically the image of the performer on the cover, became the principal

¹¹³ Holliday, “The Changing Face of Adult Video 2,” *AVN*, 88. By the turn of the 21st –century Vivid Video had become one of the three largest adult studios, with annual revenues in the area of \$100 million. .Brett Pulley, “The Porn King,” *Forbes.Com* (March 7, 2005), http://www.forbes.com/business/2005/03/07/cz_bp_0307vivid.html, (accessed June 10, 2006).

¹¹⁴ Williams, *Hard Core*, 269.

means of marketing, and consequently selecting, a video. This was true in the pre-video days of 8mm, as well. David Jennings recounts getting advice on shooting pornographic loops, interspersed with advice about the benefits of framing shots so as to capture the performer's face and genitalia at the same time, "Gives the boys a double whammy to jerk off to." Jennings also discovered that the most important shot in a loop was the one used on the box cover. "That's what sells the number."¹¹⁵ A 1985 *AVN* poll of subscribers regarding factors influencing rentals reflects the importance of box cover art. Twenty-nine percent cited the box covers as their guide, twenty percent chose because of the performer.¹¹⁶ The face and body of Ginger Lynn, or any other recognizable gay or straight porn star on the video box cover showed the consumer with whom he would be having fantasy sex. The relative weight the industry assigned to well-produced cover graphics shows that porn stars had become brand names and customers were displaying brand loyalty.

Hard-core film's shift from theaters to the home television represented the most significant factor in guaranteeing the cultural mainstreaming of the films. By relocating to the home, privacy enveloped the interaction between the viewer and the sexual performances captured on the video. The growth of the industry, because of the video shift, is dramatic. The industry rapidly moved not only to distribute their product via video, but increasingly they chose to produce it on tape as well. As 1986 began, the industry, however, was experiencing a mix bag of setbacks and victories in the realm of curiosity and public disapproval. Some highly successful porn

¹¹⁵ Jennings, *Skinflicks*, 33-34.

¹¹⁶ "Consumer Feedback: How Consumers Choose Their Video Rentals," *AVNC*, Vol. 1, No. 4, (June 1985), 6.

performers even wondered if porn would survive. “Ten years down the line, who even knows if there will be porno!”¹¹⁷

A Feminist Anti-Porn Critique

The appearance of a vocal feminist critique of pornography, during the late 1970s, posed a special problem for the hard-core industry. The feminist critique of pornography was not an extension of the traditional morals-based enmity of the activist groups like MIM or CDL, although MIM strongly supported its new feminist allies.¹¹⁸ Nor was it a response to the rise of particularly offensive forms of hard-core film at the decade’s end. Indeed, the anti-pornography feminist movement was rooted in a far larger, intellectually coherent, and older critique of the ills attending patriarchy in general reaching back to the late 1960s,¹¹⁹ and rested upon foundational works like Betty Friedan’s, *The Feminine Mystique*.¹²⁰ Historian Whitney Strub convincingly argues that while feminists in the early 1970s mentioned pornography, they did so as one of a set of problems implicating women, but before the late 1970s, pornography was “peripheral to the feminist analysis of oppression.”¹²¹ Soon, however, because of a long overdue but increasingly keen awareness of violence

¹¹⁷ “Tom Byron: The Good Boy with the Big Bad-d Cock!” *Samantha Fox's X-Rated Cinema*, Vol. 9 No. 8, (Jan. 1986), 66-69.

¹¹⁸ “‘Women Against Pornography’ (March on Times Square,” *MIMN*, (Nov. 1979), 4.

¹¹⁹ See: Cassandra Langer, *A Feminist Critique: How Feminism Has Changed American Society, Culture, and How We Live from the 1940s to the Present*, (New York: HarperCollins, 1996), 34-37. Jane Gerhard, *Desiring Revolution: Second Wave Feminism and the Rewriting of American Sexual Thought, 1920-1982*, (New York: Columbia University Press, 2001), 173-182, and Estelle Freedman, *No Turning Back: The History of Feminism and the Future of Women*, (New York: Ballantine, 2002), 271-272.

¹²⁰ Betty Friedan, *The Feminine Mystique*, 20th Anniversary Edition, [originally published, 1963], (New York: W.W. Norton and Co., 1983).

¹²¹ Strub, “Perversion for Profit,” 399.

against women—particularly sexual violence—pornography moved to the forefront of some feminist’s agendas.¹²²

While the debate spawned by the feminist critique of pornography occupied a large amount of the public discourse on pornography,¹²³ it was largely inconsequential to the growth of the hard-core film industry. This assertion, at first glance, must appear both shocking and dismissive. It is neither. The hard-core industry developed within boundaries set by law, something the feminist critique did not succeed in altering. Only three municipalities, Minneapolis in 1983, Indianapolis in 1984, and Bellingham, Washington in 1989, passed ordinances obviously based on the core feminist critique. In the three instances the laws sought to characterize pornography as an act of explicit subordination of women, and make the production or dissemination of such material a non-criminal offense, a tort. Women who believed that such materials had harmed them could seek redress, in court. In the case of the Minneapolis ordinance,¹²⁴ Mayor Don Fraser vetoed the legislation recognizing immediately that the law violated the First Amendment and would fall at the first legal challenge. A slightly revised ordinance met the same mayoral veto.¹²⁵

¹²² The most influential work tying pornography to rape was Susan Brownmiller’s, *Against Our Will: Men, Women and Rape*, (New York: Simon and Schuster, 1975).

¹²³ See: Catharine MacKinnon, *Feminism Unmodified: Discourses on Life and Law*, (Cambridge: Harvard University Press, 1987); Catharine MacKinnon, “Not a Moral Issue,” *Yale Law & Policy Review*, Vol. 2, (Spring, 1984), 321-345; Andrea Dworkin, *Pornography: Men Possessing Women*, (New York: Perigree Books, 1981); Laura Lederer, Ed., *Take Back The Night: Women on Pornography*, (New York: William Morrow & Co., Inc., 1980).

¹²⁴ Amending Title 7, Chapter 139 of the Minneapolis Code of Ordinances relating to Civil Rights, <http://www.nostatusquo.com/ACLU/dworkin/other/ordinance/newday/AppA.htm>, (accessed Nov. 12, 2007).

¹²⁵ “Around The Nation; Minneapolis Council Fails to Override Veto,” *NYT*, (July 28, 1984).

Mayor William Hudnut, of Indianapolis signed a virtually identical bill,¹²⁶ passed by his city council, into law in 1984. When challenged in Federal court,¹²⁷ the Seventh Circuit Court of Appeals swiftly declared the ordinance unconstitutional,¹²⁸ and the United States Supreme Court affirmed that decision.¹²⁹ In the case of Bellingham, Washington, in 1989, a voter initiative passed, but the when challenged in court it failed to survive scrutiny.¹³⁰

The Indianapolis ordinance received the closest judicial examination. Because of the ordinance's rejection by the Seventh Circuit, a rejection sustained by the Supreme Court, it also offers the best example of what the feminist anti-pornography movement sought through its legislative efforts, and moreover demonstrates the reasons why it failed. Under the ordinance, pornographic expression had to meet only one of several descriptions to fall under the law. Pornography could not "Present women... "as sexual objects who enjoy pain or humiliation; or... who experience sexual pleasure in being raped." Nor could it present them as sexual objects, "tied up or cut up or mutilated or bruised or physically

¹²⁶ Indianapolis, Ind. Code § 16-3(q) (1984). On-line text available at: <http://www.nostatusquo.com/ACLU/dworkin/other/ordinance/newday/AppB1.htm>, (accessed Nov. 12, 2007).

¹²⁷ *American Booksellers Association v. Hudnut*, 598 F.Supp. 1316, (U. S. District Court, Southern District of Indiana, Indianapolis Division) (1984). Also, see: E. R. Shipp, "Civil Rights Law Against Pornography is Challenged," *NYT*, (May 15, 1984), A14.

¹²⁸ *American Booksellers Association v. Hudnut*, 771 F.2d 323, Seventh Circuit, (1985).

¹²⁹ The Supreme Court unequivocally affirmed the Seventh Circuit in *American Booksellers Association v. Hudnut*, 475 U.S. 1001 (1986). As Nadine Strossen notes, "The law so plainly violated fundamental free speech principles that the Supreme Court affirmed the Seventh Circuit's holding through a procedure called 'summary affirmance,' under which the Court did not even receive briefs, hear oral arguments, or issue an opinion." Nadine Strossen, *Defending Pornography: Free Speech and the Fight for Women's Rights*, (New York: New York University Press, 2000), 79.

¹³⁰ *Village Books v. City of Bellingham*, No. 88-1470 (W.D. Wash. Feb. 9, 1989).

hurt...dismembered...truncated or fragmented or severed into body parts; or...being penetrated by objects or animals.” Nor could porn portray women in “scenarios of degradation, injury abasement, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual,” Women could not be, “presented as sexual objects for domination, conquest, violation, exploitation, possession, or use, or through postures or positions of servility or submission or display.”¹³¹

The inescapably subjective language of the ordinance made the Supreme Court’s obscenity opinions appear models of precision by comparison. Severe vagueness alone justified striking down the law. When the American Booksellers Association challenged Indianapolis, it vindicated Minneapolis Mayor Fraser in his decision to veto. There was no chance that the Indianapolis law would survive, the only real question that facing the Federal courts was what grounds to employ when striking it down. Judge Sarah Evans Barker, of the U. S. District Court, Southern District of Indiana, Indianapolis Division, settled the case in a terse, one-paragraph opinion. She held that the material the ordinance targeted “speech, not conduct,” and reached “beyond unprotected obscenity.” Moreover, the government’s interest in “prohibiting sex discrimination” did not “outweigh” the “interest of free speech.” Barker found the ordinance “unconstitutionally vague,” and noted that the “provisions related to coercion and forcing pornography failed to meet requirements for prior

¹³¹ Indianapolis, Ind. Code § 16-3(q).

restraint.” She closed by noting, “The entire ordinance failed for imposing unconstitutional prior restraint on First Amendment expression.”¹³²

Indianapolis appealed Barker’s ruling to the United States Court of Appeals. There, Judge Frank H. Easterbrook’s opinion briskly dispensed with the core feminist position, stating that he was not going to try to “balance the arguments for and against” the ordinance. The fact that the ordinance “discriminates on the ground of the content of the speech” was sufficient for its rejection. After noting that the ordinance completely disregarded the *Miller* guidelines for identifying obscenity, Easterbrook focused on the explicit aim of the ordinance, altering the “socialization of men and women.” The rationale behind the law was that pornographic materials presented an argument; they communicated an idea. The Indianapolis City Council, and the anti-porn feminists who assisted in drafting of the law, found the idea pornography presented to be false and dangerous. Yet, as Easterbrook pointed out, the First Amendment if it means anything “means that government has no power to restrict expression because of its message [or] its ideas.”¹³³ “The state may not ordain preferred viewpoints...the Constitution forbids the state to declare one perspective right and silence opponents.” Later in the opinion, Easterbrook catalogued a list of ideas, “racial bigotry, anti-semitism, (sic) violence on television,” which were both heinous and never completely “answerable” by countervailing speech. Yet, Easterbrook noted that the First Amendment protected them all “as speech, however insidious.” Any effort to list approved or forbidden ideas, he wrote, put the state in

¹³² American Booksellers Association v. Hudnut, 598 F.Supp. 1316, (1984)

¹³³ Easterbrook quoted from, Police Department v. Mosley, 408 U.S. 92, 95, 33 L. Ed. 2d 212, 92 S. Ct. 2286 (1972).

charge of all the “institutions of culture,” making the government “the great censor and director of which thoughts are good for us.”¹³⁴

The Indianapolis law was refreshingly clear about the reasons justifying the ordinance. “Pornography” was a “discriminatory practice” which denied women “equal opportunities in society.” It both created and maintained sex as “a basis for discrimination.” It was because pornography promoted “bigotry and contempt” that women should be able to seek civil redress against pornographers and retailers.¹³⁵ The challenge confronting the feminist critique lay in mounting an argument that defined words or images as actions. Catharine MacKinnon, who along with Andrea Dworkin was a leading proponent of this approach, argued that pornography was “masturbation material.” Because of the way men consumed pornography, “What is real here is not that the materials are pictures, but that they are part of a sex act. The women are in two dimensions, but the men have sex with them in their own three-dimensional bodies, not in their minds alone. Men come doing this.”¹³⁶ The power of pornography to shape the male view of women on a fundamental level was profound. Men learned how to use women, by watching porn, and the lesson became meaningful because masturbation meant that “pornography conditions male orgasm to female subordination.” Pornography told, “Men what sex means, what a real

¹³⁴ American Booksellers Assoc. v. Hudnut, 771 F.2d 323, Seventh Circuit, (1985).

¹³⁵ Indianapolis, Ind. Code § 16-3(q) (1984).

¹³⁶ Catharine A. MacKinnon, *Only Words*, (Cambridge, Harvard University Press, 1993), 17.

woman is.” Pornography identified how a “woman is seen...through orgasm” produced through masturbation. “What pornography means *is* what it does.”¹³⁷

Though the key tenet of the feminist critique—that pornography was inherently an act of discrimination against women—was eventually adopted by the Attorney General’s Commission in 1986, and later by the Canadian Supreme Court in that nation’s landmark case, *Regina v. Butler*, (1992),¹³⁸ its influence on the American hard-core industry was negligible. Perhaps the explanation for the ultimate failure of the critique rests in its essentially unequal treatment of women. Even granting the premise that men learned how to use women through consuming pornography, the remedy the critique proposed was ironically unfeminist. Were some ideas proposed by some pornographic texts so hateful, and women so powerless to resist or respond, that state intervention was required to counter the speech? Carried to its logical conclusion, and the ordinances were a logical consequent of the critique, the anti-porn feminists seemed to be saying that in certain circumstances women could not be trusted to make decisions on their own. For example, the ordinance construed the ‘choice’ to perform in hard-core as being neither voluntary nor a choice. The coercion section of the Minneapolis ordinance stated that even proving a woman performer consented verbally, or actively cooperated, or signed a contract; or made “statements affirming a willingness to cooperate;” or received payment for her work,

¹³⁷ Catharine A. MacKinnon, “Francis Biddle’s Sister: Pornography, Civil Rights, and Speech,” in *Applications of Feminist Legal Theory to Women's Lives: Sex, Violence, Work, and Reproduction*, D. Kelly Weisberg, Ed. (Philadelphia: Temple University Press, 1996.), 70.

¹³⁸ *Regina v. Butler*, 1 S.C.R. 452 (1992).

would not disprove coercion.¹³⁹ As Nadine Strossen observed, this raised significant questions about equality. Women’s actions would be considered “the product of coercion even under circumstances where a man’s decision would be treated as voluntary and consensual.”¹⁴⁰

The anti-porn feminists ultimately failed to achieve their legislative and legal goals, and consequently had negligible impact on the growth of the industry. The adult industry, of course, had no foreknowledge that the courts would so fully dismiss the feminist argument. Consequently, while reaching out to women viewers the industry was usually quite dismissive of feminists articulating the anti-porn critique. Even as the Seventh Circuit was striking down the Indianapolis statute, *AVN* reprinted an article written from the perspective of a consumer of gay hard-core pornography. Using Andrea Dworkin as emblematic of all anti-porn feminists, the author attempted to connect her to religious fundamentalists like Anita Bryant and Jerry Falwell, while conceding that unlike those who claim “a direct line of communication to the wishes and designs of the Almighty,” Dworkin did not. She was, however, aiming to become a “benevolent dictator,” claiming the right to tell others “what we may or may not view or read.” The crux of the article was an impassioned plea for the importance of gay and lesbian porn, as a “textbook” of what a fully developed gay life might contain. Pornography told gay men that there “was more to life than getting beat up or feeling guilty or confused or alone...there was adventure, love,

¹³⁹ “Proposed Minneapolis Pornography Ordinance,” <http://www.mit.edu/activities/safe/data/mackinnon-porn-law>, (Accessed, Oct. 20, 2008).

¹⁴⁰ Strossen, *Defending*, 181. There is also little difference between the anti-porn feminist view of women’s ability to choose freely in the area of hard-core film and the views Jane Addams expressed regarding prostitution seventy years earlier Jane Addams, *A New Conscience and An Ancient Evil*, (New York: The Macmillan Company, 1913).

independence, lust, a banquet of sexual expression, communities, lifestyles, even the hard-edge glint of leather and chrome and sado-masochism.” Personal opposition to demeaning pornography, limited to advocating better more affirming varieties was fine with the author, but a blanket condemnation was not.¹⁴¹

That *AVN* employed a gay voice to defend consumption speaks to its recognition of the rhetorical power of the anti-porn feminist critique. The hard-core industry, at the height of the feminist protest, was actually making some effort to reach out to female viewers. However, a survey of the magazines of the mid-1980s, and especially the imagery they contained, makes it difficult to argue that a full appreciation of women’s desires was guiding hard-core production. On the one hand, there was in a new and appreciable increase in physically attractive male performers in porn. John Paone, an editor at *AVN*, noted the popularity of male porn stars, “who take pride in their bodies and maintain a level of fitness and muscularity, such as Harry Reems and Peter North, was apparent. Moreover, Paone argued that movies geared to a “mixed-gender viewing audience,” had increased their share of the overall market. Films focusing on “romance and caressing,” with “more subtle camera shots,” a euphemism for less emphasis on the pumping piston close up that characterized most hard-core, hoped to achieve arousal without causing offense to female viewers. Paone made the remarkable claim that “60% of all adult film transactions” involved a woman.”¹⁴² This kind of ambiguous assertion suggests multiple interpretations. First, transaction is an ambiguous term. Did Paone mean

¹⁴¹ John W. Rowberry, “In Defense of Porn,” *AVN*, Vol. 1, No. 28, (August 1985), 42.52.

¹⁴² John Paone, “1985: Another AAAA Year for the Adult Film Industry,” *AVNC*, Vol. 1, No. 11, (Jan. 1986), 21.

that in 60 percent of transactions women decided what movies a couple rented? Alternatively, did he mean that the films, at some time, acquired a woman viewer? Clearly female viewers comprised some portion of the audience,¹⁴³ and some filmmakers sought to nourish and grow that market. Candida Royalle, a hard-core performer, started her own line of films with this audience in mind. The women in Royalle's films were strong, and powerful individuals, who invariably initiated sexual encounters and portrayed a highly positive, pro-sex stance.¹⁴⁴ Nevertheless, the industry's efforts at reaching female viewers notwithstanding, the male viewers were still the principal target. Even when fan magazines touted films that a female viewer might find more palatable, the ultimate needs these films met were male needs. When *Adam Film World* recommended comedies to male viewers, the rationale was that the man "might be able to 'laugh her into it.'"¹⁴⁵

Expanding the viewership was only part of the industry's plan for growth; diversification into other mediums of consumption was important too. Cable television offered the possibility of selling slightly edited versions of hard-core film to the cable audience. Here again, privacy, even when accompanied by a reduced level of explicit sex, spurred consumption. Where local laws prevented retailers from offering hard-core tapes, cable proved to be an especially fruitful venue. Edited versions could often pass local censoring schemes, providing retailers with some form of erotic product to sell. A full-page ad from Essex Video, touted its selection of re-

¹⁴³ *Adam Film World* addressed the couples market in Nov. 1986, with a cover focusing on 'couples films,' a lead story, and numerous ancillary articles and reviews throughout the issue. *Adam Film World*, Vol. 11 No. 8, (Nov. 1986), passim.

¹⁴⁴ Georgia Dullea, X-Rated 'Couples Films' Finding a New market," *NYT*, (Oct. 6, 1986), B12.

¹⁴⁵ Carl Esser, "Intro," *Adam Film World*, Vol. 11 No. 8, (Nov. 1986), 5.

worked, cable-friendly videos based on earlier hard-core productions from Essex, Electric Hollywood, and Video Classics.¹⁴⁶

Activism Endures

Anti-porn activists viewed this use of cable with alarm. They identified the violation of the ‘sanctity’ of the home as the key factor, not the sexual content of the films.¹⁴⁷ As the hard-core film audience grew during the 1970s, so too did its increasingly well-organized opposition. While anti-porn sentiment always drew political lines, the political right was particularly adept at deploying social concerns over pornography as part of a larger collection of emotionally powerful issues. Pornography joined busing, abortion, the increasingly visible gay rights movement, and the Equal Rights Amendment, as a useful rallying issue.¹⁴⁸ Organizations concerned with a wide array of these issues arose in the latter part of the decade. Methodist minister Donald Wildmon founded The National Federation for Decency, in 1977.¹⁴⁹ In 1979, Beverly LaHaye started the Concerned Women for America, and the Rev. Jerry Falwell founded the politically powerful Moral Majority. Where the CDL and MIM had been ostensibly non-partisan groups, these 1970s organizations adopted a clear political agenda. During the 1960s in the run up to the PCOP, MIM

¹⁴⁶ “Cable Version: The Profitable Alternative,” advertisement, *AVN*, Vol. 1, No. 34, (Jan. 1986).

¹⁴⁷ “Cableporn,” *MIMN*, (Nov. 1980), 1. “Utah passes Cableporn Law,” *MIMN*, (April 1981), 1. “MIM Target of the Month, Porn and Cableporn—Have a ‘Town-Meeting’ In Your Area,” *MIMN*, (June-July 1981), 3. “MIM Target of the Month, Your Governor re Cableporn,” *MIMN*, (Feb. 1982), 3. “Cableporn Update, Cablers Present at Porno Filmmakers’ (sic) Convention,” *MIMN*, (March 1982), 1. “MIM Target of the Month, Your State Senator re Cableporn,” *MIMN*, (Oct. 1982), 3.

¹⁴⁸ William Martin, *With God on Our Side: The Rise of the Religious Right in America*, New York: Broadway Books, 1996), Sara Diamond, *Roads to Dominion: Right-Wing Movements and Political Power in the United States*, (New York: Guilford, 1995). Jerome L. Himmelstein, *To The Right: The Transformation of American Conservatism*, (Berkeley: University of California Press, 1990). Robert Liebman and Robert Wuthnow, Eds. *The New Christian Right*, (New York: Aldine, 1983).

¹⁴⁹ Renamed the American Family Association in 1988.

had always advocated informing law enforcement and political leaders of community standards, and petitioning Congress to call for an obscenity commission, by the mid-1970s MIM was advising its members to assess the standards of the candidates, and to vote accordingly.¹⁵⁰

As offensive as the public consumption of hard-core was to these groups on the right, the sense that pornography was seeping into the mainstream was even more disturbing. The offense was exacerbated by a question increasingly confronting the anti-porn activist base; what if the community actually tolerated hard-core? No articles in the *MIM Newsletter*, however, raised this possibility at the time of the 1973 *Miller* decision. Moreover, assessing ‘serious’ value was little easier than proving the earlier *Roth* requirement of ‘utter lacking.’ True, *Miller* closed off facile attempts—no longer could live-sex performers in Times Square theaters uncouple every 15 minutes, recite a few lines of Shelly or Keats, and thereby clothe themselves in ‘redeeming value.’ But what of borderline cases? Mainstream Hollywood made the decision to shun hard-core earlier in the 1970s, but some independent producers crowded the margins, and consequently disturbed the activist base. When the publisher of *Penthouse*, Bob Guccione, produced a filmed version of the life of the Roman Emperor Caligula, no one was expecting a family film.¹⁵¹ *Caligula* was both violent and highly sexual, but neither were Malcolm McDowell, Peter O’Toole, Helen Mirren, and Sir John Gielgud a run-of-the-mill porno cast.¹⁵² After principal

¹⁵⁰ “MM Target of the Month, The Candidates—Ask Them Their Stand,” *MIMN*, (June-(July 1976), 3.

¹⁵¹ Sari Gilbert, “Vidal’s ‘Caligula’: Rancor in Rome; ‘Caligula’: The Rancor That Is Rome,” *The Washington Post*, (Nov. 29, 1976), B1, 3, and “Briefs on the Arts: Guccione to Film ‘Vidal’s Caligula,’” *NYT*, (Dec. 15, 1975), 41.

¹⁵² *Caligula*, Directed by Tinto Brass and Bob Guccione, Penthouse Films International, 1979.

photography ended, Guccione shot additional hard-core scenes and edited them into the final cut. Italian authorities declared the film obscene,¹⁵³ and when the film entered the country, U.S. customs officials seized it and turned it over to the Justice Department. Justice screened the film, and rejected the option of filing obscenity charges. Subsequently, MIM ran a set of front page stories calling attention to the film, and Justice's failure to prosecute.¹⁵⁴ In the same issue, they posted the addresses all fifty Governors, listing them as 'Targets of the Month,' urging readers to demand their Governors ask the President to fully enforce all national obscenity laws.¹⁵⁵ Ironically, it was not the artistic value that saved *Caligula*, in some communities, but its political statement, that "absolute power corrupts absolutely."¹⁵⁶

The absence of political support for the industry was not surprising. It did engender resentment, however, from within the industry. In North Carolina, one video store owner worked towards organizing local adult merchants, "Our purpose is to work in a unified manner to protect our rights to buy, sell, rent or lease prerecorded video tapes...and that's regardless of their rating." He did not delude himself about political support, "I mentioned to some politicians that I don't expect them to endorse pornography...but I do expect them to stand up for our constitutional rights."¹⁵⁷ As the political scientist, Kenneth Meiers notes, "A striking phenomenon of morality

¹⁵³ "'Caligula' Obscene in Italy; 2 Sentenced," *MIMN*, (May 1980), 1.

¹⁵⁴ "This Is the Statute," "This Is the Film," and "This Is the Story," *MIMN*, (June-(July 1980), 1-2.

¹⁵⁵ "MM Target of the Month: Your Governor," *MIMN*, (June-July 1980), 3.

¹⁵⁶ "Boston Judge: 'Caligula' Meets Miller Test, Except 'Political,'" *MIMN*, (Dec. 1980), 2.

¹⁵⁷ "North Carolina Retail Group Meets: Outlines Issue vs. State," *AVNC*, Vol. 1, No. 9, (Nov. 1985), 4.

politics is that no one is willing to stand up for sin,¹⁵⁸ whereas, opponents to hard-core seemed to be multiplying and gaining political clout, the political success of the right, particularly after Ronald Reagan's election in 1980, left some the activists with a sense that they were now holding a chit the new administration should honor, and a vague sense of obligation on the part of the White House.

¹⁵⁸ Kevin B. Smith, "Clean Thoughts and Dirty Minds: The Politics of Porn," *Policy Studies Journal*, Vol. 27, No. 4, (1999), 731, Citing Kenneth J. Meier, "Drugs, Sex, Rock and Roll: Two Theories of Morality Politics," Paper presented at the annual meeting of the American Political Science Association, (Washington, DC: 1997), 3.

Chapter 6: Putting Your Product in the Consumer's Hand

Enduring Demand in the Face of Relentless Opposition

This Chapter continues the narrative. Here I address the 1985 Attorney General's Commission on Pornography, the renewed Federal prosecution of hard-core, and the impact of videotape on the hard-core industry. The activist base had sought a new Commission almost constantly since the President's Commission reported that pornography was a minor national problem best solved by the abolition of most obscenity laws, and increased sex education. The Reagan Administration gave the activists the Commission they wanted, and the Commission returned the finding the activists had hoped for. The consequences, however, were a disappointment. Porn, because of videotape, thrived. The grudging toleration many Americans extended the industry sparked a questionable Federal prosecution scheme which eventually failed to curtail the industry's growth. I continue my examination of the industry's trade papers and fan magazines giving special attention to the manner in which they reveal that masturbatory potential was the primary criteria for judging film quality, and how advertisements for masturbatory devices indicate the prevailing purpose behind hard-core film consumption, and the industry knowledge of this purpose.

Anti-porn activists could look back on a mixed record for obscenity prosecutions in the 1970s and early 1980s. One bright spot, however, was the series of Federal cases under the direction of Assistant U.S. Attorney Larry Parrish, in Tennessee. Parrish was able to convict several figures associated with both *Deep*

Throat,¹ and *The Devil in Miss Jones*, in Federal court, in Tennessee. While still involved in his Memphis prosecutions, *The Washington Post* profiled Parrish. He described his pursuit of hard-core films and producers, in part, as simple adherence to duty. He said a U.S. Attorney should not ignore criminal behavior, and thereby impose his personal views about which lawbreakers to prosecute and which to overlook. Of course, all decisions to prosecute criminal activity involve an element of prioritization on the part of the prosecutor. Parrish conceded this, however, and in contradiction of his claim of objectivity, that he especially targeted hard-core, “Because it affects the tone and tenor of society,” the films attacked, “the work ethic, the family.” Parrish estimated the huge size of the market, “15 or 16 million people,” but downplayed the notion that this in any way implied community acceptance, saying it represented “a small percentage of the population, but a lot of money.” Moreover, the potential for community acceptance of pornography disturbed him, “people will start saying ‘Maybe I’m the one out of step.’”²

The industry saw Parrish’s actions in an altogether different light. When, a few years later, the Tennessee Supreme Court threw out an antiporn statute that *AVN* characterized as “obnoxious,” the magazine gave Justice William Fones’ unanimous ruling prominent placement.³ The Memphis prosecutions were exactly the kind of local and Federal cooperation MIM and other groups desired. There was no real possibility of a comprehensive compromise between the industry and the activists.

¹ Richard Rhodes, “‘Deep Throat’ Goes Down in Memphis,” *Playboy*, (Oct. 1976), 107-108, 181-192.

² Henry Mitchell, “The Prosecutor,” *The Washington Post*, (Dec. 10, 1976), D1.

³ “Memphis Prosecutors Anti-Porn Law Thrown Out by High Court,” *Adam Film World*, Vol. 7, No 6, (Sept. 1979), 4.

One side firmly believed they were defending a disintegrating culture from the barbarians,⁴ and the other believed that the forces of repression threatened everyone's civil liberties.

The FBI's undercover Miami Pornography operation (MIPORN 1978-1980) brought home to the industry just how exposed they were to aggressive Federal investigation and prosecution.⁵ MIPORN targeted mob elements involved in both the distribution of allegedly obscene pornographic films and videos and unauthorized duplication and distribution of mainstream Hollywood films. At times, the industry's rhetoric, in response to Federal efforts, reflected a bunker mentality. Bob Barco and Steve Becker, editors of (the film fan magazine) *Video-X*, tried to stir up consumer support when they told their readers that the majority of Americans tolerated hardcore consumption, but warned, "The well-organized minority always triumphs over the passive majority." Likening their opponents to McCarthy, Stalin, and Hitler, Barco and Becker wrote, "So don't get fucked, fuck back!" They urged readers to contact their senator or congressional representative, "and tell them you think it's time the *Federales* called off their anti-sex storm troopers."⁶

Hoping to rally support for his side, Fr. Hill, president of MIM, began a series of nation-wide speaking engagements in 1981, aimed at warning local communities of the threat pornography posed to their way of life. Hill also hoped to use public meetings to gather personal testimonies from various communities in hopes of

⁴ "If You Think Porn Isn't Everywhere..." *MIMN*, (April 1981), 3.

⁵ Wendell Rawls, Jr., "55 Indicted by U.S. as Pornographers and in Film Piracy," *NYT*, (Feb. 15, 1980), A1.

⁶ Bob Barco and Steve Becker, "In Our Opinion," *Video X*, Vol. 1, No. 4, (June 1980), 4.

establishing some definitive statement of ‘community standards’ to prove widespread opposition to pornography in future court cases.⁷ While gathering information, MIM continued to issue pleas to its subscribers asking that they write, wire, or call the Reagan Administration and demand both increased Federal obscenity prosecutions and a new national commission on pornography.⁸ In March, 1983, Fr. Hill, John Cardinal Krol of Philadelphia, Bruce A. Taylor, vice president and general counsel for Citizens for Decency through Law,⁹ Howard Phillips of the Conservative Caucus, the Rev. Donald Wildmon, and Henry Hudson, a prosecutor from Arlington County, Virginia met President Reagan at the White House. Hill called for vigorous enforcement of current obscenity laws, and worried that a memorandum sent by the Attorney General to all U.S. Attorneys encouraging obscenity prosecution laws did not seem to be producing result. Reagan left Hill with the impression he favored the appointment of a national coordinator of pornography prosecutions.¹⁰

The PCOP of the 1960s failed to issue the definitive anti-porn statement the activists had anticipated. A new commission, they hoped, with carefully selected members, would render a more favorable report. The activists had reason to believe that Reagan supported them, at least rhetorically. While effectively maintaining the same low level of prosecutorial intensity as the Carter Administration, Reagan did speak out publicly against pornography. He did so, however, in front of audiences

⁷ “MIM President to Begin National ‘Town-Meeting’ Tour,” *MIMN*, (June-(July 1981), 1. “Extensive Media Coverage on MIM President’s ‘Town’ Meeting Tour,” *MIMN*, (Dec. 1981.), 1.

⁸ “MIM Target of the Month, Attorney General William French Smith,” *MIMN*, (Nov. 1981), 3, and “MIM Target of the Month, President Ronald Reagan,” *MIMN*, (April-May 1982), 3.

⁹ CDL had changed its name but not its acronym.

¹⁰ “MIM Head Asks President Reagan for Enforcement,” *MIMN*, (March-April 1983), 2.

predisposed to deplore pornography, and in advance of his 1984 reelection campaign.¹¹

It was only after his 1984 reelection, in March 1985, that Reagan directed Attorney General William French Smith to convene the Commission. Smith left the Justice department before appointing the Commission members, and the new Attorney General, Edwin Meese, named its eleven members on May 20. Chairing the Commission was Henry E. Hudson US Attorney for the Eastern District of Virginia. The other Commissioners were: Edward Garcia, a Federal District Court Judge from Sacramento, California; Harold Lezar, a former counselor to Attorney General Smith; Frederick Schauer Professor of Law at the University of Michigan; Park Elliott Dietz, Professor of Law and Behavioral Medicine and Psychiatry, at the University of Virginia. Dr. Judith Becker was Professor of Clinical Psychology at Columbia University. Representing the activist base was James C. Dobson, founder of Focus on the Family and Reverend Bruce Ritter, a Catholic priest, and the founder and president of Covenant House in New York, which ministered to runaways. Mrs. Diane Cusack was a market research analyst and president of the Maricopa County Board of Health, in Arizona. Ellen Levine was Editor-in-Chief of *Woman's Day*. Deanne Tilton was president of the California Consortium of Child Abuse Councils.¹²

The Attorney General's Commission on Pornography (AGCP) differed from the earlier PCOP in several important aspects. First, it undertook no independent

¹¹ Ronald Reagan, "Remarks at the Annual Convention of the National Association of Evangelicals in Orlando, Florida," March 8, 1983, and "Remarks at the Annual Convention of the National Association of Evangelicals in Columbus, Ohio," March 6, 1984. Available on line at The American Presidency Project, www.presidency.ucsb.edu. (Accessed Dec. 12, 2007).

¹² Gordon Hawkins, Franklin E. Zimring, *Pornography in a Free Society*. (New York: Cambridge University Press, 1988), 13-14. Also, see: Philip Nobile and Eric Nadler, *United States of America vs. Sex: How the Meese Commission Lied about Pornography*, (New York: Minotaur, 1986), 16-22.

research projects; second, it relied almost exclusively on testimony delivered at a series of public hearing; and third; it had virtually no money with which to operate. The Commission held its hearing in Washington, D.C., June 18-20; in Chicago, July 23-25; in Houston, September 10-12; Los Angeles, California, October 15-18; Miami, November 19-22; and in New York City from January 21 to 24, 1986.¹³ Even before the Commission held its first public hearing, the composition of the commission raised questions among free speech advocates. The appointment of Henry Hudson, who had a strong record of obscenity prosecutions in Virginia, prompted an ACLU spokesperson to remark, “A train marked ‘censorship’...just left the station.” *The New York Times* reported Meese’s appointments to the Commission, and included a not too subtle reference to the PCOP’s refusal to identify a causal link between pornography and crime.¹⁴ This brought a swift response from Fr. Hill, who expressed his hope that the new Commission would validate the findings of his minority report.¹⁵

The Commission added relatively little to what was already known about the effects of pornography or the industry. The Commission’s tactic of using public hearings, the very process Fr. Hill, Rev. Link, and Charles Keating requested of the PCOP, while emotionally satisfying to both witnesses and the activist base, meant

¹³ Attorney General’s Commission on Pornography, *Final Report*, <http://www.porn-report.com/201-porn-report-introduction.htm>. (Accessed May 17, 2006).

¹⁴ Michael Wright, Katherine Roberts, and Caroline Rand Herron, “The Nation,” *NYT*, (May 26, 1985), E4.

¹⁵ Morton A. Hill, S.J., “Panel Should Recognize Threat of Pornography,” *NYT*, (June 12, 1985), A26.

that often the Commissioners often listened to hours of anecdotal accounts.¹⁶ Not everyone who wanted to share their feelings about pornography could travel to the hearing, nor could the Commission have listened to them, if they had. The Commission provided for this eventuality by requesting written statements, letters, and personal expressions of concern. These letters, much like the live testimony, produced ambiguous material.

Interspersed among the requests for stricter enforcement, “See to it that the Satanic and suicidal ‘music’ is also controlled in a Christian and wholesome way,”¹⁷ were descriptions of pornographic materials correspondents wanted suppressed, “Rockporn broadcasts which promote sadomasochism, masturbation, incest, necrophilia, anal intercourse, drugs, suicide and satanism,”¹⁸ and the inevitable reference to Jewish pornographers. “As a person who tries not to look upon Jews critically, it is difficult to overlook the tendency of many to promote pornography in any and every form in all types of media because that is where the money is.”¹⁹ Some writers were unable to describe the materials fully, but hinted that they depicted, “Activities that are too vulgar to describe...things that were forbidden even in the old days of the Bible writers.”²⁰

¹⁶ In particular, see: AGCP, “Part 4: Chapter 1, Victimization,” *Final Report*, <http://www.porn-report.com/401-victimization.htm>, (Accessed, June 21, 2007).

¹⁷ Letter from John and Betsy Abegg, October 22, 1985, Papers of the AGCP, Box 12, Folder: Colorado, National Archives, College Park, MD. (Hereafter AGCP).

¹⁸ Letter from Albert B. and Gloria Consentino, February 14, 1986, Box 18, Folder: New Hampshire, AGCP.

¹⁹ Letter from (Miss) Ferne Zetty, April 17, 1986, Box 20, Folder: Ohio, AGCP.

²⁰ Letter from Mr. & Mrs. Lewis Ross, February 18, 1986, Box 11, Folder: Colorado, AGCP.

One concerned citizen from Lafayette, Colorado was “appalled” after having been exposed to “pornography in it’s vilest form.” She “ached” when she contemplated the “young lives” who had been “forced to witness” this same piece of work. The material dealt with “perversion, homosexuality and ‘aching’ of a young person’s heart.” The writer “strongly” urged the Attorney General to, “enforce any existing laws,” and to “write new laws” to avoid the kind of “abuse” she experienced, “in spite” any “cries of discrimination and free speech.” The writer was complaining about a dinner theater production of *A Chorus Line*.²¹

The Attorney General’s Commission issued its *Final Report* in July 1987. In the immediate aftermath, law professor, and feminist Robin West, neatly sketched out the “danger” to feminism inherent in the Commission’s marriage between anti-porn feminists and conservative anti-porn activists. The “syllogism,” she notes, “is not hard to work out.” Taking the feminist premise that “pornography endangers women’s physical safety, security, and freedom,” and the conservative premise, that it additionally, “endangers the family, marriage, monogamy, and virtue...therefore, women’s physical security, safety, and freedom must depend on the stability of family, marriage, and sexual virtue.” As West pointed out, this is what conservatives have always claimed.²²

Certainly, the hard-core industry saw the Commission as a biased group. John Weston the First Amendment lawyer, who testified before its hearings in Los Angeles, later wrote about his experience. “I felt like I was about to participate in

²¹ Letter from Mrs. Bonita L. Lippold, February 7, 1986, Box 11, Folder: Colorado, AGCP.

²² Robin West, The Feminist-Conservative Anti-Pornography Alliance and the 1986 Attorney General’s Commission on Pornography Report,” *American Bar Foundation Research Journal*, Vol. 12, No. 4, Special Review Issue, (Autumn, 1987), 700.

some sort of charade-like a criminal trial in the Soviet Union-where no matter what I did or what anybody did, the result was preordained.” Skeptical about the Commission’s “sincerity” Weston “wondered what purpose was being served, by his testimony.²³ His main talking points were the standard industry defenses. Hard-core was popular, Weston noted. There were “54,000,000 rentals of adult tapes in the United States in 1984.” It was unjust, he believed, to conflate child-porn (a rare item) with all adult films, and unacceptable for activists to force their “narrow view of sexuality” on the rest of a nation that did not share its view of appropriate sex as “limited to procreation within marriage.” Weston called on the industry to recognize the Commission was “largely a political phenomenon,” and that its, “methodology...composition and...conclusions,” were “ridiculous.” He contrasted the AGCP with the PCOP, which provided a forum of opponents including, “three rabid professional anti-pornographers.” Weston closed with a plea for collective action, to answer every “unfounded” charge the Commission lodged, draw upon “widespread consumer support”, and fight each legal challenge.²⁴ When the Commission issued its *Final Report* in 1986, Weston presented it to the industry as a marketing opportunity. “Millions of Americans will probably rush to acquire that about which they were unaware or not previously consuming.²⁵

The industry’s self-interest no doubt clouded their objectivity about the Commission, but they were not the only observers that saw the proceedings as more

²³ John H. Weston, “It’s the Law?” *AVNC*, Vol. 1, No. 17, (July 1986), 10.

²⁴ John H. Weston, “It’s the Law?” *AVNC*, Vol. 1, No. 17, (July 1986), 10-12.

²⁵ John H. Weston, “It’s the Law?” *AVNC*, Vol. 1, No. 20, (Oct. 1986), 3.

of a public relations exercise than a dispassionate inquiry.²⁶ Legal scholars Gordon Hawkins and Franklin Zimring argue that the Commission was an enactment of public opposition, an opportunity for the administration to be seen demonstrating concern over pornography. However, the Attorney General's Commission was neither a serious attempt at research, nor an effective search for means of curtailing consumption. In large part, the Commission can be seen as an attempt at erasing "the aura of governmental endorsement" of pornography left by the earlier PCOP, which seemed to be a significant motive behind the Commission's boosters.²⁷ While the Commission claimed to have, "examined social and behavioral science research,"²⁸ some of the researchers cited in the *Final Report* claimed that the Commission either misunderstood their research or selectively quoted from it to support conclusions unsupported by the data.²⁹

Conservatives generally welcomed the report.³⁰ However, some of them indicated displeasure that the Commissioners did not adopt an even more explicitly

²⁶ Arlene Carmen, ed., *The Meese Commission Exposed: Proceedings of a NCAC Public Information Briefing on the Attorney General's Commission on Pornography*, (New York: National Coalition Against Censorship, 1987), and Barry Lynn, *Polluting the Censorship Debate: A Summary and Critique of the Final Report of the Attorney General's Commission on Pornography*, (Washington, D.C.: American Civil Liberties Union, 1986). Hendrik Hertzberg, "Big Boobs: Ed Meese and His Pornography Commission," *New Republic*, (July 14 & 21, 1986), 21-24.

²⁷ Gordon Hawkins, Franklin E. Zimring, *Pornography in a Free Society*. (New York: Cambridge University Press, 1988), 225.

²⁸ AGCP, "Part 4: Chapter 3, Social and Behavioral Science Research Analysis, Introduction," *Final Report*, <http://www.porn-report.com/403-porn-social-and-behavioral-science-research.htm>, (Accessed May 17, 2006).

²⁹ Daniel Linz, Steven D. Penrod, Edward Donnerstein, "The Attorney General's Commission on Pornography: The Gaps between 'Findings' and Facts," *American Bar Foundation Research Journal*, Vol. 12, No. 4, Special Review Issue, (Autumn, 1987), 713-736.

³⁰ Fr. Morton Hill died on November 4, 1985, while the AGCP was still conducting its series of nationwide hearings.

morals-based position.³¹ MIM objected to Attorney General Meese’s prolonged silence in the wake of the *Report’s* 1986 publication, naming him their ‘Target of the Month’ and urging readers to let the Meese know that the activist base wanted quick action on the Commission’s recommendations.³² However, even some opponents of hard-core pornography, while agreeing completely with the Commission’s assertions, saw the entire project as ultimately futile. A month after the *Report’s* July 1986 publication, William F. Buckley wrote in *National Review* that the Commission had “accepted a mandate it could not hope to handle.”³³

Although the Commission failed to generate any substantive new data concerning the actual effects of exposure to pornography, several of its recommendations profoundly affected the industry.³⁴ In the *Final Report*, the Commission recommended that Congress direct U.S. Attorneys to concentrate on obscenity cases. Additionally, the *Report* recommended that Congress enact a forfeiture statute, allowing for confiscation of property purchased with the profits from sales of obscene material. Furthermore, the *Report* called for the Justice Department to create an obscenity task force to lead and coordinate prosecutions on both the local and Federal levels. One of the most important recommendations was to make dealing in obscene materials a “predicate” offense under RICO statutes. A predicate offense is an underlying criminal action. The commission of any two of the

³¹ See: Terry Teachout, “The Pornography Report that Never Was,” *Commentary*, Vol. 84, No. 2, (August 1987), 51-57, and Ernest van den Haag, “Outlaw Porn,” *The American Spectator*, Vol. 20, No. 7, (July 1987), 30-32.

³² “MIM Target of the Month: Attorney General Edwin Meese III,” *MIMN*, (Oct. 1986), 3.

³³ William F. Buckley, Jr., “The Porn Report: How to Evaluate it,” *National Review*, (Aug. 15, 1986).

³⁴ The Commission made 92 recommendations in all.

RICO statute's listed predicate offenses within a ten-year period allowed prosecutors to file additional Federal racketeering charges.³⁵ The RICO statute also allowed for the forfeiture of assets derived from criminal activity before conviction. In short, under RICO an accused distributor of obscene pornography could have his business and assets seized upon indictment. This necessarily made mounting a successful defense difficult and forced many individuals to plead guilty to lesser charges rather than attempt a serious defense.

During the remainder of the 1980s, the use of the RICO statute and its forfeiture power would represent the greatest threats to the industry's survival. The Justice Department's National Obscenity Enforcement Unit (NOEU), founded in October of 1986,³⁶ used the threat posed by a RICO indictment to resolve many prosecutions 'successfully' without having to convince a jury that the hard-core material was actually obscene. The NOEU employed an aggressive prosecutorial strategy, often bringing numerous indictments, in alliance with local prosecutors, and often in multiple jurisdictions. This tactic would oblige the producer, distributor, mail-order wholesaler, or retailer to mount multiple defenses in multiple locations, often bringing the charges in venues believed to be favorable to the prosecution and increasing defense costs. As the government was able to outspend any defendant, the government could often compel the accused to enter into plea agreements. The threat of forfeiture meant that the government could often insist upon large fines as part of

³⁵ AGCP, "Part 3: Law Enforcement Recommendations, Chapter 2, Recommendations for the Justice System and Law Enforcement Agencies," *Final Report*, <http://www.porn-report.com/302-pornography-justice-system-recommendations.htm>, (Accessed, June 21, 2007).

³⁶ Philip Sheldon, "Meese, in Move on Pornography, Creates Special Prosecution Team," *NYT*, (Oct. 23, 1986), A21.

the plea agreements, as well as requiring defendants to cease marketing any sexually oriented materials, often to include constitutionally protected R-rated films.

Characterizing the motivations of prosecutors is more akin to psychological analysis than historical assessment. It is safe, however, to divide prosecutors into two rough categories: “regulators,” and “prohibitionists.” A ‘regulator’ would recognize pornographers as valid businesspersons who might need occasional guidance as to where the obscenity line lay, whereas a “prohibitionist” would use prosecutions to indicate that all sexually explicit material was fair game, hoping for a complete purge of such materials from the market.³⁷ However, the fact that the government had to resort to such methods provides evidence of just how widespread and acceptable hard-core consumption had become in many parts of the country.

As early as 1985, United States Attorney Brent Ward had proposed to Attorney General Meese, a “coordinated, nationwide prosecution strategy.” As Ward envisioned the program, the government would pursue, “multiple prosecutions...at all levels of government in many locations.” He believed this could “deal a serious blow” to the industry and “test the limits of pornographers’ endurance.” Aiming to “curtail their operations” and compel them to “withdraw from and refrain from entering geographical markets” where they lacked “community acceptance.” Ward

³⁷ Interviews, phone conversations, and email exchanges with representatives from the defense and prosecutorial sides identify the importance of multiple jurisdictional prosecutions, and the character of the plea agreement requirements. The judicial record at the Federal appellate level, in *PHE v. Department of Justice*, 743 F. Supp 15 (D.C. D.C. 1990), and *United States v. PHE, Inc., et al.*, 965 F.2d 848, (10th Cir. 1992), corroborate the charge that the government pursued multiple jurisdictional prosecutions with the intent to drive companies and individuals from the industry. In a telephone interview with the author on April 27, 2007, Patrick Trueman, a leading prosecutor with the NOEU, maintained there was, “No intention to forum shop.” I am indebted to the legal scholar, Todd Lochner, for the terms denoting the two forms of prosecutors. See: Todd Lochner, “Karma Police: Strategic Behavior in Obscenity Prosecutions,” paper presented at the 2007 Annual Meeting of the Western Political Science Association, Las Vegas, Nevada, March 9, 2007, 26-35, [by permission of the author].

recognized the nature of the pressure these prosecutions would generate. While “profitable as these enterprises may be,” he wrote, there was “a limit to the prison terms, fines and forfeiture of assets” that individuals would be willing to risk. The reasoning behind Ward’s proposals was unassailable: at a stage where the choices are only between bad and horrendous, even draconian penalties might appear preferable to the alternative. The most comprehensive multi-jurisdictional operation was Project Postporn, (1988-1994). Before all the cases worked their way through the courts, Postporn produced more than 130 indictments, some with “multiple defendants.” The government secured more than \$24 million in fines, inventory, real estate, and forfeited property. Bruce Taylor, one of the NOEU prosecutors, asserted that because of Postporn “all known mail order houses stopped sending hard-core obscenity through the U.S. Mails.”³⁸ While the project virtually eliminated an entire level of the hard-core distribution system, industry attorneys Jeffrey Douglas and Reed Lee argue Postporn actually had little impact on consumers. Hard-core film manufacturers and studios merely increased their own in-house mail-order divisions, completely filling the void left by the Postporn’s decimation of mail-order distribution. The consumers, they assert, probably never noticed that the distributors were gone.

Multi-jurisdictional prosecutions effectively ended between 1990 and 1992. One of the largest distributors, Paul Harvey’s PHE Inc.³⁹ decided to fight his prosecution. The Justice Department, in cooperation with U.S. Attorneys in North

³⁸ Bruce Taylor, “History of Federal Obscenity Prosecutions, 1970s-1990s,” document attached to email received by author, May 13, 2007.

³⁹ Paul Harvey Enterprises, (PHE Inc.) does business as Adam & Eve.

Carolina, had been targeting PHE Inc. since the middle of the 1980s. The county prosecutors in North Carolina described the effort as “a total waste of time and law-enforcement resources,” and refused to continue the prosecution. When the Justice Department convinced a “neighboring” county to prosecute, jurors acquitted PHE. Undeterred, a U.S. Attorney secured indictments in Utah. In the wake of the Utah indictment, and in anticipation of prosecution in other states, Harvey sued the Justice Department arguing that the prosecutions were a violation of his civil right to freedom from vindictive prosecution. In the end, the 10th Circuit Court, in Denver, found “substantial evidence” that the prosecutions were part of an “extensive government campaign,” aimed at burdening Harvey with “repeated criminal prosecutions,” to the extent that they chilled his “exercise of First Amendment rights.”⁴⁰

The fact that the Federal government sought to bring obscenity charges in prosecution-friendly municipalities like Memphis and Salt Lake City led the industry to characterize the Federal efforts as a case of the Reagan administration pandering to “right-wing religious communities.” The industry’s position was that if a sufficiently large part of the country disliked hard-core enough to justify prosecutions, the government should try the cases in a major metropolitan center, “where the bulk of our population now resides.” “What intellectual or moral justification” could there be to indict a national distributor in communities where “minimal examples of its product have been delivered?” Why should local standards have national

⁴⁰ Ward’s multiple communications with Meese are part of the judicial record in *United States v. PHE, Inc., et al.*, 965 F.2d 848, (10th Cir. 1992), also see: “The Trials of Adam & Eve,” *Newsweek*, (Jan. 7, 1991), Christopher M. Finan, *From the Palmer Raids to the Patriot Act: A History of the Fight for Free Speech in America*, (Boston, Beacon Press, 2007), 259, and Philip D. Harvey, *The Government vs. Erotica: The Seige of Adam and Eve*, (Amherst, NY: Prometheus Books, 2001), passim.

hegemony?⁴¹ Even bringing charges in predominantly conservative areas, however, did not guarantee success. Cases in Phoenix, and Cincinnati produced “hung” juries. *AVNC* noted, with considerable glee, that both cities represented strongholds for Charles Keating’s CDL.⁴² In cities where anti-pornography activism was comparatively weak, the likelihood of a conviction was even less. A Los Angeles prosecutor bemoaned the difficulties he faced in trying to prove hard-core films violated “community standards.” He characterized one effort as a “disaster,” because the jury started laughing when the prosecution screened the film. “We knew we didn’t have a chance.”⁴³

Local efforts at using zoning regulations to curtail the industry, however, were more successful especially after the Supreme Court indicated a willingness to allow cities to segregate adult business under the concept of secondary effects. Key decisions affecting zoning restrictions on adult businesses, such as *Young v. American Mini Theaters* (1976), and *Renton v. Playtime Theatres Inc* (1986),⁴⁴ introduced the notion of secondary effects. In those cases the Supreme Court held that while restrictions on adult businesses, because of the content of the materials was unconstitutional, cities could prevent a concentration of several adult business in a particular area, or insist that they keep a specified distance from other businesses or

⁴¹ John Weston, “It’s the Law: Obscenity Laws and The Effects on Video Retailers,” *AVNC*, Vol. 1, No. 9, (Nov. 1985), 8, 16.

⁴² John H. Weston, “It’s the Law?” *AVNC*, Vol. 1, No. 13, (March 1986), 6.

⁴³ “Grapevine,” *Film World* Vol. 11, No. 7, (Sept. 1986), 6-7.

⁴⁴ *Young v. American Mini Theaters*, 327 U.S. 50 (1976), and *Renton v. Playtime Theatres Inc.*, 475 U.S. 41 (1986).

residences. The rationale was that adult business led to crime, and a subsequent decrease in the property value of adjacent businesses.⁴⁵

While outside influences, such as selective prosecution, zoning regulations and the cost benefits of video production and distribution were inexorably pushing hard-core towards privacy, the industry was also able to respond to internal crises requiring rapid action. The ‘Traci Lords’ affair illustrated just how quickly the industry could react when confronted with a potentially devastating event. In the summer of 1987, the popular young porn star Traci Lords revealed she had been a minor during most of her career. The industry, virtually overnight and in advance of any legal order to do so, removed products containing Lords from retail outlets and warehouses across the nation. The industry argued, persuasively, that they could not reasonably have known Lords was a minor. Before starting her career, she presented a birth certificate, driver’s license, and a passport, as proof of age. Lords obtained these forms of identification through fraud, something she never denied. She deceived her prospective employers. The passport provided both legal and rhetorical insulation for the industry. The producers and agents could truthfully counter any government charge by pointing out that, yes; Lords duped them, but if the faked IDs “were good enough for the United States,” what chance did the adult film industry have of catching her deception? The discussion in the trade paper revolved around means of avoiding a repeat of the fraud. The suggestion that producers raise the

⁴⁵ The problem with the secondary effects doctrine is that it largely rests upon assumptions. Moreover, the Court has been reluctant to mandate that cities prove the validity of secondary effects before implementing zoning ordinances; cities may rely upon studies done in other cities. As a rhetorical point, some in the industry point out that they are unaware of any municipalities lowering tax assessments on businesses located near adult enterprises. Reed Lee, interview with author, Oct. 27, 2008.

minimum age for performers made some sense, but youth and newness were the prime marketing traits for porn starlets. In the end, the industry realized there was “no fail-safe method” of stopping underage performers from breaking into the business if they were set on doing so. While a potentially damaging incident, the industry was able to maintain a degree of equanimity about the affair, reassuring itself that no one, other than Lords, intentionally committed any crime. As *AVN* put it, “the adult film and video industry acted in good faith, Tracy was acting out her own desires of her own free will, and that is that.”⁴⁶

Giving the Consumer What He Wanted

The second half of the 1980s, while representing a period of profound danger for the industry, because of the aggressive prosecution regime directed from the Justice Department, also reveals the breadth of the industry’s appeal. That the Federal government had to resort to multi-jurisdictional prosecutions, bringing case to trial in conservative communities, and deploy the confiscatory power of the RICO statutes to drive business into plea agreements or bankruptcy, undercuts the notion that significant numbers of Americans were, in fact, eager to ban hard-core materials without exception. In 1986, *Time* magazine commissioned a poll on pornography. Regardless of whether or not the respondents considered pornography harmful, 78% agreed “either strongly or in part” that people ought to be able to buy it. The same poll, however, revealed that 72% wanted a government crackdown on pornography.⁴⁷

These opinions are hard to reconcile, and perhaps it is unnecessary to do so. The

⁴⁶ “Traci’s Age in Doubt; Retailers Pull Tapes,” *AVN*, Vol. 1, No. 41, (Aug. 1986), 8, John Paone, “Editorial: The Traci Effect,” *AVN*, Vol. 1, No. 43, (Sept. 1986), 3, and John H. Weston, “It’s the Law?” *AVNC*, Vol. 1, No. 20, (Oct. 1986), 3.

⁴⁷ “Pornography: A Poll,” *Time*, (July 21, 1986), 22.

uncertainty about both hard-core and acceptable means of suppressing it occupied a widening space in the American mind. The space between easy answers to polling questions and difficult verdicts in courtrooms provided the industry with just enough room to navigate safely.

By 1986, the hard-core industry was in the throes a full-fledged product glut. Sales were high, but the number of producers was also quite large. The number of available videos for rental or purchase decreased the average price that companies were able to charge. At the same time, the industry began to decry the abysmal ‘quality’ of the majority of films.⁴⁸ *AVN* tried to convince retailers, producers, and itself that in the end well produced films would triumph over the shoddy one-day-wonders. Producers were “upgrading their equipment, hiring sound and camera people who know their business,” and trying to make “pictures that grab you by the cojones and don’t let go.”⁴⁹ The belief that videos more closely resembling the films of hard-core’s golden age would supplant the tawdry “shot-on-shit” productions that Jim Holliday constantly disparaged raises the issue of what the customer really wanted from their hard-core films. At the 10th Annual Erotic Film Awards even industry insiders were unconvinced that customers preferred cinema to dirty movies. One critic covering the ceremony recounted a revealing conversation. “About the time *Taboo American-Style* won its third award, my wife (who saw the picture and found it dull) nudged me and whispered, “They forget the public wants twat, not

⁴⁸ John Paone, “Combating the Adult Video Glut,” *AVNC*, Vol. 1, No. 12, (Feb. 1986), 8.

⁴⁹ Marc Kernes, “Shot-On-Video: The Future Is Now,” *AVN*, Vol. 1, No. 39, (July 1986), 16.

plot.” I whispered back, “Yeah, Charlie, we don’t want pussies with good taste, we want is pussies that taste good!”⁵⁰

Gene Ross, an *AVN* editor, took a slightly different view, bemoaning the lost “titillation” that the non-hard-core sexploitation films of the late 1950s and 1960s possessed. He noted that “even in the ‘Golden Age’ of Porn from the mid-70s,” all the adult industry was doing was producing “smoker films on Ben Hur budgets.” He believed that the videos of the late 1980s were little different. “We’re still doing it...getting worse at it, and worse yet we’re getting cheaper with it.” Hard-core in 1987, according to Ross, was often a case of seeing, “how many wet shots and orgasms we can cram over a public toilet seat.” Ross conceded, “That has its appeal surely,” but wondered whether revealing too much, with too much brutal clarity, was not eventually anti-erotic. “Think about it. The imagination is a splendid selling tool.”⁵¹

Customers, however, seemed satisfied with less romance and more pure sex. Assessing audience preferences was clearly in the industry’s interest, but sometimes producers seemed to lose sight of what the audience wanted. When that happened, customers were ready, and sometimes angrily ready, to set the industry straight. When the industry pushed the relatively mild ‘couples’ films, designed to cater to supposed female sensibilities, one male consumer exploded, “After your ‘couples issue’ I almost canceled my subscription. What a lot of bullshit!” The movies were “so sugary they give me a toothache...they’re limp and listless and phony as a rubber dick.” Plot, romance, and relationships were not anything this viewer sought. “I

⁵⁰ “10th Annual Erotic Awards,” *Adam Film World*, Vol. 11 No. 9, (Jan. 1987), 7.

⁵¹ Gene Ross, “Editorial: What a Difference a Little over a Year Makes,” *AVN*, (Sept. 1987), 5.

liked the *Dark Side of the Moon* and *Climax*,” he wrote, because they “cut through the crap and get right to the bone.” “Hard, hot fucking,” was his preference, “not some wimpy poet down on one knee in the moonlight pledging his love in blank verse.”⁵²

This visceral reaction to ‘kinder and gentler’ porn contrasts with the industry’s claim that many of its viewers were women who sought such material. However, these claims also conflicted with the industry’s own statements in the fan magazines. Most of the time the magazines recognized that the consumers clearly sought an erotic charge from their hard-core and found plots a distraction. *Adam Film World* often focused on personalizing the performers for consumers, but did not attempt to present the actors as well-rounded individuals. This was objectification, unembarrassed and undiluted. Hard-core actors, especially the women, were people who “light up the night sky and lent our dreams their warm light.” The magazines described new stars in athletic language, “challenging the Superstars in the center ring.” Female actors were, “nice ‘n’ nasty,” and depicted as able and willing to provide more than “tits and ass” for the viewer. The viewers wanted, or so the magazines apparently believed, “*feelings*, big ones, expressed generously by uninhibited performers.”⁵³ The magazines made it clear that the consumers’ response to the performers was not a sterile, pristine adoration. And the publications acknowledged, in many ways, that they were aware of the masturbatory function of both the films, and the magazines themselves. A special edition of *Velvet Talks*, devoted to “Porn’s Sexiest, Nastiest, Dirtiest Stars,” described itself as the magazine

⁵² “Letters,” *Adam Film World*, Vol. 11, No. 10, (March 1987), 66.

⁵³ “New Faces in Porn,” *Adam Film World*, Vol. 11, No. 11, (May 1987), 8.

that was “making America sit up and take notice...take dick in hand...now get a grip on yourself and enjoy X-RATED DIRECTORY.”⁵⁴

From the earliest days of video’s climb to dominance, the reviews of the films themselves revealed that the industry clearly understood the masturbatory purpose of the films. Tara Alexander, a would-be porn star⁵⁵ who reviewed hard-core for *Cinema-X*, praised *Anal Party Showgirl Superstars*⁵⁶ for its masturbatory potential. “Once again, as in all the loops in this Showgirl series, this film is so good I just couldn’t resist joining the action by playing with myself through the entire thing. I know you’ll enjoy it as much as I did!”⁵⁷ A month later, Alexander applied the same criteria to the film *Vanessa’s Lovers: Joys of Erotica*.⁵⁸ “This movie is action-packed from beginning to end and if you’re like me, you’ll want to stop playing with yourself and start playing with someone else!”⁵⁹ Occasionally, the fan magazines dropped the façade and described films, approvingly, in misogynistic terms. “Do not show this film to your feminist friend,” one review read, “for the girls are addressed as ‘bitch’ and asked to ‘lick it up, bitch’ after the guy comes. The girls’ dialogue is limited to

⁵⁴ “Porn’s Sexiest, Nastiest, Dirtiest Stars,” *Velvet Talks*, (Special Edition” X-Rated Directory: Porn’s ‘Dirtiest’ Stars), Vol. 3 No. 8, (Aug. 1987), 2.

⁵⁵ Tara Alexander’s claim to fame was tangential to hard-core film. In the 1970s, Alexander attempted to establish a world record for public sexual intercourse at the popular New York City sex club Plato’s Retreat. Alexander apparently accommodated 86 men over a five-hour period. Despite this impressive display of stamina, Alexander never appeared in hard-core films. Alexander made this claim on Al Goldstein’s late-night cable television program, *Midnight Blue*. *Midnight Blue Collection: Vol. 2, Porn Stars Of The 70’s*, Blue Underground, 2006.

⁵⁶ *Anal Party Showgirl Superstars*, a compilation of loop footage, no director information available, 1980.

⁵⁷ Tara Alexander, “Private Stock,” *Cinema-X*, (Oct. 1980), 30.

⁵⁸ *Vanessa’s Lovers: Joys of Erotica*, a compilation of loop footage, no director information available, 1980.

⁵⁹ Tara Alexander, “Private Stock,” *Cinema-X*, (Nov. 1980), 28.

‘Fuck me!’” *New Wave Hookers*⁶⁰ “isn’t exactly a couples film,” the reviewer warned, “unless your lady is really into down ‘n dirty, degrading hardcore.” What it was “great for” was solitary viewing, “when you’re good and horny.” The customer was advised to “put it on the VCR, get out your nail studded wrist band, and start whacking.”⁶¹

Jim Holliday’s “cardinal rule” for hard-core films was that “a sex film should never lose sight of the fact that it is a sex film.” “The primary purpose,” he wrote, “is arousal, not entertainment.”⁶² Most reviewers adhered to Holliday’s dictum long before he put it into print. In a 1981 review, Lonnie Lester, writing for *Cinema-X*, praised *One Way at a Time*⁶³ for providing the “action we’d all like to see ourselves in—and that’s called true ‘identifying with.’” “Your cock, he wrote, “will not lie to you. This film’s a winner!”⁶⁴ When a particularly erotic film appeared, some reviewers even lost professional detachment, “I have to admit that I momentarily averted my eyes from the screen, for fear of becoming uncontrollably horny, and doing something that I might later regret in front of all my colleagues.”⁶⁵ Perhaps this was just a new way of saying what all the reviews said, at least about ‘great’ or ‘good’ films: this film will make you hard.

⁶⁰ *New Wave Hookers*, Directed by Gregory Dark, VCA, 1985.

⁶¹ P. Katt, “X-Rated Reviews; Our Hot Guide to Coozy Movies!, review of *New Wave Hookers*,” *Samantha Fox’s X-Rated Cinema*, Vol. 9, No. 4, (Aug. 1985), 15.

⁶² Jim Holliday, *Only the Best: Jim Hollidays’s Adult Video Almanac and Trivia Treasury*, (Van Nuys: CA, 1986), 8.

⁶³ *One Way at a Time*, Directed by Alan Colberg, Caballero, 1979.

⁶⁴ Lonnie Lester, “Out of the Can, review of *One Way at a Time*,” *Cinema-X*, (Jan. 1981), 46.

⁶⁵ “Review of Seductress,” *Adult Cinema Review*, Vol. 1, No. 4, (March 1982), 80.

By the early 1980s, even as the theaters were starting to close and home viewing increased, the language describing viewer behavior remained oriented in this fashion. By the mid-1980s, fan magazine references to a film's masturbatory potential became so commonplace that masturbation might have become a metaphor for arousal in general. This sometime resulted in an odd mixture of inadvertent honesty and residual disdain. Nigel Fleming's review of *Captives*, for *Adam Film World* is a good example, "There's enough fucking and sucking in this one to please even the raincoat crowd."⁶⁶ As so many porn films recycled mainstream film plots, mentioning the corresponding 'legitimate' title and emphasizing its heat was often necessary. "First there was *Here Comes Mr. Jordan* then *Heaven Can Wait* and now *Heaven's Touch*, a film so hot and explosive that it'll leave you limp and wet, for you'll surely blast off several times as you watch the good-looking stars cavort through one throbbing sex scene after another."⁶⁷ The large numbers of videos flooding the market meant only a rare few could receive full-fledged reviews. Most contented themselves with short blurbs beneath a still photograph from the film. These blurbs had to catch the eye of the consumer, and inform him of essential information.

In the midst of the glut, the self-described role of the hard-core critic was to help viewers identify films that met their needs. Sometimes this meant a film with crossover appeal. However, even then the reviewer had to assure the single viewer that the film addressed the core purpose of hard-core. "Just when the market has been

⁶⁶ Nigel Fleming, "Video X Best Bets on Tape, review of *Captives*," *Adam Film World*, Vol. 10, No. 1, (April 1984), 52.

⁶⁷ Nigel Fleming, "Video X Best Bets on Tape, review of *Heaven's Touch*," *Adam Film World*, Vol. 10, No. 1, (April 1984), 51.

flooded with cheap videos,” one reviewer remarked, Hyapatia Lee’s *The Ribald Tales of Canterbury*, came along, “to arouse both couples and single horny hands alike.”⁶⁸ Jeremy Stone, an editor with *Adam Film World*, addressed this consumer frankly, in the magazine’s 1987 *Handbook*, when he described this hypothetical everyman, “some lust driven evening...mesmerized at a monument to masturbation, (otherwise known as the adult section of your local video store).” The customer needed to avoid feelings of embarrassment, and above all, he needed to avoid grabbing a “box that looks like detergent and has a *Vogue* caliber model on the front,” or the tape that “everyone is talking about.” The wise consumer relied upon the critic.⁶⁹ The competent critic would guide the consumer to the film most appropriate to that viewer’s needs. In a case where the film’s title revealed the entirety of a film’s plot the critic assured the viewer that the film offered more than met the eye. “Besides pussy-shaving scenes, *Shave-Tail* has broiling fuck and suckathons to tease you to thick, spurting loads!”⁷⁰ The reviewing exercise, however, must have been ultimately frustrating, as one critic remarked, “it rarely matters what tapes they put on the shelves, as long as the box has an eye-catching woman on it.”⁷¹

The fan magazines often competed with each other for pride of place in supplying both accurate assessments of the videos and a sufficient supply of erotic photos within their own pages to satisfy the prurient needs of the consumer. As new

⁶⁸ “X-Rated Videos: Put these Tapes on your VCR and Get Off at Home!” *Samantha Fox’s X-Rated Cinema*, Vol. 10, No. 3, (May 1986), 13.

⁶⁹ Jeremy Stone, “This Could Be You,” *Adam Film World Guide X.-Rated Movie Handbook, 1987 Edition*, Vol. 3, No. 3, (Dec. 1986), 6.

⁷⁰ “Review of *Shave-Tail*,” *Superstars of the X-Rated Screen*, Vol. 2, No. 4, (July 1986), 4. *Shave-Tail*, Directed by Bruce Seven, Ambassador Video, 1985.

⁷¹ Renee Black, “Bisexual Video: a New Genre Emerges,” *AVN*, (July/Aug. 1988), 12.

stars appeared in the industry, magazines rolled them out for examination; much like the auto industry did with new model cars every January. On the first page of the August 1986 issue of *Adult Movies* the editors posted a brief introduction that promised “Patty Petite, and a slew of other fantastic starlets” were “waiting,” inside the magazine. The editors advised the consumer to keep the magazine next to their “VCR for ready reference,” and next to their bed for “happy dreams!” The introduction closed with a command to “blow a load for Patty...she’ll appreciate it!”⁷² The magazine *Velvet Talks* was similarly open about its role as both a guide to masturbatory films and a spur to masturbation, itself. “We’re proud...to showcase these wonder women...let them bare their charms and please you some more, until all the pages are stuck together.”⁷³

Even during the height of the video glut, when developed narrative was becoming far less common, the industry could still complain about or praise a performer for their acting ability. The criterion was believability, as was the case in mainstream film. What is interesting, however, is that critics could pan a poor performance yet praise the film’s ability to arouse, which indicates the relative unimportance of the acting. “Kari Fox,” who critic Jeremy Stone conceded met “all requirements for a perfect fantasy,” was an especially untalented actor. Stone claimed Fox “seemed to deliver her lines by rote,” and from the way Fox kept her eyes closed, Stone guessed Fox had the “words written on the inside of her lids.”

⁷² “I’ve Been Waiting for You,” *Adult Movies*, Vol. 7, No. 5, (Aug. 1986), 3.

⁷³ “Introduction,” *Velvet Talks Special No. 10: X-Rated Directory: Porn’s ‘Dirtiest’ Stars*, (1986), 4.

Notwithstanding this serious failing, Stone praised the film as “a nut-buster, technical problems and wooden acting aside.”⁷⁴

Most reviewers, however, avoided specious criticism of performers; it was too easy. A utilitarian tone pervaded most reviews. An almost formulaic standard appeared in most magazines. One can imagine a new critic receiving a flow chart explaining what he had to supply in a review: ‘tell them the plot, if there is one; tell them the stars, if there are any; and tell them if it will produce an erection.’ The difficulty was probably in finding new ways to say the same thing. In place of superlatives, the critics told the viewers that the film would make them want to masturbate. Four reviews, by three different critics, in the January 1987 issue of *Adam Film World and Adult Video Guide* illustrate the approach. Ed Sullivan reviewed *Mother’s Pride*,⁷⁵ one of a number of incest themed films and videos that appeared in the wake of *Taboo*, and *Taboo, American Style*. “A multiple orgy ensues and the action continues until everyone is worn out. Watch it and wear yourself out.”⁷⁶ Jeff O’Hare lauded the French import *Mobile Home Girls*.⁷⁷ “The scorching action gives this picture more impact than most imports. It’s a roll in the hay while rolling down the continental highway, filled with enough erotic couplings to steam up

⁷⁴ Jeremy Stone, “Review of *Hot Nights at the Blue Note Café*,” *Adam Film World and Adult Video Guide*, Vol. 11, No. 8, (Nov. 1986), 22.

⁷⁵ *Mother’s Pride*, Directed by Billy Max, Diverse Industries, 1986.

⁷⁶ Ed Sullivan, “Review of *Mother’s Pride*,” *Adam Film World and Adult Video Guide*, Vol. 11, No. 9, (Jan. 1987), 32.

⁷⁷ *Mobile Home Girls*, Directed by Francois About and Danielle Gauthier, VCA, 1986.

your glasses and make it hard to keep your hands on the wheel.”⁷⁸ Timothy Morrison commended *Temptation: The Story of a Lustful Bride*⁷⁹ because “the sex is searing,” and although the “acting goes from camp to inept, and the story is just plain silly,” if the viewer was “only looking for a stimulating stag movie,” they were “in luck.” The star of the film, Desiree Lane, was “just the thing to perk up your stag party, even if you’re having it all by yourself.”⁸⁰ Morrison also reviewed *Female Aggressors*,⁸¹ and told the customer that “the ratio of three girls to one guy,” was, “what the picture is all about...It’s jam-packed with scenes of three girls piling on one guy...polypussy for maxisex... Watch it, then go wash your hands.”⁸² The references to masturbation in reviews, and assorted advertising for the films, resulted in a sort of devaluation of the term. The frequency of the references, and therefore the difficulty in trying to say the same thing in new ways led to humor (or attempts), euphemism, and cliché. Ironically, the wider society’s enduring reticence meant that it too was often able to discuss masturbation only in furtive language and off-color jocks.

Nina Hartley, a performer in hard-core films since the early 1980s became a spokesperson for the industry, all the while, continuing her career in front of the camera. While industry advocates defended the films in court by arguing that they possessed serious value, Hartley was refreshingly candid, about the films’ true nature,

⁷⁸ Jeff O’Hare, “Review of *Mobile Home Girls*,” *Adam Film World and Adult Video Guide*, Vol. 11, No. 9, (Jan. 1987), 37.

⁷⁹ *Temptation: The Story of a Lustful Bride*, Directed by Lawrence T. Cole, Now Showing, 1983.

⁸⁰ Timothy Morrison, “Review of *Temptation: The Story of a Lustful Bride*,” *Adam Film World and Adult Video Guide*, Vol. 11, No. 9, (Jan. 1987), 59.

⁸¹ *Female Aggressors*, Directed by Paul Norman, Catalina, 1986.

⁸² Timothy Morrison, “Review of *Female Aggressors*,” *Adam Film World and Adult Video Guide*, Vol. 11, No. 9, (Jan. 1987), 43.

and frankly unapologetic. Conceding the truth behind late 1980s criticisms of hard-core for lacking “production quality,” and plot, Hartley asked whether “the music of Bach” needed “a story to ‘save’ it? Was Charlie Chaplin’s art really trash because his movies lacked dialogue?” Hartley saw nothing wrong with videos that met the masturbatory needs of viewers. “‘Mere titillation’” she wrote, did not need “redemption.” Because of videotapes, consumers were able to see “gorgeous people pursuing pleasure for your entertainment.” Films had different uses, “movies you would put on when company comes...movies you would put on when the company leaves.”⁸³

The symbiotic relationship between the magazines and the producers probably led some reviewers to commend inferior products to consumers. Awareness of this on the part of some critics and perhaps some consumers, led other critics to go out of their way to reassure the viewers that they, at least, had the customers’ best interests at heart. There is no way of knowing how sincere the protestations of independence were, but in the process of making the claim, reviewers could reveal the criteria they thought the consumers used when selecting films. Jeremy Stone, in an answer to readers’ queries about “what it takes to judge an X-Rated movie,” clearly showed arousal was the paramount value. He said he used “The time-tested measuring stick of erotica—the penis.” Stone claimed immunity from the high-pressure sales pitch employed by many studios. Since the “flesh is dumb,” he wrote, “cocks” and here we have to assume he was talking about his own, “aren’t influenced by a raving maniac who sold blenders to emerging nations before deciding to produce adult films.”

⁸³ Nina Hartley, “A Vixen among the Foxes,” *Adam Film World and Adult Video Guide*, Vol. 11, No. 9, (Jan. 1987), 63.

Neither hype, nor a “big-budget” could influence his reviews, Stone claimed. He professed that his criteria for judging films were the same as his readers, who were just as “equipped” to judge films as Stone was. The sole advantage he possessed, “over the general public” was the capacity to “write a review with a raging hard-on.” Of course this was little more than facetious hype. However, what is interesting is the inversion Stone practiced. He did not claim to be impervious to the film’s effect. He did not even affect a dispassionate tone like a man who claimed to buy *Playboy* only for the articles. Stone, like most reviewers in the late 1980s, conceded that there were large quantities of bad films on the market. He apologized for this, but guaranteed to recommend only those films that would give his readers, “a one-way ticket to Bone City.” Hard-core films, because of video, he wrote, “realized their true purpose as masturbatory fodder.” but he deplored those current films for having adopted the “‘put anything into a hole’ approach.” They were, he wrote, as “appealing as watching baby seals bludgeoned for their pelts.” Most consumers were “left tip-toeing through a pasture mined with ‘cow pies,’ hoping for a hard-on.” If the reader would only trust Stone, he promised he would not leave them with, “smelly porno” on their shoes, a “limp dick in one hand,” and the other one cramped “from holding down the fast-forward button,” on their VCR remote.⁸⁴

Hard-core fan magazines directed towards the gay male audience employed virtually identical standards when communicating with their consumers. If anything, by the beginning of the 1990s, gay fan magazines and video guides were even more direct in their recognition of how consumers employed hard-core film. The glut of

⁸⁴ Jeremy Stone, "Intro," *Adam Film World Guide, X-Rated Movie Handbook, 1988 Edition*, Vol. 3, No. 10, (Dec. 1987), 6.

inferior product was, as one might suspect, just as prevalent among the gay films. “The gay porn video market,” wrote John Rowberry in 1991, was at an “all-time low in both creativity and quality.” While “exceptional videos” were available, “substandard” videos in “very nice boxes,” were representative of the majority of offerings. Rowberry’s goal was to help the consumer “separate the packaging from the truth,” and let the viewer know what was “worth watching?”⁸⁵ The magazines utilized imagery from gay hard-core films in much the same manner as their straight magazine counterparts, as marketing tools for film and video producers.

Hard-core video occupied an appreciably different role in gay popular culture than hard-core films in the straight world. Straight audiences were never at a loss for imagery, albeit non-explicit, modeling normative behavior. The relative scarcity of imagery in the wider culture depicting eroticized male bodies and gay sexuality, however, made hard-core films and magazine photos based on the films far more important to gay men. They possessed the potential to serve instructive, identity affirming, as well as erotic uses.

Hard-core film industry magazines geared to the gay male audience came out of a publication tradition rooted in physique or fitness magazines, such as *Vim*, *MANual*, *Trim*, and *Drum*. By the late 1970s, the burgeoning gay magazine industry was increasingly using material from explicit films, in the same manner as their straight counterparts. The focus of the gay magazines using this imagery varied according to the particular interest of the target audience. Some magazines, such as *Advocate Men*, *Numbers*, and *Blueboy* appealed to a broad spectrum of the gay

⁸⁵ John W. Rowberry, “Editorial,” *The Adam Film World 1992 Directory Gay Adult Video*, Vol. 14, No. 3, (Dec. 1991), 3.

audience, and used nude shots, but never showed penetration. Other publications, also avoiding clearly visible penetration, appealed to more discrete tastes. *Drummer* targeted the leather crowd, *Honcho*, emphasized masculine, muscular, hirsute men. *Inches* magazine was for “men who think big.” *Torso* catered to those attracted to well developed, youthful bodies, and the candidly titled *Stroke* offered a little bit of everything. The text in these magazines ranged from mere captions beneath photographs to fiction to contemporary politics to tourism.⁸⁶

Some magazines were direct subsidiaries of hard-core film producers. Falcon Studios, later Falcon Entertainment and currently the largest producer of gay hard-core films, produced its own magazine. Falcon’s magazine changed titles rather quickly. *Dynamo* appeared in 1976, before being re-titled *Falcon File* in 1977 and *Falconers* in 1982. In the late 1980s, the gay hard-core film director, Jerry Douglas⁸⁷ created the magazine *Manshots*, which covered current hard-core releases, earlier films that had acquired ‘classic’ status, as well as providing a retrospective view of the industry by means of interviews and articles.⁸⁸

⁸⁶“How Moral is the Moral Majority?” *Torso*, Vol. 02 No. 02, (August 1983), to the travelogue, “The Vatican Show: Naked Apollo and the Thighs of Hercules,” *Blueboy*, (August 1983).

⁸⁷ Jerry Douglas has been an enduring presence in gay hard-core since the beginnings of the industry. Since his first feature-length production, *The Back Row*, Hand-in-Hand Films, 1972, to his most recent film, *Brotherhood*, Buckshot Productions, 2007, Douglas has consistently garnered awards, introduced new talents who went on to become industry stars, and sought to meld narrative, cinematic skill and high levels of eroticism in his work. Along with William Higgins (aka Wim Hof), Matt Sterling, (aka Brad Chapman, Bill Clayton), and Scott Master (aka Robert Walters), Douglas is part of the founding generation of gay hard-core directors.

⁸⁸ For examples, see: Jerry Douglas, “Interview with Matt Sterling,” *Manshots*, Vol. 1, No. 1, (Sept. 1988); Jerry Douglas, “Interview: Inside Falcon Studios,” *Manshots*, Vol. 1, No. 3, (Jan. 1989); Jerry Douglas, “Interview with John Travis,” *Manshots*, Vol. 2, No. 6, (March 1990); Jerry Douglas, “Interview with Al Parker, Part 1” *Manshots*, Vol. 2, No. 8, (July. 1990); Jerry Douglas, “Interview with Al Parker, Part 2,” *Manshots*, Vol. 3, No. 1, (Oct. 1990); Jerry Douglas, “Interview with William Higgins, Part 1,” *Manshots*, Vol. 3, No. 2, (Dec. 1990), and Jerry Douglas, “Interview with William Higgins, Part 2,” *Manshots*, Vol. 3, No. 3, (Feb. 1991).

Understanding the consumption of gay hard-core film, the growth of the industry, and the film's utility as a masturbatory fantasy device is impossible without placing the films in the context of the 1980s and 1990s AIDS epidemic. Even straight film, by the middle of the 1980s, recognized the substitution potential of hard-core. One 1987 review for the straight hard-core film *Sexscape*⁸⁹ was quite direct, "Taking this video to bed with you is the safest-and maybe the best-sex you can find these days."⁹⁰ Sometimes the safe-sex message was more subtle. A solo photo spread in the June 1989 issue of *Torso's Stallion*, a gay magazine targeting "The New Breed of Rugged Male," contained numerous shots of the featured model wearing a condom over his erect penis, as well as playing with and stretching the latex with his hands and mouth.⁹¹

While gay hard-core provided imagery of beauty and abandon, it did so during a period when large numbers of gay men, possibly to a greater degree than straight individuals, were restricting their sexual behavior. In this sense, gay hard-core facilitated both solitary sex, and group masturbation as a life-preserving alternative. As a side note, neither the gay nor the straight hard-core industries introduced safer-sex practices in film production on a widespread basis until the end of the 1980s. Thereafter, straight hard-core pursued a system of rigorous blood tests to preclude infections through the industry, while gay hard-core employed the extensive use of

⁸⁹ *Sexscape*, Directed by Sonny Max, Caballero Home Video, 1987.

⁹⁰ "Review of *Sexscape*," *Adam Film World*, Vol. 12, No. 3, (Jan. 1987), 37.

⁹¹ "Timmy Unleashed," *Torso's Stallion*, (Vol. 2, No. 4, (June 1989), 46-53.

condoms to prevent HIV infection. The educative role concerning HIV that hard-core film played within the gay community is difficult to overstress.⁹²

Though scholars have devoted considerable attention to the cinematic differences between straight and gay hard-core, the similarity of use is far more striking. Film scholar Tom Waugh notes hard-core film's primary use as being a "privatized, individual masturbation aid, in all categories, including theatrical and arcade."⁹³ Reviews in fan magazines for gay hard-core employed the same criteria (capacity to arouse) as the straight fan magazines. By the middle of the 1990s, safe on the other side of the Reagan and Bush prosecutions, *Adam Gay Video* looked back on 25 years of gay hard-core film, and explained the dearth of historical analysis of the films. "Why bother...when its [pornography] stated purpose is to get customers off strictly in the *here and now* as they watch it?" Pornography had been around, "as long as there have been penises and arms long enough to stroke them."⁹⁴

The Role of Masturbation within Hard-core Film

The films' capacity to arouse and consequently spur masturbation was a marketing point the industry pushed consistently and with ever increasing clarity. Masturbation, as an element of film content, has also been constant. In the stag film era the technical limitations of lighting and focus necessitated a cut in the filming if

⁹² During the 1990s, most gay hard-core films included public service announcements at the start of the video, using industry stars to tout safer sex practices. The campaign used porn stars putting on condoms, and advising all their fans to follow suit, and "wrap it up."

⁹³ See: John R. Burger, *One-Handed Histories: The Eroto-Politics of Gay Male Video Pornography*, (New York: Harrington Park Press, 1995), Tom Waugh, "Men's Pornography: Gay vs. Straight," *Jump Cut*, No. 30, (March 1985), 30-35 and Richard Dyer, "Male Gay Porn: Coming to Terms," *Jump Cut*, No. 30, (March 1985), 27-29.

⁹⁴ "Celebrating 25 Years of Gay XXX," *Adam Gay Video 1995 Directory*, Vol. 2, No.10, (March 1995), 205.

the director wished to capture the man ejaculating. The participants would disengage, camera and lighting would be adjusted and the man would masturbate to produce an ejaculation. Sometimes this footage of masturbation remained in the final print of the stag. Sometimes it would not. Visible ejaculation confirmed male orgasm, and this was always prized. The editing choice to excise the masturbation needed to produce the orgasm left the impression of an even more ‘authentic’ sexual encounter. The idea that the passion between the actors was ‘real’ and that intercourse alone had carried the man to orgasm, has endured as a valued element. In the case of modern hard-core shot on film the decision to edit out the intervening masturbation often endured.

The worst case scenarios in film production (aside from the failure of the man to achieve an erection) entailed either the failure of the man to achieve orgasm at all or premature ejaculation (premature from a cinematic perspective). A premature internal ‘money shot’ was the same as no orgasm.⁹⁵ Shooting on video made the process somewhat easier because the performer could approach orgasm, and after the director indicated it was time for the money shot, withdraw and ejaculate. However, the ability to orgasm on command is a talent given to few. In most cases masturbation occurred after intercourse and prior to ejaculation.⁹⁶ In the case of films that use condoms, this was, of course, inescapable.

⁹⁵ There are a number of films that invert this preference and are marketed to the viewer seeking out so-called “cream-pie” porn. In the case of these films internal ejaculation is intentional. The man then withdraws and the ejaculate is expelled by the woman. Gay porn, because it employs condoms rather than bi-weekly blood test to control sexually transmitted diseases, does not usually make use of this cinematic choice. A small but increasing number of “bare-back” films (condom-free) do exist, and a minority of these incorporate the “cream-pie” format.

⁹⁶ This applies to scenes of oral sex ending in ejaculation as well.

In this sense, it is easy to understand how Linda Williams could write that “very few scenes” in hard-core films contained masturbation,⁹⁷ and if she means scenes where masturbation was the primary sexual act, she is correct. But masturbation actually occurred in almost all hard-core films, and gradually, the retention of the footage showing the man masturbating to produce the ‘money shot’ became a standard element of films. And this provokes consideration. So-called ‘hands-free’ ejaculations were prized as an indicator of authenticity yet most scenes did not depict this. In the gay porn industry, the ability of the bottom, the actor being penetrated, to achieve orgasm without masturbating was similarly prized by viewers and praised by the industry.⁹⁸ The films, straight and gay, supplied scenes of intercourse or oral sex as a spur to masturbation and ended with the male performers masturbating along with their viewers. In this sense, the films reinforced masturbation as a viable and perhaps necessary practice.

Idle Hands...

The repeated references to the masturbatory potential of films and videotapes in reviews support the argument that the industry was well aware of their customers’ likely behavior when watching the films. However, the advertisements in the fan magazines provide additional, and I believe, conclusive evidence. It is impossible to prove that the advertisers believed all of the hard-core audience consisted of what hard-core critic Jim Holliday termed “the lonely guy” who used the films as a

⁹⁷ Williams, *Hard-core*, 127.

⁹⁸ This ability to ejaculate hands-free only slightly outranks a bottom’s ability to maintain an erection while being penetrated. With the significant number of straight men ‘gay-for-pay’ working in gay porn an erection during sex is the visual proof of enjoyment.

masturbatory tool.⁹⁹ Nevertheless, the large amount of masturbation device and phone-sex advertising indicates that marketers believed this hypothetical individual probably made up a significant part of the hard-core viewership. As early as 1964, the *Adam Yearbook*, produced by Knight Publishing an enduring corporate presence in the adult publishing field, carried a tantalizingly vague ad offering, “Uncommon products for married men.” The small box notice informed the readers “Our business is the securing of unique personal items for married men only.” Just what constituted these “hard-to-find products,” was left to the readers’ imagination. “Married men” were invited to “send...for illustrated pictorial catalog and future descriptive mailings.”¹⁰⁰

Ads for “Instant Peter,” “Instant Sex,” and “Instant Pussy,” were a constant feature in pre-hard-core magazines like *Daring Films & Books* and *Fiery Films*. These film magazines also offered equally vague offers for 8 mm films, often in immediate proximity to the sex toy offers.¹⁰¹ The format of the ads for the 8 mm films indicated that the sellers were sensitive to the films’ masturbatory purpose, especially when one considers the accompanying offers for inexpensive hand-held viewing projectors. The projectors ran on batteries, and the ads noted that the projectors came with a “Handy ON/OFF Thumbswitch” which meant the user

⁹⁹ Jim Holliday observed, “I will always stick to the death to this original sound bite: ‘Porn is, was, and always will be primarily the province of the lonely guy.’” Jim Holliday, “A History of Modern Pornographic Films and Videos,” in James Elias, Veronica Diehl Elias, Vern Bullough, Gwen Brewer, Jeffrey J. Douglas, and Will Jarvis, Eds. *Porn 101: Eroticism, Pornography, and the First Amendment*, (Amherst, NY: Prometheus Books, 1999), 343.

¹⁰⁰ “Uncommon Products for Married Men,” *Adam 1964 Yearbook*, (1964), 113. See Figure 1.

¹⁰¹ “Instant Pussy,” “Instant Sex,” “Instant Peter,” *Daring Films & Books*, Vol. 3, No. 2, (1968), 58, and “Instant Pussy,” “Instant Peter,” “Instant Sex,” *Fiery Films*, Vol. 2, No. 3, (1968), 36, 76, 77.

required only one hand to operate the device.¹⁰² By the mid-1970s, the advertisements were far more explicit. The E-Joy-Culator was a handheld masturbation device advertised consistently through the 1980s in several of the magazines I surveyed, both straight and gay. Men were assured they would “never know how wild” their climax could be until they tried the new E-Joy-Culator. The \$15.00 device assured the purchaser “wave after wave of continuous ongoing jolts of excruciating delight!” The “Suck-U-Lator” was a similar device, described as “instant head,” but guaranteed to feel “even better!!” One of the minor, but revealing aspects of some ads is what they avoid saying. The ads often resorted to euphemisms. The Suck-U-Lator ad read, “It duplicates the exotic feeling of a real, expert u-know-what job-but it feels even better!” Unlike the ads from the late 1960s, the “Suck-U-Lator” ad was illustrated. The accompanying artwork carried forward the theme of titillation and the advertiser blacked out parts of the ad, with the ominous note that these deletions were “censored by the publisher...as too wild to be shown in this magazine.”¹⁰³

The “Unique PenisSizer Pleasurizer” promised, “mind blowing sex whenever you want it.” The ad describes the device as “highly sophisticated,” and “space-age.” Just how the device worked is unclear, though it claimed to be “meticulously designed.” Clearly, suction and a custom fitted tube designed to slide over the erect penis were part of the process. The ensuing orgasms supposedly surpassed any “other means of sexual climax.” Moreover, since this device in particular was “custom

¹⁰² “Convertible 8mm/Super 8mm Movie Viewer,” *Flick*, Vol. 2, No. 1, (Jan. 1977), 13.

¹⁰³ “E-Joy-Culator,” *Flick*, Vol. 2, No. 1, (Jan. 1977), 55, “The Suck-U-Lator,” 59, “Free Love Doll,” 64.

fitted” to “fit” the purchaser “forever,” a one-time purchase could potentially afford years of satisfaction. The ad stressed the fact that immediate gratification was available. In this sense, “Pleasurizer” mimicked the increasingly available videotape.¹⁰⁴ “The Ultimate Jac-Package” was an inflatable masturbation device fitted with a vibrator, and was offered in a variety of textured linings.¹⁰⁵ The positioning of most of these ads amongst the film reviews makes it difficult to envision their use as disconnected from the viewing of videos. The films were marketed on the basis of their ability to arouse, and the masturbatory devices were offered to provide relief.

Masturbatory devices simulating oral sex were the most common offering, but for individuals looking for a more full-bodied experience there were options available:

“Life size and oh, so full of life...Her innocent, beautifully molded teenage face is crowned with long silky golden hair...Her 5 feet 2 inches of round, soft and shapely teenage body, plus her perfectly formed breasts make Lolita the most life like doll on the market. Lolita comes complete with built in female organs. Greek features, deep throat open mouth, and soft rounded shapely hips and thighs...Electronic hands and fingers...vibrate, pulsate, gently massage in 100 different positions...Lolita can manipulate her soft pliable hand and fingers into any action position...she can grasp an item as thin as a pencil or as thick as a banana...her hand is remote controlled.”¹⁰⁶

¹⁰⁴ “Mind Blowing Sex: The PenisSizer Pleasurizer,” *Video X*, Vol. 1, No. 4, (June 1980), 53, the same ad can be found in *Numbers*, (Fall 1978), 57, a gay focused magazine.

¹⁰⁵ “The Ultimate Jac-Package,” *Numbers*, Vol. 21, (1979), 71.

¹⁰⁶ “Lolita: Teenage Play Girl,” *Flick*, Vol. 2, No. 1, (Jan. 1977), back cover.

Inexpensive sex dolls, often provided free with the purchase of films or other devices, were a constant in the magazines from the mid-1970s forward.¹⁰⁷ *Knight* magazine even contributed an article that touted the popularity and utility of sex dolls.¹⁰⁸ While ads for some masturbatory devices could be quite brief, such as the one for the ‘Electro Pocket Pussy,’ which was “always ready” and “looks and feels like the real thing,¹⁰⁹ or the less alliterative “Artificial Vagina”¹¹⁰ ads for sex dolls tended to be more involved. ‘Dottie’ was a life-sized “personal sex slave” doll who could be relied upon to never “say no!” Purchasers could “use her any way” they wanted. Full-featured, “breasts that are full and firm” an “open mouth” that was an “invitation to love,” the doll even came with a “vagina lightly covered with pubic hair.” Again, there was liberal use of euphemisms in the text of the ad, perhaps in an effort to insulate the advertiser and the magazine from legal action. However, the purpose of the dolls was clear and unambiguous. Dottie came with “Greek style features” that made her “complete in every way!”¹¹¹

The marketers of the sex dolls often strove to create a sense that the items were more than just plastic or foam rubber. The text of many of the ads implied that there could be some form of personal interaction between customer and sex doll. The tactic may have been dictated by the residual effect of the masturbation panic—since

¹⁰⁷ “Free Doll,” *Knight*, Vol. 11, No. 11, (May 1977), 52.

¹⁰⁸ “Dorothy Simon, “The X-Rated Doll You’re Never Too Old To Play With,” *Knight*, Vol. 11, No. 11, (May 1977), 56-60.

¹⁰⁹ “Electro Pocket Pussy,” *Knight*, Vol. 11, No. 11, (May 1977), 69.

¹¹⁰ “Artificial Vagina,” *Knight*, Vol. 11, No. 11, (May 1977), 71.

¹¹¹ “Meet Dottie the Lifesize Teenage Doll,” *Knight*, Vol. 11, No. 11, (May 1977), 73. “Fulfill Your Wildest Dreams With Male & Female Electronic Everything Dolls,” *Porno Movie Girls*, Vol. 1, No. 1, (1976), 93.

masturbation remained socially suspect the use of the doll may have necessitated rhetorical window dressing. Alternatively, it might have been simple marketing hyperbole. I suspect it was both. In any event, the ads attempted to present the act of masturbating into the dolls as more than a mere masturbatory experience. In this sense, the ads for the dolls bear a marked similarity to the porn star profiles that portrayed the actors as intimately concerned with their fans' arousal and sexual happiness. Making a convincing case in a profile that porn stars such as Annette Haven, Ginger Lynn, or Jeff Stryker actually cared whether their viewers achieved sexual satisfaction was easier than convincing buyers that sex dolls cared. The ads, however, attempted to do just that. "I'll give you hour after hour of...Solid Pleasure."¹¹²

By the 1980s, the ads for devices and dolls became so numerous that some magazines were giving over nearly a quarter of their space to them. As the market grew, a clear hierarchy among sex toys became clear. In one 1980 ad, the reader was assured that the doll was "not a cardboard imitation...not a balloon with no sex parts...not an undersized toy...but a genuine inflatable, lifesized simulated sex object with two working love openings." The ad described "Frieda, the Scandinavian Sex Machine" as versatile and compliant. "Frieda" had a "working 7" deep vagina and a tight little 6" bung hole." The buyer could "take her from the front or the back...either way she never says no...& she never gets tired." For a slight surcharge, the customer could buy a model with an "electronically pulsating vagina," pubic hair,

¹¹² "Solid Pleasure," *Cinema-X Review*, Vol. 1, No. 8, (Oct. 1980), 62.

and “filmy” lingerie.¹¹³ A virtually identical device was marketed in the same issue, but described as the “world’s first & only teenage snapping pussy doll.” The complete text of the ad bears examination:

“Her vagina actually contracts & expands like the real thing. Some sex dolls may claim to be realistic, but Suzie beats them all. On command her vagina grips you so tight you’ll have to struggle to withdraw...or she can let loose to make it smooth and easy stroking...with hundreds of variations in between. It’s the most exciting seven inches of womanflesh (sic) you’ve ever imagined. Add to this a realistic, girlish face with eyes that open and close, plus lips that open to accept up to 6 inches of manflesh (sic) in deep throat fashion, and you’ve got all the bed partner any man could desire. And Suzie never “has a headache.” She’s ready to go, night after night, time after time. Tight fitting “Greek” features, too. For those who like a little more variety in their sexual approach, Suzie has a tight little ass that can take whatever you have to offer and give all the pleasure you’d expect. To top it off, her vagina and her ass can be made to quiver with delight, heightening her teasing and stimulating ability to the pinnacle. Suzie’s everything a man could desire a love partner, and she’s waiting for you now.”

The artwork accompanying this specific ad pandered to the same pedophilic interest apparent in the text. The drawing depicted a gamin doll dressed in a short sailor style dress, shoeless with over the calf socks, and ribboned barrettes on her ponytails.¹¹⁴

The inflatable sex doll had clearly become passé. A device offered in *Samantha Fox’s X-Rated Cinema* had to be described itself in terms of what it was not. The solid, “Lovie Pleasure Doll” was “not inflated;” she came with an electronic “vibro-vagina,” and was “not a cheap toy...but the most lifelike love slave imaginable.”¹¹⁵

¹¹³ “2 Hole Inflatable Sexually Functional Love Machine,” *Cinema-X Review*, Vol. 1, No. 9, (Nov. 1980), 75.

¹¹⁴ “World’s First & Only Teenage Snapping Pussy Doll,” *Cinema-X Review*, Vol. 1, No. 9, (Nov. 1980), 85.

¹¹⁵ “Lovie Doll!,” *Samantha Fox’s X-Rated Cinema*, Vol. 9, No. 4, (Aug. 1985), 75.

Male, as well as female, sex dolls soon became standard items. “Marilyn,” solid, not inflated, completely flexible, and “horny,” was joined by “Danny, the bucking young stud.” With a “clean shaven face,” and a head that was “completely removable,” “Danny” had broad shoulders, a large “masculine” chest and “strong” legs. An apparently important selling point about “Danny” was that ‘he’ was “warm to the touch,” and like “Marilyn” completely flexible.¹¹⁶ The toys offered in the magazines became increasingly high tech, as the 1980s progressed. Of course, exaggeration was the primary characteristic of most of the advertising associated with these products.¹¹⁷ The sex doll ads were, if possible, even more hyperbolic than the toy ads, though they too maintained a rough constancy through the years.¹¹⁸ In the case of the dolls, the marketers tried to apply ethnic characteristic to the dolls, playing off of sexualized national stereotypes. Various colored wigs and suggestive national costuming, were the only actual differences between “Ingrid,” “Dallas,” “Frenchy” and the original Love Doll, consumer fantasies had to do most of the work. The customer could purchase the dolls for \$39.95 each, or any three for \$90.00.¹¹⁹

¹¹⁶ “Completely Flexible...Horny Sex Dolls,” *Porn Stars*, Vol. 1, No. 4, (Nov.-Dec. 1980), 71, and “Never Be Alone Again!” *Porn Stars*, Vol. 1, No. 4, (Nov.-Dec. 1980), 69.

¹¹⁷ “Sexciting Sex Aids,” *Cinema-X Review*, Vol. 1, No. 10, (Dec. 1980), 16, “Imagine a Blow Job any time You Desire!” *Cinema-X Review*, Vol. 1, No. 10, (Dec. 1980), 81, “Life Like Climax Vagina,” *Cinema-X Review*, Vol. 1, No. 10, (Dec. 1980), 83, “Hot lips,” *Cheri*, Vol. 5, No. 7, (Feb. 1981), 81. “Inflate With Air or Water Artificial Vagina,” *Velvet Talks Erotic Guide*, Vol. 4, No. 4, (April 1982), 98, “E-joy-cu-Lator,” *Euros Porn Stars*, No. 3, (1983), 12, “The MOUTH Sucks,” *Euros Porn Stars*, No. 3, (1983), 77, “Valentine Products, An Invitation to the Sexual Adventure of your Life,” *Samantha Fox’s X-Rated Cinema*, Vol. 9, No. 6, (Nov. 1985), 10, “The Famous Extras-X,” *Samantha Fox’s X-Rated Cinema*, Vol. 9, No. 6, (Nov. 1985), 5, “World’s Best Jack-Off Machine Goes All Electric!” *Superstars of the X-Rated Screen*, Vol. 2, No. 4, (July 1986), 52.

¹¹⁸ “The Ultimate in Life-Size Love Dolls, Playgirls,” *Cinema-X Review*, Vol. 1, No. 10, (Dec. 1980), 23. “Solid Pleasure Life Size, Revolutionary Not Inflated Sex Doll,” *Cinema-X Review*, Vol. 1, No. 10, (Dec. 1980), 77.

¹¹⁹ “Oh You Beautiful Dolls...so hot, tight and ready for action!” *X-Rated Directory: Porn’s ‘Dirtiest’ Stars, Special*, No. 10, (1986), 82.

The number of phone sex lines also increased in volume during the mid-1980s, and then remained constant at a high level. Ads highlighted the appeal of a live person with whom the customer could interact, albeit at a distance.¹²⁰ One service described itself as “The service that makes you feel special!” Callers were invited to envision the tele-sex workers, “snuggled at home in our beds...wet, wild, willing...waiting,” for the customers’ calls.”¹²¹ The ads promised “purring, cum-hither voices of beautiful nymphomaniacs in heat,” as being are only a dial away. Making the nature of customer’s call blatant, the ad assured that “with less wrist than it takes to get a good handjob,” the caller could access “super sexy girls and listen to them talk dirty in your ear...in the privacy of your home.”¹²²

Finally, articles in the magazines, by the late 1980 were discussing pornography-assisted masturbation in terms nearly identical to the most fevered language employed by Anthony Comstock, except with approval. The justification of masturbation, in lieu of a sexual relationship with a real person, became almost mundane. “You can’t get a date. Susie’s washing her hair. Jane is changing her shelf paper. So, tonight you’re getting it on with the wet and sticky girl of your fantasy.”¹²³ Any attempt at passing off pornography as anything other than masturbation material receded. “As long as there has been photography, there have

¹²⁰ “Tele-sex, get off over the phone,” *Adam Film World*, Vol. 7, No. 5, (July 1979), 17.

¹²¹ “Michelle’s TeleClimax,” *Cheri*, Vol. 5, No. 7, (Feb. 1981), 65. “Sex Calls,” *Adam Film World Annual Guide to X-Rated Movies & Video*, 1983 Edition, Vol. 1, No. 8 (May 1983), 32. “CUMfort Home Phone Service,” *Adam Film World*, Vol. 9, No. 6, (June 1983), 60.

¹²² “Phone Sex Hotline,” *X-Rated Directory: Porn’s ‘Dirtiest’ Stars*, Special No. 10, (1986), Vol. 2, No. 4, (July 1986), back cover.

¹²³ Michael Benson, “Eight Decades of Adult Erotica: Filth Wasn’t So Much Fun in the First Half of This Century!” *Stag’s Adult Erotica*, Vol. 38, No. 2, (Feb. 1987), 44-45.

been pictures designed to help the lonely guy successfully yank his twizzler.”¹²⁴

Even the long-established excuse for the pornography of the 1920s and 1930s—it was really just material for artists too poor to hire live models—was raised and as quickly dismissed. The author of one article, scanned a sample from the 1930s, and deconstructed the rhetorical camouflaging:

“We wish our magazine to be an essential for artists everywhere—we want them to look forward to each issue as a source of decided inspiration and is a help in their regular routine of artistic life. Just as a novelist or dramatist must read extensively, an artist should see many, many pictures. In our monthly issues we aimed to present more idea-creating pictures than any other magazine in America.”

This section, the author noted, was able to “promise a hard-on while simultaneously functioning as a legal disclaimer.” Even in the 1930s, the ads revealed the genuine purpose of the explicit materials, “the only concession to sex’s existence comes in the back, in the advertisements... ‘Rubber Goods of Every Description.’”¹²⁵ The 1980s ads had the advantage of a offering their wares with a refreshing dose of candor.¹²⁶

Gay magazines, as in the case of their film reviews, mimicked the straight publications in respect to masturbatory devices. Although, it should be noted, gay magazines were a little bit ahead of the straight magazines in terms of explicitly pushing masturbatory devices. Technological innovation came to the gay publications in the 1970s. Also, the range of devices necessarily spoke to a wider

¹²⁴ Benson, “Eight Decades,” *Stag's Adult Erotica*, 46.

¹²⁵ Benson, “Eight Decades of Adult Erotica,” 60.

¹²⁶ “Get your rocks off...Vibrobator,” “Pulsating Vibrobator,” and “Sexercise your Weapon...Super Ejaculator.,” *EFG's Guide to Adult Film Stars*, Special, (Dec. 1987), 129.

range of sexual behaviors.¹²⁷ Phone sex lines,¹²⁸ toys,¹²⁹ and sex dolls, however, easily crossed the boundaries of sexual orientation. Like Gretchen, Lovie, Ingrid or Frenchy, “Big John”, the “Perfect Male Companion,” came with a variety of options. The standard version had two serviceable openings, and an always erect penis; a slight up-tick in price ensured the penis vibrated, and the deluxe model “ejaculates...at your command.” Again, as with the female love dolls, the customer was assured “Big John” was not a toy, “but a complete doll for the serious adult.”¹³⁰

By the end of the 1980s, even while the Federal courts were debating whether the Justice Department’s last-ditch prosecutorial tactic of multiple jurisdictional indictments RICO based confiscations and plea-bargain driven forfeitures were a constitutional means of suppressing the traffic in hard-core pornography, the films, via videotape, moved into the mainstream of American culture. Driven from the public space of the movie theatre, stripped to its essentials by the financial imperatives of shooting a full-length film in two days, the films entered the private home in a remarkably pristine and functional form. Away from the prying eyes of others, secure in the warmth of a comfortable chair, and armed with a remote control, which allowed him to fast-forward through any distracting plot, the hard-core consumer, was able to enjoy his pornographic film and masturbate in peace.

¹²⁷ “Vibrating Butt Plugs,” *Blueboy*, Vol. 68, (June 1982), 66, “Gear—Anal Beads, Electro-Rectal Probe, Electro Masturbator,” *Blueboy*, Vol. 68, (June 1982), 68, 69, “Fulfill Your Fantasies, Marksman Productions Vibrators, sleeves, nipple stimulators,” *Mandate*, Vol. 8, No. 7, (Oct. 1982), 87.

¹²⁸ “Hotline Phone Sex,” *Stallion*, Vol. 3, No. 3, (June 1984), Inside Front Cover.

¹²⁹ “The Blowjob,” *Torso’s Stallion*, Vol. 2, No. 4, (June 1989), 14.

¹³⁰ “Big John the Perfect Male Companion,” *Torso’s Stallion*, Vol. 2, No. 4, (June 1989), 60.

Chapter 7: Conclusion: Double Clicking into the New Millennium

Because of an 18th-century medical masturbation panic that reached its peak in the United States in the late 19th-century and then endured, the 20th-century grappled with an obscenity doctrine predicated upon the notion that the state had a compelling interest in preventing masturbation. As technology made consumption of pornographic film an increasingly private activity, the justifications in support of suppression resting on offense became increasingly impracticable. The language of Supreme Court obscenity opinions, starting immediately after the 1957 *Roth* decision, obscured the central fact that pornographic film consumption was a masturbatory act. Pornography's capacity to offend and its supposed worthlessness were additions—glosses—to this principal rationale behind suppression. Although these embellishments gave the appearance that the Court was narrowing the meaning of obscenity, in truth they disguised the persistence of a cultural uneasiness with masturbation. The irony was palpable: obscenity doctrine derived from a publicly articulated cultural aversion to masturbation, yet the hard-core film industry thrived most when it provided a product that efficiently facilitated private masturbation.

This dissertation concludes that the hard-core film industry moved into mainstream culture by 1990 because of several interrelated factors. First, the industry provided a product manifestly desired by a significantly large and growing number of Americans. Hard-core met a variety of needs: arousal and entertainment being the principal ones, but additionally it served the needs of educational, and community formation. This was especially true of gay male pornography, which often provided

the only film representation of gay sexuality for that community. Even after decades of rigorous prosecution of producers and retailers, and the virtual destruction of one whole level of the distribution network, sales and rentals continued to increase until leveling off at the end of the 1980s.

Second, the industry through adopting videotape technology in the early 1980s moved hard-core film from the highly contested public space of the motion picture theatre to the more easily defended private space of the home. It was through this relocation that the industry experienced its greatest growth and consolidated its place in American culture. This relocation significantly reduced hard-core film's blatant and offensive presence in the public space—while doing nothing to reduce its availability. This relocation actually increased opportunities for consumption. By lessening the unsought imposition of hard-core film on unwilling members of the public, the relocation privatized pornographic film use, eliminating one of the more compelling arguments against the industry. The more effective the films were in arousing viewers and the more secret the consumption the more the industry grew.

Third, the nature of the debate over hard-core pornography favored those defending consumption. While opponents emphasized pornography's putative harms empirical evidence for these claims never rose above the anecdotal level. In the case of the radical feminist critique, the claim of harm remained largely theoretical. Absent compelling evidence of physical harm, opponents also relied upon arguments imputing moral damage to the films. Within the context of the sexual revolution, reliance upon a traditional normative sexuality often failed to convince jurors who were necessary for obscenity convictions. While the anti-porn feminist movement's

adoption of an equal rights rationale for suppression offered the opportunity for an unstable alliance with traditional anti-porn activists it proved wholly ineffective in constraining industry growth. In a practical sense, this was because the Federal courts consistently rejected the feminist premise that the expression of an idea constituted an action. Even on a rhetorical level, the feminist critique was unconvincing. It failed to convince appreciable numbers of customers to turn away from hard-core materials. Whether this was because of the manner in which anti-porn feminists articulated their critique, or because the consumers could not reconcile the assumptions embedded in the critique with their personal experience of pornographic consumption, is open to debate. In either case, outside academia or the activist movement the rights based critique was inconsequential.

Fourth, successful prosecution of hard-core films became increasingly untenable. While Federal and state prosecutions increased during the 1980s, prosecutors could no longer rely upon juries to return guilty verdicts. At the heart of the problem lay Justice Brennan's 1957 decision to identify obscenity in terms of a material's appeal to prurient interest. While *Roth* reflected the cultural residue of a two-century long masturbation panic, Brennan's opinion reified cultural attitudes regarding masturbation into existing obscenity law even as those attitudes were being challenged in society. Over the ensuing decade, the politically charged atmosphere surrounding pornography made it difficult for the Court to abandon prurience as the core characteristic of legal obscenity. Instead, the Court tinkered with its obscenity doctrine. By 1969, prosecutors were being made to prove a negative assertion: that alleged obscene material was utterly "without" redeeming value. Logically, this was

impossible. By 1973, Brennan conceded that the *Roth Test* was no longer viable. He believed that any formula the Court contrived would necessarily include constitutionally protected expression. After the 1973 *Miller* case, the use of local community standards to define obscenity should have made prosecutions easier. Instead, most jurisdictions actually required prodding from either activists or the Federal government before initiating cases. This prodding reflected a certain degree of circularity, with activists calling for government action and the presence within the government of many from the activist movement. However, notwithstanding the resurgence of politicized religious fundamentalism and a string of conservative appointments to the Supreme Court, a cultural change had occurred in enough of the country to make obscenity convictions problematic. Successful defenses, in more tolerant regions of the country, also subtly undermined resolve among many municipalities.

The hard-core industry, buoyed by their successes and confident in their understanding of their consumer, employed its various publications to create a sense of community, assure customers that the best films were sexually arousing, and that this was right and proper. Industry publications also advised and cautioned producers, distributors, retailers, and patrons. They touted every legal victory and effectively rallied their audience by constantly reasserting the widespread, mainstream popularity of hard-core films and the censorious motives of their opponents.

By 1985, the judicial rationale behind suppression lost a major pillar. The Supreme Court clarified itself on the matter of prurience in *Brockett v. Spokane*

*Arcades, Inc.*¹ In this case, the Court narrowed the meaning of prurience to encompass “shameful or morbid” lust, but explicitly exempted materials that appealed to “normal” lust. As might be expected, they did not define “normal.” From that point forward, proving that a film appealed to a shameful morbid interest in sex became progressively more difficult. At roughly the same time, the Federal government embarked on a prosecutorial system of questionable legality. Forum shopping and multiple jurisdictional prosecutions were increasingly necessary to achieve success in court. Even then, however, comparatively few cases ended successfully because juries found materials legally obscene. Plea bargains driven by financial necessity on the part of the accused accounted for the majority of prosecutorial victories. After 1993, the Justice Department agreed to stop multiple jurisdictional prosecutions once Paul Harvey Inc. aggressively and successfully fought the practice in Federal court. Additionally, the Clinton Administration decided to focus its attention on child pornography, rather than pursuing conventional hard-core materials. By 1994, even Patrick Trueman, former Chief of the Justice Department’s Child Exploitation and Obscenity Section (CEOS), conceded that the battle was lost.²

While anti-porn activists continued to call for strenuous prosecution, the post 1993 era was a period of nearly unfettered growth for the industry. By the time George W. Bush, who campaigned on a promise to resume pre-Clinton levels of prosecution, assumed office it was impossible to reverse the gains the industry made.

¹ *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491 at 494, (1985).

² Patrick Trueman, “The Pornographers Have Won,” Op-Ed, *The Washington Times*, (Sept. 19, 1994), A21.

While Bush Attorneys General John Ashcroft, Alberto Gonzales, and Michael Mukasey promised to resurrect prosecutions, and brought Reagan era Justice Department officials back into government service, they only pursued extreme varieties of hard-core film. This concentration on ‘extreme’ hard-core—a label as elusive as obscenity, pornography or hard-core—infuriated the anti-pornography activist groups, as it implicitly recognized the cultural toleration of hard-core within the mainstream culture.

While the economic data remains incomplete and contested it is evident that in the years since 1990 the industry became incredibly profitable. A 1997 article in *The Economist* estimated the industry’s annual U.S. revenue at \$2.5 billion.³ By 1998, *Time* magazine put revenue in the area of \$4.2 billion.⁴ By 2001, *The New York Times* claimed that hard-core films generated \$10 billion per year in the United States and situated the industry within a sex-related economy of approximately \$15 billion.⁵ This claim was widely quoted in many sources since.⁶ *Forbes* magazine, however, almost immediately countered the *Times* with a detailed online rebuttal by Dan Ackman that placed film revenue in the \$500 million to \$1.8 billion range. When Ackman added all pornographic materials together, he reached a figure between \$2.6

³ “The Sex Industry,” *The Economist*, (Feb. 14-20, 1997), 21-23.

⁴ Joel Stein, “Porn Goes Mainstream,” *Time*, (Sept. 7, 1998), 54-55.

⁵ Frank Rich, “Naked Capitalists: There’s No Business Like Porn Business,” *The New York Times Magazine*, (May 20, 2001), 51-56, 80-81.

⁶ See: Paul S. Boyer, *Purity in Print: Book Censorship in America from the Gilded Age to the Computer Age*, (Madison, WI: University of Wisconsin Press, 2002), 345. Jessica Spector, ed., *Prostitution and Pornography: Philosophical Debate About the Sex Industry*, (Stanford, CA: Stanford University Press, 2006), 1. Linda Williams, ed. *Porn Studies*, Durham, NC: Duke University Press, 2004), 2. Stuart Biegel, *Beyond Our Control?: Confronting the Limits of Our Legal System in the Age of Cyberspace*, (Cambridge, MA: MIT Press, 2003), 79.

and \$3.9 billion.⁷ However, Eric Schlosser notes *Forbes* had printed an article⁸ a few days before the Ackman rebuttal that estimated hard-core revenue at \$11 billion per year. Schlosser believed it was a “reasonable” assumption that out of the estimated \$25 billion Americans spent on renting “videos and DVDs...anywhere from one-tenth to one-fifth of that money was spent on porn.”⁹

Whether hard-core generated \$4 billion or \$15 billion, revenues had significantly improved over the \$5-\$10 million annual figure the President’s Commission on Pornography attributed to all hard-core films, photos and magazines in 1970.¹⁰ This level of profitability brought its own variety of acceptance from corporate America. Connections between well-known mainstream corporations and the porn industry blossomed during the 1990s. On a mundane level, payment-processing agreements between major credit card companies and adult websites established the financial mechanism that enabled hard-core to thrive on the internet. The hospitality industry provided another opportunity for mutual benefit. During the 1990s, hard-core film became available in most nationwide hotel chains and over almost all cable television systems. The willingness of major hotel chains such as Sheraton, Hyatt, and Hilton, and established companies like General Motors and Time Warner, through their cable holdings, to supply porn to Americans illustrated

⁷ Dan Ackman, “How Big Is Porn?” *Forbes.Com*, (May 25, 2001), http://www.forbes.com/2001/05/25/0524porn_print.html, (accessed, March 23, 2007).

⁸ Davide Dukceovich, “Stock Focus: Adult Entertainment Companies,” *Forbes.Com*, (May 23, 2001) <http://www.forbes.com/2001/05/23/0523sf.html>, (accessed March 23, 2007).

⁹ Eric Schlosser, “An Empire of the Obscene,” Chapter 3 in Schlosser, *Reefer Madness: Sex, Drugs and Cheap Labor in the American Black Market*, (New York: Houghton Mifflin, 2003), 283-84.

¹⁰ President’s Commission on Obscenity and Pornography, *Report of the Commission on Obscenity and Pornography*, (Washington, DC: Government Printing Office, 1970), 18-19.

mainstream corporate acceptance.¹¹ By October 2000, *New York Times* could write “General Motors...now sells more graphic sex films every year than does Larry Flynt.”¹²

The corporate relationship with hard-core was not without its downside. Activists objected to the links between big business and porn, and the objections only increase when porn itself became a big business. It was probably most galling when old friends were seduced. On January 17, 2008, protesters from Morality in Media demonstrated outside the National Press Club in Washington, D.C. Bill Marriott, Jr. the CEO of the Marriott International hotel chain was a featured lunchtime speaker.¹³ Marriott International likely drew special attention from MIM because the founder of the chain, J. W. Marriott, had been an active supporter of MIM. The senior Marriott, a devout Latter Day Saint, sat on the MIM’s National Planning Board from 1979 until his death in 1985. Within 7 years of his death, however, pay-per-view porn had become a significant revenue stream for his hotels.¹⁴

¹¹ Barton Gellman, “Recruits Sought for Porn Squad,” *Washington Post*, (Sept. 20, 2005), A21.

¹² The automotive giant owned the satellite television business DirecTV, and sold “nearly \$200 million a year in pay-per-view sex films.” Timothy Egan, Technology Sent Wall Street into Market for Pornography, *New York Times*, (Oct. 23, 2000), A1, A20. GM was a major supplier of porn films until 2005 when it sold its share in DirecTV to Rupert Murdoch’s News Corporation, the parent company of Fox TV. Jim Brown and Pat Centner, “General Motors says ‘Goodbye’ to Porn,” *American Family Association/Agape Press*, (April 15, 2003), <http://headlines.agapepress.org/archive/4/afa/152003b.asp>, (accessed Oct. 24, 2007).

¹³ Eddie Adams, “Anti-Porn Group Pickets Marriott CEO” *Adult Video News*, Jan 18, 2008, <http://www.avn.com/index.cfm?objectid=8E3F089F-A183-C574-16E7BBBFB7688D86> (accessed January 22, 2008).

¹⁴ “J. W. Marriott on MM Planning Board,” *Morality in Media Newsletter*, (April 1978), 1-2. “An Open Letter from Morality in Media President Bob Peters to Marriott International CEO Bill Marriott: Get Rid of the Porn,” Dated July 23, 2007, *Morality in Media*, Current News and Issues Section, <http://www.moralityinmedia.org/> (accessed January 22, 2008), “Another Letter Regarding Porn Channels provided at Marriott Hotels,” Dated January 11, 2008, *Morality in Media*, Current News and Issues Section, <http://www.moralityinmedia.org/> (accessed January 22, 2008).

Aside from demonstrating the transitory nature of alliances, the protest revealed the waning political utility of anti-porn activism. An ancillary target of the Marriott protest was former Massachusetts Governor and former Marriott Board member Mitt Romney. Romney served on Marriott's board from 1992 until 2001, but the anti-porn attacks came as he was repackaging himself as the more authentically conservative alternative to John McCain. When questioned about distributing pornography, Romney answered, "I am not pursuing an effort to try and stop adults from being able to acquire or see things that I find objectionable; that's their right."¹⁵

The advent of the internet in the 1990s offered further opportunities for the industry to grow. Again, the key elements in the growth were immediacy and privacy. First, the massive collection of hard-core material produced since the dawn of the 20th-century was readily available for digital conversion. Since virtually all the hard-core material made before 1970 remained unprotected by copyright those films were rapidly digitalized and posted to the web. Filmmakers continued to produce hard-core movies for sale or rental through so-called 'brick & mortar' establishments, but also offered these new works over the internet as well, either through direct sales

¹⁵ Glen Johnson, "Romney Criticized for Hotel Pornography," *The Washington Post*, July 5, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/05/AR2007070501305.html> (accessed January 22, 2008). Also see: Max Blumenthal, "The Swift-boating of Mitt Romney," *The Nation*, July 16, 2007, <http://www.thenation.com/doc/20070730/Blumenthal> (accessed January 22, 2008), and Josh Montez, "Romney's Ties to Porn Money Called into Question," Focus on the Family Action, (July 5, 2007), <http://www.citizenlink.org/fnif/A000004973.cfm> (accessed Jan. 22, 2008). Focus on the Family Action is a 'cultural action organization' that while legally separate from Focus on the Family is also a creation of Dr. James Dobson, formerly of the Attorney General's Commission on Pornography.

or in the form of downloadable files and streaming video.¹⁶ The widespread availability of personal computers capable of swiftly downloading digital film files or streaming video moved consumption from the television to the computer screen. Filmmakers posted films or scenes from films to websites and charged a nominal fee for access.

The movement of hard-core film onto the internet allowed the industry to both serve a wider audience and limit its potential liability when it supplied materials to intolerant areas of the country. While bypassing the postal system did not eliminate the problem of Federal or local prosecutors indicting distributors for distributing obscenity, it complicated the issue profoundly. A filmmaker in California could, by the turn of the 21st-century, shoot a scene and post it on a website. Pornographic material often never physically rested on a store shelf or passed through a post office. Absent surveillance of a customer's internet traffic, no one would know who watched hard-core other than the consumer and the seller. Computer porn reached customers who had found it difficult to locate local retailers and who had previously been unable to receive postal orders because of aggressive local prosecution. Additionally, the internet reached consumers with more esoteric tastes that producers might have ill served because of their relative paucity. A new cost-benefit analysis arose. Producers no longer had to assess quite so closely the cost of videotape manufacturing. Once a scene was shot and posted to the internet customers could locate the material, pay for access, and download. The ability to shift purchases to

¹⁶ Many of the large porn studios, both straight and gay, also offered scheduled live shows. Consumers were able to interact with the performers by posting real-time messages. This consumer interaction ranged from asking the performers to engage in specific sex acts to requests for close-ups.

the internet meant the producer could significantly reduce the likelihood that he would be left with unsold merchandise in his warehouse.

Of course, prosecutors posing as consumers paid for and downloaded material then indicted webmasters for violating local standards. However, the legal terrain became far more agreeable to the hard-core industry by the end of the 1990s. In the face of a growing internet marketplace for porn, Congressional efforts to limit porn's presence on the internet in the 1990s met with limited success. In 1996, Congress passed the Communications Decency Act (CDA),¹⁷ which imposed extremely onerous restrictions on internet distribution of "indecent" materials. The ACLU immediately and successfully challenged the CDA in the United States District Court for the Eastern District of Pennsylvania.¹⁸ The Department of Justice appealed the decision to the Supreme Court which upheld the lower court in *Reno v. American Civil Liberties Union*, (1997).¹⁹ Congress then passed the Child Online Protection Act (COPA) in 1998.²⁰ The ACLU challenged COPA in Federal court and secured an injunction that enjoined the Federal government from implementing the Act. Various provisions of COPA were challenged in a series of cases²¹ that dragged on from the Act's passage in 1998 until 2009. On January 21, 2009, the Supreme Court denied the Government's petition for a writ of certiorari requesting an appeal from

¹⁷ Communications Decency Act, Title V of the Telecommunications Act of 1996. P.L. No. 104-104, 110 Stat. 56 (1996).

¹⁸ *ACLU v. Reno*, 929 F.Supp. 824, 830-849 (E.D.Pa.1996).

¹⁹ *Reno v. ACLU*, 521 U.S. 844, (1997).

²⁰ Child Online Protection Act, 47 U. S. C. § 231, (1998).

²¹ *ACLU v. Reno*, 31 F. Supp.2d 473 (E.D. Pa. 1999), *ACLU v. Reno*, 217 F.3d 162 (3d Cir. 2000), *Ashcroft v. ACLU*, 535 U.S. 564 (2002), *ACLU v. Ashcroft*, 322 F.3d 240 (3d Cir. 2003), *Ashcroft v. ACLU*, 542 U.S. 656 (2004), *ACLU v. Alberto Gonzales*, 478 F. Supp.2d. 775, 781 (E. D. Pa. 2007), *ACLU v. Mukasey*, 534 F.3d 181, 187 (3d Cir. 2008).

Third Circuit Court of Appeal's verdict in favor of the ACLU.²² This decision finally and definitively killed the Act.

Concern over vague language and the Act's impingement on protected expression were the cited reasons COPA met consistent defeats at all levels of the Federal court system. However, an aspect of COPA—the Act's reliance upon community standards to identify objectionable internet content—highlighted the problem this same standard posed for obscenity prosecution in the internet age. What constitutes the 'community in cyberspace? Justice John Paul Stevens framed the issue neatly in *Ashcroft v. ACLU* (2002), "If a prurient appeal is offensive in a puritan village, it may be a crime to post it on the World Wide Web."²³

Private Matters

As the legal and financial environment for hard-core improved, so too did the technology of viewing. Since 1990, hard-core film became even more amenable to masturbatory consumption. The move toward so-called 'wall to wall' hard-core continued with the adoption of DVD. Plot and characterization often receded and scenes followed an established sequence. Foreplay led to oral sex, then vaginal and/or anal penetration, and culminated in the ubiquitous 'money shot'. DVD technology allowed viewers to select only those sexual acts they desired to see. Viewers could jump immediately from one scene to the next or one part of a scene to another, without even the brief delay that came from fast-forwarding a videotape. 'Point of view' DVD technology permitted consumers to view the sexual action from

²² "Certiorari Denied," *Mukasey v. ACLU* (08-565), Supreme Court Order List: 555 U.S., <http://www.supremecourtus.gov/orders/courtorders/012109zor.pdf>, (accessed Jan. 23, 2009).

²³ *Ashcroft v. ACLU*, 335 U.S. 564, at 603, (2002).

different perspectives. The customer could choose to view sex from the perspective of the actor penetrating or the one being penetrated, either giving or receiving oral sex. DVDs, however, continued to provide the standard perspective as well where viewers could watch the action in the traditional manner.

In one sense, the story of the hard-core pornographic film industry is a narrative of an expanding toleration of sexual representation. In another sense, however, it is the story of the gradual but still incomplete erosion of the masturbation panic's hold on culture and the law. Even a cursory scan of popular culture since 1990 provides a wealth of references regarding masturbation, but they deceive. Few address masturbation seriously. Masturbatory humor, however, is abundant. On television, the most famous example since 1990 was probably the *Seinfeld* episode "The Contest." What was noteworthy about the four main characters' attempt to give up masturbation the longest is that no one uses the word. They try to "master their domain."²⁴ Hollywood films recognized the quick laugh, borne of familiarity and discomfort, in the equally famous apple pie scene in *American Pie*.²⁵ Only rarely did a serious engagement with masturbation occur. In *American Beauty*, after Kevin Spacey's character masturbated in the shower, he remarked bitterly that it was the, "highlight," of his day.²⁶ In *Pleasantville*, Joan Allen's character experienced her first orgasm through masturbation, and the event was so profound that the tree in the

²⁴ *Seinfeld Season 4*, Sony Pictures Home Entertainment, 2005. The porn industry parodied the episode in *The Bet*, Directed by Wesley Emerson, Video Team, 1993. The *Sinefeld* series itself became fodder for the industry in *Hindfeld*, Directed by L. S. Talbot, Odyssey, 1993.

²⁵ *American Pie*, Directed by Paul Weitz, Universal Pictures, 1999.

²⁶ *American Beauty*, Directed by Sam Mendes, Dreamworks, 1999.

front yard burst into flames as a result.²⁷ In *40 Days and 40 Nights*, a film that struck a balance between comedy and pathos, the male lead attempted to forgo all sex, including masturbation.²⁸ Perhaps these humorous treatments reflected a process by which the hated or feared moves towards acceptance gradually, by way of ridicule and humor.²⁹

The hard-core industry operated within the same culture as these more conventional filmmakers. But while the broader culture continued to disdain masturbation, at least in public, the hard-core industry exploited it. In the 1980s, this exploitation took the form of hawking films largely on the basis of their masturbatory potential and advertising sex toys in the pages of fan magazines. This practice continued throughout the 1990s. However, hard-core film's identification with masturbation became, if possible, even more candid. It seemed as if the industry, already reconciled to their audiences' use of the films, decided to capitalize upon it with passion. Inexpensive inflatable sex dolls, artificial vaginas and innumerable dildos, staples of the fan magazine classified pages since the 1970s, continued to be marketed. With the dominance of the web, however, the ads relocated to cyberspace. The fan magazines, like the dirty movie houses of the 1970s after the arrival of video, began to wither as porn shifted to the internet. There artificial vaginas, anuses, and penises acquired designer labels, so to speak. The pudendum of virtually any porn

²⁷ *Pleasantville*, Directed by Gary Ross, New Line Cinema, 1998.

²⁸ *40 days and 40 Nights*, Directed by Michael Lehmann, Miramar Film, 2002.

²⁹ Since 2000 a number of gay porn websites with a primary focus on masturbation appeared. The Maskurbate website offers short filmed scenes of masked men masturbating for online viewers. The site's logo asks "Would you do it if you wore a mask?" See: Maskurbate.com [Http://www.maskurbate.com](http://www.maskurbate.com).

starlet of even modest notoriety has been immortalized in “jellee” or “cyberskin.”³⁰ Most of these devices were less than six inches long and sold for under than \$20, though a limited number of better known porn stars often had their names attached to full-sized reproductions of the whole pelvis. These deluxe items sold for upwards of \$100 and invariably came equipped with a pair of functional orifices. Even more expensive versions, in the area of \$250, replicated the whole torso and pelvis. Most of these, however, neglected to include head, arms or legs.³¹ The number of male porn stars, gay and straight, whose sexual organs attained iconic status, was comparatively smaller. Consequently, the selection is limited, and skewed towards gay male porn stars. Falcon Studios was one of the first porn producers to offer “Super Cock” replicas of their most popular “tops.”³²

These first years of the 21st-century represented a period of mild innovation in masturbation devices, both in terms of marketing and execution. The steadfast masturbation sleeve, with its straightforward tube design with an opening that resembled a labia, mouth or anus, hardly seemed susceptible to improvement. In 2006 however, the Fleshlight appeared on the market. The Fleshlight was both discreet and forthright. When fully closed it looked like a large gray plastic flashlight and the advertising emphasized the fact that this was a device the customer could pack in their luggage and not have to dread an airport luggage check. The company marketed the Fleshlight quite frankly as the ultimate male masturbation device.

³⁰ Trademarked materials which have supplanted latex in the sex toy industry.

³¹ I assume that arms and legs were often left off to save on shipping, but I suspect that the heads may have been omitted because the mannequin-like faces might have interfered with the customer’s fantasies during use, especially if the use occurred while viewing porn.

³² Gay porn performers fall into one of three categories: tops, bottoms, or versatile.

Initially, there was no emphasis upon the Fleshlight device being a ‘reproduction’ of the customer’s favorite porn star. Moreover, the buyer customized his Fleshlight when he placed his online order. A ten inch masturbation sleeve fit inside the plastic case, and came in a selection of colors: clear, pink, or mocha. The device was offered in seven different internal contours, varying in degrees of tightness, ribbing or pebbling. The customer picked from five possible openings: labia, anus, mouth, non-descript slit, or the “Super Tight Mini Maid” that looked like a tiny pair of buttocks. The Fleshlight was advertised widely on the internet, primarily on websites that offered hard-core films for sale or download. From the start, the company relied heavily upon popular female porn stars as spokespersons. In the online ads—short 3 minute movies—the starlet/spokesperson fondled the Fleshlight sleeve and then held the device while a male actor demonstrated its use. By 2008, Fleshlight began to market nine enhanced versions, each supposedly “molded” from the labia of popular porn stars.³³ Two years after Fleshlight was launched a Fleshjack device, identical in all respects except for the labial folds, appeared targeting gay customers. The Fleshjack online ads featured popular gay porn stars using the devices.

“Hands Free”

Almost all masturbation devices marketed in connection with hard-core film concentrated on genitalia. The high end of the market in masturbatory devices has always aimed for a more complete experience. This usually meant close simulation of a human body, in form, detail and function. During a June 2007 research trip to Los Angeles, I attended Erotica LA, one of the adult industry’s many annual trade

³³ The “Fleshlight Girls” were: Tera Patrick, Paris, Puma Swede, Vanilla DeVille, Raven Riley, Lia 19, Sandee Westgate, Brooke Skye and Kat Young. Each of the enhanced Fleshlight sleeves had the particular actresses’ name discreetly embossed next to the labial folds.

shows. There, a steady line of visitors inspected “Leeloo,” a product offered by My Party Doll and the state of the art in inanimate sexual devices. “Leeloo” stood 5’4” tall and weighed 100 lbs. ‘She’ had a 34” full D bust and three functional orifices. She was available with blond, brunette, black, or streaked hair, blue, hazel-green, or brown eyes, and was described in the advertising material as suitable for “companionship as well as intimate good times.” The price was \$5,600.00 plus shipping and handling. Abyss Creations offered a comparable male version named “Charlie” that catered to gay consumers³⁴

As I rewrote this conclusion, over forty years after the first appearance of publicly screened hard-core pornographic films, and thirty years after the industry began its shift towards videotape and privacy, an alternative concept in masturbation emerged from the hard-core industry. I found myself marveling at the ingenuity and puzzled that it had taken so long to arrive. One of the leading hard-core production studios, Vivid Entertainment, had been supporting research into a virtual sex suit, which through some form of computer connection might enable the viewer to feel what he was watching?³⁵ Vivid has not announced plans to market such a device, and perhaps technology will not advance to the stage where such a device is either feasible or affordable.

However, in the late fall of 2008 a company known as AEBN, the largest Video on Demand business in the adult industry, unveiled a device called

³⁴ See: My Party Doll, www.mypartydoll.com, and Real Doll, <http://www.realdoll.com/cgi-bin/snav.rd>. Also, see: Meghan Laslocky, “Real Dolls: Love in the Age of Silicon,” <http://www.saltmag.net/images/pdfs/RealDollsPDF.pdf>, (accessed: January 4, 2008). See Figures 2-4.

³⁵ See: Mary E. Behr, “High-Tech Sex,” *PC Magazine*, online edition, <http://www.pcmag.com/article2/0,1759,36076,00.asp> (accessed Nov., 18, 2007).

RealTouch that accomplishes something like the suit's purpose. The RealTouch apparatus relies on Haptic technology, which coordinates film imagery and mechanical parts within the device. This is the same technology used in electronic games, such as the Sony Wii or similar gaming products to give the sensation of shock or impact. The RealTouch apparatus, approximately the size of a standard loaf of bread and correspondingly light, contains a pair of "beltdrives" made of a soft and flexible material called "VersaFlex" that strokes an inserted penis rhythmically in synchronization with the videos, and the manufacturers claim this can mimic the sensations of vaginal or anal intercourse or oral sex depending upon what is happening in the corresponding video being watched. The RealTouch has an orifice that contracts as well as an internal heating element and a reservoir that dispenses lubrication to complete the simulation. It should be noted the RealTouch is not a standalone, self-masturbation device and can only be used with special Haptic enabled content exclusively available through websites operated by AEBN and its affiliates. The user connects the device to his computer with a USB cable, plugs the power cord into "the nearest wall outlet" and activates the device at the RealTouch website by means of a pass code that comes with the device. The user then selects a film from a collection on the website, (the website's main page has straight and gay portals), inserts his penis in the device, and places the device on his lap. The RealTouch website then synchronizes the "servomotors" within the device as well as lubrication and heat with the images in the film.³⁶

³⁶ [Http://www.RealTouch.com](http://www.RealTouch.com) . Also see: "Device Offer Virtual Sex with Adult Movies," *Chicago Sun Times*, (Jan. 12, 2009), <http://www.suntimes.com/news/nation/1373644,w-virtual-sex-real-touch-adult-movies011209.article>, (accessed Jan. 22, 2009). See Figures 5-10.

While the device utilizes already existing hard-core films, in the near future original works will likely be made with the RealTouch in mind. The hard-core industry has already shown itself to be remarkably receptive to new technologies throughout its brief life, and will likely continue to demonstrate an astonishing staying power.

Illustrations

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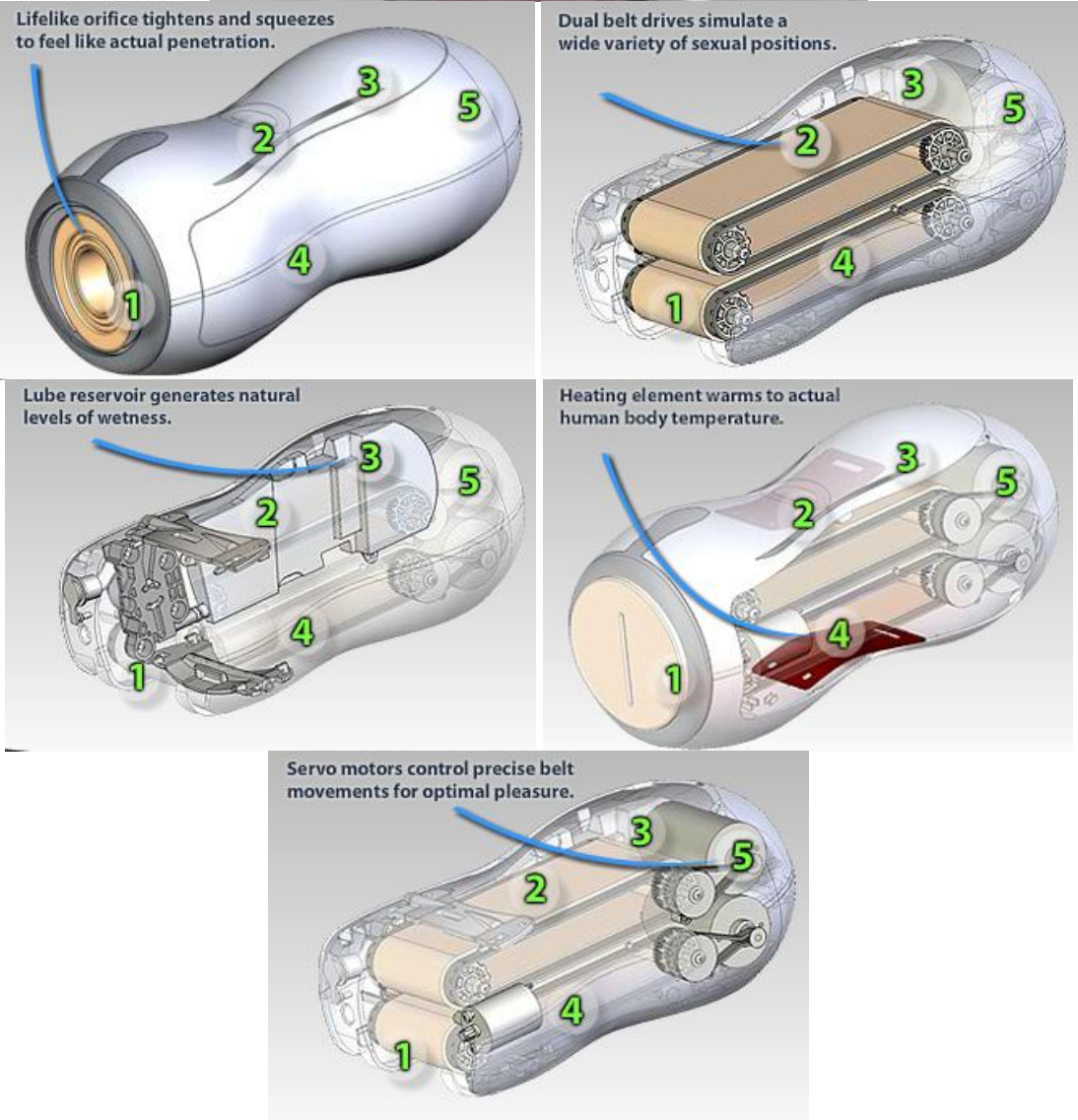
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Figure 1 Uncommon Products for Married Men.
“Uncommon Products for Married Men,” *Adam 1964 Yearbook*, (1964), 113.



Figures 2 - 4 "Leeloo" My Party Doll



Figures 5 - 10 Real Touch Device.

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