Discrepancies between the Legal Code and Community Standards for Sex and Violence: An Empirical Challenge to Traditional Assumptions in Obscenity Law

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Community standards for sexually explicit and violent depictions were measured using a representative sample of Western Tennessee residents. The residents were randomly assigned to view sexually explicit films charged in an obscenity case, violent materials, or control materials. The results showed that residents believe the sexually explicit films charged in the case did not appeal to a self-reported shameful, morbid, or unhealthy (prurient) interest in sex, and are not patently offensive. Community members indicated they would be substantially less accepting of the sexually explicit materials if they contained rape and bondage, and they showed virtually no acceptance of materials including children actors under the age of 18. Despite acceptance of sexually explicit films, there was no evidence that a majority of members of the community accepted violent "slasher" films. However, participants believed that the majority of *others* in the community tolerated the violent films they had viewed. These findings are discussed in light of an obscenity standard that presumes to take into account conventional morality and community opinion and the discrepancy between the obscenity code and community standards.

Obscenity law derives its content nearly exclusively from a consideration of community morals and values.[1] Judgments about the perceptions and reactions of members of the community are essential in determining the outcome of an obscenity case. There are times, however, when community morals and the criminal code differ (Robinson & Darley 1994). The study reported here was undertaken to investigate lay persons' perceptions of sexually explicit and violent materials in an American

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[1] Other examples of issues in which the courts refer to shared community values include whether the death penalty is "cruel and unusual" or whether the right to privacy is so broad as to include a woman's right to terminate her pregnancy. Sadurski (1987) claims that these are legal questions that cannot be decided in isolation from the moral standards accepted by the general public.

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community. We use social science methods to measure community tolerance for depictions of hardcore sex assumed by prosecutors and judges to violate community standards. We then compare tolerance for these depictions with *violent* depictions also available in the same community.

We ask several questions about the violation of community standards. Do materials assumed by prosecutors, jurors, and judges to violate community standards actually violate them? In other words, are most community members, in fact, intolerant of the sexual depictions charged in typical obscenity cases? What are the limits of community tolerance? Does the community accept explicit depictions of consensual sex but draw the line at depictions of sexual violence and rape? Or do community members draw a more circumscribed line, objecting only to such extremes as depictions of child pornography? Further we ask: Are other widely available violent materials that have never been the subject of litigation and that are assumed to be tolerable actually *not* widely tolerated within the community?

This investigation raises issues concerning the discrepancy between community views and the legal codes. The study may reveal an instance where justice requires no punishment but the criminal code demands one and the opposite—an instance where the code requires none but the community may demand punishment. In light of this possibility we ask: What is the impact of subjecting sexually explicit materials tolerated by the community to criminal prosecution, while violent materials that are *not* tolerated by the community are not prosecuted? Does this discrepancy influence perceptions of the fairness of the legal system? Is faith in the legal system subtly undermined? If so, what modifications in obscenity law may be undertaken to enhance congruity between its focus and community sentiment?

Sex, Violence, and Community Standards

Under the standard articulated in *Miller v. California* (1973), the court looks to generally shared values to decide what is not protected by the First Amendment guarantee of freedom of expression. Specifically, pursuant to *Miller*, the trier of fact (be it a judge or a jury) must determine whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable state law; and whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. Both prurient interest and patent offensiveness are to be judged with regard to contemporary community

standards.[2] (The remaining element "serious value" is not, but is instead to be judged with reference to the "reasonable person" (*Smith v. United States* 1977; *Pope v. Illinois* 1987).)

The concept of obscenity has historically been extended by the Supreme Court only to material that contains "hardcore" sexual conduct and therefore, at least at present, may not encom-

[2] The Supreme Court has generally defined prurient interest to be a "shameful, morbid, or unhealthy interest in sex" (*Roth v. United States* 1957; *Brockett v. Spokane Arcades* 1985). Patent offensiveness, however, has proven a somewhat more elusive concept, both for the court and legal scholars. Unlike prurient appeal, for patent offensiveness the Supreme Court has failed to provide any "dictionary definitions" (Schauer 1976). The only direction from the Supreme Court for this term comes from the two plurality opinions of *Manual Enterprises v. Day* (1962), which defined materials as patently offensive when they are deemed so offensive on their face as to affront current community standards of decency, and *Jacobellis v. Ohio* (1964), in which patent offensiveness was found when material goes substantially beyond customary limits of candor in description or representation of such matters. Lower courts throughout the country, in an attempt to clarify patent offensiveness so as to render it "usable" by a trier of fact, have interpreted the standard to mean whether material is "accepted" or is "tolerated" in the community. Some courts have used both these terms interchangeably to describe patent offensiveness. While the Supreme Court has commented on the use of a "tolerance" standard in *Smith v. United States* (1977), it has provided somewhat conflicting direction in that same decision by referring to a jury instruction in that case which used an "acceptance" standard. Further emphasizing the *definitional* similarity of the two terms is the language of the Indiana Court of Appeals in *Saliba v. State* (1985). That court stated: "We must emphasize [that] the majority of the community need not desire to view sexually explicit materials in order to establish community acceptance or tolerance of such materials. Rather, the issue concerns the population's perception of what is generally acceptable in the community considering the intended and probable recipients of the materials" (p. 1186). At issue in *Saliba* was the following operative question asked as part of a public opinion poll: "Do you personally think it is acceptable or not acceptable for the average adult to see any depiction of actual or pretended sexual activities shown in movies and publications that he or she wants to?" In determining the question to be an appropriate evaluation of community standards (at least with regard to patent offensiveness), the court noted: "The poll therefore questioned the interviewees regarding their view of community acceptance with sexually explicit materials rather than their personal acceptance of such materials."

In fact, no court has ever determined that the term "acceptance" equates to either personal acceptance or approval. It is with regard to these various interpretations and definitions that public opinion polls in the past have been utilized in an attempt to measure both prurient appeal and patent offensiveness of sexually explicit materials. The perception, at least for many prosecutors, is that there is a *difference* between tolerance and acceptance; "A prosecutor must insist the jury be instructed that community standards are determined by what the community 'accepts'—'acceptance" is a much *stronger* measure of 'community standards' than 'tolerance' " (Bull et al. 1985). Dictionary definitions of these terms, however, are similar. According to the Texas Court of Appeals:

> The dictionary definition of the terms "accept" and "tolerate" reveal a substantial amount of similarity, and even identity, between the two terms. For example, a definition of "accept" is to "acknowledge or recognize as appropriate, *permissible*, or inevitable," whereas "tolerate" is defined as "to *permit* the existence or practice of [;] allow without prohibition or hinderance." Webster's 3d New International Dictionary 11, 2405 (1981) (emphasis added). "Accept" is also defined as "to take without protest [;] *endure* or *tolerate* with patience"; "tolerate" is also defined as "to endure with forbearance or restraint [;] put up with." *Asaff v. State* (1990) 332.

As noted by the Texas Court of Appeals, these two terms, given their dictionary definition, can be used to refer to the same concept. Whether or not community residents, or participants in a public opinion study, or even a jury view these terms as dissimilar is, however, still open to discussion and research. In the present study both the tolerance and acceptance standards were investigated, although not under ideal circumstances, as we note below.

pass materials such as those solely containing depictions of violence, no matter how graphic, offensive, or appalling. The vast majority of materials charged in obscenity prosecutions nationwide depict sexually explicit acts between adults that do not involve depictions of rape, torture, or overt physical violence (Douglas 1994).

Community Standards and Social Science Evidence

The courts talk about appeal to conventional morality in obscenity cases, but they rarely take it seriously, or better, literally, by demanding that reasonable community boundaries be articulated or empirical evidence of community standards be presented to fact-finders (Sadurski 1987). In *Miller*, the Supreme Court specifically rejected the concept of a nationwide "community standard"; Chief Justice Burger, writing for the majority, established that the relevant "community standards" are local, not national. What "local" means has remained ambiguous, however. Individual states (or in a federal prosecution, the individual courts) may make the determination of the scope of the relevant "community" by which the questioned material is to be judged. Thus, states are free to adopt a statewide standard for the relevant contemporary community or a smaller geographical boundary (i.e., a countywide standard) or, in fact, are permitted to leave the definition of the community open, thereby allowing the triers of fact to draw on their own knowledge of the community from which they come to decide how the "average person, applying contemporary community standards," would evaluate the particular material (*Hamling v. United States* 1974).

There is no obscenity decision in which a court has positively required any empirical evidence of community standards, by, for instance, results of opinion polls. Instead, the Supreme Court has emphasized judges' and jurors' ability and competence to draw on their *own* perceptions of the views of people in the community: "A juror is entitled to draw on his own knowledge of the views of the average person in the community or vicinage from which he comes for making the required determination, just as he is entitled to draw on his knowledge of the propensities of a 'reasonable' person in other areas of the law" (*Hamling v. United States* 1974).

In fact, the Court has accepted that the elements of *Miller* can be proven without resort to *any* evidence or testimony at all, save for the introduction of the allegedly offending materials into evidence. When confronted with whether the prosecution was required to submit affirmative evidence that the charged materials were, indeed, obscene, the Court concluded in the negative, noting that the materials "obviously, are the best evidence of what they represent" (*Paris Adult Theatre v. Slaton* 1973). This assertion

seems to beg the question whether certain materials affront contemporary community standards. As the Ninth Circuit of Appeals noted, while the charged materials may be "the best evidence of what they represent . . . the materials will not supply any information as to the community standards by which they are to be judged" (*United States v. 2,200 Paperback Books* 1977).

The nearest an American appellate court has come to asking for evidence of community standards was in *United States v. Various Articles of Obscene Merchandise* (1983) in which the Second Circuit nevertheless decided that although prosecutors bear the burden of proving all the elements of obscenity, they are not constitutionally required to introduce evidence of community standards. The court decided that triers may utilize their own sense of the views of the average person in the community, as well as rely on their own experience concerning community tolerance. It is only if fact-finders have little or no knowledge of the community standards that they may "turn to opinion proof."

The Supreme Court has noted that the defendant in a criminal obscenity prosecution is free to introduce "appropriate" expert testimony at trial. Since the law is applying contemporary community standards in determining what is obscene, expert testimony on what those standards are has been deemed appropriate to enlighten the judgment of the jury or judge (*Kaplan v. California* 1973). Expert testimony on community standards has often included submission of results from public opinion polls (see, e.g., Lamont 1973; Schauer 1976; Glassman 1978; Beckett & Bell 1979).

The admissibility of a public opinion poll depends primarily on what the courts have termed certain "circumstantial guarantees of trustworthiness," including whether generally accepted survey techniques were used in conducting the poll and correct statistical methods were utilized in evaluating the results of the poll (*Saliba v. State* 1985). The court laid out a specific set of criteria, agreed on by most social scientists as necessary to ensure a poll's reliability and validity, to establish admissibility. Most important among these is that the "relevant universe" is examined; that a representative sample is drawn from this universe; and that the sample, questionnaire, and interviews be designed according to generally accepted scientific standards.[3]

The usefulness of public opinion data to assist in determining community standards has recently been challenged. Some

[3] Admissibility of expert testimony and public opinion surveys is also subject to the fundamental prerequisite of legal relevancy and must also be admissible under the local rules of evidence. By these rules, expert testimony is properly admissible when it can assist the trier of fact either to understand the evidence or to determine the facts in issue (Federal Rules of Evidence 702; adopted in most states). However, even relevant evidence can be excluded by the trial court if its probative value is substantially outweighed by the danger that it would be unfairly prejudicial or would have a tendency to either mislead the jury or to confuse the issues (Federal Rules of Evidence 403).

courts have questioned the value of surveys of community opinions about sexually explicit material when respondents have not seen the specific materials being prosecuted. A federal district court has issued an opinion *excluding* a public opinion study from evidence because the court in that district had found that the descriptive language of a telephone survey did not adequately convey "the impact of the visual image" and did not sufficiently apprise the interviewees "of the nature of the charged materials" (*United States v. Pryba* 1988:1229–30). The Fourth Circuit U.S. Court of Appeals, in affirming the district court decision in *Pryba*, further noted that "[a]sking a person in a telephone interview as to whether one is offended by nudity, is a far cry from showing the materials previously described in this opinion, and then asking if they are offensive" (ibid., p. 757). In addition, at least one appellate court has noted that the "best way" to determine the impact of communicative materials so as to determine community standards is to show these materials to "various randomly selected adult community residents" (*State v. Anderson* 1988:269). It was in regard to these specific concerns noted in the *Pryba* and *Anderson* decisions that the present study was designed.

Misperceptions of Community Standards

Even if the parties introduce evidence of the prevailing community standards, the trier may disregard it and rely exclusively on his or her own knowledge of community views. The Court appears to be so certain of juror intuitions regarding the average person and community standards, and so doubtful of remedial efforts to identify jurors unclear about these concepts, that it has ruled that it is not a reversible error to preclude a defendant's attorney from asking during jury voir dire whether potential jurors had knowledge regarding the relevant contemporary community standards. The Court held that such a question

> would not have elicited useful information about the juror's qualifications to apply contemporary community standards in an objective way. A request for the jurors' description of their understanding of community standards would have been no more appropriate than a request for a description of the meaning of "reasonableness." Neither term lends itself to precise definition. (*Smith v. United States* 1977)

Since obscenity law positively requires the court to ascertain community values in order to make sense of a legal standard but does not require empirical proof of these standards, it leaves room for the courts to substitute their own values for community morality (Sadurski 1987). In such a situation, the court "can get the community's moral ideals wrong" (Wellington 1973). In light of this danger, it would seem reasonable to provide jurors with the results of empirical investigations of community standards in

order to prevent judicial mistakes. But empirical investigation, according to several legal commentators, does not provide the criterion for discovering judicial errors. Wellington, for example, suggests that a better criterion for discovering mistakes lies in the community's reaction to a judicial decision. He offers (p. 516) the following test: "When the Justices are right about the moral ideals of the community, their decisions become settled and accepted. The turmoil, the resistance, and the threats from other governmental entities, from private groups, institutions and individuals diminish with time."

The fact that decisions appear to be accepted by the public and that contrary opinion is muted may *not* be a valid indication of the congruence between community morality and judicial decisionmaking in the case of obscenity law. One reason these indicators may be invalid is because the very act of prosecuting and adjudicating materials as obscene in a given community may lead members to believe that these materials are not tolerated. On this point, Linz et al. (1991) studied a cross-section of residents of Mecklenburg County (Charlotte), NC, who were randomly assigned to view sexually explicit films charged in a criminal case. Two types of tolerance were measured: the opinions of a representative sample of persons about what they thought the *community* tolerated, and the collective opinions of these same individuals about what they *personally* should be allowed to view.[4] The findings indicated that a much lower percentage of people think the hypothetical "community" tolerates the films they just

[4] The construct "community standards" has been operationalized two ways in many community surveys (see Scott, Eitle, & Skovron 1990)—the opinions of a representative sample of persons about what they think others in the community believe or how others would be affected by certain material, and the collective opinions of these same individuals about their particular personal view of suspect material. To measure patent offensiveness, we could ask either, "Is this material tolerated in your community?" or the arguably more direct version, "Do *you* tolerate the sale and viewing of this material in your community?" Since the Supreme Court has not provided guidance as to the correct operationalization of community standard (especially in light of the fact that the test is of the "*[a]verage person applying* contemporary community standards"), it may indeed be appropriate, until clarification from the Court is provided, to ask the relevant inquiries about prurient appeal and patent offensiveness in both fashions. In the present study we measure both a personal standard and subjects' perceptions of the community standard.

It must be noted at the outset that a tactical decision to confound the terms "tolerance" and "acceptance" with the referent "to you" and "others in the community" was made for the patent offensiveness questions in the present study. When respondents were asked about others in the community, the term "tolerance" was used; when they were asked about their personal view of the suspect material, the term "acceptance" was used. This confound prevents us from directly comparing respondents' perceptions of the communities' standard with their personal standard. It was simply not practical to present respondents with a questionnaire of the length necessary to orthogonally manipulate the two variables. The federal trial court refused to give direction as to which was the proper standard of patent offensiveness, "tolerance/acceptance," or the appropriate referent "individual/community." We asked the trial court before we began data collection for direction on the proper definition of patent offensiveness so as to allow us to specifically tailor the question to the court's standard. The court was equivocal on this matter. In addition, caselaw provides no direction as to whether tolerance (or acceptance) should be evaluated pursuant to personal standards or standards of the perception of the community.

viewed than is true when people are asked to report on what they personally should be allowed to view.

Linz et al. (1991) proposed that the discrepancy between perceptions of the community standard and the individual adults' own standards was the result of legal events in Mecklenburg County. For two years prior to the study, several well-publicized arrests for obscenity and an obscenity trial in which defendants had been found guilty had taken place in the community. Community members may have assumed that since there had been a large number of arrests and several guilty verdicts, most people in the community must not tolerate these types of materials, a phenomenon we have called "prosecution-induced intolerance." The greater the attention given law enforcement activities by the media in a community, the more the average observer may assume that citizens of the community are intolerant. However, when members of the community are individually questioned, they may express a much higher level of tolerance for sexually explicit materials.

This misperception, primarily gained from the mass media, may also have consequences for interpersonal interactions, which in turn also influence perceptions about community beliefs. The erroneous belief in lack of tolerance for sexually explicit materials in the community may lead people to be hesitant to speak out honestly about their own opinions for fear they are deviant. Here, another theory of public opinion may come into play. This unwillingness to speak out may be an example of the more general tendency toward a "spiral of silence" in public opinion whereby a silent majority falsely perceives itself to hold a minority opinion and, thus, remains quiet to avoid public ridicule (Noelle-Neumann 1974, 1984). Mosher (1989) has speculated that public opinion toward pornography and obscenity may be very susceptible to this effect.

The end result of these social-psychological processes is that the legal system may be an unwitting but crucial contributor to the very standard it is trying to discover through the criminal fact-finding process. Members of the community, including jurors themselves, may assume the community does not tolerate sexually explicit materials because such materials are not tolerated by local law enforcement officials (as evidenced by continued prosecutions).

Jurors and other legal actors who rely on their intuition in making judgments about community standards may fall prey to individual decisionmaking biases such as prosecution-induced intolerance. By ignoring this potential bias, the Court may be maintaining a convenient legal fiction—the belief that jurors can ac-

curately gauge community standards in spite of compelling evidence to the contrary.[5]

Incongruities between Code and Community concerning Sex and Violence

The present study probes the parameters of what is perhaps a more fundamental legal fiction—that it is explicit depictions of nonviolent consenting sex between adults, rather than other depictions, that violate community standards in the first place. We ask: Do members of the community accept/tolerate sexually explicit films? If so, what are the limits of this tolerance and acceptance? Would community members personally accept sexually explicit materials if the materials included rape and bondage? Do community members accept these more violent depictions but draw the line at the use of actors under age 18 in sexually explicit films?

We were also interested in determining whether courts correctly interpret the community's moral ideals with regard to other forms of filmed violence. We empirically measure conventional morality regarding the presentation of violence against women in a sexually nonexplicit context ("slasher" films). First we wondered, Do the majority of residents personally accept this form of filmed violence? Second, we wondered if the reverse pattern of *misperceptions* of community tolerance would be found. In our previous study, we found that members of the community personally accepted sexually explicit materials but felt that *other* members of the community would be less tolerant of these same materials. We reasoned that respondents believed that others in the Mecklenburg community must not tolerate these materials or they would not be the subject of legal activity. Slasher films, on the other hand, have never been the subject of criminal litigation. They are widely available in nearly every videocassette rental outlet in the community, and they are not sequestered in an "adults-only" section of most stores. Community members in the present study who are asked to view these materials may personally disapprove of them while assuming others in the community tolerate them simply because they are widely available and publicly displayed and presumed to be popular.

A finding that depictions of consenting sex are tolerable to the community and that depictions of violence in sexually suggestive but nonexplicit contexts are not tolerated would have interesting implications for obscenity law. Obscenity law's legiti-

[5] For further commentary on this issue see *United States v. Various Articles of Obscene Merchandise* 1983, referring to the "dubious assumption that the triers have their fingers on the pornographic pulse of the community" (*City of Miami v. Florida Literary Distribution Corp.* 1986, referring to the assumption of the knowledge of community standards as "a questionable legal fiction"; *State ex rel. Pizza v. Strope* 1990, discussing "grave misgivings regarding the nebulous and subjective nature of the *Miller* test").

macy rests on the fact that it reflects community values. It presumes that depictions of explicit sex can be regulated because they are intolerable to community members. Prosecutors seeking materials most likely to be convicted for obscenity have focused on materials *assumed* to violate community moral standards—consenting sexual depictions. Rape, torture, and other forms of violence have not figured prominently in the selection of materials for prosecution, and other materials that depict violence in mildly sexual contexts are never considered. If we were to find that these violent materials were unacceptable, and sexual materials customarily believed to affront community values were acceptable, then obscenity laws' claim to legitimacy on the basis of conventional morality may be challenged.[6]

Method

Overview of Procedure

A randomly selected sample of residents of the Western Division of the Federal Western District of Tennessee were recruited to view the sexually explicit films charged in an obscenity case. Residents were then randomly assigned to view either the allegedly obscene materials, violent materials, or control materials. These residents responded to a set of questions designed to determine the appeal (of the materials viewed) to a prurient interest (an unhealthy, shameful, morbid interest in sex; *Roth v. United States* 1957; *Brockett v. Spokane Arcades* 1985) and their patent offensiveness (whether the material so affronted contemporary community standards as to go substantially beyond the level of acceptance/tolerance regarding depiction and representation of sexual conduct in the community; *Roth* 1957:478 n.20). Public acceptance of these sexually explicit materials was measured and compared with acceptance of the same material if it had included rape and bondage and the appearance of actors under the age of 18. This study was conducted in four phases: (1) subject recruitment by telephone, (2) questionnaire administration

[6] An added benefit of examining possible limits on tolerance and acceptance of slasher films is the ability to rule out an alternative explanation for the earlier study on community standards conducted by Linz et al. (1991). It could be argued that the high level of approval for sexually explicit materials found in that study was due to an experimental artifact. Participants may have been unwilling to express disapproval no matter what depictions they were asked to consider. Having just volunteered to view sexually explicit materials, participants may have been motivated to distort their response to the key questions, indicating more approval than they actually felt. Cognitive dissonance theory (Festinger 1957) would predict that participants would indicate greater favorability toward the materials as a means of justifying having volunteered to view them. It is important to demonstrate that disapproval for certain depictions can be elicited from participants in a study of this type. If we can find this disapproval, we may rule out the possibility that study participants are indiscriminately approving of what we show them.

before film viewing, (3) film viewing, (4) post-viewing questionnaire administration.

This study was submitted as evidence in *United States v. Ellwest Stero Theaters of Memphis* (1990) to inform the jury as to whether the average adult, applying the contemporary standards in their community, would find that three videotape films, alleged to be obscene by the federal government, either appealed to a prurient interest in sex or were patently offensive. The study was funded by Ellwest Stereo Inc., through its defense attorneys L. Klein and B. Shafer.

Sample

To define the universe of this study, we had to determine the relevant "community" in which to evaluate these materials. The community was defined as the area or vicinage from which the jurors would come.[7] In this case, as the federal trial court sat in Memphis, TN, and was considered to be part of the Western Division of the Federal Western District of Tennessee, we defined the community, for study purposes, as five counties making up the Western Division of the Western District: Shelby, Dyer, Fayette, Lauderdale, and Tipton counties. This "universe" is referred to here as the "Western Division."

Telephone Recruitment

We contacted a sample of Western Division residents by telephone. This sample was compiled through random-digit dialing using a list of digits, not weighted by prefix, obtained from Survey Sampling Inc., Fairfield, CT. Potential respondents who could not be reached were called back three times, with next-day calling staggered by time. Once contacted, the respondents were administered an interview that involved four components: (1) selection of an adult respondent in the household 18 years old or over; (2) assessment of demographic characteristics including age, education, race, and sex (the interviewers were instructed to recruit within quotas corresponding to the proportions within each of these demographic categories in the population); (3) subject recruitment to possibly "view a movie . . . and fill out a questionnaire about it"; and (4) subject recruitment to possibly view "adult, X-rated sexually explicit films." Once subjects agreed to participate in the study, they were informed that they would receive $30 on completion of the project, which, they were told,

[7] As this was a federal prosecution, without specific statutory authority for defining the relevant community, we asked the trial court, prior to trial, to provide guidance as to the geographic boundary of the relevant "community" for purposes solely of the admissibility of the studies. When the court indicated that it would not define the relevant community to the jury, we defined the community, pursuant to *Hamling v. United States* (1974), as the area or vicinage from which the jurors would come.

would take about two and a half hours. Participants were given the address of the study site. We then mailed each participant who volunteered and could be scheduled for a viewing session a reminder of the time and place of the study.

A breakdown of response rates at each stage of subject recruitment is presented in Table 1. A total of 496 adults completed the initial telephone interview. Of these, 254 respondents indicated that "yes," they would be willing to participate in a film-viewing project; 242 declined participation. Once informed that they might be asked to watch an X-rated video, 27 respondents declined to participate; 227 respondents agreed to participate. Of these, 225 were scheduled for a film-viewing session, and 132 subjects reported for a session. Of those reporting, 9 were dismissed because of lack of available equipment or early termination of film viewing. A total of 123 subjects participated in the film evaluation study. In appendix A we assess the potential bias resulting from nonresponse at two critical drop points—once respondents are asked to view a movie and after they are informed they may be viewing X-rated materials.

Table 1. Subject Loss at Each Stage of Film Evaluation Study

	N	Percentage Remaining		
Total numbers called	1,921	100		
Nonworking disconnected numbers	216	89		
No answer/no contact	217	77		
Business or government	100	72		
Ineligible county	1	72		
Answering machine	55	70		
Computer tone	45	67		
Deaf/language problem	19	65		
Busy signal	14	64		
Eligible households	1,045		100	
Refusals	389		63	
Call-back at last contact	38		59	
Intended respondent unavailable	23		57	
Terminated during interview	99		47	
Completed telephone interview	496			100
Refused to participate in a file-viewing study	242		24	51
Declined to view an X-rated video	27		22	45
Could not be scheduled	2		22	45
Failed to show for scheduled session	93		13	28
Scheduled but canceled by experimenters	9		12	26
Total subjects viewing films	123			

Procedure

Assigning Subjects to Film-Viewing Conditions

The film evaluation portion of the study began on 3 March 1990 and was completed on 31 March 1990. A six-step procedure

was followed for handling participants: (1) random assignment to a film-viewing condition, (2) completion of a voluntary consent form, (3) completion of the pre-viewing questionnaire, (4) videocassette film viewing, (5) post-viewing questionnaire completion, and (6) participant debriefing and payment.

Subjects reported to the viewing sessions not knowing whether they would be asked to watch an X-rated film or a nonexplicit film. The subjects were randomly assigned to view either one of three sexually explicit films (*Blacks and Blondes* (N=25), *Menage-a-Troix* (N=24), *Calendar Girl Collection* (N=26), a nonexplicit control film *Nothing in Common* (N=23), or a graphic violence film compendium (N=25). Participants in this latter group were asked to view an hour-long compendium of clips featuring displays of violence against women from the following R-rated films: *Pieces*, *The Prowler*, *Vice Squad*, and *Snuff*. Each of the sexually explicit films contained scenes of nudity and graphic sex, including acts of intercourse, cunnilingus, and fellatio. None of the scenes involved forced sex or rape. The contents of the R-rated violent films included such graphic close-up depictions of violence directed at women as stabbings, shootings, cutting up of bodies, cutting off legs and arms from bodies, and variations of these activities by adult and child performers.

Obtaining Informed Consent

Prior to participating in the study, each subject was given a viewing-consent form to read and sign. This document informed subjects that they may be asked to view a sexually explicit, X-rated adult video or an R-rated violent film compendium.

Pre-Viewing Questionnaire Administration

Subjects were given a questionnaire and instructed to take it to one of several separate video-viewing rooms and complete it. On this questionnaire, subjects were asked to indicate their county and length of residence, newspaper subscription, video movie consumption, cable subscription, political affiliation, political attitudes, religiosity, religious service attendance, attitudes about current events, education level, age, and religious affiliation. Most important, the following set of instructions were given:

> The next few questions deal with Adult X-rated videos and sexually explicit magazines. These videos and magazines have little or no plot. Their contents are primarily graphic depictions of nudity and sex showing a variety of actual sexual activities, including: sexual intercourse, ejaculation, oral sex, anal sex, use of vibrators, lesbian sex, group sex and variations of these activities by adult performers. No minors are involved, and these materials can only be purchased, rented, or viewed by adults who want them.

These instructions were followed by questions designed to measure contemporary community standards and constructed to be consistent with legal definitions of obscenity as conveyed during discussions with counsel concerning the appropriate definition of patent offensiveness and prurient appeal. These questions approached community standards from two perspectives: what subjects think the community tolerates; and what subjects would personally accept. Within each of the two subtypes of community standard, we also asked about obtaining and viewing the video generally, as well as the specific depictions in the video. Subjects were asked the following questions:

> Is it or is it not acceptable to you, for adults in your community to obtain and view such *videos and magazines*, if they should want to?
>
> Are such *depictions* of nudity and sex in videos and magazines, acceptable or unacceptable to you, for adults who want to view them?

These questions were followed by a eight-point rating scale from "Acceptable" to "Not Acceptable."

> THE NEXT TWO QUESTIONS CONCERN HOW OTHER ADULTS IN YOUR COMMUNITY FEEL ABOUT SUCH ADULT VIDEOS AND MAGAZINES.
>
> Is it or is it not tolerated in your community for other adults to obtain and view such videos and magazines, if they should want to? [Eight-point rating scale from "Tolerated" to "Not tolerated"]
>
> Are such depictions of nudity and sex in videos and magazines, tolerated or not tolerated in your community for adults who want to view them? [Eight-point rating scale from "Tolerated" to "Not tolerated"]
>
> Would your viewing of adult videos and magazines depicting actual sex acts in great detail and with close-ups of the sexual organs, as described, appeal to any unhealthy, shameful, or morbid interest in sex that you might have? Yes — No — [Eight-point rating scale from "Definitely yes" to "Definitely no"]
>
> Would the viewing of adult videos and magazines depicting actual sex acts in great detail and with closeups of the sexual organs, as described, appeal to any unhealthy, shameful, or morbid interest in sex that your neighbor might have? [Eight-point rating scale from "Definitely yes" to "Definitely no"]

Film Viewing

Upon completing the pre-viewing questionnaire, subjects were instructed to return the form to a staff member when they had completed it. The subject was then shown how to turn off the videocassette recorder (VCR). Subjects were instructed that

when the film was over, they were to turn off the VCR and report to the staff person. The film was placed in the VCR by the staff person, who then started the VCR and left the room. The staff member made periodic checks to ensure that the film was on by listening at the door of the respondents viewing room and also verified that the participant was in the room for the entire length of the film.

Post-Viewing Questionnaire

When subjects completed their viewing, they were given a post-viewing questionnaire and instructed to return to their room, alone, to complete it. This questionnaire assessed subject attitudes on a number of issues regarding the film they had just viewed. Most important, they were given the following instructions and questions:

> In the first questionnaire you filled out, we asked you about Adult X-rated videos and sexually explicit magazines. These videos and magazines have little or no plot. Their contents are primarily graphic depictions of nudity and sex showing a variety of actual sexual activities, including: sexual intercourse, ejaculation, oral sex, anal sex, use of vibrators, lesbian sex, group sex and variations of these activities by adult performers. No minors are involved, and these materials can only be purchased, rented, or viewed by adults who want them.
>
> Was the movie you saw today what you expected to see given this definition of X-rated videos, adult movies and magazines?
>
> Have you ever viewed a film or video like the one you just saw? If you answered *Yes*, about how many times in the last 5 years?

This question was followed by questions on community tolerance and personal acceptance that were similar to those in the pretest.[8] Subjects were instructed to answer the post-viewing questions only with reference to the film they had viewed that day.[9]

[8] The questions pertaining to personal and community acceptance and tolerance, and those pertaining to prurient appeal, in the pre-viewing questionnaire contain the words "in videos and magazines." The post-viewing questionnaire refers to "this video" only when inquiring about these same topics. The wording used in the pre-viewing questionnaire was identical to that used in a 1990 telephone survey of Western Division residents and was used in the present study to ensure comparability between the two data sources. Since we were only interested in the film evaluation participants' responses to the videos they had just viewed, we dropped the term "magazines" from the post-viewing questionnaire.

We asked participants after they completed their pre-viewing questions if their answers to the questions on adult X-rated videos and sexually explicit magazines would have been any different if those questions had only asked for their opinions about adult X-rated videos and not about sexually explicit magazines. Of the participants, 89% indicated "no." In response to whether the answers would have been any different if those questions had only asked for opinions about sexually explicit magazines, and not about adult X-rated videos, 85% indicated "no."

[9] We were concerned whether the participants, when completing the pre-viewing questionnaire, had in mind those type of graphic depictions of sexual conduct actually

Subjects in the sexually explicit film conditions were given the following two sets of additional instructions:[10]

> In answering the next questions, think about the video you just viewed and imagine that there were scenes of nudity and sex which were violent, including bondage and simulated rape;

and,

> In answering the next questions, think about the video you just viewed and imagine that there were scenes of nudity and sex with children under the age of 18.

These instructions were followed by the questions on personal acceptance, community tolerance, and prurient appeal described above. In addition, subjects were also asked to answer the two questions on prurient appeal again after receiving the following instructions:

> In answering the next two questions, you should consider the video that you viewed *in its entirety*, and you should not answer these next two questions based upon any particular scene or scenes or on the depictions contained in any particular scene or scenes.

Violence-Viewing Film Subjects

The violence-viewing group was handled in a manner identical to the other groups with the following exceptions. The prefilm questionnaire included the instruction:

> The next few questions deal with R-rated movies and videos which contain scenes of explicit graphic violence. These are commercially released films available at local movie theaters and available for rental at local video stores. Their contents include graphic close-up depictions of violence such as: stabbings, shootings, beheadings, cutting up of bodies, cutting off

shown in the film they subsequently saw and referred to when answering the post-viewing questionnaire. This concern went directly to the adequacy of the description of the content and character of the sexually explicit material about which participants were questioned. In the pre-viewing questionnaire, the possibility existed that the participants' perception, based on the description given, was different in content or character from the actual material. To rule out these concerns, we asked the participants if the movie they viewed was what they had expected to see given the definition they had been provided in the pre-viewing questionnaire. The results indicated that from 85% to 88% of participants when considered across the sexually explicit film groups indicated "yes," that the materials viewed were, in fact, what they had in mind when responding to the pre-viewing questionnaire.

[10] Since a motivating factor for our own study design was to meet the standards outlined in *Pryba*, it may appear to be somewhat contradictory that we chose to ask respondents to "imagine" violent sexual scenes and similar scenes involving children under 18 in light of the concern raised in *Pryba* in which the court said it was not adequate to ask people whether they would be offended by explicit sexual materials. Rather, they should be shown such materials. Aside from the many moral and ethical dilemmas that arise from showing respondents sexually violent and/or child pornography, one of the most important reasons we did not include these viewing conditions in our study is, quite simply, because we had no guarantee from the prosecuting attorney that we would not be arrested for showing potentially obscene and illegal material.

legs and arms from bodies, setting people on fire, and variations of these activities by adult and children performers.

This instruction was followed by a post-viewing questionnaire that included identical questions to the explicit sex viewing groups' questionnaire, except that the word "violence" was substituted for the word "sex" in the questions pertaining to personal acceptance, community tolerance, and prurient appeal.[11] Their post-viewing questionnaire did not include questions on whether the film they viewed met their definition of an "X-rated" film, nor were they asked to imagine the film they had just viewed as violent or containing scenes with children under the age of 18.

Control Film Subjects

Control subjects saw a nonexplicit film (*Nothing in Common*). As with the violence viewing group, the control post-viewing questionnaire did not include questions on whether the film they viewed met their definition of an X-rated film, nor were they asked to imagine the film they had just viewed as violent or containing scenes with children under the age of 18. Otherwise, control subjects were treated identically to the sexually explicit and violence film-viewing subjects.

Subject Payment and Debriefing

Once the post-viewing questionnaire had been completed, subjects returned the packet to the staff person. Subjects were paid $30 and thanked. Subjects were then asked if they had any questions about the study. The research assistants were instructed to answer each question honestly and completely.

Results

Subject Characteristics

On average, participants in the sample have lived in the Western Division for 24 years. The majority of them subscribed both to a daily newspaper and cable television and had a videocassette player in their homes. Over half the persons in the sample considered themselves to be politically "conservative" to "very conservative," and over 80% said they were "somewhat" to "very" religious. Most had completed high school, over half had some college or completed a college education, and over half were

[11] The term "prurient appeal" with regard to exclusively violent as opposed to sexual material is really a misnomer, as from a legal perspective the term only applies to sexually oriented media. Thus, when we use "prurient appeal" in reference to violent, nonsexual, material, we refer to an analogous although fictitious and not legally cognizable concept—a shameful, morbid, or unhealthy interest in violence. Because of the limited value of these variables from a legal standpoint, we will not discuss them further with regard to the violence-viewing group.

married or widowed. The ages of subjects ranged from 18 to 74 years. The majority had an annual income of more than $20,000, although 28% indicated a yearly income under $20,000.

Initial Assessment of Subject Sample Selection Bias

Despite our efforts to establish quotas within demographic categories, some respondents were more willing to participate in the film-viewing study than others. As an initial assessment of the possibility of volunteer bias, we compared our sample to a larger sample of respondents interviewed over the telephone shortly before the film evaluation study began.[12] Since the telephone survey involved a larger number of respondents, it provided us with a more stable estimate of the demographic characteristics of the Western District. We could then compare the demographic categories for the larger telephone survey sample with the sample of participants in the film evaluation study. If statistically significant differences are found between the larger survey and the film evaluation samples on any demographic category, this would suggest that the film-viewing sample may not be totally representative of the population with respect to that characteristic.

Table 2 compares the percentage of subjects within each demographic category for our sample of 123 study participants with percentages within the same demographic categories obtained in the larger phone survey of the Western district. The table displays the total film evaluation project sample and each film-viewing group by race, sex, age, and education. Statistical comparisons of the cell entries show that in terms of race, the sample used in the film-viewing study did not differ significantly from the larger telephone survey sample (χ^2=2.01, df=1, p>.05). The present study also did not differ from the larger telephone survey in terms of sex of respondent (χ^2=.65, df=1, p>.05). While the proportions were about equal for younger participants, there was about an 8% difference in the older age categories, with the present study underrepresenting older persons (χ^2=7.16, df=2, p<.05). The film-viewing sample did not differ from the larger sample on education level (χ^2=4.77, df=2, p>.05).

[12] A random-digit dialing telephone survey (Survey Sampling, Inc., Fairfield, CT) of Western Division residents was conducted in February and March 1990 as part of a study of community standards for this legal proceeding. A total of 1,071 households were contacted; 148 numbers resulted in incompletion due to language difficulties (23), busy signal (20), answering machine (54), or "call backs" who were never reached (51); 33 respondents terminated the interview midstream, and 360 declined to be interviewed at all. A total of 478 respondents, 18 years old or older, completed the interview.

Respondents were questioned about length of residence, television and newspaper consumption habits, political affiliation, religiosity, and a variety of other issues. In addition, level of education, income, race, sex. and age were assessed. Respondents were also given the same description of X-rated materials used in the pre-viewing questionnaire of the film evaluation study and asked a subset of the questions concerning personal acceptance and tolerance in the community for adult movies and prurient appeal.

Table 2. Demographic Characteristics of Film Study Participants and Phone Survey Respondents

Race		Sex		Age			Education		
Black	White	Male	Female	18–30	31–45	46+	12–	13–15	16+
Film Study (*N*=123)									
37% (45)	63% (63)	39% (49)	61% (74)	34% (42)	43% (53)	23% (28)	41% (51)	36% (44)	23% (28)
Telephone Survey (*N*=478)									
27% (129)	73% (349)	46% (222)	54% (256)	30% (139)	35% (164)	35% (166)	47% (226)	26% (123)	27% (128)

NOTE: Sample in category may not total to entire sample because "Other" is not included.

As a further check of response bias, we compared subjects who volunteered for the present study with participants in the telephone survey on three additional attitude variables for which we did not specifically quota sample: self-assessed attitudes on most political issues ("very conservative," "conservative," "liberal," "very liberal"), level of religiosity ("very," "somewhat," "not very," and "not at all religious"), and attitude toward making abortion illegal ("favor," "oppose," "don't know"). The samples did not differ on the political issues variable (χ^2=6.59, df=3, p>.05). The two samples did differ significantly on attitudes toward the legalization of abortion (χ^2=17.03, df=2, p<.001) with telephone respondents indicating more support for making abortion illegal than film study volunteers (telephone respondents "favor"=37%, film study volunteers "favor"=24%). The two samples also differed significantly on level of religiosity (χ^2=11.79, df=2, p<.01) with telephone respondents indicating greater religiosity than film study participants (telephone respondents "very religious" =40%, film study volunteers "very religious"=25%).

As a more specific check on response bias, we compared our pre-viewing responses to the six key pre-film questions with responses to identical questions asked in the telephone survey: (1) whether it was acceptable to them for adults in their community to obtain and view sexually explicit materials, (2) whether the depictions contained in these materials are acceptable for adults, (3) whether it is tolerated in their community for other adults to obtain these materials, (4) community tolerance for the depictions of nudity and sex in these materials, (5) whether such materials appeal to any shameful, unhealthy, or morbid interest in sex they may have, and (6) whether such materials appeal to any unhealthy, shameful, or morbid interest in sex that a neighbor might have. This provided an index of whether before participating in the film-viewing phase of the study, our film-viewing sample was either more or less favorably disposed to viewing sex-

ually explicit materials than the population as a whole. Table 3 compares the percentages for responses to the critical questions asked in the telephone survey with responses from the film study subjects before they viewed a film. A comparison of the cells in a 2×2 chi-square analysis revealed statistically significant differences among the cells for five of the six questions: (1) personally acceptable (χ^2=36.7, df=1, p<.001); (2) depictions acceptable (χ^2= 24.9, df=1, p<.001); (3) tolerated in community for other adults to obtain (χ^2=5.7, df=1, p<.025); (4) community tolerance for depictions (χ^2=9.38, df=1, p<.005); (5) materials appeal to any shameful, unhealthy, or morbid interest in sex they may have (χ^2=4.06, df=1, p<.05). The samples did not differ on responses to the question addressing appeal to any unhealthy, shameful, or morbid interest in sex that a neighbor might have.

These comparisons indicate that subjects who volunteered for the film-viewing study are somewhat younger, could be considered less religious, and are more favorably disposed to sexually explicit materials than the community at large. The critical question is whether this bias is serious enough to grossly distort the major findings of the results presented below. At least two statistical techniques are available that permit us to take this sampling bias, and any other bias resulting from underrepresentation in a demographic category, into account for each of the major findings. We will discuss the results of the application of one of these techniques to our data following our report of the major findings.

Prior X-rated Movie Viewing Self-Reports

A preliminary indication of contemporary community standards as a whole are the viewing habits of the adults of the Western Division. To assess this, we asked the participants after viewing the films to complete the question: "Have you ever viewed a film or video like the one you just saw?" If participants answered yes, they were instructed to indicate how many times they had viewed a film like this in the last five years. Considered across the three X-rated film groups, 64% of the participants indicated that they had previously seen a film like the one they had just viewed. The median number of films that the participants had seen over the last five years was 4. Considered by individual film-viewing group, 65% had seen a film like this before for *Calendar Girls Collection*, 72% for *Blacks and Blondes*, and 54% for *Menage-a-Troix*. These proportions are very close to estimates available from national opinion polls. The polling organization Yankelovich Clancy Schulman (1986), for example, has reported that 62% of Americans had seen an X-rated movie at least once.

Table 3. Responses of Telephone Survey Respondents and Film Study Subjects (before and after Film Viewing for X-rated Film Subjects Combined Compared with Control Films) to the Questions on Personal Acceptability, Tolerance, and Prurient Appeal

Telephone Survey (% "yes")		Film Study Subjects (% "Acceptable")	
		All X-rated Films	Control Film
	Is it or is it *not* acceptable *to you* for adults in your community to obtain and view such videos and magazines, if they should want to?		
57	Before viewing	81	83
	After viewing	77	79
	Are such *depictions* of nudity and sex in videos and magazines, acceptable or unacceptable *to you*, for adults who want to view them?		
52	Before viewing	77	74
	After viewing	73	79
	Is it or *is it not* tolerated *in your community* for other adults to obtain and view such videos and magazines, if they should want to?		
62[a]	Before viewing	79	87
	After viewing	73	94
	Are such *depictions* of nudity and sex in videos and magazines, tolerated or not tolerated in *your community* for adults who want to view them?		
56[a]	Before viewing	77	87
	After viewing	71	94
	Would your viewing of adult videos and magazines depicting actual sex acts in great detail and with close-ups of the sexual organs, as described, appeal to any unhealthy, shameful, or morbid interest in sex that you might have?		
17[b]	Before viewing	11	9
	After viewing	19	0
	Would the viewing of adult videos and magazines depicting actual sex acts in great and with close-ups of the sexual organs, as described, appeal to any unhealthy, shameful, or morbid interest in sex that your *neighbor* might have?		
20[c]	Before viewing	26	30
	After viewing	32	13

[a] "Don't know" = 12%.
[b] "Don't know" = 5%.
[c] "Don't know" = 35%.

Defining Contemporary Community Standards for Sexually Explicit Materials

Patent Offensiveness

Table 3 shows the responses of participants who viewed the X-rated films to the questions concerning personal acceptability on the dichotomous accept/not accept variable. The results indicate that, by a margin of more than 3:1, participants who viewed the X-rated films felt it was personally *acceptable to them* for adults in their community to obtain and view sexually explicit materials

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described to them in the prefilm questionnaire. After they viewed the films charged in the case, there was no significant change in their evaluations. The participants found it acceptable for adults in the community to obtain and view that particular video by a comparable margin (McNemar Symmetry χ^2=.667, df=1, p>.41). The results were nearly identical when participants were asked about the *depictions* of nudity and sex (McNemar Symmetry χ^2=1.286, df=1, p>.26).

Table 3 also presents the responses of participants to whether it is or is not *tolerated* in their community for *other* adults to obtain and view this video. The subjects overwhelming felt that the community tolerated the materials but by a slightly smaller margin after viewing the films than before (McNemar Symmetry χ^2=3.6, df=1, p<.06). No substantial difference in the before and after evaluations was obtained when participants were asked whether the particular *depictions* of nudity and sex in these videos were tolerated or not tolerated in their community (McNemar Symmetry χ^2=2.27, df=1, p>.13).

Appeal to Prurient Interest

Table 3 also presents X-rated viewing subjects' responses both before and after film viewing for the prurient appeal questions. Although the percentages change somewhat pre- to post-viewing (McNemar Symmetry χ^2=6.0, df=1, p<.02), the majority of participants believed that the films did not appeal to an unhealthy, morbid, or shameful interest in sex they may have. When asked this same question in reference to their *neighbor*, the majority of participants also indicated that the sex acts in these videos would not appeal to prurient interest; and subjects showed no significant change pre- to post-viewing (McNemar Symmetry χ^2=1.146, df=1, p >.29).[13]

[13] As a further check on appeal to prurient interest, subjects were asked to answer the same two questions about the film they had just viewed, but to consider the film *in its entirety* and not answer based on any particular scene or scenes or any depiction in a scene. This was done because the legal standard of prurient appeal requires the material to be taken as a whole, not evaluated part by part. Here, again, a very solid majority of participants indicated that these films would not appeal either to their own or to a neighbor's shameful, morbid, or unhealthy interest in sex.

We believed that asking participants in a telephone survey or in a pre-viewing questionnaire to consider or "take" the described materials "as a whole" when judging their prurient appeal would be confusing. Subjects could only be reasonably asked to consider the material as a whole after having actually viewed it. By asking this question without this additional instruction, we were able to compare the telephone survey respondents with the pre-viewing subjects and both with post-viewing responses. The fact that the responses to these items were nearly identical whether or not the "as a whole" instructions were included, however, suggests that questions used in a telephone survey even when they are not prefaced with this instruction are legally valid.

Estimating the Limits of Community Acceptance and Tolerance

Pre-Post Changes in Acceptance of Violence

Table 4 shows the results of pre- to post-viewing changes for the violence-viewing group. There is a substantial drop in personal acceptance of adults obtaining and viewing this video and personal acceptance of the violent depictions by subjects pre- and post-viewing. As can be seen from the table, 79% indicate acceptance of adults obtaining and viewing this material on the pre-viewing questionnaire, but the figure drops to 58% following the film (McNemar Symmetry χ^2=3.57, df=1, p<.06). Of the subjects, 75% indicated on the pre-viewing questionnaire that depictions of violence were acceptable. The figure drops to 50% after viewing (McNemar Symmetry χ^2=6.0, df=1, p<.02).

Table 4. Responses of Survey Respondents and Film Study Subjects (Before and After Viewing Violent Films) to Questions on Personal Acceptability, Tolerance, and Prurient Appeal

Questions	Telephone Survey (% "Yes")	Film Study Subjects	
		Before Viewing (%)	After Viewing (%)
Is it or is it *not* acceptable *to you*, for adults in your community to obtain and view such videos and magazines if they should want to?	53	79	58
Are *depictions* of violence in this video acceptable or unacceptable to you, for adults who want to view them?	NA	75	50
Is it or is it *not* tolerated *in your community* for other adults to obtain and view this video if they should want to?	74	83	87
Are such *depictions* of violence in this video tolerated or not tolerated in your community for adults who want to view them?	NA	83	83
Did viewing of this video depicting violent acts in great detail, appeal to any shameful, unhealthy, or morbid interest in violence that you might have?	NA	17	22
Would viewing of this video depicting violent acts in great detail, appeal to any shameful, unhealthy, or morbid interest in violence that your *neighbor* might have?	NA	26	26

Comparable drops pre- to post-viewing were not found for whether it is tolerated in their community for other adults to obtain and view this video (McNemar Symmetry χ^2=.33, df=1, p>.56) or when subjects were asked whether the particular depictions of

violence in these videos were tolerated or not tolerated in their community (McNemar Symmetry χ^2=0.0, df=1, p=1.0).

Scenes of Violence, Bondage, and Simulated Rape and Use of Children under the Age of 18

Subjects who had viewed the sexually explicit films were also asked to think about the video they had just viewed and imagine that there were scenes of nudity and sex which were violent, including bondage and simulated rape. Later they were asked to consider the movie they had just viewed and imagine that there were scenes of nudity and sex with children under the age of 18. After each instruction set they were then asked to complete the two personal acceptance, the two community tolerance, and the prurient appeal questions. Table 5 presents the mean responses for X-rated viewing subjects under each instruction set. A 3×3 (film condition by instruction set) mixed-design ANOVA was computed for each of the six questions. For the personal acceptance and community tolerance variables, the results indicated no differences between sex film groups but statistically significant ones among instruction sets (*personally acceptable*, univariate repeated measures F (2, 132)=52.44, p<.001; *depictions acceptable*, univariate repeated measures F (2, 132)=60.13, p<.001; *tolerated in your community*, univariate repeated measures F (2, 132)=46.27, p<.001; *depictions tolerated*, univariate repeated measures F (2, 132)=65.14, p<.001). Tests on means for each repeated measures variable using the Newman-Keuls procedure (Winer 1971) showed that all pairs of means for the four questions differed significantly from one another (p<.01). No significant differences were found between the instruction sets after viewing the sexually explicit movies for either of the prurient appeal questions. In summary, while there were clear differences between the instruction conditions (no instruction; violence, including bondage and simulated rape; and nudity and sex with children under the age of 18) for judgments of patent offensiveness variables, there were no differences between these instruction conditions when subjects were asked to judge their level of prurient appeal.

Ruling out "Testing Effects"

We undertook an additional set of analyses to strengthen our confidence in the results of the study. We asked: Did answering questions about prurient appeal and patent offensiveness first in the pre-film questionnaire and again post-film cause subjects to think more carefully about these issues and produce substantially different answers the second time regardless of the content of the movie? The answer to this question is critical since we had detected large shifts in opinion pre- and post-viewing for the violence-group subjects. To test for this possibility, we included a

Table 5. Means for X-rated Film-Viewing Subjects by Post-Film Type of Instruction

Question	Instruction Type		
	None	Rape and Bondage	Children under 18
Acceptable to you, for adults in your community to obtain and view	3.64_a	5.49_b	7.02_c
Depictions acceptable or unacceptable to you	3.89_a	5.46_b	7.32_c
Tolerated in your community for other adults to obtain and view	3.97_a	4.92_b	6.8_c
Depictions tolerated or not tolerated in your community	4.15_a	5.12_b	7.23_c
Appeal to any unhealthy, shameful, or morbid interest in sex that you might have	6.33_a	6.18_a	5.94_a
Appeal to any unhealthy, shameful, or morbid interest in sex that your neighbor might have	5.53_a	5.18_a	5.4_a

NOTE: Those means sharing a common subscript are not significantly different from each other ($p < .05$).

neutral film group in the study who completed the same pre-viewing questionnaire items as the X-rated viewing groups and the violence viewing group. After viewing the neutral film, they again completed these items. A comparison of the responses of the neutral-film control group subjects before and after the film on the patent offensiveness and prurient appeal questionnaire items using the McNemar Symmetry chi-square showed no statistically significant changes in opinion pre- to post-viewing for the neutral-film control group on any of the questionnaire items. This indicates that simply answering these potentially sensitive and thought-provoking questions during the pretest phase had no effect on participant attitudes measured in the posttest phase.

Assessing Selection Bias

As noted earlier, some types of respondents were more willing to participate in the film-viewing study than others, first when initially asked to watch a film, and later when informed that they might be asked to view an X-rated film. We noted that of the 496 telephone interview respondents who completed the initial interview, 242 declined to participate in *any* film-viewing project, and 27 refused when informed of the possibility they would see an X-rated film. It is now appropriate to ask whether the failure to include opinions from these two groups of telephone interview respondents who had refused has grossly distorted the percentages responding positively (or negatively) to the obscenity questions in Table 3. Stated in more technical terms, we may ask: Have the sample self-selection processes governing the willingness of individuals to participate in the film-viewing study—whether by the explicit race, sex, education, and age categories

(see Table 2) or implicitly by unmeasured variables (such as religiosity or political conservatism, which were not ascertained in the telephone recruitment interviews), or by personal positions of individuals on the dependent variables themselves—so truncated the frequency distributions observed in the film-viewing study that the percentage estimates in Table 3 are grossly biased and inaccurate?

Several statistical techniques are available to assess the degree of sample bias (see Appendix A). We applied Rubin's (1977) mixture-modeling approach. Rubin's method can be thought of as summarizing the results of simulations in which one uses data on both independent and dependent variables for respondents to generate reasonable hypothetical responses for nonrespondents. This method yields probability intervals that are estimations, in a subjective sense, of the effect of nonresponse in sample surveys. Based on Bayesian techniques, the method produces subjective probability intervals for the statistics that would have been calculated if all nonrespondents had responded. Background information recorded for both respondents and nonrespondents is used to sharpen the subjective interval. In this study, we have observations on the following background variables for age, race, sex, education (years of schooling), years of residence in Shelby County, number of days in the last week reading a daily newspaper, number of movies on videocassette seen during past 12 months, and whether the respondent has a television connected to cable service. However, we have "accept," "tolerate," and "yes" response statistics only for the respondents who viewed the videos.

The first analysis compared respondents who viewed the X-rated videos and those who refused to view *any* video. The probability intervals reported in Table 6 give lower and upper bounds on the percentage in the table *that would have responded* yes to the questions if responses (after viewing) had been obtained from those individuals who refused to view any video.[14]

[14] The intervals are calculated on the basis of two parameters in Rubin's (1977) model. The first (θ_1) formalizes subjective notions about how similar are the slopes of the regressions of the dependent (response) variables on the background variables for respondents and nonrespondents. The second (θ_2) formalizes subjective notions about how similar the expected values of the response variables are likely to be for respondents and nonrespondents with means on the background variables equal to the respondents' observed means on these variables.

It was found that the probability intervals reported in Table 6 were insensitive to the θ_1 parameter. That is, assumptions about varying levels of similarity of the regression coefficients of nonrespondents and respondents produced little or no variation in the sizes of the probability intervals. (For illustrative purposes, the subjective probability levels were also calculated with θ_1=0.20. These analyses are reported in Land & McCall 1993.) On the other hand, the intervals did show substantial sensitivity to variations in θ_2, i.e., to variations in assumptions about how similar the expected values (percentages responding yes) of the nonrespondents are to the respondents.

While the intervals could be calculated for various probability levels, those reported in the table are the conventional 95% (two standard deviation) intervals. Note that while the centers of these intervals shift somewhat as compared with the sample means (% yes

Table 6. Sample Means, Centers, and Bounds (Lower and Upper) for 95% Probability Intervals on Responses to the Post-Viewing Questions (Analysis Based on Comparing 93 Subjects Who Viewed X-Rated Films with 244 Respondents (of 497) Who Were Not Willing to View Any Film)

Dependent Variable	Sample Mean of Film-Viewing Subjects	Interval Center	Bayesian Interval Bounds[a] Low Selection Bias (θ_2=0.10)	Medium Selection Bias (θ_2=0.20)	High Selection Bias (θ_2=0.40)
Q3: Acceptable to you for adults to obtain and view this video? % "accept"	78	70	62, 78	55, 85	40, 100
Q4: Depictions of nudity and sex in this video acceptable to you for adults who want to view? % "accept"	74	67	60, 75	53, 82	39, 96
Q5: Tolerated in your community for other adults to obtain and view this video if they want to? % "tolerated"	75	74	67, 81	60, 88	45, 100
Q6: Such depictions of nudity and sex in this video tolerated in your community for adults who want to view? % "tolerated"	74	70	62, 77	55, 84	41, 98
Q7: Viewing of this video appeal to any unhealthy, shameful, or morbid interest in sex that you might have? % "yes"	14	17	15, 19	14, 20	11, 22
Q8: Viewing of this video appeal to any unhealthy, shameful, or morbid interest in sex that your neighbor might have? % "yes"	28	29	25, 32	23, 35	18, 40
Q9: Viewing of this video in its entirety appeal to any unhealthy, shameful, or morbid interest in sex that you might have? % "yes"	17	19	17, 21	15, 23	12, 26
Q10: Viewing of this video in its entirety appeal to any unhealthy, shameful, or morbid interest in sex that your neighbor might have? % "yes"	27	26	22, 29	20, 31	15, 36

[a] θ_1=0.10

Each of the low, medium, and high selectivity bias probability intervals in the table is calculated with θ_1=0.10. But θ_2 is set, respectively, equal to 0.10, 0.20, and 0.40 for the low, medium, and high intervals. For the last value of θ_2=(0.40), this corresponds to saying that the standard deviation of the sampling distribution of the % yes dependent variables for the nonrespondents (those who declined to view any videos) is 40% of the observed % yes responses for the respondents (those who viewed the X-rated videos). This is quite a radical assumption regarding selectivity bias;[15] hence, the term "high selectivity bias" for intervals corre-

responses) observed for the film-viewing respondents, they remain constant across levels of θ_1 and θ_2.

[15] Standard deviations of sampling distributions of percentages [proportions] for samples of about 100 usually are 10% or less of the observed percentages [proportions].

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sponding to this value of θ_2. By comparison, the θ_2 values specified for the other two sets of intervals correspond to milder selection bias assumptions; hence, the terms "low" and "medium" for these intervals.

As examples for the interpretation of the intervals in Table 6, consider first the question on appeal to respondent's prurient interest. It is 95% probable that the response statistic (% yes) lies within the interval of 15%–19% under the low selectivity bias assumptions, within the 14%–20% interval under the medium selectivity bias assumptions, and within the 11%–22% interval under the high selectivity bias assumptions. By comparison, for the question on acceptability for adults in your community to obtain, it is 95% probable that the response statistic (% acceptable) lies within the interval of 62%–78% under the low selectivity bias assumptions, 55%–85% under the medium assumptions, and 40%–100% under the high assumptions.

The second analysis compared those who viewed the X-rated videos and nonrespondents who refused to participate when informed that they would be asked to view an X-rated video. This analysis appears in Table 7. As examples for the interpretation of the intervals in the table, consider first the question on appeal to respondent's prurient interest. It is 95% probable that the response statistic (% yes) lies within the interval of 13%–14%, under the low selectivity bias assumptions, within the 13%–14% interval under the medium selectivity bias assumptions, and within the 12%–15% interval under the high selectivity bias assumptions. By comparison, for the question on acceptability for adults in your community to obtain, it is 95% probable that the response statistic (% acceptable) lies within the interval of 75%–79% under the low selectivity bias assumptions, 74%–78% under the medium selectivity bias assumptions, and 71%–83% under the high selectivity bias assumptions.

We may conclude that even under the most extreme assumptions of bias, there is no evidence that more than 50% of the respondents contacted during the telephone recruitment phase of the study indicate that sexually explicit materials described to them appeal to a prurient interest either they or a neighbor might have. Under the most plausible assumption of selection bias, the lower bounds of the responses to the questions of personal acceptance and community tolerance do not fall below a majority of 50%. Only under the most extreme assumptions of selection bias (i.e., θ_2=0.40) could one conclude that the majority of the respondents to the recruitment phase questionnaire do not personally accept or feel the community tolerates sexually explicit materials.

Table 7. Sample Means, Centers, and Bounds (Lower and Upper) for 95% Probability Intervals on Responses to the Post-Viewing Questions (Analysis Based on Comparing 93 Subjects Who Viewed X-Rated Films with 26 Respondents (of 253) Who Initially Were Willing to View a Film But Declined to View an X-Rated Film)

Dependent Variable	Sample Mean of Film-Viewing Subjects	Interval Center	Bayesian Interval Bounds[a] Low Selection Bias (θ_2=0.10)	Medium Selection Bias (θ_2=0.20)	High Selection Bias (θ_2=0.40)
Q3: Acceptable to you for adults to obtain and view this video? % "accept"	78%	77%	75%, 79%	74%, 80%	71%, 83%
Q4: Depictions of nudity and sex in this video acceptable to you for adults who want to view? % "accept"	74%	74%	72%, 75%	71%, 77%	68%, 80%
Q5: Tolerated in your community for other adults to obtain and view this video if they want to? % "tolerated"	75%	74%	73%, 76%	71%, 77%	68%, 80%
Q6: Such depictions of nudity and sex in this video tolerated in your community for adults who want to view? % "tolerated"	74%	73%	71%, 75%	70%, 76%	67%, 79%
Q7: Viewing of this video appeal to any unhealthy, shameful, or morbid interest in sex that you might have? % "yes"	14%	14%	13%, 14%	13%, 14%	12%, 15%
Q8: Viewing of this video appeal to any unhealthy, shameful, or morbid interest in sex that your neighbor might have? % "yes"	28%	28%	27%, 29%	26%, 29%	25%, 3%0
Q9: Viewing of this video in its entirety appeal to any unhealthy, shameful, or morbid interest in sex that you might have? % "yes"	17%	17%	16%, 17%	16%, 18%	15%, 18%
Q10: Viewing of this video in its entirety appeal to any unhealthy, shameful, or morbid interest in sex that your neighbor might have? % "yes"	27%	26%	25%, 27%	25%, 27%	24%, 28%

[a] θ_1=0.10

Discussion

The results of this study suggest that adult residents in the Western Division (the city of Memphis, its constituent Shelby County, and an additional four-county area) believe that the sexually explicit films charged in the case *United States v. Ellwest of Memphis* (1990) do not appeal to a self-reported shameful, morbid, or unhealthy (prurient) interest in sex (see appendix B) and are not patently offensive—that is, they did not go substantially beyond the customary limits of candor (acceptance and tolerance) in the Western Division in depictions of sex. There was, on the whole, no substantial shift in opinions about prurient interest

and patent offensiveness based on a description of these materials before and after viewing the films among our subjects. Further, a nearly equal percentage of people think other members of the community tolerate the sexually explicit films they just viewed as what they personally accept. However, the results also showed that the community would be substantially less accepting of the sexually explicit materials if they were to contain rape and bondage and indicate virtually no acceptance of materials including children actors under the age of 18.

Further, participants who viewed a violent slasher film clip compendium showed a substantial downward shift in personal acceptance of these materials from pre to post-viewing, so that after viewing, it could not be concluded that a majority within the community accepted them. Assuming a confidence interval of 10% on either side of our estimates, we find no evidence that a majority of members of the community accept these violent films. Or, more to the point, these materials appear to exceed community standards. Despite a lack of *personal* acceptance among the majority, participants still believed the majority of *others* in the community tolerated the violent films they had viewed.

The results of this study appear to be free of experimental artifacts such as a "cognitive dissonance effect" whereby subjects are unwilling to condemn materials they have volunteered to view or a "testing effect" caused by administration of the questionnaire twice. The participant recruitment procedures used here permitted us to statistically compare participants who volunteered for the study, knowing they might be asked to view sexually explicit materials, with those who declined to participate. With this information we are able to estimate the effects of any self-selection bias on responses to key questions. Statistical analyses designed to determine if these results were affected by sample selection bias (the tendency for younger persons, politically liberal persons, and persons already more tolerant of sexually explicit materials to be more likely to volunteer for the study) showed no plausible support for such contaminating effects.

Is the Law "Wrong" about Community Morals?

Nearly all prosecutions for obscenity in this community and elsewhere in the United States have involved *nonviolent* hardcore sex. Traditionally, the Supreme Court has ruled that in order to be found obscene, movies, books, and videos must contain only a strong sexual component; they need not contain any form of violence or subjugation. Potentially vicious, violent, degrading depictions are fully protected by the First Amendment so long as they do not contain strong sexual content.

Our data would suggest that the law is "wrong" about community disapproval of sexually explicit materials—at least in western Tennessee. Community members tolerate consenting hardcore sex by an overwhelming majority. They *disapprove* of sex tied to violence. Most community members appear to draw the line at depictions of rape and bondage. Virtually all members of the community disapprove of the use of children in sexually explicit productions.[16] The majority of our sample of community members also appeared not to personally accept violent slasher films or the depictions of violence against women in them.

With the advent of *Miller v. California* (1973), obscenity law has been cast directly in light of local public opinion. Obscenity law draws its legitimacy from the fact that it presumably reflects community values. Certain depictions of sex can be regulated through prosecution because they are intolerable to community members. It is fundamental that the Court be "right" about community disapproval for the law to be just. Our findings would suggest that to be true to this focus on community standards, sexual violence—and not consenting sex—should have been the subject of prosecution in western Tennessee.

If not an indication of injustice, it is at least ironic that we did not find a majority of community members indicating personal acceptance for materials that have never been the subject of litigation (slasher films) but that a majority *did* personally accept materials often adjudicated illegal (consenting sex).

Discrepancy between Code and Community and Obscenity Law's Legitimacy

Our study revealed two types of discrepancies between code and community. The finding that community members tolerate consenting sex depictions that are the subject of prosecution may be viewed as an instance of lay persons claiming that justice requires no punishment but where the criminal code demands one. Since community members disapprove of violent depictions, yet the criminal justice system does not specifically address them, we may have uncovered an instance where the community assumes blameworthiness, but it is not followed by the criminal justice system.

What are the consequences of the law punishing persons not considered blameworthy by the community and not punishing those who are? Overall, it has been suggested that a legal system that unjustly criminalizes some conduct undermines faith in the system (Robinson & Darley 1994; Kadish & Kadish 1973; Tyler

[16] Intolerance for the use of children in sexual depictions has been well established in the law; see *New York v. Ferber* (1982). The Supreme Court has held flatly that there is no First Amendment protection for portrayals of specifically described sex acts performed by boys or girls under 18 years of age. Consequently, the implications of this finding will not be discussed further.

1990). Discrepancies between the criminal code for obscenity and community sentiment may result in several specific outcomes. First, as Robinson and Darley (1994) point out, the fear of condemnation and criminal conviction can be a powerful crime deterrent. Its effectiveness depends on the established "condemnatory value" of conviction. Discrepancies between the obscenity code and community tolerance may undercut the condemnation value of a conviction for obscenity violations, thereby undercutting the effectiveness of condemnation as a deterrent threat in this area of the law.

Research by Tyler (1990) and others suggests that the law's most powerful mechanism for gaining compliance lies not in punishment as a deterrent threat but rather with the positive force of the law as arbiter of proper conduct. Most people obey the law not because they fear punishment but for other normative reasons such as seeing themselves as persons who want to do the right thing. Discrepancies between the obscenity code and community tolerance may tend to undercut the law's moral credibility, which in turn undercuts the law's power as arbiter of proper conduct in this and other domains.

Finally, the perceived justice of the system generally is crucial to gaining the cooperation and acquiescence of those persons involved in the legal process (offenders, potential offenders, witnesses, jurors, etc). The greatest cooperation will be elicited where the system has greatest moral credibility. Discrepancies between code and community like those found in this study have the potential to undercut the law's moral credibility and thereby its effectiveness. This may occur in two ways for obscenity law: by targeting and punishing tolerable depictions and persons who may be blameless and by failing to address blameworthy depictions and purveyors of violence. As Robinson and Darley (1994) note, the former may be especially detrimental in the long run. Each time the criminal law seeks to target materials community members tolerate, it calls into question, in some small way, the propriety of condemnation of all other criminal convictions. Failure to address the problem of violent depictions may be equally detrimental. These effects may be small in themselves, but over time, they may serve to delegitimize both obscenity law and perhaps the criminal justice system in general. Community members may come to question a legal system that appears to permit portrayals of extreme violence they deem intolerable.

Complicating matters is the finding that despite a lack of personal acceptance for violence among the majority of participants in our study, a large majority both before and *after* viewing the material did indicate that *others* in the community tolerated these materials.[17] This finding is interesting in light of our previous

[17] We suspect that few of our study participants (and by inference, few members of the community) were aware of the level of violence and mutilation in slasher films. Per-

work on community members in Charlotte, NC, which showed that these citizens personally accepted sexually explicit depictions but judged others in the community to be intolerant of them (Linz et al. 1991)—an effect we attributed to the prosecution of these materials in that community. Robinson and Darley (1994) have noted that a person's intuitive judgment about what is just is dependent not on idiosyncratic beliefs but on the assumption that there is broad community support by other just persons. Community members in this study may not have perceived broad support for their attitudes. Consequently, they may not have felt that justice required that violent materials be addressed by the law.

While no other studies have measured public attitudes toward *sexual* violence per se, there is evidence to suggest that Americans may be intolerant of nonsexual violence in the media. Several national public opinion surveys indicate that Americans are concerned with and often disapprove of media violence (Mathews 1987; Rosensteil 1993). Nearly two-thirds of adults nationwide think there is too much violence on television (Rosensteil 1993). A strong majority of respondents also believed that televised violence is harmful to society. Finally, when asked to rank-order a list of subject matter found in entertainment including violence, profane language, nudity, and sex, respondents indicated they were most upset by violence (Mathews 1987; Rosensteil 1993).

This research and the results presented here would suggest that the public may becoming concerned about depictions that are now outside the scope of the present law. However, that people are intolerant of sexual violence does not mean they are necessarily in favor of making it illegal or banning it. The *Los Angeles Times* poll mentioned above (Rosensteil 1993) finds that despite the widespread belief that violence and sex on television are corrupting the nation, most Americans oppose any government efforts to regulate programming.

haps participants used that portion of the pre-viewing instructions which indicated that these movies and videos were R-rated as a heuristic for evaluating these materials beforehand. They may have assumed that materials not restricted to "adults only" viewers would not be as sexually and nonsexually violent as more restricted materials.

In fact, content analysis of X- and R-rated materials suggest that this lay perception is seriously flawed. Comparative analyses of X- and R-rated movies have shown that sexual violence is about equal in X- and R-rated materials. The level of nonsexual violence in R-rated materials is substantially higher than that found in X- and the so-called XXX-rated materials (Yang & Linz 1990).

The fact that our subjects indicated personal acceptance of sex but not of violence suggests a paradox regarding public policy and restrictions on certain forms of mass media. As we have suggested elsewhere, the film rating system devised by the Motion Picture Association of America (MPAA) and used to restrict audience attendance by age group, is designed to reflect and appease American public opinion which is supposedly intolerant of depictions of sex while tolerant of violent content (Wilson, Linz & Randall 1990). Our data would suggest the public is far less supportive of violence than it may be of sex, calling into question the assumptions underlying the MPAA rating system.

The Roots of the Discrepancy between Code and Community

Our study suggests that obscenity law may be incorrectly gauging conventional morality. While a discrepancy between the obscenity code and community standards is not automatically an argument for changing the legal code, it may be an argument for careful examination of the roots of the discrepancy (Robinson & Darley 1994). The discrepancy between community tolerance and the obscenity code may exist because sexually explicit depictions of consensual behavior are no longer perceived as *harmful* by community members.

The Court has assumed that regulation of obscene materials is justified to prevent decay of society's morals and preserve its sense of decency. Government regulation has sought to control material that is patently offensive and sexually arousing or that appeals to "prurient interest" under the assumption that offensiveness and moral perversion flow from sex depictions. Obscenity law has not been concerned with incitement to violence or rape. When the courts have considered the "harms" associated with obscenity, it is harm to society's morality or an assault on the sensitivity of the audience that is identified.

Research on the effects of exposure to pornography and other sexually suggestive materials that contain violence suggests that it is *violence*, whether or not accompanied by sex, that has the most potentially damaging societal effects. Studies suggest that depictions of rape result in a variety of harmful, antisocial outcomes, such as an increase in rape myth acceptance, callousness toward rape victims depicted in other contexts, and displays of aggressive behavior against women in laboratory settings. Mass media depictions of rape, particularly those that portray the woman as sexually aroused by her violent treatment, may result in the same harmful effects (for reviews, see Donnerstein, Linz, & Penrod 1987; Linz & Malamuth 1993). Research on the effects of exposure to *consenting* sex depictions has not, for the most part, yielded similar findings of harmful outcomes (for a review, see Linz 1989). Further, depictions of violence against women need not occur in a sexually explicit context for negative effects to occur. For example, male viewers repeatedly exposed to depictions of violence against women portrayed in mildly erotic contexts (i.e., slasher films) become desensitized to the violence in these films and report lower levels of sympathy for female victims of sexual and domestic violence in other contexts (Donnerstein et al. 1987; Linz & Malamuth 1993).

One explanation for the discrepancy between code and community may be that members of the community are no longer as offended by viewing sex but are concerned about the harms associated with viewing violence. The community's morals may have changed since the inception of *Miller*. Obscenity law with its em-

phasis on "moral decay" appears to lie outside the community's scope of concern. Instead, the possible harms of exposure to violence appear most troubling. Members of the Memphis community seem to have an intuitive sense of what may be socially harmful.

Aligning the Law with Social Science Findings

What are the implications of the fact that community members may not accept violent depictions and the fact that social science data has detected a significant harm associated with these materials on obscenity law? Traditional assumptions in the law suggest that there may be room under current constitutional theory to regulate portrayals of violence. However, community sentiment and social science evidence suggests a new standard for laws regulating sexual depictions.

Obscenity law has been traditionally directed toward sexually explicit materials and community tolerance/acceptance of sexual depictions. The violent materials that community members do not tolerate in our study are not particularly sexually explicit or arousing, and the sex is not hardcore. They would not meet the prurient appeal part of the test and would never be prosecuted under current obscenity law. Other, nonsexual depictions or descriptions, no matter how potentially offensive or potentially harmful, have usually been deemed excluded from obscenity prosecutions and are protected by the First Amendment. According to the Seventh Circuit Court of Appeals:

> Racial bigotry, anti-semitism, violence on television, reporters' biases—these and many more influence the culture and shape our socialization. None is directly answerable by more speech, unless that speech too finds its place in the popular culture. Yet all is protected as speech, however insidious. Any other answer leaves the government in control of all the institutions of culture, the great censor and director of which thoughts are good for us. (*American Booksellers Ass'n v. Hudnut*, 1985, p. 9).

On other occasions (see *Jenkins v. Georgia* 1974), in reversing a lower court decision holding the film *Carnal Knowledge* to be obscene, the Supreme Court has left no doubt that unless the materials contain hardcore sexual depictions, they cannot be criminalized under obscenity law.

On the other hand, it may be possible under constitutional theory to find room for the prosecution of violent materials that may or may not have an undeniably sexual theme but that are clearly not hardcore depictions of sex. The court in *Miller* (1973), for example, speaks of both "*actual or simulated*" depictions of sex as falling under the purview of an obscenity prosecution, leaving open the possibility that violent materials with merely sexual themes could fall under the purview of obscenity

law. In another case the Ohio Court of Appeals in *State v. Wolfe* (1987) ruled that movies involving violent activities, such as so-called slave piercing, but with no explicit depictions of sexual conduct may be adjudicated obscene under the *Miller* standard. Similarly, the Attorney General's Commission on Pornography (U.S. Department of Justice 1986), despite its mandate to examine the impact of sexually explicit materials on individual viewers and society, concluded that violent films similar to those viewed by our subjects may be substantially more harmful than explicit pornography. According to the Commission (p. 329): "The so-called slasher films, which depict a great deal of violence connected with an undeniably sexual theme but less sexual explicitness than materials that are truly pornographic, are likely to produce the consequences discussed here to a greater extent than most materials available in 'adults only' pornographic outlets."

Indeed, the Supreme Court's initial decision in holding "obscenity" outside the protections of the First Amendment may lend support for an implication that materials other than the merely "hardcore" sexually explicit fare can be devoid of constitutional protections. In *Roth v. United States* (1957), the Supreme Court concluded that obscenity had been a "historical exception" to the First Amendment and, therefore, did not receive constitutional protection. It noted that Massachusetts laws enacted as early as 1712 that had criminally proscribed "any filthy, obscene, or profane song, pamphlet, liable or mock sermon" and "imitation or mimicking of religious services." As the "obscene" was therefore subsequently held to be outside of the protections of the First Amendment, so could the "filthy" or "profane," *however those terms may be defined.* Finally, speech and expression that creates a "clear and present danger" has long been held to fall outside the scope of constitutional protection (*Schenck v. United States* 1919). Thus, if certain violent material was shown to create a "clear and present danger" (however that "danger" or underlying "harm" might be defined), a legal argument could be made that such materials could be criminally proscribed, regardless of the presumptive veil of the First Amendment.

It may be time to consider a new definition of what constitutes legally actionable material to replace the traditional obscenity standard. The results of this study, the Linz et al. (1991) study on community standards in Mecklenburg County, and past empirical research on pornography effects (Donnerstein et al. 1987; Linz & Malamuth 1993) suggest that prosecutions most closely aligned with both community standards and harmful effects as identified by empirical research would involve materials that feature rape or other forms of sexual violence rather than consenting sexual depictions.

The Court could continue to allow prosecution of nonviolent sex under current obscenity law. This law was designed to prosecute sexually explicit consenting depictions with *presumed* community approval. Empirical evidence suggests that this presumption, as well as the notion that jurors are capable of discerning the standard, is dubious. Alternatively, the law could allow only for the prosecution of depictions of sexual violence. Such a shift has the advantage of being both congruent with community sentiment and of limiting prosecutions to only those materials for which there is scientific evidence of harmful effects.

Appendix A. Sample Bias

Recently, a number of advances have been made in statistical methods for the diagnosis of, and correction for, subject selection bias (Berk 1983; Berk & Subhash 1982). Two of the principal approaches to the correction for sample selection bias are represented by the selection modeling methods of Heckman (1979) and the Bayesian mixture modeling methods of Rubin (1977). Heuristically, the selection approach models the probability of being a nonrespondent (nonparticipant in the present study) as a function of known characteristics of nonrespondents (e.g., sociodemographic variables) and then enters a function of this probability (called a hazard rate for nonresponse) into a statistical model for the correction of the frequency distribution on a dependent variable (such as one of the questions in Table 3) that has been obtained from respondents (participants in the present study). By contrast, the mixture approach takes as given the distribution on a dependent variable for the sample of respondents, constructs statistical models of the unobserved distribution of the dependent variable for nonrespondents, and then mixes the observed and unobserved distributions of the dependent variable and outputs this mixed distribution (or some function thereof, such as the mean).

Recent methodological work (Wainer 1986) suggests that each approach has its strengths and weaknesses. While there currently is no clear consensus among statisticians that one is always preferable to the other, evidence is mounting that the Heckman technique is probably not a general cure for censoring bias except perhaps where strong theory permits certain strong assumptions (Stolzenberg & Relles 1990). Mixture modeling proceeds by the imposition of the investigators' beliefs (priors) on the observed distribution of Y for respondents. It can, therefore, be regarded as a type of sensitivity analysis and has been fruitfully related to multiple imputation procedures (Glynn, Laird, & Rubin 1986; Rubin 1987). By comparison, selection modeling requires the investigator to model the selection process itself. Evidence has been accumulated that this can be a difficult and possibly misleading task, even when the model is correctly specified (Stolzenberg & Relles 1990).

We report the results of applying Rubin's (1977) mixture modeling approach to ascertain the extent to which the "after-film" response distributions in Table 3 could be biased by sample self-selection. This decision is based largely on the fact that the mixture modeling produces probability intervals as output. These achieve our goal of displaying the

sensitivity of the "after-film" response distributions to various assumptions about selectivity bias. By comparison, the selection modeling approach focuses on providing an answer to whether significant selection bias exists under a single, untestable assumption.

Appendix B. Methodological Note Regarding Prurient Appeal Questions

Subject responses to the prurient appeal questions asked after viewing the sexually explicit films and after each instruction set indicated that no matter when the question was asked (before or after the film), or how the question was asked (with reference to the film in its entirety or without this reference), participants overwhelming indicate that the materials do not appeal to an unhealthy, shameful, or morbid interest in sex either for themselves or their neighbor. As we noted above, these results may, indeed, might suggest that the sexually explicit films studied here do not appeal to a shameful, morbid, or unhealthy interest in sex to the average adult in the Western Division of Tennessee.

But this interpretation is clouded by the fact that subject responses to the prurient appeal questions following both the rape and bondage and the children under 18 instruction sets indicate that neither of these depictions would appeal to a prurient interest according to subjects. Frankly, we had expected the pattern of results for the prurient appeal questions to mirror the results obtained for patent offensiveness (personal acceptance and community tolerance)—subjects would indicate that materials featuring rape and children actors would be more likely to appeal to an unhealthy, shameful, morbid interest in sex than the sexually explicit materials featuring consenting sex between adults. Instead, the means for each of these instruction sets on the prurient appeal variable were about equal to the no instruction condition. To explain this similarity, we consider two possibilities: a methodological artifact due to question wording; and a legal explanation that emphasizes the appeal to a prurient interest of the intended recipients of deviant materials.

Methodological Artifact

Did we ask the question in the wrong way? One possibility is that the phrasing of the question may make it extremely difficult for the respondent to answer in a way that does not damn himself/herself to having an unhealthy or unnatural interest in sex—something most people would be reluctant to admit. Subjects may be saying, in effect, that the materials in question cannot appeal to any unhealthy or shameful interest in sex I might have, because *I* do not have any unhealthy interest in sex. If this explanation is correct, the findings for the prurient appeal questions both for the rape and children instruction sets and the no instruction set conditions are an artifact of subjects offering socially desirable responses to the experimenter and are not an accurate reflection of the level of prurient appeal. If this experimental artifact is operating, it may be difficult for social scientists to provide useful information to the decisionmaker in the manner of expert testimony based

on studies asking the question this way, and thus, survey research may not be helpful in evaluating this aspect of *Miller*.

One obvious and less complicated interpretation of the lack of differences between the instruction sets is that subjects may have had difficulty imagining just what depictions of rape and those involving children would look like. Their responses to the prurient appeal question may reflect this ambiguity, and the lack of differences between instruction sets can be considered the result of measurement error and a failure to properly instill the ideas of rape and child pornography in subjects' minds.

A Legal Explanation

On the other hand, we may be getting an answer to a slightly different question than the one we thought we were asking. If subjects are indeed saying that material featuring rape and children does not appeal to any unhealthy interest *they* might have, we may have unwittingly confirmed a precept about prurient appeal and the average person already enshrined in the law by the Supreme Court (*Mishkin v. New York* 1966). The lack of differences between the no instruction, rape and bondage, and children instruction conditions may confirm a legal notion that tests for whether deviant materials are obscene. Such materials are deemed obscene not whether they appeal to the prurient interest of the average person, but whether they appeal to such an interest of the average member of a deviant group. In *Mishkin*, the Supreme Court was asked to review the obscenity conviction of a number of materials that depicted "various deviant sexual practices," such as flagellation, fetishism, and lesbianism. The defendant there had argued that those materials would not satisfy the prurient appeal requirement "because they do not appeal to a prurient interest of the 'average person' in sex, that 'instead of stimulating the erotic, they disgust and sicken.' " In concluding that where material is designed for or primarily disseminated to a clearly defined deviant group, the prurient appeal requirement is satisfied if the material appeals to the "prurient interest in sex of members of that group," the Supreme Court noted: "We adjust the prurient-appeal requirement to *social realities* by permitting the appeal of this type of material to be assessed in terms of the sexual interests of its intended and probable recipient group" (emphasis added). The "social realities" the Court was talking about is obviously the simple fact that deviant materials would, in fact, not appeal to the prurient interest of the "average person": rather, they would merely disgust and sicken. Put somewhat differently in a later decision:

> [T]he primary concern with requiring a jury to apply the standard of "the average person applying contemporary community standards" is to be certain that, *so far as material is not aimed at a deviant group*, it will be judged by its impact on an average person, rather than a particularly susceptible or sensitive person—or indeed a totally insensitive one." *Hamling*. . . at 129, citing *Miller v. California*, 413 U.S., at 33. (Emphasis in original)

The Court, in effect, mandated that the trier of fact in an obscenity case judge the materials in question by their impact on, and with regard to,

the reference group to which the material was directed, rather than the average adult in the community.

In this case, therefore, to comport with the proper obscenity standard, we should have asked whether the described materials involving rape and children would appeal to, respectively, the average sadomasochist or pedophile. Not having asked the prurient appeal questions in regard to these reference groups, we might, retrospectively, have expected to obtain the results that we did; that while these latter materials may disgust and sicken the average person, they would not appeal to any sexual interest, let alone a prurient one. If the Court was correct in *Mishkin* that such materials simply would not appeal to the prurient interest of the average person (and hence the need to modify the test to allow criminalization pursuant to test of such materials that would otherwise not be found to fulfil the three-part criteria), then our results are completely understandable. We may simply have empirically demonstrated that, in fact, the Supreme Court's observation is valid—disgusting and deviant materials do not appeal to the prurient interests of the average individual. From a legal perspective this implies that our questions should have been operationalized as a deviant instruction; i.e., an appeal to a pedophile or to a rapist.

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