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ARTICLES

DEFINING PORNOGRAPHY

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Those who teach pornography in class might consider using a couple of examples from the survey questionnaires in appendix A, asking their students to examine the examples under the MacKinnon-Dworkin and Supreme Court tests. Perhaps form 2.2, examples B and C, might be best. Although you don't need this law review's consent to use these questionnaires, you do need the informed consent of your students if you expose them to example B or any other pornography.

Warning: This Article contains pornographic, sexist, and racist materials.

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INTRODUCTION

What is pornography or obscenity? Except for those who profit by selling pictures of vaginas, the Supreme Court's various definitions of obscenity have been unsuccessful, at least in practice. Yet the state needs a definition if it wants to prohibit pornography or obscenity or to permit women harmed or offended by them to sue to stop their dissemination. As Gordon Hawkins and Frank Zimring point out:

[A]n essential preliminary to any discussion of the censorship or prohibition of pornographic material must be some attempt at the definition of pornography. . . .

. . . .

. . . Even if all know it when they see it and are united in agreeing that it should be suppressed, how do we know that the agreement is not totally illusory?¹

Despite much speculating about pornography definitions, there's been little empirical study of just how they work when applied to real texts.

A good definition would do a reasonably effective job of separating erotica from pornography—of separating borderline cases. But that's probably too much to hope for. The easier hurdle should be to separate clear cases—pornographic sex scenes from feminist sex scenes. Any theory is supposed to be able to handle the easy cases.² But pornography is so difficult to define that some pornography theories can't meet even this standard. This study is

¹ GORDON HAWKINS & FRANKLIN E. ZIMRING, *PORNOGRAPHY IN A FREE SOCIETY* 20 (1988).

² That "any theory can handle the easy cases" was asserted by Richard Epstein in 1975 during the single most interesting class session during my years as a student at the University of Chicago Law School. Robert Ellickson invited Epstein, Richard Posner, and Ronald Coase into our torts class to discuss their theories; hijinks ensued.

a test of the ability of three pornography or obscenity definitions to distinguish what should be readily distinguishable: sex scenes in pornographic fiction from those in feminist fiction.

Much of the acrimonious debate over pornography among feminists³ has centered on whether it can be defined. Modern pornography statutes are debated in nearly every university in the country. Yet no one has yet taken the elementary step of asking people to apply them. This study is designed to test whether these definitions are vague, overbroad, or underbroad.

The most influential modern definitions of pornography all stem in one way or another from Andrea Dworkin and Catharine MacKinnon's 1983 ordinance for Minneapolis.⁴ Building on Dworkin's earlier work opposing pornography⁵ and MacKinnon's women's rights background, they created a civil rights statute that would allow women to sue purveyors of pornography. A version of the statute was adopted by the Minneapolis City Council in 1983 and 1984, but vetoed by liberal mayor Donald Fraser.⁶ Later in 1984, the Indianapolis City Council enacted another version, which was signed by conservative mayor William Hudnut, but struck down by the Seventh Circuit in *American Booksellers Ass'n v. Hudnut*,⁷ a decision affirmed without comment by the United States Supreme Court.⁸ Nonetheless, the Canadian Supreme Court⁹ and a govern-

³ See, e.g., CATHARINE A. MACKINNON, *On Collaboration*, in FEMINISM UNMODIFIED 198, 199, 204-05 (1987) (stating that women opposed to her statute are defending and fronting for pornographers).

⁴ It is sometimes incorrectly stated that the statute was a class drafting project at the University of Minnesota Law School. See DONALD A. DOWNS, *THE NEW POLITICS OF PORNOGRAPHY* 34-35, 56-57 (1989) (discussing emergence of the ordinance in the law school class). According to MacKinnon, she and Dworkin drafted the statute themselves, not as part of the class. Telephone Conversation with Catharine MacKinnon (Sept. 30, 1992).

⁵ See ANDREA DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* (1979) (the "ovular" work in the anti-pornography literature).

⁶ See Randall D.B. Tigue, *Civil Rights and Censorship—Incompatible Bedfellows*, 11 WM. MITCHELL L. REV. 81, 82 (1985). Explaining his veto, Fraser stated: "The definition of pornography in the ordinance is so broad and so vague as to make it impossible for a bookseller, movie theater operator or museum director to adjust his or her conduct in order to keep from running afoul of its proscriptions." *Id.*; see also DOWNS, *supra* note 4, at 62-65, 86, 89, 111 (discussing Fraser's veto).

⁷ 771 F.2d 323 (7th Cir. 1985), *aff'd*, 475 U.S. 1001 (1986) (finding the statute's definition of pornography overbroad).

⁸ 475 U.S. 1001 (1986).

⁹ See *Butler v. The Queen*, 1 S.C.R. 452 (Can. 1992) (holding that violent, degrading, or dehumanizing materials are obscene); see also Suzanne Fields, *Porn By Gender? Limiting Speech*, WASH. TIMES, Mar. 5, 1992, at G1 (discussing *Butler*); Tamar Lewin, *Canada Court Says Pornography Harms Women*, N.Y. TIMES, Feb. 28, 1992, at B7

ment pornography commission in New Zealand¹⁰ have adopted altered versions of the MacKinnon-Dworkin definition of pornography. In addition, ordinances similar to those in Minneapolis and Indianapolis have been considered elsewhere in the United States, including Cambridge (Massachusetts), Los Angeles, Bellingham (Washington), Madison (Dane County, Wisconsin), and Suffolk County (Long Island, New York).¹¹

The MacKinnon-Dworkin model statute has three elements: graphic sexual explicitness, the subordination of women, and depictions of any one of a long list of specific sexual acts.¹² Critics of the model statute have repeatedly called its provisions vague, overbroad, and underbroad.¹³

(discussing *Butler* and citing the similar ordinance at issue in *American Booksellers*).

¹⁰ See Charlotte L. Bynum, *Feminism and Pornography: A New Zealand Perspective*, 65 TUL. L. REV. 1131 (1991) (analyzing the New Zealand commission report).

¹¹ See DOWNS, *supra* note 4, at xiii (listing municipalities that considered an ordinance similar to Indianapolis's); Note, *Anti-pornography Laws and First Amendment Values*, 98 HARV. L. REV. 460, 461 n.4 (1984) (listing areas interested in adopting a similar pornography ordinance); John Elson, *Passions Over Pornography*, TIME, Mar. 30, 1992, at 52.

¹² Under the MacKinnon-Dworkin model statute:

Pornography is the graphic sexually explicit subordination of women, whether in pictures or in words, that also includes one or more of the following:

(i) women are presented dehumanized as sexual objects, things or commodities; or

(ii) women are presented as sexual objects who enjoy pain or humiliation; or

(iii) women are presented as sexual objects who experience sexual pleasure in being raped; or

(iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or

(v) women are presented in postures of sexual submission, servility or display; or

(vi) women's body parts—including but not limited to vaginas, breasts, and buttocks—are exhibited, such that women are reduced to those parts; or

(vii) women are presented as whores by nature; or

(viii) women are presented being penetrated by objects or animals; or

(ix) women are presented in scenarios of degradation, injury, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual.

CATHARINE A. MACKINNON, *Not a Moral Issue*, in FEMINISM UNMODIFIED, *supra* note 3, at 146, 146 n.1.

¹³ See *American Booksellers Ass'n v. Hudnut*, 598 F. Supp. 1316, 1328-38 (S.D. Ind. 1984) (finding the Indianapolis ordinance unconstitutionally vague), *aff'd on other grounds*, 771 F.2d 323, 332 (7th Cir. 1985) (holding the definition of pornography unconstitutionally overbroad), *aff'd*, 475 U.S. 1001 (1986); DOWNS, *supra* note 4, at

Building on the MacKinnon-Dworkin definition, other writers have come up with narrower definitions that they believe should or would pass constitutional muster.¹⁴ The most elegantly presented of these alternatives is Cass Sunstein's. In a *Duke Law Journal* article,¹⁵ he argues that a simpler definition focused more clearly on the abuse of women would work well. Sunstein's definition has four elements: sexual explicitness; depictions of women as enjoying or deserving abuse; the purpose of arousal; and the effect of arousal.¹⁶ Like other tests, the Sunstein test has been criticized as both underbroad and overbroad.¹⁷

154 (stating that the statute's "language is . . . vague and ideological"); JOEL FEINBERG, 2 OFFENSE TO OTHERS 145 (1985) ("It will not do then to isolate the most objectionable kinds of pornography, the kinds that are most offensive and even dangerous to women, and reserve the label 'pornographic' for them alone."); HAWKINS & ZIMRING, *supra* note 1, at 157-72, 172 ("[Dworkin and MacKinnon's] inability to define pornography . . . results in what MacKinnon acknowledges as an 'inability to draw a line between pornography and everything else.'" (citation omitted)); Paul Brest & Ann Vandenberg, *Politics, Feminism, and the Constitution: The Anti-Pornography Movement in Minneapolis*, 39 STAN. L. REV. 607, 642 (1987) (some Minneapolis City Council members opposed the ordinance because it was "incredibly vague and ambiguous"); *id.* at 644, 654-55 (feminist brief in *Hudnut* against the Indianapolis statute argued that subordination is determined differently by different people; *Minneapolis Star and Tribune* editorial called the Minneapolis statute "vague, overly broad"); Martin Karo & Marcia McBrian, *The Lessons of Miller and Hudnut: On Proposing a Pornography Ordinance That Passes Constitutional Muster*, 23 U. MICH. J.L. REF. 179, 210 (1989) ("Many of the terms . . . are unconstitutionally vague." (footnote omitted)); Kenneth L. Karst, *Boundaries and Reasons: Freedom of Expression and the Subordination of Groups*, 1990 U. ILL. L. REV. 95, 141 (stating that antipornography laws "inevitably raise difficult issues of vagueness and overbreadth"); Deana Pollard, *Regulating Violent Pornography*, 43 VAND. L. REV. 125, 148 (1990) ("The MacKinnon Ordinance . . . is both constitutionally overbroad and underinclusive . . . [and] many of the terms and definitions . . . are unconstitutionally vague."); Tigue, *supra* note 6, at 82, 100-01 (discussing the adverse effects that would be attributable to the vague definitions); Note, *supra* note 11, at 462 n.8 (arguing that the "terms . . . may lack the clarity necessary to withstand constitutional challenge"); Nadine Strossen, *The Convergence of Feminist and Civil Liberties Principles in the Pornography Debate*, 62 N.Y.U. L. REV. 201, 216 (1987) (book review) ("The model law's broad, vague definition of proscribed works violates both feminist and civil liberties principles . . ." (footnotes omitted)); Cass R. Sunstein, *Feminism and Legal Theory*, 101 HARV. L. REV. 826, 844 (1988) (reviewing CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED* (1987)) ("MacKinnon's own effort at definition might be faulted for overbreadth." (footnote omitted)).

¹⁴ See appendix C (listing the Sunstein, Ridington, Wesson, Pollard, and Taylor definitions).

¹⁵ See Cass R. Sunstein, *Pornography and the First Amendment*, 1986 DUKE L.J. 589, 592.

¹⁶ Sunstein's definition is: "In short, regulable pornography must (a) be sexually explicit, (b) depict women as enjoying or deserving some form of physical abuse, and (c) have the purpose and effect of producing sexual arousal." *Id.*

¹⁷ See Strossen, *supra* note 13, at 226 n.113 ("In practice, the Sunstein model is

Pornography, however, is not the same as obscenity, and the purposes of the terms are often different. Roughly, obscenity is dirty sexual material that lacks value, while pornography is explicit sexual material that harms women. Typically, pornography is a much broader category that includes some currently constitutionally protected works with literary or social value. The Supreme Court's definition of obscenity was set out in *Miller v. California*¹⁸ in 1973: prurient interest; patently offensive depictions of specific sexual acts; and the lack of serious value.¹⁹ The *Miller* test has been called vague, underbroad, and overbroad by various commentators.²⁰

necessarily over- and underinclusive for the same reasons that the Dworkin-MacKinnon model is—namely, that 'pornography' cannot be defined with the requisite objectivity or specificity to ensure a narrow application consistent with feminist and civil liberties concerns.”)

¹⁸ 413 U.S. 15 (1973).

¹⁹ See *id.* at 24-26. As the court stated:

The basic guidelines for the trier of fact must be: (a) whether “the average person, applying contemporary community standards” would find that the work, taken a whole, appeals to the prurient interest . . . ; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Id. at 24 (citation omitted). The Court went on to explain what specific sexual conduct would meet its test:

We emphasize that it is not our function to propose regulatory schemes for the States. That must await their concrete legislative efforts. It is possible, however, to give a few plain examples of what a state statute could define for regulation under part (b) of the standard announced in this opinion, *supra*:

(a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.

(b) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals.

Id. at 25. Later cases have slightly modified the *Miller* test. See *infra* note 68 and accompanying text.

²⁰ Downs, for example, argues:

Confusion over the meaning of key parts of the *Miller* test—“prurience,” “serious value,” “patently offensive,” “community standards”—make prosecutors reluctant to prosecute and juries reluctant to convict, especially given the need to find guilt “beyond a reasonable doubt.” Complex laws and judicial instructions confuse juries, making them less inclined to convict, and few laws are more confusing and complex than obscenity laws.

Downs, *supra* note 4, at 20-21; see also HAWKINS & ZIMRING, *supra* note 1, at 25-26 (stating that “the term ‘obscenity’ . . . cannot serve to facilitate discussion or make any significant distinction” among the terms “obscenity,” “pornography,” and “erotica”); CATHARINE A. MACKINNON, *Afterword, in FEMINISM UNMODIFIED, supra* note 3, at 215, 223 (referring to criminal obscenity statutes as “vague and discretionary”).

The purpose of this study is to test whether any of these three definitions works. I'm not asking whether pornography is a good thing or a bad thing. I believe that it's a bad thing. I'm not asking whether pornography harms women. I believe that it does. Ideas matter; bad ideas—such as sexism or socialism—have caused harm and will continue to cause harm. I'm also not asking whether pornography should be prohibited if it can be successfully defined. I'll leave that question to others.

This is a feasibility study. My concern is with the drafting exercise. Are any of these definitions successful at separating pornography from material that isn't pornographic? My hope is to shed more light than heat on this issue. Perhaps naively, I assume that people wouldn't want to enact statutes that won't accomplish their purposes.

To test the definitions, I asked law student subjects in two separate surveys to apply the three tests to pornographic and feminist sexual materials. My purpose was not to determine whether particular works were pornographic. Rather, I wanted to examine how well various definitions separated pornographic works from feminist works.

In this study, the performance of the MacKinnon-Dworkin definition was mixed. It suffers from overbreadth by MacKinnon and Dworkin's standards. An excerpt from Andrea Dworkin's own novel *Mercy* is pornographic under their test.²¹ The MacKinnon-Dworkin test is, however, less vague than the Supreme Court's obscenity test, although many people may still find it disturbingly vague. On balance, the performance of the Supreme Court's obscenity standard is perhaps slightly worse. It's the most vague of the three tests and by various measures either overbroad or potentially underbroad. Indeed, the results vary markedly depending on how the data are aggregated. Yet the Sunstein test performs even worse. Nothing is close to pornographic under its standard.

MacKinnon has contrasted her statute with the *Miller* test, using language suggesting its vagueness:

This is not like obscenity law, which is written in order to include a whole lot of possibilities for interpretation and local variation. This law is extremely concrete. It's not only . . . narrow, but it's very specific. It doesn't give that kind of room.

Valerie J. Hamm, Note, *The Civil Rights Pornography Ordinances—An Examination Under the First Amendment*, 73 KY. L.J. 1081, 1106 (1984) (quoting *Nightline* interview with Catharine MacKinnon).

²¹ See ANDREA DWORGIN, *MERCY* 207-12 (1991).

A piece of porn that Sunstein cites as “easily characterized” as pornographic²² was found to be pornographic under his test by only 3% of the subjects in the study.²³ And under the Sunstein standard as applied, feminist works rank as more pornographic than real porn.

This study also found that some groups, such as women, were significantly more likely to find a work obscene or pornographic than other groups, but they were not significantly better at correctly applying the MacKinnon-Dworkin standard.²⁴ In other words, women, for example, are more likely to object to a work, but they aren’t significantly better at correctly classifying it as pornographic.

I. METHODOLOGY

A. Choosing Sex Scenes for Testing

1. Pornography: *Story of the Eye*, *Story of O*, and *Beaver Hunters*

Choosing the three pornography texts was simple. Because I didn’t own any pornography and had never bought any before conducting this study, I went to my local academic bookstore and asked for the pornographic novels that Dworkin attacks in *Pornography: Men Possessing Women*.²⁵ They had two: Georges Bataille’s *Story of the Eye*,²⁶ which Dworkin discusses at length,²⁷ and the *Story of O*,²⁸ which Dworkin mentions in passing as pornographic.²⁹ In a poll of anti-pornography activists, the *Story of O* was named as pornographic more than any other book.³⁰ Another

²² See Sunstein, *supra* note 15, at 593 (referring to *Beaver Hunters* photograph, discussed *infra* notes 37-42 and accompanying text).

²³ See *infra* table 1.4 and accompanying text.

²⁴ See *infra* tables 1.6 & 1.9.

²⁵ See DWORKIN, *supra* note 5, at 167.

²⁶ GEORGES BATAILLE, *STORY OF THE EYE* (Joachim Neugroschel trans., Urizen Books 1977) (1928).

²⁷ See DWORKIN, *supra* note 5, at 167-78 (attacking *Story of the Eye*).

²⁸ PAULINE RÉAGE, *STORY OF O* (Sabine d’Estrée trans., Grove Press 1965) (1954). The bookstore was the Seminary Bookstore on the University of Chicago campus. The bookstore also had most of the works of the Marquis de Sade, but these were so different in style from the modern works that the comparison would have been difficult.

²⁹ See DWORKIN, *supra* note 5, at 33, 167 (stating that *Story of O* is pornographic).

³⁰ See R. George Kirkpatrick & Louis A. Zurcher, Jr., *Women Against Pornography: Feminist Antipornography Crusades in American Society*, in FRANKLIN M. OSANKA & SARA LEE JOHANN, *SOURCEBOOK ON PORNOGRAPHY* 494, 502 tbl. F-15 (1989) [hereinafter

1987 study found that 83% of the men surveyed found the *Story of O* exciting.³¹ It was published under the pen name Pauline Réage, but in my opinion, its cruelty suggests that it was written by a man. Because these two works are considered to have some significant literary pretensions, they should not be obscene under the Supreme Court's *Miller* test. Dworkin and MacKinnon, however, clearly do not intend to exclude these works, or art in general, from their definition of pornography. As MacKinnon argues, "if a woman is subjected, why should it matter that the work has other value?"³²

I then selected scenes that Dworkin and MacKinnon should find particularly objectionable. From the *Story of O*, I selected a scene that showed O being handed over as a possession from one male protagonist to another, then being painfully throat-raped to the point of tears, followed immediately by her admitting to herself that she enjoyed it. With MacKinnon and Dworkin among the leading opponents of throat-rape,³³ this passage should be the kind of scene that leads Dworkin to call the *Story of O* pornographic:

"All we ask you to do is submit to it, and, if you scream or moan, to agree ahead of time that it will be in vain," Sir Stephen went on. . . .

"So give us your answer [René] said. "Do you consent?"

Finally she said that she did. . . .

"I leave you to Sir Stephen," René then said [to O]. "Remain the way you are, he'll dismiss you when he sees fit."

. . . .

[O] did not dare look Sir Stephen in the face, but she saw his hands undoing his belt. When he had straddled O, who was still

SOURCEBOOK]. The four books named most often as pornographic in a survey of "feminist crusaders" were:

1. STORY OF O	17%
2. TROPIC OF CANCER (Miller)	14
3. AN AMERICAN DREAM (Mailer)	11
4. Books by de Sade	9

Id.

³¹ See Virginia Greendlinger & Donn Byrne, *Coercive Sexual Fantasies of College Men as Predictors of Self-Reported Likelihood to Rape and Overt Sexual Aggression*, 23 J. SEX RES. 1, 5 (1987) (reporting that 82.6% of the men in the survey found the book exciting).

³² Catharine A. MacKinnon, *Pornography, Civil Rights, and Speech*, 20 HARV. C.R.-C.L. L. REV. 1, 21 (1985).

³³ See *id.* at 1, 35 n.65 (acknowledging Dworkin's assistance to MacKinnon in the fight against pornography and decrying the increased incidence of throat-rape after the release of the movie *Deep Throat*).

kneeling, and had seized her by the nape of the neck, he drove into her mouth. It was not the caress of her lips the length of him he was looking for, but the back of her throat. For a long time he probed, and O felt the suffocating gag of flesh swell and harden, its slow repeated hammering finally bringing her to tears. In order to invade her better, Sir Stephen ended by kneeling on the sofa, one knee on each side of her face, and there were moments when his buttocks rested on O's breast, and in her heart she felt her womb, useless and scorned, burning her. Although he delighted and reveled in her for a long time, Sir Stephen did not bring his pleasure to a climax, but withdrew from her in silence and rose again to his feet, without closing his dressing gown.

"You are easy, O," he said to her. "You love René, but you're easy. Does René realize that you covet and long for all the men who desire you, that by . . . surrendering you to others he is providing you with a string of alibis to cover your easy virtue?"

"I love René," O replied.

"You love René, but you desire me, among others," Sir Stephen went on.

Yes, she did desire him, but what if René, upon learning it, were to change? All she could do was remain silent and lower her eyes: even to have looked Sir Stephen directly in the eyes would have been tantamount to a confession.³⁴

From the *Story of the Eye*, I chose the passage that Dworkin quoted most extensively from in *Pornography* and the two sexual acts that preceded it:³⁵

One day, when I tried to rape Simone in her bed, she brusquely slipped away:

"You're totally insane, little man," she cried, "I'm not interested—here, in a bed like this, like a housewife and mother! I'll only do it with Marcelle!"

"What are you talking about?" I asked, disappointed, but basically agreeing with her.

She came back affectionately and said in a gentle, dreamy voice:

"Listen, [Marcelle] won't be able to help pissing when she sees us . . . making it."

³⁴ RÉAGE, *supra* note 28, at 76-78, 83-84 (for the study, "O" was replaced by "W"). This is the "consent" version. In the "nonconsent" versions of the survey, I omitted the first five lines of this passage. Compare example B in the three versions of the questionnaires in appendix A.

³⁵ See DWORKIN, *supra* note 5, at 169 (describing sex acts and attempted rape scenes in *Story of the Eye*).

I felt a hot, enchanting liquid run down my legs, and when [Simone] was done, I got up and in turn watered her body, which she complaisantly turned to the unchaste and faintly murmuring spurt on her skin. After thus flooding her cunt, I smeared jizm all over her face. Full of muck, she climaxed in a liberating frenzy. She deeply inhaled our pungent and happy odor: "You smell like Marcelle," she buoyantly confided after a hefty climax, her nose under my wet ass.

Obviously Simone and I were sometimes taken with a violent desire to fuck. But we no longer thought it could be done without Marcelle, whose piercing cries kept grating on our ears, for they were linked to our most violent desires. Thus it was that our sexual dream kept changing into a nightmare. Marcelle's smile, her freshness, her sobs, the sense of shame that made her redden and, painfully red, tear off her own clothes and surrender lovely blond buttocks to impure hands, impure mouths, beyond all the tragic delirium that had made her lock herself in the wardrobe to jerk off with such abandon that she could not help pissing—all these things warped our desires, so that they endlessly racked us.³⁶

With the sexual degradation, pissing, attempted rape, semen-smearing, violent fantasies, and rough language, it's not surprising that Dworkin describes and quotes from this scene while attacking it.

But my academic bookstore didn't have the cruder kind of pornography that many pornography definitions are designed to prohibit. In *Pornography*, Dworkin spends five pages attacking an offensive photograph in *Hustler* called *Beaver Hunters*.³⁷ Indeed, it's the first work that she systematically attacks. In Sunstein's article, the only pornographic work that he discusses in text is the same photograph, though he incorrectly characterizes it as an advertisement:

Examples of pornography as defined here can be found in such magazines as *Hustler* and numerous "adult" movies. It is difficult to capture the nature of genuine pornography without presenting examples. One such example is the "Beaver Hunters" advertisement in *Hustler*, which shows a nude woman strapped to the top of a car; the copy below the photograph states that the woman would be "stuffed and mounted" as soon as the "hunters"

³⁶ BATAILLE, *supra* note 26, at 23-25.

³⁷ See DWORKIN, *supra* note 5, at 25-30 (attacking *Beaver Hunters* as celebrating "the physical power of men over women").

got her home. But pornographic materials cannot always be easily characterized as such.³⁸

In the photograph, the woman's legs are open and the hunters carry rifles. A bumper sticker on the jeep-style vehicle says, "I Brake for Billy Carter." A separate bumper sticker with these words ran alongside the *Beaver Hunters* photo in *Hustler* and was included on the page of my survey. The text below the picture read:

Beaver Hunters. Western sportsmen report beaver hunting was particularly good throughout the Rocky Mountain region during the past season. These two hunters easily bagged their limit in the high country. They told *Hustler* that they stuffed and mounted their trophy as soon as they got home.³⁹

Surprisingly, the photograph was quite small as printed, less than a quarter-page, and was intended as humorous. Some people apparently consider sexual violence funny. In a magazine filled with photographs for masturbating, this may not have been one of them.⁴⁰

I selected the *Beaver Hunters* photograph as an example of what both Dworkin and Sunstein consider the worst in pornography, the easiest case. Moreover, a poll of anti-pornography activists named *Hustler* as pornographic more frequently than any other magazine.⁴¹ Because visual works are usually thought to be worse than mere words,⁴² and because (after *Deep Throat*) the *Beaver Hunters*

³⁸ Sunstein, *supra* note 15, at 593 (citations omitted).

³⁹ *Beaver Hunters*, HUSTLER, Dec. 1978, at 18, 18. In the survey, I replaced *Hustler* with "us."

⁴⁰ Subjects were shown a color copy, which is not included in the appendix to this Article.

⁴¹ See Kirkpatrick & Zurcher, *supra* note 30, at 503 tbl. F-16. The seven magazines named most often as pornographic by "feminist crusaders" were:

1.	HUSTLER	63%
2.	PLAYBOY	57
3.	PENTHOUSE	49
4.	OUI	20
5.	CHIC	9
5.	PLAYGIRL	9
5.	EASY RIDER	
	MOTORCYCLE MAGAZINE	9

Id. ⁴² See Pollard, *supra* note 13, at 155 (noting that most studies correlating violence toward women with pornography used films to present the pornographic material); Sunstein, *supra* note 15, at 625 (asserting that the evidence of harm is clearer with films and photos than with written material); Bruce A. Taylor, *Hard-Core Pornography*:

photograph is the most infamous example in the pornography literature, it should provide a baseline against which to measure all the other works.

2. Feminist Fiction: *Ice and Fire*, *The Women's Room*, *Titters: The First Collection of Humor by Women*, and *Mercy*

For the feminist sex scenes, I looked first at Andrea Dworkin's 1986 novel *Ice and Fire*.⁴³ It's inconceivable that Dworkin would consider her own novel pornographic. To my surprise, however, the novel has a disgusting, fairly explicit sex scene in which a woman asks to be beaten, bitten, and degraded in various ways enumerated by Dworkin's own statute. The woman regrets having taught her future husband to systematically torture her, but in context the scene is what it appears to be—a moderately explicit scene in which a woman seeks to be sexually degraded:

There was a big bed, one room, a huge skylight in the middle of the room, one large table in a corner: I put the bed under the skylight, water condenses and drips on it, but there I teach him, slowly. I have understood. He has too much respect for women. I teach him disrespect, systematically. I teach him how to tie knots, how to use rope, scarves, how to bite breasts: I teach him not to be afraid: of causing pain. It goes slowly. I teach him step by step. I invent sex therapy in this one room somewhere in the middle of Europe. I am an American innocent, in my fashion. I forbid intercourse. I teach him how to play games. You be this and I will be that. Rape, virgin, Queen Victoria. The games go on and on. There are some we do over and over. I teach him to penetrate with his fingers, not to be afraid of causing pain. I fellate him. I teach him not to worry about erection. I tie him up. Dungeon, brothel, little girl, da-da. I ask him what he wants to do and we do it. I teach him not to be afraid of causing pain. Not to be afraid of hurting me. I am the one there: don't be afraid of hurting me, see, this is how. I teach him not to be afraid of piss and shit, human dirt. I teach him everything about his body, I penetrate him, I scratch, I bite, I tie him up, I hit him with my

A Proposal for a Per Se Rule, 21 U. MICH. J.L. REF. 255, 272 (1987-88) (providing a visual-based definition of hard-core pornography). *But see* Donn Byrne & John Lamberth, *The Effect of Erotic Stimuli on Sex Arousal, Evaluative Responses, and Subsequent Behavior*, in 8 TECHNICAL REPORT OF THE COMMISSION ON OBSCENITY AND PORNOGRAPHY 41, 53 tbl. 3, 65 (1971) (noting that imagining sexual activities proved to be more arousing than pictorial or prose presentations of these activities).

⁴³ ANDREA DWORKIN, *ICE AND FIRE* (1986).

hand open, with my fist, with belts: he gets hard. He does each thing back to me. He is nearly hard. Water condenses on the skylight and falls. We move the bed. I am disappointed. I liked the extravagance. I do everything I can think of to help him: impotent and suicidal: I am saving his life. We are on an island, isolated in this European city. There is us. There is the bed. He is nearly hard. We move back to his city, where he is from, into a room that is ours. He needs some act, some gesture, some event to give him the final confidence: to get really hard. Reader, I married him.

....

He became a husband, like anyone else, normal. He got hard, he fucked, it spilled over, it was frenzy, I ended up cowering, caged, catatonic. How it will end finally, I don't know. I wanted to help: but this was a hurricane of hate and rage let loose: I wanted to help: I saved him: not impotent, not suicidal, he beat me until I was a heap of collapsed bone, comatose, torn, bleeding, bruised so bad, so hard: how will it end, I don't know.

Oh, it was a small small room with no windows: he had it painted dark blue: he didn't let me sleep: he never let me sleep: he beat me and he fucked me: I fought back and tried to run away. The rest is unspeakable. He got hard and fucked easy now.⁴⁴

Next, I went to my shelves for other feminist fiction. I excluded *Fear of Flying*,⁴⁵ a smarmy search for the "zipless fuck," because it's arguably a work of erotica. I wanted to include only easy cases—works that are not considered erotica. I selected Marilyn French's *The Women's Room*,⁴⁶ one of the most popular feminist novels of the 1970s, in part because I had remembered a feminist co-worker saying that she had asked her husband to try to reenact a sex scene from that novel. The sexual encounter goes on for pages; I selected the most intense and potentially disturbing portion of the longer passage:

She put her cigarette out and caressed his shoulders. Then he was leaning over her, kissing her belly, rubbing his hands on her thighs, on the insides of her thighs. Desire rose up in her more fiercely than before. She caressed his hair, then his head moved down, and she tightened up, her eyes widened, he was kissing her

⁴⁴ *Id.* at 101-02. In the "consent" versions of the survey, I used only the first paragraph of this excerpt. Compare example A in the three versions of the questionnaires in appendix A.

⁴⁵ ERICA JONG, *FEAR OF FLYING* (1973).

⁴⁶ MARILYN FRENCH, *THE WOMEN'S ROOM* (1977).

genitals, licking them, she was horrified, but he kept stroking her belly, her leg, he kept doing it and when she tried to tighten her legs, he held them gently apart, and she lay back again and felt the warm wet pressure and her innards felt fluid and giving, all the way to her stomach. She tried to pull him up, but he would not permit it, he turned her over, he kissed her back, her buttocks, he put his finger on her anus and rubbed it gently, and she was moaning and trying to turn over, and finally, she succeeded, and then he had her breast in his mouth and the hot shoots were climbing all the way to her throat. She wrapped her body around him, clutching him, no longer kissing or caressing, but only clinging now, trying to get him to come inside her, but he wouldn't. She surrendered her body to him, let him take control of it, and in an ecstasy of passivity let her body float out to the deepest part of the ocean. There was only body, only sensation: even the room had ceased to exist. He was rubbing her clitoris, gently, slowly, ritually, and she was making little gasps that she could hear from a distance. Then he took her breast in his mouth again and wrapped his body around her and entered her. She came almost immediately and gave a sharp cry, but he kept going, and she came over and over again in a series of sharp pleasures that were the same as pain. Her face and body were wet, so were his, she felt, and still the pangs came, less now, and she clutched him to her, holding him as if she really might drown. The orgasms subsided, but still he thrust himself into her. Her legs were aching, and the thrust no longer felt like pleasure. Her muscles were weary, and she was unable to keep the motion going. He pulled out and turned her over and propped her on a pillow so that her ass was propped up, and entered her vagina from behind. His hand stroked her breast gently, he was humped over her like a dog. It was a totally different feeling, and as he thrust more and more sharply, she gave out little cries. Her clitoris was being triggered again, and it felt sharp and fierce and hot and as full of pain as pleasure⁴⁷

As the final work in the first study I chose *Titters: The First Collection of Humor by Women*.⁴⁸ *Titters* includes submissions by Fran Lebowitz, Candice Bergen, Gilda Radner, Laraine Newman, Gail Parent, Peg Bracken, Lois Gould, Anne Meara, and Erma Bombeck, among others. The purpose of the collection, as the

⁴⁷ *Id.* at 313-14.

⁴⁸ See *TITTERS: THE FIRST COLLECTION OF HUMOR BY WOMEN* (Deanne Stillman & Anne Beatts eds., 1976) [hereinafter *TITTERS*].

editors Deanne Stillman and Anne Beatts explain, is to break out of the negative stereotyping of women as not funny:

We don't want to bore you with case histories of oppression. This is meant to be an introduction, not a political manifesto. But after years of telling our favorite jokes, witticisms, funny ideas, satirical remarks, and boss slashes to men, and having them respond, "I just don't think that's funny" . . . we began to get suspicious.

....

So, if you're a man, *Titters* may hold some surprises. You may even think some of it is "just not funny." We can't help that. We didn't do it for you, although we hope you'll enjoy reading it. We did it for ourselves.⁴⁹

Most pieces have a feminist orientation: attacks on *The Total Woman*, romance magazines, girl scouts, football, male orgasms, and nude centerfolds. There are also parodies of feminist works, including *Ms. Magazine* and *Fear of Flying*. I selected for this study Susan Toepfer's parody of Nancy Friday's *My Secret Garden: Women's Sexual Fantasies*.⁵⁰ Toepfer calls her parody *My Secret Cabbage Patch* and uses the penname Maundy Thursday, who is described as a "[n]oted inventor of sex fantasies."⁵¹ The parody presents supposed female sexual fantasies in a very negative light, fantasies too disturbing to be erotic, pleasant, or even believable. Here's the one I used:

I am a happily married mother of four, and though my husband is a perfect lover, I still have fantasies during sexual intercourse. Maybe it's because my husband is so perfect that I have this recurring fantasy that we have driven down to Sam's Garage to get the muffler on our Ford fixed. While my husband is busy talking to Sam, I am approached by a small well-built Oriental grease monkey. Soon, the two of us are mounting the engine block, where my mysterious new acquaintance reaches beneath my skirt and begins to massage my poontang with gasoline. Just as I am about to explode in Exxon, he jerks away those small yellow fingers and screws me onto a nearby piston. Then he wraps himself around my neck and jams his little yellow button up my nose. To my delight, Sam, my husband, and everyone within a one-mile radius soon runs to my side. As the Chinaman and I sit there writhing and wiggling—the piston urging us on in our

⁴⁹ Deanne Stillman & Anne Beatts, *Introduction* to *TITTERS*, *supra* note 48, at 3, 3-4.

⁵⁰ NANCY FRIDAY, *MY SECRET GARDEN: WOMEN'S SEXUAL FANTASIES* (1973).

⁵¹ Stillman & Beatts, *supra* note 49, at 6.

gyrations—I lift up my skirt and wait for the applause! “Turn it off, turn it off!” yells the crowd, but I am beyond them, lost to the pumping, fucking for my fans, bleeding like a stuck pig. . . . I’ve never told my husband about this, because I’m afraid he would call me a pervert. Am I?⁵²

This is not the only potentially offensive material in the book or in Toepfer’s parody. There is, for example, a fantasy about the sexual abuse of a young girl who secretly enjoys it⁵³ and a song about a woman preferring sex with her dog because her dog doesn’t require cooking and cleaning, just “Alpo in his dish.”⁵⁴

In the second study, which focused on nonconsensual sex, I included an excerpt from Andrea’s Dworkin’s novel *Mercy*:

I am going one, two, three, four, against him, in the opposite direction from him trying to get past him and he is using my own motion to push me back to where he wants and he sits me down on the single bed and we just sit there like chaste kids, teenagers, side by side, we each look straight ahead except he’s got his hand on my neck, we’re Norman Rockwell except his fingers are spread the width of my neck, his fingers are around my neck, circling my neck and I turn my head to face him, my body’s staring outwards but I turn my face toward him and I say to him I don’t want to do this, I get him to face me and I look him in the eye and I say I don’t want to do this and his hand tightens on my neck and I feel his fingers down under my skin and into the muscle of my neck and he says quiet, totally level, totally calm: it doesn’t matter, darling, it doesn’t matter at all. I’m thinking he means it doesn’t matter to him to fuck and I smile in a kind of gratitude but it’s not what he means and he takes his other hand and he puts it up at the neck of my T-shirt and he pulls, one hand’s holding my neck from behind and the other’s pulling off my T-shirt, pulling it half off, ripping it, it burns against my skin like whiplash, and he pushes me down on the bed and I see my breast, it’s beautiful and perfect and kind of cascading, there’s no drawing can show how it’s a living part of me, human, and when he puts his mouth on it I cry, not so he can tell, inside I’m turned to tears, I see his face now up against my breast, he’s suckling and I hate him, I feel the inside of his mouth, clammy and toothy and gummy, the cavity of his mouth and the sharp porcelain of his teeth, there’s the edge of

⁵² Susan Toepfer, *My Secret Cabbage Patch*, in TITERS, *supra* note 48, at 124, 125.

⁵³ *Id.* at 126.

⁵⁴ Trucia Kusher, *The Dynamite Sisters’ Greatest Hits*, in TITERS, *supra* note 48, at 107, 109. The song, *Sweet Lovin’ Lou*, was supposedly on an album by the Dynamite Sisters, a rock group that met at a Tupperware Party in Sandusky, Ohio. See *id.*

his teeth on my nipple, and he's got my underpants torn off me and my legs pushed up and spread and he's in me and I think I will count to a hundred and it will be over but it isn't, he's different, I try to push him off and he raises himself above me and he smiles at me and he pushes me back, he holds me down, and I give up, I do, I stay still, my body dies as much as it can, hate distilled, a perfect hate expressed in a perfect physical passivity, a perfect attentiveness to dying, he's going to say I'm a bad lay because I won't move but I hate him and I won't move. I just wait now for him to come but he's different, he won't come, he pushes my neck to hurt it and he kisses me, I feel his mouth on me, he's in me, sudden, brutal, unpleasant; vomitous; then he's out of me, he's kissing me, he kisses me everywhere, he rams into me then he's out, he's kissing, he's kissing my stomach, he's kissing my legs, then he's in me and my thighs are pushed back past my shoulders, then he's kissing me, he's kissing my anus and licking it and he's kissing my legs and he's talking to me, your skin reminds me of Bridget's, he says, Bridget has beautiful skin, some whispering bullshit like I'm his lover or his friend or something, conspiring with him, and then he's ramming himself in me and then he's kissing me and I am confused and afraid and I am paralyzed, I don't move, . . . I'm desperate for an end but there's no end, he's brutal and cold and chaotic and I say this will end but it doesn't end, he rams, he kisses, . . . he's in me, then he withdraws, then he kisses, he kisses my stomach, he kisses my feet—my feet; he kisses my legs, I feel a searing pain in my leg, I feel a terrible bad pain, I feel sharp shots of pain, then he rams, he kisses, he pushes, he pushes my legs apart, he pushes them back, he rams, he kisses, he must of read a book, girls like this, girls like that, you kiss girls, you kiss them; you kiss them; he's kissing me and saying things as if we are friends or I know him or something and then he rams in, brutal bastard, and then he's a lover, kissing; and this is my body but it ain't, I say it ain't . . . I move slowly and finally I am sitting, sitting on the edge of the bed, the single bed, sitting, chaste, just sitting, and my right leg is split open, the skin on it is split open in two places, above my knee and under my knee, the skin's torn, there's big jagged pieces of skin, there's gashes, it's deep tears, deep cuts, blood, dried blood and wet blood, my leg's torn open in two places, his kisses, his lover's kisses opened the skin, inside it's all angry looking as if it's turning to a yellow or greenish pus, it's running with dirty, angry blood, I think it needs stitches but I can't get stitches . . . I concentrate on getting out, finding my clothes, putting on my clothes, they're torn and fucked up, and I ask for the keys to get out . . . I walk out and it's deserted, cold, bare, bare city streets, I wish someone would go up now

while he's asleep and kill him or rob him, I wish I could put a sign on the door—it's open, kill him, rob him, I think there's some chance, it's a bad neighborhood, maybe somebody'll find him. I'm dirty; all my clothes are torn and fucked up as if they were urinated on or wrapped in a ball and used to wipe someone's ass. I call Jill from a pay phone. He raped me, I say.⁵⁵

B. *Taking Scenes Out of Context*

This study looks at sexual materials out of context. This is both an advantage and a disadvantage. Besides facilitating comparisons, using excerpts allows me to explore whether context is necessary. If sex scenes are indistinguishable out of context, then it's the context that matters, not the sex. Divorcing materials from the larger work certainly makes the classification of those materials more difficult. Yet to the extent that feminist and pornographic sex scenes look the same out of context, that would indicate that what makes something pornographic isn't the sex, but the context. In other words, the author's purpose and the repetitiveness of the depictions in the work would be the crucial determinants of whether something was pornographic, not the sort of sex depicted.

The evidence on this point is mixed. Significant differences were observed between the results for the tests used. Further, in the second study, the MacKinnon-Dworkin test actually performed worse when a longer excerpt showing clearer context was used.⁵⁶

Excerpting is not a serious problem for the *Beaver Hunters* photo since the work is potentially complete in itself. According to *Kois v. Wisconsin*,⁵⁷ a case decided before *Miller*, adding "serious value" to otherwise obscene works will not exculpate the works from a conclusion that they are obscene.⁵⁸ After reviewing the conflicting cases on the "work as a whole" element, Fred Schauer concluded that "magazine 'articles' with no connection except that of dealing with the same general subject matter are not necessarily likely to be

⁵⁵ DWORKIN, *supra* note 21, at 207-12.

⁵⁶ See *infra* tables 2.4 & 2.5 (showing that longer "nonconsent" version of *Ice and Fire* performs worse).

⁵⁷ 408 U.S. 229 (1972).

⁵⁸ See *id.* at 231 (noting that "[a] quotation from Voltaire in the flyleaf of a book will not constitutionally redeem an otherwise obscene publication"); see also FREDERICK F. SCHAUER, *THE LAW OF OBSCENITY* 105-09 (1976) (summarizing the Supreme Court's "taken as a whole" test in obscenity cases).

seen or read together, and should therefore be evaluated separately."⁵⁹

In this study, students were provided with a color copy of the *Beaver Hunters* photo, the caption, and an accompanying bumper sticker saying, "Warning: I Brake for Billy Carter." Because both Dworkin and Sunstein consider *Beaver Hunters* quintessentially pornographic under their standard, they appear to embrace a view of a "work" as being as short as part of a page in a larger publication. Sunstein doesn't make looking at the work as a whole part of his definition, although he sees this as a possible limitation if his definition wouldn't otherwise pass constitutional muster.⁶⁰ He does ask whether the author's purpose is sexual arousal. A look at the larger work would help in answering that question, but even without that question, Sunstein's test performed poorly. Indeed, it performed worst on the work that was potentially complete—*Beaver Hunters*.⁶¹

Further, MacKinnon and Dworkin are not sympathetic to tests that look at the work as a whole. MacKinnon criticizes the "work as a whole" requirement as legitimating pornographic publications like *Playboy*.⁶² The Minneapolis ordinance contained no exception for isolated passages; neither did the first enactment of the Indianapolis ordinance.⁶³ The revised Indianapolis statute⁶⁴ and the model definition in their 1988 book⁶⁵ excluded isolated passages from the reach of the trafficking provisions, but had no such limitations for the other provisions or on the definition of pornography itself. Further, MacKinnon effectively ridiculed soft-core pornographic magazines for their informational articles on other subjects being designed to establish literary or social value to the "work as a

⁵⁹ SCHAUER, *supra* note 58, at 109; *see also* SOURCEBOOK, *supra* note 30, at 319-20 (explaining that "work as a whole" may be different for magazines and newspapers than for novels and films).

⁶⁰ *See* Sunstein, *supra* note 15, at 624-26 (discussing possible limiting strategies designed to avoid overinclusion). The other two possible limitations are to materials lacking serious social value and to films and photos, but he does not advocate that any of these limitations be used. His suggestion seems to be to use them only if necessary to cure overbreadth, but as this study shows, the problem with his theory is not overbreadth, but underbreadth. *See infra* notes 150-55 and accompanying text.

⁶¹ *See infra* table 1.4.

⁶² *See* CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 202 (1989) (arguing against the "work as a whole" requirement).

⁶³ *See* DOWNS, *supra* note 4, at 132.

⁶⁴ *See id.*

⁶⁵ *See* ANDREA DWORKIN & CATHARINE A. MACKINNON, PORNOGRAPHY AND CIVIL RIGHTS: A NEW DAY FOR WOMEN'S EQUALITY at app. D (1988).

whole": "Behaviorally, *Playboy's* consumers are reading about the First Amendment, masturbating to the women, reading about the First Amendment, masturbating to the women, reading about the First Amendment, masturbating to the women."⁶⁶ Taking things out of context is a problem for the MacKinnon-Dworkin test only because it may obscure the author's purpose—or in their terminology, what the work does: whether it subordinates women. The other two parts of their test—specific acts and graphic sexual explicitness—are not affected by excerpting.

Although excerpting isn't a serious problem for the MacKinnon-Dworkin and Sunstein tests, it's a potentially serious problem for the Supreme Court's obscenity test. The *Miller* test asks whether "the work, taken a whole, appeals to the prurient interest" and "whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."⁶⁷ With the work as a whole, some answers would undoubtedly be different. Yet the part of the test not relying on the work as a whole—patently offensive sexual depictions—performs badly as well. Nonetheless, results for the Supreme Court's obscenity test must be viewed as merely suggestive. Further studies might explore responses to entire works, thereby giving a better reading on the *Miller* test.

C. *The Administration of the Questionnaires*

This study presents the results of two surveys. The questionnaires used in this study were derived from the definitions themselves. They were refined through pretesting on small numbers of male and female secretaries and law professors. Much of the sloppy language in the MacKinnon-Dworkin and *Miller* definitions was left in its original state. I made slight changes in separating the different elements and in converting definitions to questions. In addition, where conjunctions and punctuation were omitted from definitions, I made educated guesses about where to add them.

The full Sunstein test was used with no significant changes. The first survey used the original *Miller* test, while the second survey used the *Miller* test as slightly modified by later cases.⁶⁸ Both

⁶⁶ See CATHARINE A. MACKINNON, *The Sexual Politics of the First Amendment*, in FEMINISM UNMODIFIED, *supra* note 3, at 206, 209.

⁶⁷ *Miller v. California*, 413 U.S. 15, 24 (1973).

⁶⁸ See appendix A, second survey; see also *Pope v. Illinois*, 481 U.S. 497, 500-01 (1987) (holding that "[t]he proper inquiry is . . . whether a reasonable person would find such value"); *Pinkus v. United States*, 436 U.S. 293, 297 (1978) ("[C]hildren are

versions of the *Miller* test included the suggested specific sexual acts that would qualify.⁶⁹ Respondents were, however, asked twice to consider the *passage* as a whole rather than the *work* as a whole. The MacKinnon-Dworkin test was too long to include in its entirety, so I chose the five specific acts most likely to qualify under that test,⁷⁰ as well as the other two elements of the test—subordination and graphic sexual explicitness. For one excerpt that included penetration by objects, I included that question from the MacKinnon-Dworkin test.⁷¹ Correctly anticipating that subordination would be the pivotal element of the MacKinnon-Dworkin test, I also included questions based on MacKinnon and Dworkin's comments defining subordination.⁷²

In the first survey, the sexual materials were put in random order except for the *Beaver Hunters* photo, which was put last for

not to be included . . . as part of the 'community' . . ."); *Smith v. United States*, 431 U.S. 291, 301, 305 (1977) (holding that "the jury must measure patent offensiveness against contemporary community standards[;] . . . [these] standards must be applied by juries in accordance with their own understanding . . . of the average person").

⁶⁹ The Court in *Miller* limited the scope of regulation of obscene materials to works "which depict or describe sexual conduct. That conduct must be specifically defined by the applicable state law, as written or authoritatively construed." *Miller*, 413 U.S. at 24.

⁷⁰ Based on the MacKinnon-Dworkin model act, the questions are:

1. Does this present women in postures of sexual submission, servility, or display?
2. Does this present women as sexual objects who enjoy pain or humiliation?
3. Does this present women dehumanized as sexual objects, things or commodities?
4. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?
5. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?

See appendices A & B.

⁷¹ "Does this present women being penetrated by objects or animals?" Appendix A, first survey, question 41.

⁷² "Does this place women in an unequal position or in a position of loss of power?" Appendix A, first survey, questions 13, 28, 44, 59, 74 & 89; see also DWORKIN & MACKINNON, *supra* note 65, at 39 ("Subordination is an active practice of placing someone in an unequal position or in a position of loss of power."); MACKINNON, *supra* note 3, at 201 ("The term 'subordination' refers to materials that, in one way or another, are active in placing women in an unequal position."); cf. Andrea Dworkin, *Against the Male Flood: Censorship, Pornography, and Equality*, in PORNOGRAPHY: PRIVATE RIGHT OR PUBLIC MENACE? 56, 57-59 (Robert M. Baird & Stuart E. Rosenbaum eds., 1991) (maintaining that subordination is inequality achieved through sex and is composed of four elements: hierarchy, objectification, submission, and violence).

two reasons. I thought that its graphicness might desensitize some respondents from looking at the other examples carefully. I also thought that some respondents might be too horrified to continue. In the second survey, I kept roughly the same order. I changed the "name" of a character in one example that I thought students might recognize, "O" in the *Story of O*. I thought of giving her a real name, but that would humanize her to an extent that the pornographer doesn't, so I called her "W." Several respondents recognized her anyway.

In the first survey, the 105 subjects were students in two Professional Responsibility courses at a large midwestern law school. In one course, 76 out of 77 students filled out questionnaires.⁷³ In the other course of approximately the same size, 31 students initially volunteered for the study; 29 filled out questionnaires.⁷⁴ Because of the offensive nature of the materials, students were asked to participate only after informed consent, delivered both orally by me and in writing on the questionnaire. On a night in May 1992, both classes ended a little early. Students stayed after class to fill out the questionnaire. The larger class was monitored first by me and then by my female research assistant; the smaller class was monitored by me.

In the second survey, conducted on two successive days in early December 1992, first-year students in two large sections at the same law school were invited to participate. In one class, 98 out of 99 students filled out questionnaires. In the other class, 97 out of 98 participated. Both were monitored jointly by my female research assistant and me. Most students took about fifteen to twenty-five minutes to fill out the questionnaires. No reward was given.

At the following class sessions, students were debriefed, told of the study's purposes, and given very early, very partial results. Students were encouraged to speak with me further about the study and several did. Most were simply curious but a couple spoke about the strangeness of the experience and the effect of the study on their views of pornography (making them more hostile to it).

There was, however, less obvious anxiety over the materials than I had anticipated. A few did report distress. Most of those who

⁷³ In this group there were three additional students who had studied the MacKinnon-Dworkin definition and one of the excerpts in an earlier class that year who were therefore excluded from the study.

⁷⁴ In this smaller group, no attempt was made to screen out those who had encountered the MacKinnon-Dworkin test or an excerpt previously.

didn't fill out the entire first questionnaire, however, seemed more influenced by the length and tediousness of the questionnaire than by agitation over the materials. Thus, in the first survey, several respondents skipped examples D and E, but answered example F (*Beaver Hunters*), which was mostly pictorial. There was a small amount of nervous snickering by a few male students in two of the classes surveyed.

For the statistics and tables in this study, missing data are excluded and any score for a combination variable where missing data renders the result unknown is treated as a missing score and excluded.

The demographic breakdown of subjects in the first survey is presented in Table 1.1.

TABLE 1.1
DEMOGRAPHIC BREAKDOWN OF SUBJECTS
FIRST SURVEY

Group	% or Mean	<i>n</i>
Gender:		105
Female	50.5%	
Male	49.5%	
Age:		103
Mean	29.1 years	
Race/Ethnicity:		103
White	90.3%	
African-American	4.9%	
Asian-American	2.9%	
Hispanic	1.9%	
Religion:		104
Christian	56.7%	
Catholic	38.5%	
Prot./Other	18.2%	
Jewish	28.8%	
No religion	14.4%	
Feminism:		101
Feminist	39.6%	
(Females-69%)		
Feminist sympathizer	22.8%	
(Females-15%)		
Not a feminist	37.6%	
(Females-15%)		

In the first survey, the subject population's gender distribution (50.5% women) nearly matches the general population mean of

51.2%.⁷⁵ This is especially good for a study researching sex, because other studies have suggested that men are much more likely than women to volunteer for such studies.⁷⁶ The subject population's mean age of 29.1 years is close to the national median age of 33.1 years,⁷⁷ but obviously very young as compared with the mean age of the adult population. As to the racial and ethnic makeup of the population, the percentage of Asian-Americans is virtually equal to the percentage in the general population (2.9%), but the percentages of African-Americans and Hispanics are relatively low.⁷⁸ Overall, the subject population is 7.8% nonwhite and 1.9% Hispanic—compared to 19.7% nonwhite and 9.0% Hispanic in the general population.⁷⁹ The subject population is 56.7% Christian compared with 81% in the general population.⁸⁰ The subjects are 28.8% Jewish—far in excess of the 2% in the general population.⁸¹ The numbers of feminists and feminist sympathizers are probably higher than the general population. The educational level of the subjects is obviously also above average, but I didn't explore this because of the narrow range of educational backgrounds.

The demographic breakdown of subjects in the second survey is presented in Table 2.1 on the next page. The subject population's gender distribution (46.6% women) is slightly less than the general population mean of 51.2%.⁸² The subject population's mean age of 24.5 years is below the national median age of 33.1 years.⁸³ While the numbers of African-Americans and Hispanics are low, the percentage of Asians (9.3%) is three times that of the general population (2.9%).⁸⁴ Overall, the subject population is 13.9% nonwhite and 1.6% Hispanic—not far below the national average

⁷⁵ See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1992, no. 15 at 16 (112th ed. 1992).

⁷⁶ See SOURCEBOOK, *supra* note 30, at 229 (discussing 1976 Zuckerman study finding that single male college students would volunteer for a study of erotic films three times as often as single female college students).

⁷⁷ See BUREAU OF THE CENSUS, *supra* note 75, no. 12 at 14.

⁷⁸ See *id.* no. 16 at 17. The U.S. Census considers Hispanics as members of any race, so the percentages are not quite comparable. The 1990 Census Bureau figures report a population distribution of: 80.3% white, 12.1% black, 2.9% Asian or Pacific Islander, and 9.0% Hispanic origin. *Id.*

⁷⁹ See *id.*

⁸⁰ See *id.* no. 75 at 58 (56% Protestant, 25% Catholic).

⁸¹ See *id.*

⁸² See *id.* no. 15 at 16.

⁸³ See *id.* no. 12 at 14.

⁸⁴ See *id.* no. 16 at 17.

TABLE 2.1
 DEMOGRAPHIC BREAKDOWN OF SUBJECTS
 SECOND SURVEY

Group	% or Mean	n
Gender:		193
Female	46.6%	
Male	53.4%	
Age:		191
Mean	24.5 years	
Race/Ethnicity:		193
White	84.5%	
African-American	4.7%	
Asian-American	9.3%	
Hispanic	1.6%	
Religion:		192
Christian	67.2%	
Jewish	17.2%	
No religion	14.1%	
Other	1.6%	
Attended Church Last Week:		192
Attended church	17.7%	
Not attended church	82.3%	
Feminism:		192
Strong feminist (Females-10%)	5.7%	
Feminist (Females-56%)	28.1%	
Feminist sympathizer (Females-21%)	31.3%	
Not a feminist (Females-12%)	34.9%	
Watched Pornography Last Month:		192
Watched	20.3%	
Not watched	79.7%	
Pornography Suppression:		186
Favor	23.7%	
Oppose	74.7%	
Uncertain (volunteered)	1.6%	

of 19.7% nonwhite but far below the national average of 9.0% Hispanic.⁸⁵ The subject population is 67.2% Christian and 17.2% Jewish, compared with 81% and 2%, respectively, in the general population.⁸⁶ Also, 14.1% have no religion, compared to 11% for the nation.⁸⁷ In this population, 17.7% attended church in the week before the survey, 20.3% watched or read pornography in the last month, and 23.7% favor pornography suppression. The numbers of feminists and feminist sympathizers may also be high.

The second survey had two versions in order to vary the questions and texts used. The two versions were alternated when passed out. Between the groups filling out the two versions, there were no significant differences in any demographic measure (gender, age, race, religion, church attendance, feminism, pornography exposure, pornography suppression).

An enormous amount of social science research has been conducted on students. As student populations go, this is a relatively good sample. The average age is closer to that of the general population than most undergraduate student populations and the gender breakdown is good. Whether a law student population is appropriate for the study depends on which decision one is trying to model. A wide range of people either have already entered the debate on pornography or have to be able to determine the scope of the law: pornographers, women who might sue disseminators of pornography, lawyers who advise pornographers or women suing pornographers, judges, antipornography activists, law professors, and jurors. The law student sample of this study would be roughly appropriate to model most of these people. Like law students, most of these groups are relatively well-educated, upper-middle class persons. But this study would seem to be a relatively weak test of jury decisionmaking, not only because of the demographic differences from the general jury population, but also because there was no attempt to model the dynamics of jury deliberation or the supermajority or unanimity voting rules of many states.

⁸⁵ *See id.*

⁸⁶ *See id.* no. 75 at 58.

⁸⁷ *See id.*

II. THE FIRST SURVEY

A. *Vagueness*

The MacKinnon-Dworkin test is most commonly criticized for being vague. Among the words that people find particularly objectionable are:

- (1) "graphic sexually explicit,"
- (2) "subordination,"
- (3) "sexual objects,"
- (4) "servility," and
- (5) "submission."⁸⁸

A few commentators have pointed out that the Supreme Court's *Miller* test is itself vague—in particular, such terms as:

- (1) "prurience,"
- (2) "serious . . . value," and
- (3) "patently offensive."⁸⁹

Vague laws offend several important values: they deny people fair notice that certain conduct is forbidden, they inadequately define crimes prior to commission, and they permit "arbitrary and discriminatory enforcement."⁹⁰ Usually, when commentators call

⁸⁸ See, e.g., HAWKINS & ZIMRING, *supra* note 1, at 159 ("It is in fact extremely difficult to derive from either Dworkin or MacKinnon a precise account of what they mean by pornography or how it can be meaningfully distinguished from any other material in which women are 'objectified.'"); POLLARD, *supra* note 13, at 126 (stating that "the ordinance is alarmingly . . . vague"); TIGUE, *supra* note 6, at 100-01 (describing MacKinnon-Dworkin definition as "nearly limitless"); Note, *supra* note 11, at 462 n.8 (noting that "terms . . . may lack the clarity necessary to withstand constitutional challenge"); *supra* note 13 and accompanying text.

⁸⁹ See, e.g., DOWNS, *supra* note 4, at 20-21 (stating that all three terms are confusing); WILLIAM K. LAYMAN, Note, *Violent Pornography and the Obscenity Doctrine: The Road Not Taken*, 75 GEO. L.J. 1475, 1481 (1987) ("What is 'the prurient interest'? . . . Perhaps the ultimate proof of the intractable vagueness of the Court's obscenity definition is Justice Stewart's famous remark: 'I know it when I see it.'" (quoting *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring))); *id.* at 1502 n.197 ("In the liberal view, the *Miller* standard suppresses unharmed speech and also perpetuates sexual neuroses and repression. Consequently, liberals attack the standard as vague and overbroad."); *supra* note 20 and accompanying text.

⁹⁰ See *Smith v. Goguen*, 415 U.S. 566, 572-73 (1974); *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972).

something vague they mean that they don't know what a text means or that different people will interpret the text differently.

For this study, vagueness is statistically measured in two ways. The first is uncertainty. Individuals may not know what the words used in a legal test mean or how to apply these definitions to sexual materials. When asked to apply a test, they may answer that they "Don't Know." Thus for both individual questions and the tests as a whole, I calculated the percentage of respondents expressing uncertainty.

The second way to measure vagueness is by looking at variability in responses. One aspect of vagueness is the degree to which different people can reach different conclusions. Thus for both individual questions and the tests as a whole, I measured the percentage whose opinions differed from the majority or plurality opinion.

Table 1.2 shows the levels of uncertainty expressed by subjects asked to apply the tests.⁹¹ Note that, contrary to the bulk of the commentary, the MacKinnon-Dworkin test ranks as the least vague. Furthermore, the individual questions performed well. The *Miller* test is highly vague, with many students apparently uncertain how to answer.

Table 1.3 shows the mean percentage of people disagreeing with the majority opinion over the six examples. Just as for the uncertainty measures, measures of variability show that questions from the *Miller* and Sunstein tests occupy the five most vague spots on the list. When one compares the mean percentage disagreeing with the majority under each of the three tests, rather than on individual questions, the Sunstein test displaces the MacKinnon-Dworkin test as the least vague. Indeed, measured by variability in responses, the MacKinnon-Dworkin test is nearly as vague as the *Miller* test. But the Sunstein test is the least variable only because almost everyone (incorrectly) finds that nothing is pornographic under that test.⁹² In other words, the low variability of the Sunstein test is a function of its failure to discriminate among even easy cases. Everything looks more or less the same; thus there's little variability. Once again, the Supreme Court's *Miller* test ranks as the most variable and thus the most vague.

⁹¹ The results are a combined mean of the percentages for all six examples in the first survey. See appendix B, first survey.

⁹² See *infra* table 1.4.

TABLE 1.2
 VAGUENESS
 MEASURED BY UNCERTAINTY
 FIRST SURVEY
 ($n = 598-612$ observations)

TESTS		Mean % Don't Know	
U.S. Supreme Court's Obscenity Test (<i>Miller</i>)		19	most vague
Sunstein Pornography Test		10	
MacKinnon-Dworkin Pornography Test		7	
QUESTIONS	Source	Mean % Don't Know	
Prurient interest	<i>Miller</i>	31	most vague
Purpose of arousal	Sunstein	21	
Lacks serious literary, artistic, . . . value	<i>Miller</i>	11	
Effect of arousal	Sunstein	11	
Patently offensive sexual acts	<i>Miller</i>	8	
Subordination of women	MacK-Dwork	7	
Scenarios of degradation	MacK-Dwork	6	
Objects enjoying pain or humiliation	MacK-Dwork	6	
Enjoying physical abuse	Sunstein	6	
Dehumanized as objects, things	MacK-Dwork	5	
Tied up or cut up or bruised or . . . hurt	MacK-Dwork	5	
Submission, servility or display	MacK-Dwork	5	
Places women in an unequal position	MacK-Dwork commentary	5	
Aggregate of specific acts	MacK-Dwork	4	
Sexually explicit	Sunstein	2	
Graphic sexually explicit	MacK-Dwork	2	

TABLE 1.3
VAGUENESS
MEASURED BY MEAN % DISAGREEING WITH MAJORITY
(OR PLURALITY) OPINION
FIRST SURVEY
(*n* = 598-612 observations)

TESTS		Mean % Disagreeing w/ Majority	
U.S. Supreme Court's Obscenity Test (<i>Miller</i>)		35	most vague
MacKinnon-Dworkin Pornography Test		30	
Sunstein Pornography Test		18	least vague

QUESTIONS	Source	Mean % Disagreeing w/ Majority	
Prurient interest	<i>Miller</i>	58	most vague
Purpose of arousal	Sunstein	46	
Lacks serious literary, artistic, . . . value	<i>Miller</i>	43	
Enjoying physical abuse	Sunstein	42	
Patently offensive sexual acts	<i>Miller</i>	41	
Objects enjoying pain or humiliation	MacK-Dwork	41	
Scenarios of degradation	MacK-Dwork	33	
Effect of arousal	Sunstein	31	
Submission, servility or display	MacK-Dwork	30	
Dehumanized as objects, things	MacK-Dwork	29	
Tied up or cut up or bruised or . . . hurt	MacK-Dwork	28	
Subordination of women	MacK-Dwork	28	
Aggregate of specific acts	MacK-Dwork	26	
Places women in an unequal position	MacK-Dwork commentary	26	
Graphic sexually explicit	MacK-Dwork	20	
Sexually explicit	Sunstein	18	least vague

B. *Overbreadth and Underbreadth*

1. Compared to What?

The MacKinnon-Dworkin test was struck down by the Seventh Circuit Court of Appeals as unconstitutionally overbroad.⁹³ Many other commentators have made the same criticism against it.⁹⁴ Some commentators, on the other hand, have pointed out that the *Miller* test could be more aggressively used to strike at materials that conservatives believe are obscene.⁹⁵ MacKinnon and Dworkin in effect claim that the *Miller* test is underbroad because it fails to prohibit explicit materials that harm women.⁹⁶ Others have claimed that the MacKinnon-Dworkin and Sunstein tests are underbroad.⁹⁷ All this shows that there's no shortage of speculative opinion, but very little real information.

Usually, when commentators call a test overbroad, they mean that its wording would (or might) apply to a text that is (or ought to be) constitutionally protected. Thus, to be able to determine whether a test is overbroad or underbroad in an ordinary sense,⁹⁸ one needs a standard. In essence, one needs to know the "right" answer *before* one can know whether a test is overinclusive, underinclusive, or just about right. If one knows the right answer ahead of time, one can assess how well the elements of the test lead to pre-chosen conclusions. In other words, I'm not using the three definitions to determine whether the six excerpts are pornographic or obscene, I'm using the works to test the definitions. Further, I'm not trying to impose my own views about what pornography or

⁹³ See *American Booksellers Ass'n v. Hudnut*, 771 F.2d 323, 327-32 (7th Cir. 1985), *aff'd*, 475 U.S. 1001 (1986).

⁹⁴ See *supra* notes 13 & 88 and accompanying text.

⁹⁵ See DOWNS, *supra* note 4, at 20 (stating that the Meese Commission "appears to have encouraged greater enforcement efforts in some localities"); Layman, *supra* note 89, at 1504-05 (stating that "the activities of the Meese Commission demonstrate that conservatives are prepared to test the breadth of the *Miller* standard by enforcing obscenity laws more vigorously—both directly censoring and indirectly chilling 'borderline' expressions—even without any doctrinal change").

⁹⁶ See MACKINNON, *supra* note 3, at 200.

⁹⁷ See FEINBERG, *supra* note 13, at 145 ("It will not do then to isolate the most objectionable kinds of pornography, the kinds that are most offensive and even dangerous to women, and reserve the label 'pornographic' for them alone."); Pollard, *supra* note 13, at 148 (stating that "the [model] statute is both constitutionally overbroad and underinclusive").

⁹⁸ For the legal meaning of overbreadth, see, e.g., Henry P. Monaghan, *Overbreadth*, 1981 SUP. CT. REV. 1; Note, *The First Amendment Overbreadth Doctrine*, 83 HARV. L. REV. 844 (1970).

obscenity is, but rather to reflect the views of the theorists as well as I can ascertain them. If you guess differently about which works should be obscene or pornographic, you can easily apply those conclusions to the results for breadth.

So, what are the right answers against which to test overbreadth? It's fairly easy to tell what the right answers are under the MacKinnon-Dworkin test. The three feminist works are not porn; the other three works are porn. MacKinnon herself has confirmed my assessment.⁹⁹

The right answers under the Sunstein test are probably the same. Certainly, *Beaver Hunters* is pornographic by Sunstein's definition. In fact, it's the only example he discusses in text as an obvious case.¹⁰⁰ The two examples of literary porn show women enjoying harmful sex and thus should also be pornographic under his test.

The *Miller* test would not find the feminist fiction and literary porn obscene, but the status of *Beaver Hunters* is unclear. It would seem to meet the *Miller* test, but the routine availability of *Hustler* gives me pause.

2. Methods of Aggregating Data

There are two basic ways of aggregating the data. The first is to ask how many people find that an example meets all the elements required of pornography by a particular test? The second way is to take each element separately and determine whether a majority of people think it's present and then combine the conclusions for each element. This aggregation problem is closely analogous to the probability issue in aggregating multiple-element legal tests.¹⁰¹ For example, assume that both elements of a two-element test must be proved to be more likely than not for the test to be met. If the probability of each element being satisfied is independent and equal to 60%, one will find that the test has been met, even though the combined probability of both elements being true might be only 36% (.6 x .6 = .36).

In this study, the aggregation problem is similar, but much more complex. When all of several elements must be met, requiring each

⁹⁹ Telephone Conversation with Catharine MacKinnon (Sept. 30, 1992).

¹⁰⁰ See Sunstein, *supra* note 15, at 593.

¹⁰¹ See, e.g., Ronald J. Allen, *The Nature of Juridical Proof*, 13 CARDOZO L. REV. 373, 373-82 (1991) (discussing methods of reaching probabilistic conclusions).

individual to meet each element of the test will reduce positive answers. Conversely, aggregating opinions for each element before combining them will inflate the number of positives. For example, assume that most subjects think that a scene has the purpose of arousal, and most think that it has the effect of arousal, but that only a minority think that both elements are met; one might conclude that the answer is negative if the aggregation is done at the individual level, but positive if the aggregation is done at the element level.

On the other hand, where there are alternative ways to meet an element, such as the MacKinnon-Dworkin test's specific acts (any one of which will meet the element), the problem is the opposite. Allowing any individual to meet the specific acts element by showing any specific act will inflate positive answers. Conversely, aggregating opinions for each specific act before combining them will reduce the number of positives. For example, assume that less than half of the subjects think that the "enjoying pain" element is met, and less than half think that the "scenario of degradation" element is met, but a majority think that one or the other was met; one would conclude that the answer is positive if the aggregation is done at the individual level, but negative if the aggregation is done at the element level.

Further, the degree to which these aggregation methods reach different results is in part a reflection of the variability in answers from question to question. These two methods of aggregation will tend to reach the same conclusion when the correlation between elements is high, but will reach different conclusions when the correlation between elements is low. Another decision that affects the conclusion is how answers of "Don't Know" are handled. One may get a different conclusion if those answering "Don't Know" are excluded from the analysis (or if their numbers are added equally or proportionally to "Yes" and "No").

3. Conclusions About Sexual Materials

Table 1.4 shows the results for each example and test, aggregated by individual opinions.

TABLE 1.4
 RANKING PORNOGRAPHY
 PERCENTAGE OF INDIVIDUALS FINDING THAT EXAMPLES MEET ALL THE ELEMENTS OF A TEST
 FIRST SURVEY
 (n = 94-105)

Example	MacKinnon-Dworkin Test				Supreme Court (Miller) Test				Sunstein Pornography Test			
	% Yes	% Don't Know	% No	Porn/ Rank	% Yes	% Don't Know	% No	Obscene/ Rank	% Yes	% Don't Know	% No	Porn/ Rank
<i>Beaver Hunters</i> (low-class porn)	72	3	25	YES-1	32	17	51	NO-1	3	11	86	NO-6
<i>Story of O</i> (high-class porn)	68	5	27	YES-2	17	20	64	NO-3	12	13	76	NO-2
<i>Story of the Eye</i> (high-class porn)	33	8	59	NO-3	17	24	59	NO-2	6	12	82	NO-5
<i>Titlers</i> (feminist fiction)	22	9	69	NO-4	15	26	59	NO-4	8	10	83	NO-3
<i>Women's Room</i> (feminist fiction)	21	7	73	NO-5	8	9	88	NO-5	13	4	83	NO-1
<i>Ice & Fire</i> (feminist fiction)	10	10	81	NO-6	6	17	78	NO-6	7	12	81	NO-4

One can get a sense of how well these tests work from this table. Both the MacKinnon-Dworkin and *Miller* tests give a sensible ordering of the materials. The feminist works are less pornographic than the pornography. The Sunstein test doesn't give a sensible ordering. *The Women's Room* scores as the most pornographic¹⁰² because it's the most arousing. In contrast, *Beaver Hunters* scores as the least pornographic because it's the least arousing. If one accepts the MacKinnon-Dworkin and Sunstein classification of works (three porn, three not porn), then the MacKinnon-Dworkin test performs best. If one accepts only the *Beaver Hunters* photograph as obscene, then the MacKinnon-Dworkin test is slightly overbroad and the other two tests are slightly underbroad.

If one aggregates the results at the element level rather than the individual level and includes the "Don't Know" results in the totals (thus effectively counting them as "No"s), one gets the same conclusions and similar results.¹⁰³ But because overbreadth is concerned with chilling protected speech, effectively counting "Don't Know" as "No" is particularly inappropriate. Thus we should exclude those answering "Don't Know" (or assign them equally or proportionately to "Yes" and "No"). If we do this, the conclusions change dramatically. The *Miller* test becomes the most overbroad, while the other two tests are stable in their results. One would expect those answering "Don't Know" to choose "Yes" or "No" if compelled to decide, so excluding the "Don't Know" responses is the best test of overbreadth.

Table 1.5 shows the percentage of subjects finding that various elements of the test are met when those answering "Don't Know" are excluded.¹⁰⁴

As you can see from Table 1.5, the Supreme Court's *Miller* obscenity test is the most overbroad. It finds one of the pieces of feminist fiction obscene, as well as all three examples of pornography. This compares to the expected result of only the *Beaver Hunters* photograph being obscene, if any excerpt is obscene.

¹⁰² Works are ranked by the percentage finding that the works meet a legal standard.

¹⁰³ A table is not provided, but one may check the results for any test and sex scene by examining the results printed in appendix B, first survey.

¹⁰⁴ The results, including those answering "Don't Know," are in appendix B, first survey.

TABLE 1.5
 RANKING PORNOGRAPHY
 MEETING THE ELEMENTS OF THE TESTS (EXCLUDING "DON'T KNOW")
 FIRST SURVEY
 (n = 66-105)

Example	MacKinnon-Dworkin Test/Question	% Yes		% No		Porn/ Rank	Sup. Ct. (Miller) Test/Question	% Yes		% No		Obscene/ Rank	Sunstein Test/Question	% Yes		% No		Porn/ Rank
		Yes	No	Yes	No			Yes	No	Yes	No			Yes	No			
<i>Beaver Hunters</i> (low-class porn)	84. Object	96	4	64	36		90. Prurient	64	36			93. Enjoys Abuse	72	28				
	87. Graphic explicit	81	19	70	30	YES-2	91. Offensive	70	30	YES-1		94. Purpose-Arousal	61	39				NO-6
	88. Subordination	91	9	83	17		92. Lacks value	83	17			95. Effect-Arousal	9	91				
<i>Story of O</i> (high-class porn)	21. Submission	89	11	62	38		29. Prurient	62	38			32. Enjoys Abuse	59	41				
	26. Graphic explicit	84	16	55	45	YES-1	30. Offensive	55	45	YES-4		33. Purpose-Arousal	59	41				NO-3
	27. Subordination	86	14	51	49		31. Lacks value	51	49			34. Effect-Arousal	25	75				
<i>Story of the Eye</i> (high-class porn)	70. Scenario	52	48	59	41		75. Prurient	59	41			78. Enjoys Abuse	43	57				
	72. Graphic explicit	86	14	68	32	NO-3	76. Offensive	68	32	YES-2		79. Purpose-Arousal	73	27				NO-5
	73. Subordination	44	56	62	38		77. Lacks value	62	38			80. Effect-Arousal	12	88				
<i>Tilters</i> (feminist fic- tion)	41. Penetrated	72	28	56	44		45. Prurient	56	44			48. Enjoys Abuse	48	52				
	42. Graphic explicit	87	13	57	43	NO-5	46. Offensive	57	43	YES-3		49. Purpose-Arousal	70	30				NO-4
	43. Subordination	24	76	65	35		47. Lacks value	65	35			50. Effect-Arousal	19	81				
<i>Women's Room</i> (feminist fic- tion)	52. Submission	37	63	70	30		60. Prurient	70	30			63. Enjoys Abuse	26	74				
	57. Graphic explicit	89	11	27	73	NO-4	61. Offensive	27	73	NO-6		64. Purpose-Arousal	90	10				NO-2
	58. Subordination	25	75	43	57		62. Lacks value	43	57			65. Effect-Arousal	63	37				
<i>Ice & Fire</i> (feminist fic- tion)	7. Pain	41	59	48	52		14. Prurient	48	52			18. Enjoys Abuse	55	45				
	11. Graphic explicit	65	35	42	58	NO-6	15. Offensive	42	58	NO-5		19. Purpose-Arousal	52	48				NO-1
	12. Subordination	16	84	37	63		16. Lacks value	37	63			20. Effect-Arousal	30	70				
												21. Explicit	74	26				

The MacKinnon-Dworkin test, because it had low numbers of uncertain responses, performs the same when uncertain responses are excluded. The Sunstein test, because it's unable to discriminate between works (everything is far from pornographic), also performs the same.

C. *Demographic Breakdown of Responses*

1. Tendency to Find Works Pornographic

Much of the modern literature on pornography seeks to reflect women's views on what pornography is and what to do about it.¹⁰⁵ Thus, I broke down the results according to demographic background—in part to see whether women or other groups were more likely to find something pornographic and in part to see whether women or other groups were better at distinguishing feminist fiction from pornography.

Table 1.6 presents the tendency to find a work pornographic under any of the three tests. As the table suggests, women, older subjects (over thirty), and feminists are more likely than men, younger subjects, feminist sympathizers, and nonfeminists to find something pornographic or obscene under any of the three tests. Considering the number of tests performed,¹⁰⁶ only gender and age show a strong probability of being significant. Religion had no significant effect.¹⁰⁷

Table 1.7 shows a similar demographic breakdown for those finding a work pornographic under the MacKinnon-Dworkin test. It suggests that women, older subjects (over thirty), nonwhites, and

¹⁰⁵ See, e.g., MACKINNON, *supra* note 62, at 209 ("Perhaps a human being, for gender purposes, is someone who controls the social definition of sexuality."); Maria Katyachild et al., *Pornography*, in *WOMEN AGAINST VIOLENCE AGAINST WOMEN* 13, 13-14 (dusty rhodes & Sandra McNeill eds., 1985) (arguing that women campaigning against pornography should try to "reach a self-defined sexuality" rather than a "male-defined sexuality").

¹⁰⁶ Like most empirical studies, this study made no Bonferroni adjustments for the number of tests performed. Accordingly, for the first survey probabilities greater than .01 should be considered marginal at best, as should probabilities greater than .006 for the second survey.

¹⁰⁷ The finding that religion had no significant effect appears to contradict the 1971 Byrne-Lamberth study, which found that religion, as determined by frequency of church attendance, was positively related to the tendency to find a work pornographic. See Byrne & Lamberth, *supra* note 42, at 41-67 (noting that other groups that also found themes pornographic were authoritarian personalities and those expressing disgust in response to the study's sexual stimuli).

feminists are significantly more likely than men, younger subjects, whites, and nonfeminists to find something pornographic under the MacKinnon-Dworkin test. Only gender shows more than marginal significance.

TABLE 1.6
TENDENCY TO FIND AN EXAMPLE PORNOGRAPHIC OR OBSCENE
UNDER ANY OF THREE TESTS
FIRST SURVEY

Group	Mean Score ⁺	<i>n</i>	Probability [‡]
Gender:		90	.003 [□]
Female	10.8	45	
Male	6.7	45	
Age:			
Continuous		88	.001 [□]
Race/Ethnicity:		88	.309
White	8.6	78	
African-American	8.0	5	
Asian-American	15.7	3	
Hispanic	5.5	2	
Religion:		89	.143
Christian	9.9	49	
Jewish	6.8	27	
No religion	8.1	13	
Feminism:		87	.044 [□]
Feminist	11.2	33	
Fem. sympathizer	7.3	20	
Not a feminist	7.5	34	
OVERALL MEAN	8.7	90	

⁺ Finding all six works pornographic or obscene under all three tests would yield a score of 36.

[‡] Probabilities are based on F values for ANOVA, except for age, for which the probability is based on regression analysis.

[□] Significant at a <.05 probability level.

TABLE 1.7
TENDENCY TO FIND AN EXAMPLE PORNOGRAPHIC UNDER
THE MACKINNON-DWORKIN TEST
FIRST SURVEY

Group	Mean Score ⁺	<i>n</i>	Probability [‡]
Gender:		95	.001 [□]
Female	5.8	49	
Male	3.8	46	
Age:			
Continuous		93	.049 [□]
Race/Ethnicity:		93	.028 [□]
White	4.6	83	
Other	6.9	10	
(African-American-6.0 mean)			
(Asian-American-9.3 mean)			
(Hispanic-5.5 mean)			
Religion:		94	.261
Christian	5.3	53	
Jewish	4.2	28	
No religion	4.3	13	
Feminism:		92	.014 [□]
Feminist	5.9	36	
Feminist sympathizer	5.1	20	
Not a feminist	3.8	36	
OVERALL MEAN	4.8	95	

⁺ Finding all six works pornographic under the MacKinnon-Dworkin test would yield a score of 12.

[‡] Probabilities are based on F values for ANOVA, except for age, for which the probability is based on regression analysis.

[□] Significant at a <.05 probability level.

2. Expertise at Distinguishing Pornographic from Feminist Works

Although gender and age can explain some of the tendency to find a work pornographic or obscene, it doesn't necessarily follow that some groups are better at distinguishing pornographic fiction from feminist fiction. Further, although in the first survey the MacKinnon-Dworkin test performed fairly well in the aggregate, most individuals were unable to use the test to distinguish the sex scenes accurately.

Table 1.8 shows that only 15% of subjects were able to correctly assign all six examples using the MacKinnon-Dworkin test. An additional 16% were able to correctly assign five of six. This is better than would be expected by chance, yet the test's performance might still be below what many might think adequate. Indeed, more than one-third of the subjects performed no better than the likeliest chance outcome, identifying three or fewer examples correctly.

TABLE 1.8
 PERCENTAGE CORRECTLY APPLYING MACKINNON-DWORKIN TEST
 FIRST SURVEY
 (3 Pornographic; 3 Not Pornographic)
 ($n = 95$)

Number of Examples Correctly Assigned	% Individuals Correct
6 of 6	15
5 of 6	16
4 of 6	34
3 of 6	28
2 of 6	5
1 of 6	2
0 of 6	0

Table 1.9 provides a demographic breakdown of the tendency to assign examples correctly under the MacKinnon-Dworkin test. As the table illustrates, there are no significant differences between groups in their ability to distinguish feminist fiction from pornographic fiction. In other words, suppositions of special expertise by women or feminists to identify pornography are not supported by this study. The one variable that approaches significance—gender (.06 probability)—would explain only a trivial amount of the variance. Although some groups are more likely to find a work pornographic, they are not better at applying the MacKinnon-Dworkin test.

TABLE 1.9
TENDENCY TO ASSIGN EXAMPLE CORRECTLY UNDER THE
MACKINNON-DWORKIN TEST
FIRST SURVEY
(3 Pornographic; 3 Not Pornographic)

Group	Mean Number of Examples Correctly Assigned	<i>n</i>	Probability [†]
Gender:		95	.060
Female	4.2	49	
Male	3.8	46	
Age:			
Continuous		93	.237
Race/Ethnicity:		93	.142
White	4.0	83	
African-American	4.8	5	
Asian-American	3.7	3	
Hispanic	2.5	2	
Religion:		94	.617
Christian	3.9	53	
Jewish	4.0	28	
No religion	4.3	13	
Feminism:		92	.472
Feminist	4.0	36	
Feminist sympathizer	4.3	20	
Not a feminist	3.8	36	
OVERALL MEAN	4.0	95	

† Probabilities are based on F values for ANOVA, except for age, for which the probability is based on regression analysis.

□ There were no significant results at a probability level of <.05.

III. THE SECOND SURVEY

I conducted a second survey to explore some questions remaining after the first survey. Discussions with subjects revealed confusion over whether the MacKinnon-Dworkin test prohibited depictions of subordination or works whose dissemination would tend to subordinate. Further, I wanted to see if other alternative formulations of the subordination requirement could perform better. The results also left unclear how subjects would respond to feminist depictions of nonconsensual sex (rape). In addition, I tested the *Miller* definition as it has been modified by additional cases specifying whose determinations are supposed to count (e.g.,

a reasonable person or an average person).¹⁰⁸ Along the same lines, I wanted to test whether those point-of-view considerations in fact matter. The Sunstein test was excluded from the second survey because of its poor showing in the first survey.

Subjects in the second survey were shown one of two versions of the *Ice and Fire* excerpt, the longer version more clearly showing nonconsent and the author's point of view (hostility toward the acts depicted), and one of two versions of the *Story of O* example, the longer version making consent a greater part of the text. The third example used was a rape scene from Dworkin's *Mercy* and the fourth was *Beaver Hunters*. Thus, although four excerpts were shown to each subject, six excerpts were tested.¹⁰⁹

A. Vagueness

As in the first survey, vagueness has been statistically measured in two ways: uncertainty and variability in responses. Table 2.2 shows the levels of uncertainty expressed by subjects asked to apply the tests.¹¹⁰ Note that, as with the first survey and contrary to the bulk of the commentary, the MacKinnon-Dworkin test is less vague and its individual questions perform well. The *Miller* test is highly vague, with many students uncertain how to answer.

Table 2.3 shows the mean percentage of people disagreeing with the majority opinion over the six examples. By this measure of variability, the *Miller* questions fill the two most vague spots on the list. Once again, the Supreme Court's *Miller* test is more variable and thus vaguer than the MacKinnon-Dworkin test.

B. Overbreadth and Underbreadth

Interviews and results from the first survey raised the question whether subjects found works pornographic under the MacKinnon-Dworkin test according to whether they *depicted* subordination. Thus, the second survey compared expanded versions of the excerpts from *Ice and Fire* and the *Story of O* with shorter versions varying the amount of consent. I also added a feminist depiction of nonconsensual sex (rape) from Dworkin's novel *Mercy*.

¹⁰⁸ See *supra* note 68.

¹⁰⁹ See appendix A, forms 2.1 & 2.2.

¹¹⁰ Tables 2.2 & 2.3 average results for all six examples: examples A & B in forms 2.1 & 2.2, and examples C & D in form 2.2.

TABLE 2.2
 VAGUENESS
 MEASURED BY UNCERTAINTY
 SECOND SURVEY
 ($n = 564\text{-}577$ observations)

TESTS	Mean % Don't Know	
U.S. Supreme Court's Obscenity Test (<i>Miller</i> as modified)	29	more vague
MacKinnon-Dworkin Pornography Test	5	less vague

QUESTIONS	Source	Mean % Don't Know	
Prurient interest	Modified <i>Miller</i>	41	most vague
Lacks serious literary, artistic, . . . value	Modified <i>Miller</i>	15	
Patently offensive sexual acts	Modified <i>Miller</i>	10	
Hierarchy, objectification, sub- mission, violence	MacK-Dwork	8	
Scenarios of degradation	MacK-Dwork	5	
Submission, servility, or display	MacK-Dwork	5	
Subordination of women	MacK-Dwork	5	
Objects enjoying pain or humiliation	MacK-Dwork	5	
Dehumanized as objects, things	MacK-Dwork	4	
Tied up or cut up or bruised or . . . hurt	MacK-Dwork	3	
Aggregate of specific acts	MacK-Dwork	3	least vague
Graphic sexually explicit	MacK-Dwork	2	

TABLE 2.3
VAGUENESS
MEASURED BY MEAN % DISAGREEING WITH MAJORITY
(OR PLURALITY) OPINION
SECOND SURVEY
(*n* = 564-577 observations)

TESTS		Mean % Disagreeing w/ Majority	
U.S. Supreme Court's Obscenity Test (<i>Miller</i> as modified)		42	more vague
MacKinnon-Dworkin Pornography Test		29	less vague

QUESTIONS	Source	Mean % Disagreeing w/ Majority	
Prurient interest	Modified <i>Miller</i>	59	most vague
Lacks serious literary, artistic, ... value	Modified <i>Miller</i>	45	
Objects enjoying pain or humiliation	MacK-Dwork	36	
Tied up or cut up or bruised or ... hurt	MacK-Dwork	31	
Scenarios of degradation	MacK-Dwork	30	
Patently offensive sexual acts	Modified <i>Miller</i>	29	
Dehumanized as objects, things	MacK-Dwork	26	
Graphic sexually explicit	MacK-Dwork	23	
Subordination of women	MacK-Dwork	23	
Submission, servility, or display	MacK-Dwork	21	
Hierarchy, objectification, submission, violence	MacK-Dwork	19	
Aggregate of specific acts	MacK-Dwork	12	least vague

As argued before, to be able to determine whether a test is overbroad or underbroad in an ordinary sense, one needs a standard. One needs to know the right answer *before* one can know whether a test is overinclusive, underinclusive, or just about right. Under the MacKinnon-Dworkin test, Dworkin's three novel excerpts are not porn, and the other three excerpts are porn. The *Miller* test would find the feminist fiction and literary porn not obscene, but the status of *Beaver Hunters* is unclear. Table 2.4 shows the results for each example and test aggregated by individual opinions.

Both tests rationally order the materials. With one exception,¹¹¹ the feminist works are identified as pornographic less frequently than is the pornography. The most striking result is that the excerpt from Andrea Dworkin's own novel *Mercy* solidly ranks as pornographic using her test. Otherwise, the MacKinnon-Dworkin test performs well, correctly classifying the other works. Thus it is slightly overbroad by their lights, suggesting that the test as presented doesn't work very well when applied to feminist depictions of nonconsensual sex. The results for *Mercy* and *Ice and Fire* suggest that feminist works showing women resisting subordinating sex are viewed as more pornographic than works showing women asking for it. If you view the *Beaver Hunters* photo as obscene,¹¹² then the *Miller* test is underbroad. If you view *Beaver Hunters* as not obscene, then the *Miller* test is neither overbroad nor underbroad.

If one aggregates the results at the element level rather than the individual level and excludes the "Don't Know" results from the totals, the conclusions change dramatically for the *Miller* test, a function of its extreme variability. Table 2.5 shows the percentage of subjects finding that various elements of the test are met, when those answering "Don't Know" are excluded.¹¹³

As Table 2.5 shows, the MacKinnon-Dworkin test is more overbroad than the modified *Miller* test. It finds one of Andrea Dworkin's own novel excerpts pornographic, and it comes close to finding the longer nonconsensual excerpt from *Ice and Fire* pornographic. The modified *Miller* test finds only one excerpt obscene

¹¹¹ Under the modified *Miller* test, *Mercy* is ranked as more pornographic than the nonconsent excerpt from the *Story of O* in the number of "Yes" responses, but less pornographic in the number of "No" responses. Neither are classified as pornographic.

¹¹² See *supra* notes 37-42, 99-100 and accompanying text.

¹¹³ The results, including those answering "Don't Know," are in appendix B.

TABLE 2.4
 RANKING PORNOGRAPHY
 PERCENTAGE OF INDIVIDUALS FINDING THAT EXAMPLES MEET ALL
 THE ELEMENTS OF A TEST
 SECOND SURVEY
 ($n = 89-98$)

Example	MacKinnon-Dworkin Test				Supreme Court Test (<i>Miller</i> as modified)			
	% Yes	% Don't Know	% No	Porn/ Rank	% Yes	% Don't Know	% No	Obscene/ Rank
<i>Beaver Hunters</i> (low-class porn)	78	0	22	YES-1	24	30	46	NO-1
<i>Story of O</i> (consent version) (high-class porn)	73	2	24	YES-2	13	35	52	NO-2
<i>Story of O</i> (nonconsent version) (high-class porn)	72	3	25	YES-3	9	38	53	NO-4
<i>Mercy</i> (feminist fiction)	63	8	29	YES-4	11	19	70	NO-3
<i>Ice & Fire</i> (nonconsent version) (feminist fiction)	27	8	65	NO-5	8	25	67	NO-5
<i>Ice & Fire</i> (consent version) (feminist fiction)	14	8	77	NO-6	9	30	61	NO-6

(*Beaver Hunters*), which may be the correct result for breadth (or may be overbroad, depending on your view of the correct result under *Miller*). However, the survey finds that all six excerpts are close to being obscene under *Miller*, even the three Dworkin novel excerpts. Further, the consent version of the *Story of O* has a 50-50 split response, only one response away from being obscene on balance, which would be an overbroad result. The high variability in the responses for *Miller* does not allow it to give clear answers for any excerpt, but it may have the correct results for that test. The MacKinnon-Dworkin test gives more clear answers, but it incorrectly classifies *Mercy* as pornographic and comes close to classifying the

TABLE 2.5
 RANKING PORNOGRAPHY—MEETING THE ELEMENTS OF THE TESTS
 (EXCLUDING "DON'T KNOW")
 SECOND SURVEY
 (n = 56-98)

Example	MacKinnon- Dworkin Test/Question	% No		Porn/ Rank	Sup. Ct. (Miller as modi- fied) Test/Question	% No		Obscene/ Rank
		Yes	No			Yes	No	
<i>Beaver Hunters</i> (low-class porn)	42. Submission	99	1		49. Prurient	56	44	
	47. Graphic explicit	84	16	YES-3	50. Offensive	79	21	YES-1
	48. Subordination	90	10		51. Lacks value	85	15	
<i>Story of O</i> (consent version) (high-class porn)	20. Submission	93	7		27. Prurient	50	50	
	25. Graphic explicit	86	14	YES-1	28. Offensive	85	15	MAYBE-2
	26. Subordination	89	11		29. Lacks value	67	33	
<i>Story of O</i> (nonconsent version) (high-class porn)	20. Submission	98	2		27. Prurient	45	55	
	25. Graphic explicit	85	15	YES-2	28. Offensive	68	32	NO-3
	26. Subordination	88	12		29. Lacks value	65	35	
<i>Mercy</i> (feminist fiction)	35. Mutilated	86	14		38. Prurient	39	61	
	36. Graphic explicit	89	11	YES-4	39. Offensive	77	23	NO-5
	37. Subordination	77	23		40. Lacks value	43	57	
<i>Ice & Fire</i> (nonconsent version) (feminist fiction)	10. Enjoying pain	72	28		16. Prurient	37	63	
	14. Graphic explicit	61	39	NO-5	17. Offensive	78	22	NO-6
	15. Subordination	44	56		18. Lacks value	45	55	
<i>Ice & Fire</i> (consent version) (feminist fiction)	10. Enjoying pain	50	50		16. Prurient	43	57	
	14. Graphic explicit	66	34	NO-6	17. Offensive	81	19	NO-4
	15. Subordination	18	82		18. Lacks value	54	46	

nonconsent version of *Ice and Fire* as pornographic. This suggests that the test does a poor job classifying depictions of nonconsensual sex in feminist literature, though further study is needed before any firm conclusions are drawn.

I compared the results for the *Mercy* and *Beaver Hunter* examples using the point-of-view restrictions under the modified *Miller* test, e.g., seeing things as an "average person" or "reasonable person" would see them,¹¹⁴ with the results generated by dropping these restrictions. There were no significant differences between the results with or without the point-of-view restrictions;¹¹⁵ they appear not to matter.

I also directly compared the consensual and nonconsensual versions of *Ice and Fire* and *Story of O*.¹¹⁶ I found that for Dworkin's novel *Ice and Fire*, the longer nonconsensual version was significantly more pornographic than the consensual version (though it wasn't on balance pornographic in either version). For the *Story of O*, on the other hand, no significant differences appeared for different versions of the excerpt. For *Mercy*, however, the clearly nonconsensual sex scene was found pornographic.

Thus, the MacKinnon-Dworkin test has some problems with depictions of consensual or nonconsensual sex in feminist fiction. It appears that feminist depictions of nonconsensual sex are more likely to be found pornographic than feminist depictions of consensual sex. Yet the crucial determination according to the MacKinnon-Dworkin test ought to be whether the work *is* subordination, not whether it *depicts* subordination. MacKinnon and Dworkin don't want to prohibit depictions of subordination that don't themselves subordinate, but their statute is drafted ambiguously enough that this subtlety seems to be lost on law student subjects. Using their test, subjects found a rape scene from Dworkin's novel *Mercy* pornographic.¹¹⁷

¹¹⁴ See appendix B, form 2.1, questions 38-40 & 48-50; form 2.2, questions 38-40 & 49-51; see also *supra* note 68 (listing the cases that have modified *Miller*).

¹¹⁵ Using a Pearson Chi-Square test, there were no significant differences for the prurient interest, offensiveness, or value elements for either version of the *Miller* test in the second survey, applied to *Mercy* and *Beaver Hunters*. See appendix B, form 2.1, questions 38-40, 48-50; form 2.2, questions 38-40, 49-51.

¹¹⁶ See *supra* tables 2.4 & 2.5; appendices A & B, forms 2.1 & 2.2, examples A & B.

¹¹⁷ See *supra* tables 2.4 & 2.5.

C. Demographic Breakdown of Responses

1. Tendency to Find Works Pornographic

Table 2.6 presents the tendency to find work pornographic under the tests in the second survey.¹¹⁸ The table shows that women, those who have not recently watched or read pornography, and those who favor pornography suppression are more likely to find something pornographic or obscene. Age, feminism, and religion had no significant effect. As to church attendance, a finding of no relationship is contrary to that of the 1971 Byrne-Lamberth study, which found that church attendance was positively related to the tendency to find a work pornographic.¹¹⁹

Table 2.7 shows a similar demographic breakdown for those finding a work pornographic under the MacKinnon-Dworkin test. Only those who favor pornography suppression and those who don't watch pornography were more likely than other groups to find works pornographic using the MacKinnon-Dworkin test, but the relationships observed were marginally significant at best.

2. Expertise at Distinguishing Pornographic from Feminist Works

While gender and opinions about pornography suppression can partially explain the tendency to find a work pornographic or obscene, it doesn't necessarily follow that some groups are better at distinguishing pornographic fiction from feminist fiction.

Table 2.8 shows that only 6% of subjects were able to assign correctly the four examples shown to them using the MacKinnon-Dworkin test. Many may find the performance poor. Indeed, over half (53%) of the subjects performed no better than the most likely chance result (two or fewer correct).

¹¹⁸ Results are included for the modified *Miller* test, the *Miller* test without the point-of-view restrictions, the MacKinnon-Dworkin test, and the MacKinnon-Dworkin test with the "Lindgren Variation." See *infra* notes 136-37 and accompanying text; appendix B, forms 2.1 & 2.2.

¹¹⁹ See *supra* note 107.

TABLE 2.6
TENDENCY TO FIND AN EXAMPLE PORNOGRAPHIC OR OBSCENE
UNDER ANY TEST
SECOND SURVEY

Group	Mean Score ⁺	n	Probability [‡]
Gender:		179	.0005 [□]
Female	8.2	81	
Male	6.3	98	
Age:			
Continuous		191	.239
Race/Ethnicity:		179	.361
White	7.2	150	
African-American	7.9	9	
Asian-American	7.5	17	
Hispanic	4.0	3	
Religion:		178	.084
Christian	7.5	121	
Jewish	6.8	29	
No religion	6.5	26	
Other	2.5	2	
Attended Church Last Week:		178	.364
Attended church	7.7	33	
Not attended church	7.1	145	
Feminism:		178	.098
Strong feminist	7.8	10	
Feminist	8.1	51	
Feminist sympathizer	7.1	54	
Not a feminist	6.5	63	
Watched Pornography Last Month:		178	.010 [□]
Watched	5.9	35	
Not watched	7.5	143	
Pornography Suppression:		173	.0005 [□]
Favor	8.9	41	
Oppose	6.5	129	
Uncertain (volunteered)	9.7	3	
OVERALL MEAN	7.2	181	

⁺ Finding all four works pornographic or obscene under both tests would yield a score of 16.

[‡] Probabilities are based on F values for ANOVA, except for age, for which the probability is based on regression analysis.

[□] Significant at a <.05 probability level.

TABLE 2.7
TENDENCY TO FIND AN EXAMPLE PORNOGRAPHIC UNDER
THE MACKINNON-DWORKIN TEST
SECOND SURVEY

Group	Mean Score [†]	n	Probability [‡]
Gender:		87	.189
Female	5.4	35	
Male	4.7	52	
Age:			
Continuous		86	.191
Race/Ethnicity:		87	.665
White	4.9	75	
African-American	5.3	4	
Asian-American	4.9	7	
Hispanic	8.0	1	
Religion:		87	.122
Christian	5.2	62	
Jewish	4.1	16	
No religion	5.5	8	
Other	1.0	1	
Attended Church Last Week:		87	.383
Attended church	5.4	20	
Not attended church	4.9	67	
Feminism:		87	.275
Strong feminist	4.8	5	
Feminist	5.8	23	
Feminist sympathizer	4.5	25	
Not a feminist	4.8	34	
Watched Pornography Last Month:		86	.008 [□]
Watched	3.3	12	
Not watched	5.3	74	
Pornography Suppression:		84	.042 [□]
Favor	6.1	15	
Oppose	4.6	68	
Uncertain (volunteered)	8.0	1	
OVERALL MEAN	5.0	88	

[†] Finding all four works pornography would yield a score of 8.

[‡] Probabilities are based on F values for ANOVA, except for age, for which the probability is based on regression analysis.

[□] Significant at a <.05 probability level.

TABLE 2.8
 PERCENTAGE CORRECTLY APPLYING MACKINNON-DWORKIN TEST
 SECOND SURVEY
 (2 Pornographic; 2 Not Pornographic)
 ($n = 97$)

Number of Examples Correctly Assigned	% Individuals Correct
4 of 4	6
3 of 4	40
2 of 4	42
1 of 4	8
0 of 4	3

Table 2.9 provides a demographic breakdown for the tendency to assign correctly examples under the MacKinnon-Dworkin test. As in the first survey, there are no significant differences between groups in their ability to distinguish feminist fiction from pornographic fiction. In other words, claims of special expertise by women or feminists to distinguish pornography are not supported by this study. Some groups are more likely to find a work pornographic, but they are not better at applying the MacKinnon-Dworkin test.

IV. REVISING THE DEFINITIONS

This study suggests some ways in which these pornography definitions could be improved and some areas in which they don't need improvement. First, the data don't support the claim that the terms "sexually explicit" (in both the Sunstein test and the Minneapolis statute) and "graphic sexually explicit" (in both the Indianapolis statute and the MacKinnon-Dworkin model statute) are vague. Differences between the two answers were statistically insignificant, but the shorter "sexually explicit" language may have performed slightly better. On balance, sexual explicitness was the most concrete part of any test and performed best.

TABLE 2.9
TENDENCY TO ASSIGN EXAMPLE CORRECTLY UNDER THE
MACKINNON-DWORKIN TEST
SECOND SURVEY
(2 Pornographic; 2 Not Pornographic)

Group	Mean Number of Examples Correctly Assigned	<i>n</i>	Probability ^{‡□}
Gender:		87	.231
Female	2.3	35	
Male	2.5	52	
Age:			
Continuous		86	.165
Race/Ethnicity:		87	.338
White	2.5	75	
African-American	1.8	4	
Asian-American	2.3	7	
Hispanic	2.0	1	
Religion:		87	.317
Christian	2.4	62	
Jewish	2.5	16	
No religion	2.3	8	
Other	1.0	1	
Attended Church Last Week:		87	.246
Attended church	2.6	20	
Not attended church	2.4	67	
Feminism:		87	.223
Strong feminist	3.0	5	
Feminist	2.2	23	
Feminist sympathizer	2.5	25	
Not a feminist	2.4	34	
Watched Pornography Last Month:		86	.289
Watched	2.2	12	
Not watched	2.4	74	
Pornography Suppression:		84	.667
Favor	2.3	15	
Oppose	2.4	68	
Uncertain (volunteered)	2.0	1	
OVERALL MEAN	2.4	88	

‡ Probabilities are based on F values for ANOVA, except for age, for which the probability is based on regression analysis.

□ There are no significant results at a probability level of <.05.

A. *The MacKinnon-Dworkin Definition*

Most of the debate over the MacKinnon-Dworkin definition has centered on the descriptions of specific acts.¹²⁰ This study found this emphasis entirely misplaced. Omitting the list of specific acts would have had no effect on whether a work was considered pornographic. The subordination element did all the work. Thus, if one simply asked whether a sex scene is the subordination of women, one would have reached the same conclusion for each work as asking the entire battery of questions based on the MacKinnon-Dworkin definition.

In fact, this study found that the specific act part of the test was very easy to meet. In the first survey, four of the six works met this part of the test¹²¹—and five of six met it if the answers were aggregated at the individual level rather than at the element level.¹²² In the second survey, all six excerpts met the specific act requirement if aggregated for each individual.¹²³ Much of the criticism that finds this part of the test overbroad by itself was borne out by the data. MacKinnon's claims that this part of the test is narrowly focused¹²⁴ are not supported. Thus, most people would find that explicit sex scenes, even in feminist fiction, fall within one of the categories of specific acts enumerated in the MacKinnon-Dworkin definition. The bulk of the definition actually does little to distinguish regulable sex scenes from unregulable sex scenes.

As MacKinnon makes clear, however, and some commentators have overlooked, the MacKinnon-Dworkin test has three parts.¹²⁵ Besides being "graphic sexually explicit" and depicting one of the enumerated acts, the work must subordinate women. To my mind, this is the most confusing part of the test. MacKinnon says that this element prohibits works that *do* something (*subordinate* women),¹²⁶

¹²⁰ See, e.g., HAWKINS & ZIMRING, *supra* note 1, at 155-56 (criticizing the MacKinnon-Dworkin definition's description of specific acts as "inadequate" and "tententious").

¹²¹ See *supra* table 1.5.

¹²² See appendix B, first survey, questions X1, X2, X3, X4, X5 & X6.

¹²³ See *supra* table 2.5.

¹²⁴ See MACKINNON, *supra* note 3, at 204; *supra* note 20.

¹²⁵ See *id.* at 201.

¹²⁶ See CATHARINE A. MACKINNON, *Francis Biddle's Sister: Pornography, Civil Rights, and Speech*, in FEMINISM UNMODIFIED, *supra* note 3, at 163, 176.

but the test actually prohibits works that *are* something ("Pornography is the . . . *subordination* of women.").¹²⁷

MacKinnon and Dworkin have responded to critics by trying to define subordination in their commentaries.¹²⁸ In the first survey, I tested a MacKinnon-Dworkin definition of subordination (that which places women "in an unequal position or in a position of loss of power") and found it insignificantly different from the original subordination element. On average, 86.5% of subjects gave the same answer to the subordination questions and the corresponding questions about placing women in inferior positions.¹²⁹ In the second survey, I tested a Dworkin definition of subordination (hierarchy, objectification, submission, and violence).¹³⁰ It, too, failed. Every excerpt was considered subordination using this Dworkin definition.¹³¹

MacKinnon points out that some of the confusion over what subordination means would be cleared up by court decisions and the trial itself.¹³² She contemplates that the trial would allow evidence of the subordinating effects of pornography similar to the work being litigated. She notes, however, that those who might be chilled by the statute wouldn't go to trial.¹³³

Perhaps the main confusion over this subordination element is whether it may be met by descriptions of subordination or whether the work itself must subordinate women. MacKinnon intends the latter interpretation,¹³⁴ but the definition itself is unclear. Per-

¹²⁷ MACKINNON, *supra* note 12, at 146, 146 n.1 (emphasis added); see appendix C.

¹²⁸ See DWORKIN & MACKINNON, *supra* note 65, at 39 (defining "subordination" as that which places someone "in an unequal position or in a position of loss of power"); MACKINNON, *supra* note 3, at 201 (defining "subordination" as "materials that, in one way or another, are active in placing women in an unequal position"); Dworkin, *supra* note 72, at 57-59 (observing that subordination has four elements: hierarchy, objectification, submission, and violence).

¹²⁹ See appendix B, first survey, questions 12-13, 27-28, 43-44, 58-59 & 73-74.

¹³⁰ See appendix B, second survey, form 2.1, questions 19 & 30; form 2.2, questions 19, 30, 41 & 52. I used the disjunctive "or" rather than the conjunctive "and." Because MacKinnon and Dworkin intend to prohibit nonviolent pornography, I assumed that not all elements of Dworkin's definition of subordination need to be present at once in each pornographic work. Given the poor showing of this disjunctive version of her subordination definition, perhaps the conjunctive version would have performed better.

¹³¹ See appendix B, forms 2.1 & 2.2.

¹³² Telephone Conversation with Catharine MacKinnon (Sept. 30, 1992).

¹³³ *Id.*

¹³⁴ As MacKinnon writes:

Why do women lawyers seem unable to comprehend the simple statutory requirement that all these elements must be there? Why do they distort the

haps a change in the MacKinnon-Dworkin test to reflect this would be in order:

Pornography is a (1) graphic sexually explicit work, (2) whose dissemination [or distribution] in context would tend to subordinate women, (3) that also includes¹³⁵

In the second survey, I tested this "Lindgren Variation" on two examples—*Mercy* and *Beaver Hunters*. With this variation, the MacKinnon-Dworkin test performed significantly better on *Mercy*, which otherwise was its chief failure, and performed the same on *Beaver Hunters*. Without my variation, Dworkin's own novel *Mercy* is pornographic. With my variation, it's not.¹³⁶ Even if this change were made, subordination would remain an ambiguous element, but at least the point of view would be clarified.¹³⁷ By further refining the definition of subordination, its ambiguity might be reduced.

There is an additional problem here—whose standards of subordination should govern? To determine the meaning of statutes, one often examines the original ideas of the drafters. If one examines the ideas of MacKinnon and Dworkin about subordination, a problem arises. Dworkin believes that sexual intercourse by its very physical nature involves subordination: the act of "fucking" involves male force, invasion, and dominance:

By thrusting into her, he takes her over. His thrusting into her is taken to be her capitulation to him as a conqueror; it is a physical surrender of herself to him; he occupies and rules her, expresses his elemental dominance over her, by his possession of her in the fuck.

law ludicrously? Can't they get it right and still oppose it? Why do they, feminists, insist that they have no idea what subordination means, what being put down is about or looks like?

MACKINNON, *supra* note 3, at 201.

¹³⁵ Cf. *supra* note 12 (listing the unmodified terms of the MacKinnon-Dworkin statute).

¹³⁶ Subjects using my variation of the subordination element averaged 1.35 correct responses out of a possible 2, while those using the MacKinnon-Dworkin version averaged only 1.07 correct responses. Using ANOVA, this difference is significant at the .001 level. See appendix B, form 2.1, questions 37 & 47; form 2.2, questions 37 & 48.

¹³⁷ I am not endorsing the MacKinnon-Dworkin test with this change, just suggesting an improvement.

The act itself, without more, is the possession. There need not be a social relationship in which the woman is subordinate to the man, a chattel in spirit or deed, decorative or hardworking. There need not be an ongoing sexual relationship in which she is chronically, demonstrably, submissive or masochistic. The normal fuck by a normal man is taken to be an act of invasion and ownership undertaken in a mode of predation: colonializing, forceful (manly) or nearly violent; the sexual act that by its nature makes her his.¹³⁸

It appears that depictions of normal intercourse—at least if it involves thrusting—would be subordinating by Dworkin's standards as expressed in her writings.

These interpretations illustrate one of the problems for MacKinnon and Dworkin. In their work on pornography definition, they must emphasize, as MacKinnon does, that "what the pornographers do . . . is utterly unlike what anyone else does."¹³⁹ Yet in the rest of their work, they emphasize the pervasiveness and sameness of pornography, literature, advertising, and daily life.¹⁴⁰ Indeed, MacKinnon argues:

We have to admit that pornography turns men on; it is therefore erotic. . . . What pornography says about us is that we enjoy degradation, that we are sexually turned on by being degraded. For me that obliterates the line, as a line at all, between pornography on one hand and erotica on the other, if what turns men on, what men find beautiful, is what degrades women.¹⁴¹

¹³⁸ ANDREA DWORKIN, *INTERCOURSE* 63 (1987).

¹³⁹ MACKINNON, *supra* note 3, at 204.

¹⁴⁰ See DWORKIN, *supra* note 138, at 63-67 (claiming that both theological and biological conceptual systems support male dominance through the normal physical act of sex which expresses male power, domination, and possession); CATHARINE A. MACKINNON, *Linda's Life and Andrea's Work*, in *FEMINISM UNMODIFIED*, *supra* note 3, at 127, 131 (observing that the "same values pervade" pornography, literature, advertising, and daily life) [hereinafter MACKINNON, *Linda's Life*]; Kathryn Abrams, *Ideology and Women's Choices*, 24 GA. L. REV. 761, 779 n.54 (1990) (asserting that MacKinnon presents "women's powers . . . as largely or completely compromised" in all aspects of life).

MacKinnon has also noted that: "If the pervasiveness of an abuse makes it nonactionable, no inequality sufficiently institutionalized to merit a law against it would be actionable." CATHARINE A. MACKINNON, *Sexual Harassment: Its First Decade in Court*, in *FEMINISM UNMODIFIED*, *supra* note 3, at 103, 115; see also Robert C. Post, *Cultural Heterogeneity and Law: Pornography, Blasphemy, and the First Amendment*, 76 CAL. L. REV. 297, 334 (1988) (observing that "[t]he pervasiveness of gender relations and the inherent vagueness of the insult to be redressed" make anti-pornography statutes difficult to draft); cf. IRVING GOFFMAN, *GENDER ADVERTISEMENTS* 28-51 (1979) (documenting the pervasive subordination of women in print advertising).

¹⁴¹ CATHARINE A. MACKINNON, *Sex and Violence: A Perspective*, in *FEMINISM*

She also admits an “inability to draw a line between pornography and everything else.”¹⁴²

B. *The Miller Test*

Justice Antonin Scalia has called for a reevaluation of the *Miller* test.¹⁴³ This study lends support to this effort. It found all parts of the *Miller* test to be highly vague. The extreme variability in responses made breadth measures inconsistent.

The prurient interest element was the worst performer,¹⁴⁴ perhaps in part because many subjects don't know what “prurient” means. Several subjects confessed their ignorance. Some mistakenly tried to “correct” my spelling of the word. This confusion shouldn't be surprising; I've met Constitutional Law professors teaching obscenity law who didn't know what “prurient” means. Although MacKinnon says that prurience is whatever gives a man an erection,¹⁴⁵ the courts distinguish prurience—unhealthy lust—from “normal, healthy sexual desires.”¹⁴⁶ If even educated law students can't tell whether a sex scene appeals to prurient interest, another formulation should be tried. I should note that the prurient interest element might be expected to perform much better when a whole work is considered, rather than a single excerpt.

The next worst performer was the “lacks . . . serious value” element.¹⁴⁷ One may reasonably debate the wisdom of such a requirement, but this element almost certainly would have performed differently with the work as a whole.

The “patently offensive” element performed best of the three *Miller* elements on the vagueness tests, but still performed poorly.¹⁴⁸ Moreover, no excuses about considering the work as a whole should be raised because that's not part of this element. I

UNMODIFIED, *supra* note 3, at 85, 91.

¹⁴² MACKINNON, *Linda's Life*, *supra* note 140, at 131.

¹⁴³ See *Pope v. Illinois*, 481 U.S. 497, 505 (1987) (Scalia, J., concurring) (“All of today's opinions, I suggest, display the need for reexamination of *Miller*.”).

¹⁴⁴ See *supra* tables 1.2 & 2.2.

¹⁴⁵ See MACKINNON, *supra* note 12, at 153 (“To appeal to ‘prurient interest’ means . . . to give a man an erection.” (citations omitted)); MACKINNON, *supra* note 62, at 202.

¹⁴⁶ *American Booksellers Ass'n v. Hudnut*, 771 F.2d 323, 324 (7th Cir. 1985) (quoting *Brockett v. Spokane Arcades*, 472 U.S. 491, 499 (1985)), *aff'd*, 475 U.S. 1001 (1986).

¹⁴⁷ See *supra* tables 1.2 & 2.2.

¹⁴⁸ See *supra* tables 1.2 & 2.2.

would recommend that, at a minimum, the test specify what is an ultimate sexual act. Is orgasm a necessary part of an ultimate act, or is penetration all that's required? Is cunnilingus ultimate? Frankly, I don't know.

Because excerpts rather than works as a whole were used, one should consider the results for the *Miller* test merely suggestive. But they do suggest that the *Miller* test is a poor definition, inferior on balance to the MacKinnon-Dworkin test (at least with the "Lindgren Variation"). Further study is needed, however, before a firm conclusion can be reached.

C. The Sunstein Test

The Sunstein test performed worst of all. Under that test, nothing was pornographic.¹⁴⁹ The most pornographic works under the Sunstein test were Dworkin's *Ice and Fire* and French's *The Women's Room*.¹⁵⁰ The least pornographic works were *Beaver Hunters* and the *Story of the Eye*.¹⁵¹ This is the reverse of what you'd expect.

The worst performing element was that of "effect of arousal." When you show people a crude piece of porn like *Beaver Hunters* and ask them whether it has the effect of arousal, almost everyone says "No."¹⁵² A more accurate result could be obtained by conducting a study that measured physical arousal—for example, male erections and female vaginal blood volume¹⁵³—but there's nothing in the Sunstein test to indicate that arousal was intended to be measured physically rather than intellectually, or that medical proof would be required before a work would be actionable. And MacKinnon, for example, distrusts physical arousal measures as not reflecting sexual truth for women.¹⁵⁴ Yet, if the "effect of arousal" element were excluded, the Sunstein test would have performed better. Three works would have been considered pornographic, although one of them would have been Dworkin's *Ice and Fire*.

¹⁴⁹ See *supra* table 1.5.

¹⁵⁰ See *supra* table 1.5.

¹⁵¹ See *supra* table 1.5.

¹⁵² Ninety-one percent of the subjects said "no." See *supra* table 1.5.

¹⁵³ See SOURCEBOOK, *supra* note 30, at 141-42 (discussing various physical measures of arousal in men and women).

¹⁵⁴ See Catharine A. MacKinnon, *Sexuality, Pornography, and Method: "Pleasure under Patriarchy,"* in FEMINISM & POLITICAL THEORY 207, 232 (Cass R. Sunstein ed., 1990) (stating that women's physical responses are socially conditioned and that verbal responses saying that they are not aroused may be more accurate).

Sunstein also suggests, but doesn't adopt, other possible strategies for avoiding overbreadth: limiting pornography to works as a whole, valueless works, and films and photos.¹⁵⁵ But the chief problem with the Sunstein test isn't overbreadth—it's underbreadth. These innovations wouldn't cure the underbreadth. Instead, these limiting strategies would exacerbate the problem.

CONCLUSION

A. *Testing the Tests*

What is pornography or obscenity? This study shows problems with three attempts to define these terms—the MacKinnon-Dworkin model pornography statute, the Supreme Court's *Miller* obscenity test, and Cass Sunstein's pornography definition. The performances of the MacKinnon-Dworkin and *Miller* tests were mixed, while the performance of the Sunstein test was poor.

Under the Sunstein definition, nothing was close to pornographic. The one piece of pornography that Sunstein considered to be easily classified—the *Beaver Hunters* photo from *Hustler*—was found to be pornographic by only 3% of the subjects using his test.¹⁵⁶ And feminist works were generally ranked as more pornographic than pornography under the Sunstein test.

The *Miller* test also performed poorly, but less so. It at least resulted in a sensible ordering of the works: pornographic works ranked as more obscene under the test than feminist works. Unfortunately, in the first survey it was the most overbroad, finding obscene a feminist parody and two works of literary porn, as well as the one work of crude low-class porn.¹⁵⁷ In the second survey, the test was either potentially underbroad or potentially overbroad, depending on how responses were aggregated. It was also the vaguest test, with extraordinarily high variations in the responses given to the same questions by different people.¹⁵⁸ One must not, however, draw firm conclusions about the *Miller* test from this

¹⁵⁵ See Sunstein, *supra* note 15, at 624-25 (discussing three strategies for avoiding overbreadth).

¹⁵⁶ Aggregated at the element level, 9% found the work pornographic. Aggregated at the individual level, 3% found the work pornographic. See *supra* tables 1.4 & 1.5.

¹⁵⁷ See *supra* table 1.5.

¹⁵⁸ See *supra* table 2.3.

study. Two of the three elements of the test require looking at the work as a whole, and this study looked at excerpts only.

Yet this study found no evidence to support the liberal belief that the *Miller* test is superior to the MacKinnon-Dworkin test. If the *Miller* test is superior, it's solely because parts of it look at the work as a whole, not because the sorts of issues that it raises are more easily or clearly answerable.

The MacKinnon-Dworkin definition performed best of the three tests, though its performance was mixed. In the first survey, it was slightly underbroad by MacKinnon and Dworkin's own standards, but slightly overbroad by Supreme Court standards.¹⁵⁹ Its one misclassification, the *Story of the Eye*, was not found to be pornographic under the MacKinnon-Dworkin test, though it's one of Dworkin's targets. With 44% finding it pornographic, it was, however, close to being correctly classified.¹⁶⁰ In the second survey, the test was overbroad. An excerpt from Andrea Dworkin's novel *Mercy* was found to be pornographic under her own definition.¹⁶¹ The MacKinnon-Dworkin definition was also less vague than the *Miller* test, with less uncertainty expressed and less variation in responses.¹⁶²

The list of specific acts necessary to constitute pornography under the MacKinnon-Dworkin test proved to be less discriminating than one might expect.¹⁶³ This element was met by five of six works in the first study and all six works in the second study.¹⁶⁴ The element did little to distinguish regulable sex scenes from unregulable sex scenes.

The crucial element in the MacKinnon-Dworkin test was subordination. Indeed, rather than using all three elements of the MacKinnon-Dworkin test, one gets the same conclusions for all six works in both surveys if one looks at just the element of subordina-

¹⁵⁹ See *supra* table 1.5.

¹⁶⁰ See *supra* table 1.5 (aggregating at the element level). Only 33% of the participants found the *Story of the Eye* pornographic when the results were aggregated at the individual level. See *supra* table 1.4.

¹⁶¹ See *supra* table 2.4.

¹⁶² See *supra* tables 2.2 & 2.3.

¹⁶³ Cf. Note, *supra* note 11, at 462 n.8 ("Although the two anti-pornography ordinances proposed thus far contain lengthy definitions of pornography, length alone does not ensure that the definitions are narrow and specific enough to avoid an unacceptable burdening of fully protected speech." (citation omitted)).

¹⁶⁴ Here I am aggregating at the individual level. See appendix B, first survey, questions X1, X2, X3, X4, X5 & X6; forms 2.1 & 2.2, questions X1, X2, X3 & X4 in each.

tion. I also tested three additional versions of the subordination element. One of their definitions of subordination (places women "in an unequal position or in a position of loss of power")¹⁶⁵ didn't change performance. Dworkin's definition (hierarchy, objectification, submission, or violence) performed worse. Using this definition in the second survey, almost everything is pornographic.¹⁶⁶ The "Lindgren Variation" of the subordination element (dissemination in context would tend to subordinate women) performed better, correctly classifying the *Mercy* excerpt (incorrectly classified under the original subordination language).¹⁶⁷ With this third variation, the MacKinnon-Dworkin test performed adequately for their purposes.

B. Group Skills at Distinguishing Feminist Sex Scenes from Pornographic Sex Scenes

I also tested whether particular groups were more likely to find a work pornographic under any of the tests (and the MacKinnon-Dworkin test in particular). In the first survey, I found that women and older subjects were more likely to find a work pornographic or obscene.¹⁶⁸ I also found that women were more likely to find a work pornographic using the MacKinnon-Dworkin definition.¹⁶⁹ In the second survey, women and those who favored pornography suppression were significantly more likely to find a work pornographic or obscene.¹⁷⁰ Although some groups were more likely to find a work obscene or pornographic in both surveys, I found that they weren't significantly better at correctly classifying the works using the MacKinnon-Dworkin definition.¹⁷¹ Variations within groups were much larger than variations between groups.

¹⁶⁵ DWORKIN & MACKINNON, *supra* note 65, at 39; note 72.

¹⁶⁶ Excluding uncertain responses, this element was met 75.0-94.6% of the time for the six examples. See appendix B.

¹⁶⁷ Excluding uncertain responses, the original MacKinnon-Dworkin subordination element was found for *Mercy* by 77% of subjects, see *supra* table 2.5, while the "Lindgren Variation" was found by 49% of subjects—a weak, but adequate performance. See appendix B, form 2.1, question 37; *supra* note 136 and accompanying text.

¹⁶⁸ See *supra* table 1.6 and accompanying text.

¹⁶⁹ See *supra* table 1.7 and accompanying text.

¹⁷⁰ See *supra* table 2.6 and accompanying text.

¹⁷¹ See *supra* tables 1.9 & 2.9 and accompanying text.

C. *Enforcing the Definitions*

A number of contrary conclusions can be drawn from this study. One might reasonably conclude, for example, that all three definitions performed poorly. Perhaps defining pornography or obscenity is impossible—or at least not yet accomplished. Or one might conclude that many of the criticisms of the MacKinnon-Dworkin definition are misplaced. Depending on one's standards, one might conclude that it performed adequately. In any event, it probably performed better than the Supreme Court's *Miller* test.

The fact that the *Miller* test was more overbroad by one measure¹⁷² than the MacKinnon-Dworkin test suggests that definition may be secondary to enforcement. With vigorous enforcement, the *Miller* test could be used to prohibit vastly more than it has previously.¹⁷³ Perhaps the high standard of proof in criminal cases is part of what makes the test so ineffective.¹⁷⁴ In the first survey, even though the *Miller* test found four of the six works obscene, the highest percentage meeting all three elements was 64% for *Beaver Hunters*.¹⁷⁵ The real innovation of the MacKinnon-Dworkin pornography statute may be its enforcement mechanism—private suits by women offended by pornography. The ability of women to “harass” pornographers by good-faith lawsuits¹⁷⁶ under either the *Miller* standard or the MacKinnon-Dworkin standard would help to reduce the availability of the kinds of sexually explicit materials that they want to prohibit. But, of course, there's no reason to think that only those materials that MacKinnon and Dworkin find offensive would be discouraged. Other explicit materials—particularly gay and lesbian materials—would likely be harder to find if a right to sue were granted.¹⁷⁷

¹⁷² See *supra* table 1.5 and accompanying text.

¹⁷³ See, e.g., DOWNS, *supra* note 4, at 18-22 (suggesting reasons for low enforcement).

¹⁷⁴ See *id.* at 21 (arguing that the “beyond a reasonable doubt” standard combined with confusion over the terms used in the *Miller* test leads to low enforcement).

¹⁷⁵ See *supra* table 1.5.

¹⁷⁶ Cf. Karo & McBrian, *supra* note 13, at 189 n.68 (“[A]n ordinance would open the way for masses of disgruntled women to flood the courts with suits for damages.”); Tigue, *supra* note 6, at 105-06 (discussing dismissed actions in which plaintiffs sought to “impose civil liability upon television networks on the basis of the reaction of a single viewer to certain programming”).

¹⁷⁷ See Strossen, *supra* note 13, at 220-21 (“[Some] oppose pornography not because they associate it with sex discrimination, but rather because they associate it with other phenomena that they do oppose: homosexuality, interracial sex, divorce, birth control, abortion, and the breakdown of the traditional family.”); see also Anna

D. Subordinating Depictions or Depictions of Subordination

The debate over pornography has revolved around three issues: (1) whether pornography causes harm;¹⁷⁸ (2) whether pornography has been adequately defined; and occasionally, (3) whether pornography should be prohibited even if it's harmful and definable. Social science research can do much to illuminate the first two questions. Yet, although the harm question has been debated mostly with empirical studies, this project may be the first to use empiricism, rather than mere speculation, to answer the second question: whether the existing definitions are adequate.

This study allows us to get a clearer picture of the strengths and weaknesses of the various approaches to defining pornography. Contrary to much of the literature, the MacKinnon-Dworkin test is no worse—indeed, it may be better—than other tests.¹⁷⁹ But the chief weakness of the MacKinnon-Dworkin test, the subordination requirement, looms even larger after this study. Some commentators incorrectly assume that the list of specific acts of sexual subordination in the MacKinnon-Dworkin definition clarifies the meaning of the subordination element.¹⁸⁰ But as MacKinnon

Gronau, *Women and Images: Toward a Feminist Analysis of Censorship*, in *WOMEN AGAINST CENSORSHIP* 91, 97 (Varda Burstyn ed., 1985) ("There are too many other obstacles now in place to women becoming artists or writers, or even speaking out publicly, without inviting the judicial control of censorship."); Lynn King, *Censorship and Law Reform: Will Changing the Laws Mean a Change for the Better?*, in *WOMEN AGAINST CENSORSHIP*, *supra*, at 79, 80-84 (discussing some of the films the Ontario Board of Censors has banned, including some feminist films).

¹⁷⁸ See, e.g., *SOURCEBOOK*, *supra* note 30, at 130-241 (reviewing scientific research studies on pornography's influence on behavior); Edward C. Nelson, *Pornography and Sexual Aggression*, in *THE INFLUENCE OF PORNOGRAPHY ON BEHAVIOUR* 171, 172 (Maurice Yaffe & Edward C. Nelson eds., 1982) (summarizing and discussing "research findings regarding the effects of exposure to sexually explicit material upon sexually aggressive attitudes and behaviour"); *REPORT OF THE COMMITTEE ON OBSCENITY AND FILM CENSORSHIP*, 1979, CMND 7772, at 61-95 (U.K. government report analyzing studies and statistics of the harms potentially caused by pornography); *REPORT OF THE SPECIAL COMMITTEE ON PORNOGRAPHY AND PROSTITUTION*, 1 *PORNOGRAPHY AND PROSTITUTION IN CANADA* 71-73, 95-103 (1985) (Canadian government report discussing the potential link between pornography and harm).

¹⁷⁹ One commentator who speculated as much is William Layman. See Layman, *supra* note 89, at 1505 ("[A] view that all feminist proposals must necessarily be broader than *Miller* . . . may be inaccurate. . . . The problem of vagueness [in the MacKinnon-Dworkin definition of pornography] is perhaps inescapable to some degree, but is no worse than that in *Miller's* obscenity definition.").

¹⁸⁰ See, e.g., Hamm, *supra* note 20, at 1106 ("But, of course, the term 'subordination' does not [have substantial legal meaning]; it is subject to different interpretations. However, the examples listed in the statute do provide some degree of fair notice and warning to booksellers and arguably 'conve[y] sufficiently definite warning

emphasizes,¹⁸¹ the subordination element is entirely distinct from the specific act requirement. Also, this study finds that the specific act requirement is easily met.

One has only to read the sex scenes from Andrea Dworkin's own novels, *Mercy* and *Ice and Fire*, to realize that the MacKinnon-Dworkin definition isn't intended to prohibit all sexually explicit depictions of the subordination of women. *Mercy* contains many explicit rapes, and *Ice and Fire* contains an explicit¹⁸² sexual scene in which a woman repeatedly asks to be bitten on the breast, hurt, tied up, raped, penetrated, and beaten with fists and belts as part of sexual relations.¹⁸³ Some commentators assume that depictions of politically correct sex are the only ones allowed under the MacKinnon-Dworkin test¹⁸⁴—in MacKinnon's words, she would allow erotica,¹⁸⁵ or sex "premised on equality."¹⁸⁶ The sex scenes in Dworkin's novels are certainly not premised on equality.

as to the proscribed conduct" (quoting *United States v. Petrillo*, 332 U.S. 1, 8 (1947)); Christine A. Littleton, *Old Wine in Nude Skins*, 69 TEX. L. REV. 497, 507 (1990) (reviewing DONALD A. DOWNS, *THE NEW POLITICS OF PORNOGRAPHY* (1989)) ("[The ordinance] describes nine different types of subordination.").

¹⁸¹ See MACKINNON, *supra* note 3, at 201 ("Why do women lawyers seem unable to comprehend the simple statutory requirement that all these elements must be there?").

¹⁸² See *supra* tables 1.5 & 2.5 (61-66% of survey participants found *Ice and Fire* "graphic sexually explicit").

¹⁸³ See DWORKIN, *supra* note 43, at 101-02. This was the excerpt used for the study. See *supra* text accompanying note 44.

¹⁸⁴ See *American Booksellers Ass'n v. Hudnut*, 771 F.2d 323, 325 (7th Cir. 1985) (concluding that only sex "premised on equality" is allowed under Indianapolis pornography ordinance held to be unconstitutional); Layman, *supra* note 89, at 1505 ("Feminists contend that presentations of sexuality, even explicit, graphic depictions of sexual acts, are not pornography if they show men and women as equal.").

¹⁸⁵ See MACKINNON, *supra* note 126, at 176 ("Erotica . . . might be sexually explicit materials premised on equality."); Gloria Steinem, *Erotica and Pornography: A Clear and Present Difference*, in *PORNOGRAPHY: PRIVATE RIGHT OR PUBLIC MENACE?*, *supra* note 72, at 51-55 (distinguishing erotica from pornography); cf. Eric Hoffman, *Feminism, Pornography, and Law*, 133 U. PA. L. REV. 497, 526 (1985) ("[A] liberal analysis of the claim that there is a necessary connection between aggression and sexuality would point to the intensity of the desires aroused in sex. Thus this view also argues that sexual activity must have a tinge of aggression." (footnote omitted)); Layman, *supra* note 89, at 1505 ("Whether this zone of nonharmful 'erotica' actually exists is questioned by liberals and other feminists." (footnote omitted)).

¹⁸⁶ MacKinnon, *supra* note 32, at 22.

To Dworkin, rather, women currently "are a species of filth."¹⁸⁷ That's part of what she's fighting against.

Yet theorists shouldn't be confused by MacKinnon's casual comments about sexual depictions that would pass muster. The idea that only depictions of healthy sex would be allowed under their definition, though widespread, fits neither their model definition nor Dworkin's novels *Ice and Fire* and *Mercy*.¹⁸⁸ Novels may depict politically incorrect or subordinating sex without violating the MacKinnon-Dworkin statute; what novels may not do is include such depictions if their inclusion has the effect of subordinating women. It's the act of depicting that must subordinate.¹⁸⁹ Thus, Dworkin's novels may explicitly depict sexual subordination so long as her depictions themselves don't subordinate women. Because her purpose is to end subordination rather than promote it, it would be stretching things a bit to find that her novels subordinate women.¹⁹⁰

¹⁸⁷ DWORKIN, *supra* note 138, at 170 ("She is not just less; she and the sex she incarnates are a species of filth."). This is not just a passing comment. That women are filth and dirt is the main point of Dworkin's last chapter of *Intercourse*, which is called "Dirt/Death." See *id.* at 169-94. The reason that women are a species of filth, she argues, is that men think women are filth and men have the power to create reality. See *id.* at 171.

In *Feminism Without Illusions*, Elizabeth Fox-Genovese gives her own characterization of Dworkin's views of men and women:

Dworkin views all men as beasts and all women as innocent (and strangely passive) victims. Men, from her tortured perspective, are incapable of compassion, decency, or honor and only refrain from the most brutal acts out of fear of revenge. This fear, which normally dissuades them from raping other men, does not operate in their relations with women, whom they brutalize without need to consider the consequences. Men see all women as whores and use them accordingly. What men do to women is worse than what the Nazis did to the Jews. For Dworkin, "Sex is the theory and extermination the practice."

ELIZABETH FOX-GENOVESE, *FEMINISM WITHOUT ILLUSIONS* 93 (1991) (quoting Alan Wolfe, *Dirt and Democracy*, NEW REPUBLIC, Feb. 19, 1990, at 28).

¹⁸⁸ See, e.g., text accompanying notes 44 & 55 (quoting scenes from *Ice and Fire* and *Mercy*).

¹⁸⁹ See MACKINNON, *supra* note 126, at 176 ("The definition does not include all sexually explicit depictions of the subordination of women. That is not what it says. It says, this which *does* that: the sexually explicit that subordinates women.").

¹⁹⁰ To find Dworkin's novels subordinating, one would have to argue that the paternalism inherent in her attempt to silence women who want to read, write, or see pornography subordinates women to the state or to the anti-pornography wing of the feminist movement. As I said, this would be stretching things, but arguments tending in this direction have been made. See Gronau, *supra* note 177, at 97 ("There are too many other obstacles now in place to women becoming artists or writers, or even speaking out publicly, without inviting the judicial control of censorship.").

E. What's Next? More Testing

Obscenity and pornography definition hasn't attracted much interest from the two main empirical schools in legal academics—the law and economics movement and the law and society movement. The law and economics movement is not generally interested in the subject of pornography¹⁹¹ and the law and society movement too often doesn't think of legal doctrine as real. Not surprisingly, empiricism has been brought into the debate mostly to determine whether pornography causes violence. Apparently, violence is thought to be a real and fit topic for study, but the reality of pornography doctrine is ephemeral to hard-headed empiricists.

Yet there are a number of testable empirical claims embedded in statements about how pornography definitions would work. When people call a definition vague, they are usually expressing a claim that people will be uncertain how to apply the definition or that they will vary in their responses. When people claim that a definition is overbroad, they are usually asserting that it might or would prohibit works or passages that are constitutionally protected. Within limits, these are testable propositions.

This study isn't the last word on the subject of pornography definition. It answers a wide range of questions, but it raises just as many new ones. In particular, the relatively poor showings of the *Miller* and Sunstein tests may suggest that the entire field needs rethinking. Further studies are needed to explore the implications of looking at the work as a whole, rather than just excerpts. The finding that Dworkin's own novel is pornographic under her test suggests that the MacKinnon-Dworkin definition needs refining. The mixed showing of the MacKinnon-Dworkin test highlights the need to define the "subordination" element more specifically. Also, further studies should test other works and other subject populations. In particular, one should test whether nonviolent erotica is distinguishable from pornography. One should also test explicit

An alternative argument for Dworkin being subordinating is that her depiction of women as filthy and absolutely powerless may perpetuate stereotypes of women as less capable than men. This line of argument is recognized in another context by MacKinnon and rejected. See MACKINNON, *supra* note 20, at 220-21 ("I have yet to understand why my critique of victimization through sex is part of victimization through sex."). From what I have seen, Dworkin's rhetoric has not had a debilitating effect on her female readers.

¹⁹¹ A notable exception is RICHARD POSNER, *SEX AND REASON* 351-82 (1992) (discussing the uses and causes of pornography).

lesbian and gay materials, which may not be easily handled by the MacKinnon-Dworkin test. After all, with this study I set what should have been an easy task—distinguishing pornographic sex scenes from feminist sex scenes. That none of the three definitions performed well suggests just how difficult it is to define pornography or obscenity.

APPENDIX A
FIRST SURVEY

SURVEY

Participation in this survey is entirely OPTIONAL; you are not required to participate. Participation or nonparticipation will have no effect on your grade. If you decide to participate in this study, you may be exposed to pornographic, obscene, sexist, or racist materials. If you decide not to participate, please fill out page 1 on demographic background for purposes of comparison. All individual responses will be absolutely confidential; data will be reported only in the aggregate.

(circle one)

1. GENDER:

- a. *Male*
- b. *Female*

2. AGE: _____

3. RELIGION:

- a. *Catholic*
- b. *Protestant*
- c. *Jewish*
- d. *Islam/Muslim*
- e. *No Religion*
- f. *Other: _____*

4. RACIAL OR ETHNIC ORIGIN:

- a. *White*
- b. *African-American*
- c. *Hispanic*
- d. *Native American*
- e. *Other: _____*

5. HOW WOULD YOU DESCRIBE YOURSELF?

- a. *Radical Feminist*
- b. *Liberal Feminist*
- c. *Other Feminist: _____*
- d. *Feminist Sympathizer*
- e. *Not a Feminist*

A.

There was a big bed, one room, a huge skylight in the middle of the room, one large table in a corner: I put the bed under the skylight, water condenses and drips on it, but there I teach him, slowly. I have understood. He has too much respect for women. I teach him disrespect, systematically. I teach him how to tie knots, how to use rope, scarves, how to bite breasts: I teach him not to be afraid: of causing pain. It goes slowly. I teach him step by step. I invent sex therapy in this one room somewhere in the middle of Europe. I am an American innocent, in my fashion. I forbid intercourse. I teach him how to play games. You be this and I will be that. Rape, virgin, Queen Victoria. The games go on and on. There are some we do over and over. I teach him to penetrate with his fingers, not to be afraid of causing pain. I fellate him. I teach him not to worry about erection. I tie him up. Dungeon, brothel, little girl, da-da. I ask him what he wants to do and we do it. I teach him not to be afraid of causing pain. Not to be afraid of hurting me. I am the one there: don't be afraid of hurting me, see, this is how. I teach him not to be afraid of piss and shit, human dirt. I teach him everything about his body, I penetrate him, I scratch, I bite, I tie him up, I hit him with my hand open, with my fist, with belts: he gets hard. He does each thing back to me. He is nearly hard. Water condenses on the skylight and falls. We move the bed. I am disappointed. I liked the extravagance. I do everything I can think of to help him, impotent and suicidal: I am saving his life. We are on an island, isolated in this European city. There is us. There is the bed. He is nearly hard. We move back to his city, where he is from, into a room that is ours. He needs some act, some gesture, some event to give him the final confidence: to get really hard. Reader, I married him.

*Questions About Passage A**(circle one)*

6. Does this present women in postures of sexual submission, servility, or display? YES / NO / DON'T KNOW
7. Does this present women as sexual objects who enjoy pain or humiliation? YES / NO / DON'T KNOW
8. Does this present women dehumanized as sexual objects, things or commodities? YES / NO / DON'T KNOW
9. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual? YES / NO / DON'T KNOW
10. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt? YES / NO / DON'T KNOW

11. Is this a graphic sexually explicit description?
YES / NO / DON'T KNOW
12. Is this the subordination of women?
YES / NO / DON'T KNOW
13. Does this place women in an unequal position or in a position of loss of power? YES / NO / DON'T KNOW
14. Would the average person, applying contemporary community standards, find that this passage, taken as a whole, appeals to the prurient interest?
YES / NO / DON'T KNOW
15. Is this a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?
YES / NO / DON'T KNOW
16. Does this passage, taken as a whole, lack serious literary, artistic, political, or scientific value?
YES / NO / DON'T KNOW
17. Does this depict women as enjoying or deserving some form of physical abuse? YES / NO / DON'T KNOW
18. Does this have the purpose of producing sexual arousal? YES / NO / DON'T KNOW
19. Does this have the effect of producing sexual arousal? YES / NO / DON'T KNOW
20. Is this sexually explicit? YES / NO / DON'T KNOW

B.

"I leave you to Sir Stephen," Rene then said [to W]. "Remain the way you are, he'll dismiss you when he sees fit." . . .

[W] did not dare look Sir Stephen in the face, but she saw his hands undoing his belt. When he had straddled W, who was still kneeling, and had seized her by the nape of the neck, he drove into her mouth. It was not the caress of her lips the length of him he was looking for, but the back of her throat. For a long time he probed, and W felt the suffocating gag of flesh swell and harden, its slow repeated hammering finally bringing her to tears. In order to invade her better, Sir Stephen ended by kneeling on the sofa, one knee on each side of her face, and there were moments when his buttocks rested on W's breast, and in her heart she felt her womb, useless and scorned, burning her. Although he delighted and reveled in her for a long time, Sir Stephen did not bring his pleasure to a climax, but withdrew from her in silence and rose again to his feet, without closing his dressing gown.

"You are easy, W," he said to her. "You love Rene, but you're easy. Does Rene realize that you covet and long for all the men who desire you, that by . . . surrendering you to others he is providing you with a string of alibis to cover your easy virtue?"

"I love Rene," W replied.

"You love Rene, but you desire me, among others," Sir Stephen went on.

Yes, she did desire him, but what if Rene, upon learning it, were to change? All she could do was remain silent and lower her eyes: even to have looked Sir Stephen directly in the eyes would have been tantamount to a confession.

*Questions About Passage B**(circle one)*

21. Does this present women in postures of sexual submission, servility or display? YES / NO / DON'T KNOW
22. Does this present women as sexual objects who enjoy pain or humiliation? YES / NO / DON'T KNOW
23. Does this present women dehumanized as sexual objects, things or commodities? YES / NO / DON'T KNOW
24. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?
YES / NO / DON'T KNOW
25. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?
YES / NO / DON'T KNOW

26. Is this a graphic sexually explicit description?
YES / NO / DON'T KNOW
27. Is this the subordination of women?
YES / NO / DON'T KNOW
28. Does this place women in an unequal position or in a position of loss of power? YES / NO / DON'T KNOW
29. Would the average person, applying contemporary community standards, find that this passage, taken as a whole, appeals to the prurient interest?
YES / NO / DON'T KNOW
30. Is this a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?
YES / NO / DON'T KNOW
31. Does this passage, taken as a whole, lack serious literary, artistic, political, or scientific value?
YES / NO / DON'T KNOW
32. Does this depict women as enjoying or deserving some form of physical abuse? YES / NO / DON'T KNOW
33. Does this have the purpose of producing sexual arousal? YES / NO / DON'T KNOW
34. Does this have the effect of producing sexual arousal? YES / NO / DON'T KNOW
35. Is this sexually explicit? YES / NO / DON'T KNOW

C.

I am a happily married mother of four, and though my husband is a perfect lover, I still have fantasies during sexual intercourse. Maybe it's because my husband is so perfect that I have this recurring fantasy that we have driven down to Sam's Garage to get the muffler on our Ford fixed. While my husband is busy talking to Sam, I am approached by a small well-built Oriental grease monkey. Soon, the two of us are mounting the engine block, where my mysterious new acquaintance reaches beneath my skirt and begins to massage my poontang with gasoline. Just as I am about to explode in Exxon, he jerks away those small yellow fingers and screws me onto a nearby piston. Then he wraps himself around my neck and jams his little yellow button up my nose. To my delight, Sam, my husband, and everyone within a one-mile radius soon runs to my side. As the Chinaman and I sit there writhing and wiggling—the piston urging us on in our gyrations—I lift up my skirt and wait for the applause! “Turn it off, turn it off!” yells the crowd, but I am beyond them, lost to the pumping, fucking for my fans, bleeding like a stuck pig. . . . I've never told my husband about this, because I'm afraid he would call me a pervert. Am I?

*Questions About Passage C**(circle one)*

36. Does this present women in postures of sexual submission, servility or display? YES / NO / DON'T KNOW
37. Does this present women as sexual objects who enjoy pain or humiliation? YES / NO / DON'T KNOW
38. Does this present women dehumanized as sexual objects, things or commodities? YES / NO / DON'T KNOW
39. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?
YES / NO / DON'T KNOW
40. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?
YES / NO / DON'T KNOW
41. Does this present women being penetrated by objects or animals? YES / NO / DON'T KNOW
42. Is this a graphic sexually explicit description?
YES / NO / DON'T KNOW
43. Is this the subordination of women?
YES / NO / DON'T KNOW
44. Does this place women in an unequal position or in a position of loss of power? YES / NO / DON'T KNOW

45. Would the average person, applying contemporary community standards, find that this passage, taken as a whole, appeals to the prurient interest?
YES / NO / DON'T KNOW
46. Is this a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?
YES / NO / DON'T KNOW
47. Does this passage, taken as a whole, lack serious literary, artistic, political, or scientific value?
YES / NO / DON'T KNOW
48. Does this depict women as enjoying or deserving some form of physical abuse? YES / NO / DON'T KNOW
49. Does this have the purpose of producing sexual arousal? YES / NO / DON'T KNOW
50. Does this have the effect of producing sexual arousal? YES / NO / DON'T KNOW
51. Is this sexually explicit? YES / NO / DON'T KNOW

D.

She put her cigarette out and caressed his shoulders. Then he was leaning over her, kissing her belly, rubbing his hands on her thighs, on the insides of her thighs. Desire rose up in her more fiercely than before. She caressed his hair, then his head moved down, and she tightened up, her eyes widened, he was kissing her genitals, licking them, she was horrified, but he kept stroking her belly, her leg, he kept doing it and when she tried to tighten her legs, he held them gently apart, and she lay back again and felt the warm wet pressure and her innards felt fluid and giving, all the way to her stomach. She tried to pull him up, but he would not permit it, he turned her over, he kissed her back, her buttocks, he put his finger on her anus and rubbed it gently, and she was moaning and trying to turn over, and finally, she succeeded, and then he had her breast in his mouth and the hot shoots were climbing all the way to her throat. She wrapped her body around him, clutching him, no longer kissing or caressing, but only clinging now, trying to get him to come inside her, but he wouldn't. She surrendered her body to him, let him take control of it, and in an ecstasy of passivity let her body float out to the deepest part of the ocean. There was only body, only sensation: even the room had ceased to exist. He was rubbing her clitoris, gently, slowly, ritually, and she was making little gasps that she could hear from a distance. Then he took her breast in his mouth again and wrapped his body around her and entered her. She came almost immediately and gave a sharp cry, but he kept going, and she came over and over again in a series of sharp pleasures that were the same as pain. Her face and body were wet, so were his, she felt, and still the pangs came, less now, and she clutched him to her, holding him as if she really might drown. The orgasms subsided, but still he thrust himself into her. Her legs were aching, and the thrust no longer felt like pleasure. Her muscles were weary, and she was unable to keep the motion going. He pulled out and turned her over and propped her on a pillow so that her ass was propped up, and entered her vagina from behind. His hand stroked her breast gently, he was humped over her like a dog. It was a totally different feeling, and as he thrust more and more sharply, she gave out little cries. Her clitoris was being triggered again, and it felt sharp and fierce and hot and as full of pain as pleasure

*Questions About Passage D**(circle one)*

52. Does this present women in postures of sexual submission, servility or display? YES / NO / DON'T KNOW
53. Does this present women as sexual objects who enjoy pain or humiliation? YES / NO / DON'T KNOW
54. Does this present women dehumanized as sexual objects, things or commodities? YES / NO / DON'T KNOW

55. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?
YES / NO / DON'T KNOW
56. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?
YES / NO / DON'T KNOW
57. Is this a graphic sexually explicit description?
YES / NO / DON'T KNOW
58. Is this the subordination of women?
YES / NO / DON'T KNOW
59. Does this place women in an unequal position or in a position of loss of power?
YES / NO / DON'T KNOW
60. Would the average person, applying contemporary community standards, find that this passage, taken as a whole, appeals to the prurient interest?
YES / NO / DON'T KNOW
61. Is this a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?
YES / NO / DON'T KNOW
62. Does this passage, taken as a whole, lack serious literary, artistic, political, or scientific value?
YES / NO / DON'T KNOW
63. Does this depict women as enjoying or deserving some form of physical abuse?
YES / NO / DON'T KNOW
64. Does this have the purpose of producing sexual arousal?
YES / NO / DON'T KNOW
65. Does this have the effect of producing sexual arousal?
YES / NO / DON'T KNOW
66. Is this sexually explicit?
YES / NO / DON'T KNOW

E.

One day, when I tried to rape Simone in her bed, she brusquely slipped away:

"You're totally insane, little man," she cried, "I'm not interested—here, in a bed like this, like a housewife and mother! I'll only do it with Marcelle!"

"What are you talking about?" I asked, disappointed, but basically agreeing with her.

She came back affectionately and said in a gentle, dreamy voice:

"Listen, [Marcelle] won't be able to help pissing when she sees us . . . making it."

I felt a hot, enchanting liquid run down my legs, and when [Simone] was done, I got up and in turn watered her body, which she complaisantly turned to the unchaste and faintly murmuring spurt on her skin. After thus flooding her cunt, I smeared jizm all over her face. Full of muck, she climaxed in a liberating frenzy. She deeply inhaled our pungent and happy odor: "You smell like Marcelle," she buoyantly confided after a hefty climax, her nose under my wet ass.

Obviously Simone and I were sometimes taken with a violent desire to fuck. But we no longer thought it could be done without Marcelle, whose piercing cries kept grating our ears, for they were linked to our most violent desires. Thus it was that our sexual dream kept changing into a nightmare. Marcelle's smile, her freshness, her sobs, the sense of shame that made her redden and, painfully red, tear off her own clothes and surrender lovely blond buttocks to impure hands, impure mouths, beyond all the tragic delirium that had made her lock herself in the wardrobe to jerk off with such abandon that she could not help pissing—all these things warped our desires, so that they endlessly racked us.

*Questions About Passage E**(circle one)*

67. Does this present women in postures of sexual submission, servility or display? YES / NO / DON'T KNOW
68. Does this present women as sexual objects who enjoy pain or humiliation? YES / NO / DON'T KNOW
69. Does this present women dehumanized as sexual objects, things or commodities? YES / NO / DON'T KNOW
70. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?

YES / NO / DON'T KNOW

71. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?
YES / NO / DON'T KNOW
72. Is this a graphic sexually explicit description?
YES / NO / DON'T KNOW
73. Is this the subordination of women?
YES / NO / DON'T KNOW
74. Does this place women in an unequal position or in a position of loss of power? YES / NO / DON'T KNOW
75. Would the average person, applying contemporary community standards, find that this passage, taken as a whole, appeals to the prurient interest?
YES / NO / DON'T KNOW
76. Is this a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?
YES / NO / DON'T KNOW
77. Does this passage, taken as a whole, lack serious literary, artistic, political, or scientific value?
YES / NO / DON'T KNOW
78. Does this depict women as enjoying or deserving some form of physical abuse? YES / NO / DON'T KNOW
79. Does this have the purpose of producing sexual arousal? YES / NO / DON'T KNOW
80. Does this have the effect of producing sexual arousal? YES / NO / DON'T KNOW
81. Is this sexually explicit? YES / NO / DON'T KNOW

F.

[*Beaver Hunters Photograph*]*Questions About Example F**(circle one)*

82. Does this present women in postures of sexual submission, servility or display? YES / NO / DON'T KNOW
83. Does this present women as sexual objects who enjoy pain or humiliation? YES / NO / DON'T KNOW
84. Does this present women dehumanized as sexual objects, things or commodities? YES / NO / DON'T KNOW
85. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?
YES / NO / DON'T KNOW
86. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?
YES / NO / DON'T KNOW
87. Is this a graphic sexually explicit depiction?
YES / NO / DON'T KNOW
88. Is this the subordination of women?
YES / NO / DON'T KNOW
89. Does this place women in an unequal position or in a position of loss of power? YES / NO / DON'T KNOW
90. Would the average person, applying contemporary community standards, find that this example, taken as a whole, appeals to the prurient interest?
YES / NO / DON'T KNOW
91. Is this a patently offensive depiction of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?
YES / NO / DON'T KNOW
92. Does this example, taken as a whole, lack serious literary, artistic, political, or scientific value?
YES / NO / DON'T KNOW
93. Does this depict women as enjoying or deserving some form of physical abuse? YES / NO / DON'T KNOW
94. Does this have the purpose of producing sexual arousal? YES / NO / DON'T KNOW

95. Does this have the effect of producing sexual
arousal? YES / NO / DON'T KNOW
96. Is this sexually explicit? YES / NO / DON'T KNOW

SECOND SURVEY
FORM 2.1

SURVEY

Participation in this survey is entirely OPTIONAL; you are not required to participate. Participation or nonparticipation will have no effect on your grade. If you decide to participate in this study, you may be exposed to pornographic, obscene, sexist, or racist materials. If you decide not to participate, please fill out page 1 on demographic background for purposes of comparison. All individual responses will be absolutely confidential; data will be reported only in the aggregate. *Once you have answered the questions for each sexual excerpt, do not go back to change answers for earlier sexual excerpts.*

(circle one)

1. GENDER:

- a. *Male*
- b. *Female*

2. AGE: _____

3. RELIGION:

- a. *Christian*
- b. *Jewish*
- c. *No Religion*
- d. *Other: _____*

4. HAVE YOU ATTENDED CHURCH OR SYNAGOGUE IN THE LAST WEEK?

- a. *Yes*
- b. *No*

5. RACIAL OR ETHNIC ORIGIN:

- a. *White/Caucasian*
- b. *African*
- c. *Asian*
- d. *Hispanic*
- e. *Native American*
- f. *Other: _____*

6. HOW WOULD YOU DESCRIBE YOURSELF?

- a. Strong Feminist*
- b. Feminist*
- c. Feminist Sympathizer*
- d. Not a Feminist*

7. HAVE YOU WATCHED OR READ PORNOGRAPHY IN THE LAST MONTH?

- a. Yes*
- b. No*

8. SHOULD PORNOGRAPHY BE SUPPRESSED BY LAW?

- a. Yes*
- b. No*

A.

There was a big bed, one room, a huge skylight in the middle of the room, one large table in a corner: I put the bed under the skylight, water condenses and drips on it, but there I teach him, slowly. I have understood. He has too much respect for women. I teach him disrespect, systematically. I teach him how to tie knots, how to use rope, scarves, how to bite breasts: I teach him not to be afraid: of causing pain. It goes slowly. I teach him step by step. I invent sex therapy in this one room somewhere in the middle of Europe. I am an American innocent, in my fashion. I forbid intercourse. I teach him how to play games. You be this and I will be that. Rape, virgin, Queen Victoria. The games go on and on. There are some we do over and over. I teach him to penetrate with his fingers, not to be afraid of causing pain. I fellate him. I teach him not to worry about erection. I tie him up. Dungeon, brothel, little girl, da-da. I ask him what he wants to do and we do it. I teach him not to be afraid of causing pain. Not to be afraid of hurting me. I am the one there: don't be afraid of hurting me, see, this is how. I teach him not to be afraid of piss and shit, human dirt. I teach him everything about his body, I penetrate him, I scratch, I bite, I tie him up, I hit him with my hand open, with my fist, with belts: he gets hard. He does each thing back to me. He is nearly hard. Water condenses on the skylight and falls. We move the bed. I am disappointed. I liked the extravagance. I do everything I can think of to help him, impotent and suicidal: I am saving his life. We are on an island, isolated in this European city. There is us. There is the bed. He is nearly hard. We move back to his city, where he is from, into a room that is ours. He needs some act, some gesture, some event to give him the final confidence: to get really hard. Reader, I married him.

*Questions About Passage A**(circle one)*

9. Does this present women in postures of sexual submission, servility, or display? YES / NO / DON'T KNOW
10. Does this present women as sexual objects who enjoy pain or humiliation? YES / NO / DON'T KNOW
11. Does this present women dehumanized as sexual objects, things or commodities? YES / NO / DON'T KNOW
12. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?
YES / NO / DON'T KNOW
13. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?
YES / NO / DON'T KNOW

14. Is this a graphic sexually explicit description?
YES / NO / DON'T KNOW
15. Is this the subordination of women?
YES / NO / DON'T KNOW
16. Would the average person, applying contemporary adult community standards, find that this passage, taken as a whole, appeals to the prurient interest?
YES / NO / DON'T KNOW
17. Would the average person, applying contemporary adult community standards, find that this passage is a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated? YES / NO / DON'T KNOW
18. Would a reasonable person find that this passage, taken as a whole, lacks serious literary, artistic, political, or scientific value? YES / NO / DON'T KNOW
19. Is this hierarchy, objectification, submission, or violence? YES / NO / DON'T KNOW

B.

"All we ask you to do is submit to it, and, if you scream or moan, to agree ahead of time that it will be in vain," Sir Stephen went on. . . .

"So give us your answer," [Rene] said. "Do you consent?"

Finally she said that she did. . . .

"I leave you to Sir Stephen," Rene then said [to her]. "Remain the way you are, he'll dismiss you when he sees fit." . . .

[W] did not dare look Sir Stephen in the face, but she saw his hands undoing his belt. When he had straddled W, who was still kneeling, and had seized her by the nape of the neck, he drove into her mouth. It was not the caress of her lips the length of him he was looking for, but the back of her throat. For a long time he probed, and W felt the suffocating gag of flesh swell and harden, its slow repeated hammering finally bringing her to tears. In order to invade her better, Sir Stephen ended by kneeling on the sofa, one knee on each side of her face, and there were moments when his buttocks rested on W's breast, and in her heart she felt her womb, useless and scorned, burning her. Although he delighted and reveled in her for a long time, Sir Stephen did not bring his pleasure to a climax, but withdrew from her in silence and rose again to his feet, without closing his dressing gown.

"You are easy, W," he said to her. "You love Rene, but you're easy. Does Rene realize that you covet and long for all the men who desire you, that by . . . surrendering you to others he is providing you with a string of alibis to cover your easy virtue?"

"I love Rene," W replied.

"You love Rene, but you desire me, among others," Sir Stephen went on.

Yes, she did desire him, but what if Rene, upon learning it, were to change? All she could do was remain silent and lower her eyes: even to have looked Sir Stephen directly in the eyes would have been tantamount to a confession.

*Questions About Passage B**(circle one)*

20. Does this present women in postures of sexual submission, servility, or display? YES / NO / DON'T KNOW
21. Does this present women as sexual objects who enjoy pain or humiliation? YES / NO / DON'T KNOW
22. Does this present women dehumanized as sexual objects, things or commodities? YES / NO / DON'T KNOW
23. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?

YES / NO / DON'T KNOW

24. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?
YES / NO / DON'T KNOW
25. Is this a graphic sexually explicit description?
YES / NO / DON'T KNOW
26. Is this the subordination of women?
YES / NO / DON'T KNOW
27. Would the average person, applying contemporary adult community standards, find that this passage, taken as a whole, appeals to the prurient interest?
YES / NO / DON'T KNOW
28. Would the average person, applying contemporary adult community standards, find that this passage is a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated? YES / NO / DON'T KNOW
29. Would a reasonable person find that this passage, taken as a whole, lacks serious literary, artistic, political, or scientific value? YES / NO / DON'T KNOW
30. Is this hierarchy, objectification, submission, or violence? YES / NO / DON'T KNOW

C.

I am going one, two, three, four, against him in the opposite direction from him trying to get past him and he is using my own motion to push me back to where he wants and he sits me down on the single bed and we just sit there like chaste kids, teenagers, side by side, we each look straight ahead except he's got his hand on my neck, we're Norman Rockwell except his fingers are spread the width of my neck, his fingers are around my neck, circling my neck and I turn my head to face him, my body's staring outwards but I turn my face toward him and I say to him I don't want to do this, I get him to face me and I look him in the eye and I say I don't want to do this and his hand tightens on my neck and I feel his fingers down under my skin and into the muscle of my neck and he says quiet, totally level, totally calm: it doesn't matter, darling, it doesn't matter at all. I'm thinking he means it doesn't matter to him to fuck and I smile in a kind of gratitude but it's not what he means and he takes his other hand and he puts it up at the neck of my T-shirt and he pulls, one hand's holding my neck from behind and the other's pulling off my T-shirt, pulling it half off, ripping it, it burns against my skin like whiplash, and he pushes me down on the bed and I see my breast, it's beautiful and perfect and kind of cascading, there's no drawing can show how it's a living part of me, human, and when he puts his mouth on it I cry, not so he can tell, inside I'm turned to tears, I see his face now up against my breast, he's suckling and I hate him, I feel the inside of his mouth, clammy and toothy and gummy, the cavity of his mouth and the sharp porcelain of his teeth, there's the edge of his teeth on my nipple, and he's got my underpants torn off me and my legs pushed up and spread and he's in me and I think I will count to a hundred and it will be over but it isn't, he's different, I try to push him off and he raises himself above me and he smiles at me and he pushes me back, he holds me down, and I give up, I do, I stay still, my body dies as much as it can, hate distilled, a perfect hate expressed in a perfect physical passivity, a perfect attentiveness to dying, he's going to say I'm a bad lay because I won't move but I hate him and I won't move. I just wait now for him to come but he's different, he won't come, he pushes my neck to hurt it and he kisses me, I feel his mouth on me, he's in me, sudden, brutal, unpleasant; vomitous; then he's out of me, he's kissing me, he kisses me everywhere, he rams into me then he's out, he's kissing, he's kissing my stomach, he's kissing my legs, then he's in me and my thighs are pushed back past my shoulders, then he's kissing me, he's kissing my anus and licking it and he's kissing my legs and he's talking to me, your skin reminds me of Bridget's, he says, Bridget has beautiful skin, some whispering bullshit like I'm his lover or his friend or something, conspiring with him, and then he's ramming himself in me and then he's kissing me and I am confused and afraid and I am paralyzed, I don't move, . . .

I'm desperate for an end but there's no end, he's brutal and cold and chaotic and I say this will end but it doesn't end, he rams, he kisses, . . . he's in me, then he withdraws, then he kisses, he kisses my stomach, he kisses my feet—my feet; he kisses my legs, I feel a searing pain in my leg, I feel a terrible bad pain, I feel sharp shots of pain, then he rams, he kisses, he pushes, he pushes my legs apart, he pushes them back, he rams, he kisses, he must of read a book, girls like this, girls like that, you kiss girls, you kiss them; you kiss them; he's kissing me and saying things as if we are friends or I know him or something and then he rams in, brutal bastard, and then he's a lover, kissing; and this is my body but it ain't, I say it ain't . . .

I move slowly and finally I am sitting, sitting on the edge of the bed, the single bed, sitting, chaste, just sitting, and my right leg is split open, the skin on it is split open in two places, above my knee and under my knee, the skin's torn, there's big jagged pieces of skin, there's gashes, it's deep tears, deep cuts, blood, dried blood and wet blood, my leg's torn open in two places, his kisses, his lover's kisses opened the skin, inside it's all angry looking as if it's turning to a yellow or greenish pus, it's running with dirty, angry blood, I think it needs stitches but I can't get stitches . . . I concentrate on getting out, finding my clothes, putting on my clothes, they're torn and fucked up, and I ask for the keys to get out . . . I walk out and it's deserted, cold, bare city streets, . . . I wish someone would go up now while he's asleep and kill him or rob him, I wish I could put a sign on the door—it's open, kill him, rob him, I think there's some chance, it's a bad neighborhood, maybe somebody'll find him. I'm dirty; all my clothes are torn and fucked up as if they were urinated on or wrapped in a ball and used to wipe someone's ass. I call Jill from a pay phone. He raped me, I say.

Questions About Passage C

(circle one)

31. Does this present women in postures of sexual submission, servility, or display? YES / NO / DON'T KNOW
32. Does this present women as sexual objects who enjoy pain or humiliation? YES / NO / DON'T KNOW
33. Does this present women dehumanized as sexual objects, things or commodities? YES / NO / DON'T KNOW
34. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?

YES / NO / DON'T KNOW

35. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?
YES / NO / DON'T KNOW
36. Is this a graphic sexually explicit description?
YES / NO / DON'T KNOW
37. Would the dissemination of this passage in what you suppose is its original context tend to subordinate women?
YES / NO / DON'T KNOW
38. Does this passage, taken as a whole, appeal to the prurient interest?
YES / NO / DON'T KNOW
39. Is this passage is a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?
YES / NO / DON'T KNOW
40. Does this passage, taken as a whole, lack serious literary, artistic, political, or scientific value?
YES / NO / DON'T KNOW

F.

[*Beaver Hunters Photograph*]*Questions About Example F**(circle one)*

41. Does this present women in postures of sexual submission, servility or display? YES / NO / DON'T KNOW
42. Does this present women as sexual objects who enjoy pain or humiliation? YES / NO / DON'T KNOW
43. Does this present women dehumanized as sexual objects, things or commodities? YES / NO / DON'T KNOW
44. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?
YES / NO / DON'T KNOW
45. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?
YES / NO / DON'T KNOW
46. Is this a graphic sexually explicit depiction?
YES / NO / DON'T KNOW
47. Would the dissemination of this depiction in what you suppose is its original context tend to subordinate women?
YES / NO / DON'T KNOW
48. Does this depiction, taken as a whole, appeal to the prurient interest?
YES / NO / DON'T KNOW
49. Is this a patently offensive depiction of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?
YES / NO / DON'T KNOW
50. Does this depiction, taken as a whole, lack serious literary, artistic, political, or scientific value?
YES / NO / DON'T KNOW

SECOND SURVEY
FORM 2.2

SURVEY

Participation in this survey is entirely OPTIONAL; you are not required to participate. Participation or nonparticipation will have no effect on your grade. If you decide to participate in this study, you may be exposed to pornographic, obscene, sexist, or racist materials. If you decide not to participate, please fill out page 1 on demographic background for purposes of comparison. All individual responses will be absolutely confidential; data will be reported only in the aggregate. *Once you have answered the questions for each sexual excerpt, do not go back to change answers for earlier sexual excerpts.*

(circle one)

1. GENDER:

- a. Male*
- b. Female*

2. AGE: _____

3. RELIGION:

- a. Christian*
- b. Jewish*
- c. No Religion*
- d. Other: _____*

4. HAVE YOU ATTENDED CHURCH OR SYNAGOGUE IN THE LAST WEEK?

- a. Yes*
- b. No*

5. RACIAL OR ETHNIC ORIGIN:

- a. White/Caucasian*
- b. African*
- c. Asian*
- d. Hispanic*
- e. Native American*
- f. Other: _____*

6. HOW WOULD YOU DESCRIBE YOURSELF?

- a. Strong Feminist*
- b. Feminist*
- c. Feminist Sympathizer*
- d. Not a Feminist*

7. HAVE YOU WATCHED OR READ PORNOGRAPHY IN THE LAST MONTH?

- a. Yes*
- b. No*

8. SHOULD PORNOGRAPHY BE SUPPRESSED BY LAW?

- a. Yes*
- b. No*

A.

There was a big bed, one room, a huge skylight in the middle of the room, one large table in a corner: I put the bed under the skylight, water condenses and drips on it, but there I teach him, slowly. I have understood. He has too much respect for women. I teach him disrespect, systematically. I teach him how to tie knots, how to use rope, scarves, how to bite breasts: I teach him not to be afraid: of causing pain. It goes slowly. I teach him step by step. I invent sex therapy in this one room somewhere in the middle of Europe. I am an American innocent, in my fashion. I forbid intercourse. I teach him how to play games. You be this and I will be that. Rape, virgin, Queen Victoria. The games go on and on. There are some we do over and over. I teach him to penetrate with his fingers, not to be afraid of causing pain. I fellate him. I teach him not to worry about erection. I tie him up. Dungeon, brothel, little girl, da-da. I ask him what he wants to do and we do it. I teach him not to be afraid of causing pain. Not to be afraid of hurting me. I am the one there: don't be afraid of hurting me, see, this is how. I teach him not to be afraid of piss and shit, human dirt. I teach him everything about his body, I penetrate him, I scratch, I bite, I tie him up, I hit him with my hand open, with my fist, with belts: he gets hard. He does each thing back to me. He is nearly hard. Water condenses on the skylight and falls. We move the bed. I am disappointed. I liked the extravagance. I do everything I can think of to help him: impotent and suicidal: I am saving his life. We are on an island, isolated in this European city. There is us. There is the bed. He is nearly hard. We move back to his city, where he is from, into a room that is ours. He needs some act, some gesture, some event to give him the final confidence: to get really hard. Reader, I married him. . . .

*

He became a husband, like anyone else, normal. He got hard, he fucked, it spilled over, it was frenzy, I ended up cowering, caged, catatonic. How it will end finally, I don't know. I wanted to help: but this was a hurricane of hate and rage let loose: I wanted to help: I saved him: not impotent, not suicidal, he beat me until I was a heap of collapsed bone, comatose, torn, bleeding, bruised so bad, so hard: how it will end, I don't know.

*

Oh, it was a small small room with no windows: he had it painted dark blue: he didn't let me sleep: he never let me sleep: he beat me and he fucked me: I fought back and I tried to run away. The rest is unspeakable. He got hard and fucked easy now.

*Questions About Passage A**(circle one)*

9. Does this present women in postures of sexual submission, servility, or display? YES / NO / DON'T KNOW

10. Does this present women as sexual objects who enjoy pain or humiliation? YES / NO / DON'T KNOW
11. Does this present women dehumanized as sexual objects, things or commodities? YES / NO / DON'T KNOW
12. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?
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13. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?
YES / NO / DON'T KNOW
14. Is this a graphic sexually explicit description?
YES / NO / DON'T KNOW
15. Is this the subordination of women?
YES / NO / DON'T KNOW
16. Would the average person, applying contemporary adult community standards, find that this passage, taken as a whole, appeals to the prurient interest?
YES / NO / DON'T KNOW
17. Would the average person, applying contemporary adult community standards, find that this passage is a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated? YES / NO / DON'T KNOW
18. Would a reasonable person find that this passage, taken as a whole, lacks serious literary, artistic, political, or scientific value? YES / NO / DON'T KNOW
19. Is this hierarchy, objectification, submission, or violence? YES / NO / DON'T KNOW

B.

"I leave you to Sir Stephen," Rene then said [to W]. "Remain the way you are, he'll dismiss you when he sees fit." . . .

[W] did not dare look Sir Stephen in the face, but she saw his hands undoing his belt. When he had straddled W, who was still kneeling, and had seized her by the nape of the neck, he drove into her mouth. It was not the caress of her lips the length of him he was looking for, but the back of her throat. For a long time he probed, and W felt the suffocating gag of flesh swell and harden, its slow repeated hammering finally bringing her to tears. In order to invade her better, Sir Stephen ended by kneeling on the sofa, one knee on each side of her face, and there were moments when his buttocks rested on W's breast, and in her heart she felt her womb, useless and scorned, burning her. Although he delighted and reveled in her for a long time, Sir Stephen did not bring his pleasure to a climax, but withdrew from her in silence and rose again to his feet, without closing his dressing gown.

"You are easy, W," he said to her. "You love Rene, but you're easy. Does Rene realize that you covet and long for all the men who desire you, that by . . . surrendering you to others he is providing you with a string of alibis to cover your easy virtue?"

"I love Rene," W replied.

"You love Rene, but you desire me, among others," Sir Stephen went on.

Yes, she did desire him, but what if Rene, upon learning it, were to change? All she could do was remain silent and lower her eyes: even to have looked Sir Stephen directly in the eyes would have been tantamount to a confession.

*Questions About Passage B**(circle one)*

20. Does this present women in postures of sexual submission, servility, or display? YES / NO / DON'T KNOW
21. Does this present women as sexual objects who enjoy pain or humiliation? YES / NO / DON'T KNOW
22. Does this present women dehumanized as sexual objects, things or commodities? YES / NO / DON'T KNOW
23. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?
YES / NO / DON'T KNOW
24. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?
YES / NO / DON'T KNOW

25. Is this a graphic sexually explicit description?
YES / NO / DON'T KNOW
26. Is this the subordination of women?
YES / NO / DON'T KNOW
27. Would the average person, applying contemporary adult community standards, find that this passage, taken as a whole, appeals to the prurient interest?
YES / NO / DON'T KNOW
28. Would the average person, applying contemporary adult community standards, find that this passage is a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated? YES / NO / DON'T KNOW
29. Would a reasonable person find that this passage, taken as a whole, lacks serious literary, artistic, political, or scientific value? YES / NO / DON'T KNOW
30. Is this hierarchy, objectification, submission, or violence? YES / NO / DON'T KNOW

C.

I am going one, two, three, four, against him in the opposite direction from him trying to get past him and he is using my own motion to push me back to where he wants and he sits me down on the single bed and we just sit there like chaste kids, teenagers, side by side, we each look straight ahead except he's got his hand on my neck, we're Norman Rockwell except his fingers are spread the width of my neck, his fingers are around my neck, circling my neck and I turn my head to face him, my body's staring outwards but I turn my face toward him and I say to him I don't want to do this, I get him to face me and I look him in the eye and I say I don't want to do this and his hand tightens on my neck and I feel his fingers down under my skin and into the muscle of my neck and he says quiet, totally level, totally calm: it doesn't matter, darling, it doesn't matter at all. I'm thinking he means it doesn't matter to him to fuck and I smile in a kind of gratitude but it's not what he means and he takes his other hand and he puts it up at the neck of my T-shirt and he pulls, one hand's holding my neck from behind and the other's pulling off my T-shirt, pulling it half off, ripping it, it burns against my skin like whiplash, and he pushes me down on the bed and I see my breast, it's beautiful and perfect and kind of cascading, there's no drawing can show how it's a living part of me, human, and when he puts his mouth on it I cry, not so he can tell, inside I'm turned to tears, I see his face now up against my breast, he's suckling and I hate him, I feel the inside of his mouth, clammy and toothy and gummy, the cavity of his mouth and the sharp porcelain of his teeth, there's the edge of his teeth on my nipple, and he's got my underpants torn off me and my legs pushed up and spread and he's in me and I think I will count to a hundred and it will be over but it isn't, he's different, I try to push him off and he raises himself above me and he smiles at me and he pushes me back, he holds me down, and I give up, I do, I stay still, my body dies as much as it can, hate distilled, a perfect hate expressed in a perfect physical passivity, a perfect attentiveness to dying, he's going to say I'm a bad lay because I won't move but I hate him and I won't move. I just wait now for him to come but he's different, he won't come, he pushes my neck to hurt it and he kisses me, I feel his mouth on me, he's in me, sudden, brutal, unpleasant; vomitous; then he's out of me, he's kissing me, he kisses me everywhere, he rams into me then he's out, he's kissing, he's kissing my stomach, he's kissing my legs, then he's in me and my thighs are pushed back past my shoulders, then he's kissing me, he's kissing my anus and licking it and he's kissing my legs and he's talking to me, your skin reminds me of Bridget's, he says, Bridget has beautiful skin, some whispering bullshit like I'm his lover or his friend or something, conspiring with him, and then he's ramming himself in me and then he's kissing me and I am confused and afraid and I am paralyzed, I don't move, . . .

I'm desperate for an end but there's no end, he's brutal and cold and chaotic and I say this will end but it doesn't end, he rams, he kisses, . . . he's in me, then he withdraws, then he kisses, he kisses my stomach, he kisses my feet—my feet; he kisses my legs, I feel a searing pain in my leg, I feel a terrible bad pain, I feel sharp shots of pain, then he rams, he kisses, he pushes, he pushes my legs apart, he pushes them back, he rams, he kisses, he must of read a book, girls like this, girls like that, you kiss girls, you kiss them; you kiss them; he's kissing me and saying things as if we are friends or I know him or something and then he rams in, brutal bastard, and then he's a lover, kissing; and this is my body but it ain't, I say it ain't . . .

I move slowly and finally I am sitting, sitting on the edge of the bed, the single bed, sitting, chaste, just sitting, and my right leg is split open, the skin on it is split open in two places, above my knee and under my knee, the skin's torn, there's big jagged pieces of skin, there's gashes, it's deep tears, deep cuts, blood, dried blood and wet blood, my leg's torn open in two places, his kisses, his lover's kisses opened the skin, inside it's all angry looking as if it's turning to a yellow or greenish pus, it's running with dirty, angry blood, I think it needs stitches but I can't get stitches . . . I concentrate on getting out, finding my clothes, putting on my clothes, they're torn and fucked up, and I ask for the keys to get out . . . I walk out and it's deserted, cold, bare, bare city streets, . . . I wish someone would go up now while he's asleep and kill him or rob him, I wish I could put a sign on the door—it's open, kill him, rob him, I think there's some chance, it's a bad neighborhood, maybe somebody'll find him. I'm dirty; all my clothes are torn and fucked up as if they were urinated on or wrapped in a ball and used to wipe someone's ass. I call Jill from a pay phone. He raped me, I say.

Questions About Passage C

(circle one)

31. Does this present women in postures of sexual submission, servility, or display? YES / NO / DON'T KNOW
32. Does this present women as sexual objects who enjoy pain or humiliation? YES / NO / DON'T KNOW
33. Does this present women dehumanized as sexual objects, things or commodities? YES / NO / DON'T KNOW
34. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?
YES / NO / DON'T KNOW
35. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?

YES / NO / DON'T KNOW

36. Is this a graphic sexually explicit description?

YES / NO / DON'T KNOW

37. Is this the subordination of women?

YES / NO / DON'T KNOW

38. Would the average person, applying contemporary adult community standards, find that this passage, taken as a whole, appeals to the prurient interest?

YES / NO / DON'T KNOW

39. Would the average person, applying contemporary adult community standards, find that this passage is a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?

YES / NO / DON'T KNOW

40. Would a reasonable person find that this passage, taken as a whole, lacks serious literary, artistic, political, or scientific value?

YES / NO / DON'T KNOW

41. Is this hierarchy, objectification, submission, or violence?

YES / NO / DON'T KNOW

F.

[*Beaver Hunters Photograph*]*Questions About Example F**(circle one)*

42. Does this present women in postures of sexual submission, servility or display? YES / NO / DON'T KNOW
43. Does this present women as sexual objects who enjoy pain or humiliation? YES / NO / DON'T KNOW
44. Does this present women dehumanized as sexual objects, things or commodities? YES / NO / DON'T KNOW
45. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?
YES / NO / DON'T KNOW
46. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?
YES / NO / DON'T KNOW
47. Is this a graphic sexually explicit depiction?
YES / NO / DON'T KNOW
48. Is this the subordination of women?
YES / NO / DON'T KNOW
49. Would the average person, applying contemporary adult community standards, find that this depiction, taken as a whole, appeals to the prurient interest?
YES / NO / DON'T KNOW
50. Would the average person, applying contemporary adult community standards, find that this is a patently offensive depiction of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated? YES / NO / DON'T KNOW
51. Would a reasonable person find that this depiction, taken as a whole, lacks serious literary, artistic, political, or scientific value? YES / NO / DON'T KNOW
52. Is this hierarchy, objectification, submission, or violence? YES / NO / DON'T KNOW

APPENDIX B
RESULTS—FIRST SURVEY

QUESTIONS	Example	Test	% Yes	% Don't Know	% No
6. Does this present women in postures of sexual submission, servility, or display?	<i>Ice & Fire</i>	Mac-Dw	14	14	71
7. Does this present women as sexual objects who enjoy pain or humiliation?	<i>Ice & Fire</i>	Mac-Dw	37	10	52
8. Does this present women dehumanized as sexual objects, things or commodities?	<i>Ice & Fire</i>	Mac-Dw	23	10	68
9. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?	<i>Ice & Fire</i>	Mac-Dw	31	12	58
10. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?	<i>Ice & Fire</i>	Mac-Dw	28	11	62
X1. (Composite of Questions 6-10; Yes = yes to any question; No = no to all questions; Don't Know = combination of <i>don't know</i> and <i>no</i> for all questions)	<i>Ice & Fire</i>	Mac-Dw	52	12	35
11. Is this a graphic sexually explicit description?	<i>Ice & Fire</i>	Mac-Dw	65	0	35
12. Is this the subordination of women?	<i>Ice & Fire</i>	Mac-Dw	14	13	72
13. Does this place women in an unequal position or in a position of loss of power?	<i>Ice & Fire</i>	Mac-Dw	13	6	81
14. Would the average person, applying contemporary community standards, find that this passage, taken as a whole, appeals to the prurient interest?	<i>Ice & Fire</i>	Sup. Ct.	30	37	32
15. Is this a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?	<i>Ice & Fire</i>	Sup. Ct.	35	16	49
16. Does this passage, taken as a whole, lack serious literary, artistic, political, or scientific value?	<i>Ice & Fire</i>	Sup. Ct.	32	12	55
17. Does this depict women as enjoying or deserving some form of physical abuse?	<i>Ice & Fire</i>	Sunstein	50	9	41
18. Does this have the purpose of producing sexual arousal?	<i>Ice & Fire</i>	Sunstein	38	27	35

QUESTIONS	Example	Test	% Yes	% Don't Know	% No
19. Does this have the effect of producing sexual arousal?	<i>Ice & Fire</i>	Sunstein	26	14	60
20. Is this sexually explicit?	<i>Ice & Fire</i>	Sunstein	73	1	26
21. Does this present women in postures of sexual submission, servility or display?	<i>Story of O</i>	Mac-Dw	88	2	11
22. Does this present women as sexual objects who enjoy pain or humiliation?	<i>Story of O</i>	Mac-Dw	56	4	40
23. Does this present women dehumanized as sexual objects, things or commodities?	<i>Story of O</i>	Mac-Dw	82	3	15
24. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?	<i>Story of O</i>	Mac-Dw	74	6	20
25. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?	<i>Story of O</i>	Mac-Dw	59	5	37
X2. (Composite of Questions 21-25; see X1. above for coding)	<i>Story of O</i>	Mac-Dw	92	0	8
26. Is this a graphic sexually explicit description?	<i>Story of O</i>	Mac-Dw	83	2	16
27. Is this the subordination of women?	<i>Story of O</i>	Mac-Dw	83	4	13
28. Does this place women in an unequal position or in a position of loss of power?	<i>Story of O</i>	Mac-Dw	84	5	11
29. Would the average person, applying contemporary community standards, find that this passage, taken as a whole, appeals to the prurient interest?	<i>Story of O</i>	Sup. Ct.	41	34	25
30. Is this a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?	<i>Story of O</i>	Sup. Ct.	50	9	41
31. Does this passage, taken as a whole, lack serious literary, artistic, political, or scientific value?	<i>Story of O</i>	Sup. Ct.	44	13	42
32. Does this depict women as enjoying or deserving some form of physical abuse?	<i>Story of O</i>	Sunstein	56	6	38
33. Does this have the purpose of producing sexual arousal?	<i>Story of O</i>	Sunstein	42	28	30
34. Does this have the effect of producing sexual arousal?	<i>Story of O</i>	Sunstein	22	12	66

QUESTIONS	Example	Test	% Yes	% Don't Know	% No
35. Is this sexually explicit?	<i>Story of O</i>	Sunstein	84	1	15
36. Does this present women in postures of sexual submission, servility or display?	<i>Titters</i>	Mac-Dw	33	6	61
37. Does this present women as sexual objects who enjoy pain or humiliation?	<i>Titters</i>	Mac-Dw	42	7	51
38. Does this present women dehumanized as sexual objects, things or commodities?	<i>Titters</i>	Mac-Dw	29	8	63
39. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?	<i>Titters</i>	Mac-Dw	36	6	58
40. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?	<i>Titters</i>	Mac-Dw	34	1	65
41. Does this present women being penetrated by objects or animals?	<i>Titters</i>	Mac-Dw	71	2	27
X3. (Composite of Questions 36-41; see X1. above for coding)	<i>Titters</i>	Mac-Dw	84	2	14
42. Is this a graphic sexually explicit description?	<i>Titters</i>	Mac-Dw	84	3	13
43. Is this the subordination of women?	<i>Titters</i>	Mac-Dw	22	9	69
44. Does this place women in an unequal position or in a position of loss of power?	<i>Titters</i>	Mac-Dw	21	3	76
45. Would the average person, applying contemporary community standards, find that this passage, taken as a whole, appeals to the prurient interest?	<i>Titters</i>	Sup. Ct.	37	34	29
46. Is this a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?	<i>Titters</i>	Sup. Ct.	53	8	39
47. Does this passage, taken as a whole, lack serious literary, artistic, political, or scientific value?	<i>Titters</i>	Sup. Ct.	58	10	32
48. Does this depict women as enjoying or deserving some form of physical abuse?	<i>Titters</i>	Sunstein	45	7	49
49. Does this have the purpose of producing sexual arousal?	<i>Titters</i>	Sunstein	55	21	23
50. Does this have the effect of producing sexual arousal?	<i>Titters</i>	Sunstein	17	10	73
51. Is this sexually explicit?	<i>Titters</i>	Sunstein	82	2	17

QUESTIONS	Example	Test	% Yes	% Don't Know	% No
52. Does this present women in postures of sexual submission, servility or display?	<i>Woman's Room</i>	Mac-Dw	36	2	62
53. Does this present women as sexual objects who enjoy pain or humiliation?	<i>Woman's Room</i>	Mac-Dw	21	4	75
54. Does this present women dehumanized as sexual objects, things or commodities?	<i>Woman's Room</i>	Mac-Dw	23	2	75
55. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?	<i>Woman's Room</i>	Mac-Dw	18	4	78
56. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?	<i>Woman's Room</i>	Mac-Dw	18	4	78
X4. (Composite of Questions 52-56; see X1. above for coding)	<i>Woman's Room</i>	Mac-Dw	41	3	56
57. Is this a graphic sexually explicit description?	<i>Woman's Room</i>	Mac-Dw	88	1	11
58. Is this the subordination of women?	<i>Woman's Room</i>	Mac-Dw	24	6	71
59. Does this place women in an unequal position or in a position of loss of power?	<i>Woman's Room</i>	Mac-Dw	38	5	57
60. Would the average person, applying contemporary community standards, find that this passage, taken as a whole, appeals to the prurient interest?	<i>Woman's Room</i>	Sup. Ct.	50	28	22
61. Is this a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?	<i>Woman's Room</i>	Sup. Ct.	26	3	71
62. Does this passage, taken as a whole, lack serious literary, artistic, political, or scientific value?	<i>Woman's Room</i>	Sup. Ct.	38	12	50
63. Does this depict women as enjoying or deserving some form of physical abuse?	<i>Woman's Room</i>	Sunstein	25	2	73
64. Does this have the purpose of producing sexual arousal?	<i>Woman's Room</i>	Sunstein	79	12	9
65. Does this have the effect of producing sexual arousal?	<i>Woman's Room</i>	Sunstein	59	7	34
66. Is this sexually explicit?	<i>Woman's Room</i>	Sunstein	88	0	12
67. Does this present women in postures of sexual submission, servility or display?	<i>Story of the Eye</i>	Mac-Dw	48	7	45

QUESTIONS	Example	Test	% Yes	% Don't Know	% No
68. Does this present women as sexual objects who enjoy pain or humiliation?	<i>Story of the Eye</i>	Mac-Dw	46	8	45
69. Does this present women dehumanized as sexual objects, things or commodities?	<i>Story of the Eye</i>	Mac-Dw	45	9	45
70. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?	<i>Story of the Eye</i>	Mac-Dw	48	7	44
71. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?	<i>Story of the Eye</i>	Mac-Dw	20	4	76
X5. (Composite of Questions 67-71; see X1. above for coding)	<i>Story of the Eye</i>	Mac-Dw	62	7	31
72. Is this a graphic sexually explicit description?	<i>Story of the Eye</i>	Mac-Dw	84	2	14
73. Is this the subordination of women?	<i>Story of the Eye</i>	Mac-Dw	39	11	51
74. Does this place women in an unequal position or in a position of loss of power?	<i>Story of the Eye</i>	Mac-Dw	36	8	56
75. Would the average person, applying contemporary community standards, find that this passage, taken as a whole, appeals to the prurient interest?	<i>Story of the Eye</i>	Sup. Ct.	43	26	31
76. Is this a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?	<i>Story of the Eye</i>	Sup. Ct.	63	7	30
77. Does this passage, taken as a whole, lack serious literary, artistic, political, or scientific value?	<i>Story of the Eye</i>	Sup. Ct.	51	18	32
78. Does this depict women as enjoying or deserving some form of physical abuse?	<i>Story of the Eye</i>	Sunstein	40	6	54
79. Does this have the purpose of producing sexual arousal?	<i>Story of the Eye</i>	Sunstein	56	23	21
80. Does this have the effect of producing sexual arousal?	<i>Story of the Eye</i>	Sunstein	11	13	77
81. Is this sexually explicit?	<i>Story of the Eye</i>	Sunstein	82	5	13
82. Does this present women in postures of sexual submission, servility or display?	<i>Beaver Hunters</i>	Mac-Dw	93	0	7
83. Does this present women as sexual objects who enjoy pain or humiliation?	<i>Beaver Hunters</i>	Mac-Dw	73	2	25

QUESTIONS	Example	Test	% Yes	% Don't Know	% No
84. Does this present women dehumanized as sexual objects, things or commodities?	<i>Beaver Hunters</i>	Mac-Dw	95	1	4
85. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?	<i>Beaver Hunters</i>	Mac-Dw	86	1	13
86. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?	<i>Beaver Hunters</i>	Mac-Dw	93	1	6
X6. (Composite of Questions 82-86; see X1. above for coding)	<i>Beaver Hunters</i>	Mac-Dw	98	0	2
87. Is this a graphic sexually explicit depiction?	<i>Beaver Hunters</i>	Mac-Dw	79	2	19
88. Is this the subordination of women?	<i>Beaver Hunters</i>	Mac-Dw	89	2	9
89. Does this place women in an unequal position or in a position of loss of power?	<i>Beaver Hunters</i>	Mac-Dw	92	1	7
90. Would the average person, applying contemporary community standards, find that this example, taken as a whole, appeals to the prurient interest?	<i>Beaver Hunters</i>	Sup. Ct.	46	27	26
91. Is this a patently offensive depiction of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?	<i>Beaver Hunters</i>	Sup. Ct.	66	6	28
92. Does this example, taken as a whole, lack serious literary, artistic, political, or scientific value?	<i>Beaver Hunters</i>	Sup. Ct.	82	1	17
93. Does this depict women as enjoying or deserving some form of physical abuse?	<i>Beaver Hunters</i>	Sunstein	68	5	27
94. Does this have the purpose of producing sexual arousal?	<i>Beaver Hunters</i>	Sunstein	52	15	33
95. Does this have the effect of producing sexual arousal?	<i>Beaver Hunters</i>	Sunstein	8	10	82
96. Is this sexually explicit?	<i>Beaver Hunters</i>	Sunstein	81	1	18

RESULTS—SECOND SURVEY
FORM 2.1

QUESTIONS	Example	Test	% Yes	% Don't Know	% No
9. Does this present women in postures of sexual submission, servility, or display?	<i>Ice & Fire</i>	Mac-Dw	32	8	60
10. Does this present women as sexual objects who enjoy pain or humiliation?	<i>Ice & Fire</i>	Mac-Dw	49	2	49
11. Does this present women dehumanized as sexual objects, things or commodities?	<i>Ice & Fire</i>	Mac-Dw	34	5	61
12. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?	<i>Ice & Fire</i>	Mac-Dw	41	6	53
13. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?	<i>Ice & Fire</i>	Mac-Dw	38	7	55
X1. (Composite of Questions 9-13; Yes = yes to any question; No = no to all questions; Don't Know = combination of don't know and no for all questions)	<i>Ice & Fire</i>	Mac-Dw	61	7	32
14. Is this a graphic sexually explicit description?	<i>Ice & Fire</i>	Mac-Dw	63	4	33
15. Is this the subordination of women?	<i>Ice & Fire</i>	Mac-Dw	16	7	76
16. Would the average person, applying contemporary adult community standards, find that this passage, taken as a whole, appeals to the prurient interest?	<i>Ice & Fire</i>	Sup. Ct.	25	42	33
17. Would the average person, applying contemporary adult community standards, find that this passage is a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?	<i>Ice & Fire</i>	Sup. Ct.	73	10	17
18. Would a reasonable person find that this passage, taken as a whole, lack serious literary, artistic, political, or scientific value?	<i>Ice & Fire</i>	Sup. Ct.	44	18	38
19. Is this hierarchy, objectification, submission, or violence?	<i>Ice & Fire</i>	Mac-Dw	65	13	22
20. Does this present women in postures of sexual submission, servility, or display?	<i>Story of O</i>	Mac-Dw	93	0	7

QUESTIONS	Example	Test	% Yes	% Don't Know	% No
21. Does this present women as sexual objects who enjoy pain or humiliation?	<i>Story of O</i>	Mac-Dw	58	4	38
22. Does this present women dehumanized as sexual objects, things or commodities?	<i>Story of O</i>	Mac-Dw	81	4	15
23. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?	<i>Story of O</i>	Mac-Dw	78	2	20
24. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?	<i>Story of O</i>	Mac-Dw	60	3	37
X2. (Composite of Questions 20-24; see X1. above for coding)	<i>Story of O</i>	Mac-Dw	94	0	6
25. Is this a graphic sexually explicit description?	<i>Story of O</i>	Mac-Dw	85	1	14
26. Is this the subordination of women?	<i>Story of O</i>	Mac-Dw	87	3	10
27. Would the average person, applying contemporary adult community standards, find that this passage, taken as a whole, appeals to the prurient interest?	<i>Story of O</i>	Sup. Ct.	29	43	29
28. Would the average person, applying contemporary adult community standards, find that this passage is a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?	<i>Story of O</i>	Sup. Ct.	77	9	14
29. Would a reasonable person find that this passage, taken as a whole, lack serious literary, artistic, political, or scientific value?	<i>Story of O</i>	Sup. Ct.	54	19	27
30. Is this hierarchy, objectification, submission, or violence?	<i>Story of O</i>	Mac-Dw	90	5	5
31. Does this present women in postures of sexual submission, servility, or display?	<i>Mercy</i>	Mac-Dw	74	1	25
32. Does this present women as sexual objects who enjoy pain or humiliation?	<i>Mercy</i>	Mac-Dw	17	0	83
33. Does this present women dehumanized as sexual objects, things or commodities?	<i>Mercy</i>	Mac-Dw	69	3	28

QUESTIONS	Example	Test	% Yes	% Don't Know	% No
34. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?	<i>Mercy</i>	Mac-Dw	81	4	15
35. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?	<i>Mercy</i>	Mac-Dw	82	1	17
X3. (Composite of Questions 31-35; for coding, see Question X1 supra)	<i>Mercy</i>	Mac-Dw	90	1	9
36. Is this a graphic sexually explicit description?	<i>Mercy</i>	Mac-Dw	86	1	13
37. Would the dissemination of this passage in what you suppose is its original context tend to subordinate women?	<i>Mercy</i>	Mac-Dw	46	6	48
38. Does this passage, taken as a whole, appeal to the prurient interest?	<i>Mercy</i>	Sup. Ct.	16	44	41
39. Is this passage a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?	<i>Mercy</i>	Sup. Ct.	61	5	33
40. Does this passage, taken as a whole, lack serious literary, artistic, political, or scientific value?	<i>Mercy</i>	Sup. Ct.	38	9	53
41. Does this present women in postures of sexual submission, servility, or display?	<i>Beaver Hunters</i>	Mac-Dw	92	1	7
42. Does this present women as sexual objects who enjoy pain or humiliation?	<i>Beaver Hunters</i>	Mac-Dw	65	10	24
43. Does this present women dehumanized as sexual objects, things or commodities?	<i>Beaver Hunters</i>	Mac-Dw	96	0	4
44. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?	<i>Beaver Hunters</i>	Mac-Dw	85	2	13
45. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?	<i>Beaver Hunters</i>	Mac-Dw	92	0	8
X4. (Composite of Questions 41-45; for coding, see Question X1 supra)	<i>Beaver Hunters</i>	Mac-Dw	96	0	4
46. Is this a graphic sexually explicit depiction?	<i>Beaver Hunters</i>	Mac-Dw	88	0	12

QUESTIONS	Example	Test	% Yes	% Don't Know	% No
47. Would the dissemination of this depiction in what you suppose is its original context tend to subordinate women?	<i>Beaver Hunters</i>	Mac-Dw	93	2	5
48. Does this depiction, taken as a whole, appeal to the prurient interest?	<i>Beaver Hunters</i>	Sup. Ct.	34	42	24
49. Is this a patently offensive depiction of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?	<i>Beaver Hunters</i>	Sup. Ct.	76	4	20
50. Does this depiction, taken as a whole, lack serious literary, artistic, political, or scientific value?	<i>Beaver Hunters</i>	Sup. Ct.	87	5	8

SECOND SURVEY
FORM 2.2

QUESTIONS	Example	Test	% Yes	% Don't Know	% No
9. Does this present women in postures of sexual submission, servility, or display?	<i>Ice & Fire</i>	Mac-Dw	60	14	26
10. Does this present women as sexual objects who enjoy pain or humiliation?	<i>Ice & Fire</i>	Mac-Dw	68	5	27
11. Does this present women dehumanized as sexual objects, things or commodities?	<i>Ice & Fire</i>	Mac-Dw	53	6	41
12. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?	<i>Ice & Fire</i>	Mac-Dw	56	11	33
13. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?	<i>Ice & Fire</i>	Mac-Dw	63	5	32
X1. (Composite of Questions 9-13; Yes = yes to any question; No = no to all questions; Don't Know = combination of don't know and no for all questions)	<i>Ice & Fire</i>	Mac-Dw	84	7	9
14. Is this a graphic sexually explicit description?	<i>Ice & Fire</i>	Mac-Dw	59	3	38
15. Is this the subordination of women?	<i>Ice & Fire</i>	Mac-Dw	39	11	51
16. Would the average person, applying contemporary adult community standards, find that this passage, taken as a whole, appeals to the prurient interest?	<i>Ice & Fire</i>	Sup. Ct.	23	39	38
17. Would the average person, applying contemporary adult community standards, find that this passage is a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?	<i>Ice & Fire</i>	Sup. Ct.	69	11	20
18. Would a reasonable person find that this passage, taken as a whole, lacks serious literary, artistic, political, or scientific value?	<i>Ice & Fire</i>	Sup. Ct.	38	15	46
19. Is this hierarchy, objectification, submission, or violence?	<i>Ice & Fire</i>	Mac-Dw	73	14	14
20. Does this present women in postures of sexual submission, servility, or display?	<i>Story of O</i>	Mac-Dw	95	3	2

QUESTIONS	Example	Test	% Yes	% Don't Know	% No
21. Does this present women as sexual objects who enjoy pain or humiliation?	<i>Story of O</i>	Mac-Dw	58	7	35
22. Does this present women dehumanized as sexual objects, things or commodities?	<i>Story of O</i>	Mac-Dw	85	3	12
23. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?	<i>Story of O</i>	Mac-Dw	72	6	22
24. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?	<i>Story of O</i>	Mac-Dw	57	3	40
X2. (Composite of Questions 20-24; for coding, see Question X1 supra)	<i>Story of O</i>	Mac-Dw	98	1	1
25. Is this a graphic sexually explicit description?	<i>Story of O</i>	Mac-Dw	83	2	15
26. Is this the subordination of women?	<i>Story of O</i>	Mac-Dw	87	2	11
27. Would the average person, applying contemporary adult community standards, find that this passage, taken as a whole, appeals to the prurient interest?	<i>Story of O</i>	Sup. Ct.	25	45	30
28. Would the average person, applying contemporary adult community standards, find that this passage is a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?	<i>Story of O</i>	Sup. Ct.	59	14	28
29. Would a reasonable person find that this passage, taken as a whole, lacks serious literary, artistic, political, or scientific value?	<i>Story of O</i>	Sup. Ct.	51	23	27
30. Is this hierarchy, objectification, submission, or violence?	<i>Story of O</i>	Mac-Dw	83	7	10
31. Does this present women in postures of sexual submission, servility, or display?	<i>Mercy</i>	Mac-Dw	70	4	26
32. Does this present women as sexual objects who enjoy pain or humiliation?	<i>Mercy</i>	Mac-Dw	17	1	82
33. Does this present women dehumanized as sexual objects, things or commodities?	<i>Mercy</i>	Mac-Dw	67	3	29

QUESTIONS	Example	Test	% Yes	% Don't Know	% No
34. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?	<i>Mercy</i>	Mac-Dw	76	3	20
35. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?	<i>Mercy</i>	Mac-Dw	86	0	14
X3. (Composite of Questions 31-35; for coding, see Question X1 supra)	<i>Mercy</i>	Mac-Dw	95	2	3
36. Is this a graphic sexually explicit description?	<i>Mercy</i>	Mac-Dw	87	2	11
37. Is this the subordination of women?	<i>Mercy</i>	Mac-Dw	74	4	22
38. Would the average person, applying contemporary adult community standards, find that this passage, taken as a whole, appeals to the prurient interest?	<i>Mercy</i>	Sup. Ct.	24	38	38
39. Would the average person, applying contemporary adult community standards, find that this passage is a patently offensive description of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?	<i>Mercy</i>	Sup. Ct.	71	8	21
40. Would a reasonable person find that this passage, taken as a whole, lacks serious literary, artistic, political, or scientific value?	<i>Mercy</i>	Sup. Ct.	39	10	51
41. Is this hierarchy, objectification, submission, or violence?	<i>Mercy</i>	Mac-Dw	88	6	7
42. Does this present women in postures of sexual submission, servility, or display?	<i>Beaver Hunters</i>	Mac-Dw	98	1	1
43. Does this present women as sexual objects who enjoy pain or humiliation?	<i>Beaver Hunters</i>	Mac-Dw	71	7	21
44. Does this present women dehumanized as sexual objects, things or commodities?	<i>Beaver Hunters</i>	Mac-Dw	97	1	2
45. Does this present women in scenarios of degradation, injury, or torture, or does this show women as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual?	<i>Beaver Hunters</i>	Mac-Dw	86	2	12
46. Does this present women as sexual objects tied up or cut up or mutilated or bruised or physically hurt?	<i>Beaver Hunters</i>	Mac-Dw	93	1	6

QUESTIONS	Example	Test	% Yes	% Don't Know	% No
X4. (Composite of Questions 42-46; for coding, see Question X1 supra)	<i>Beaver Hunters</i>	Mac-Dw	99	0	1
47. Is this a graphic sexually explicit depiction?	<i>Beaver Hunters</i>	Mac-Dw	84	0	16
48. Is this the subordination of women?	<i>Beaver Hunters</i>	Mac-Dw	89	1	9
49. Would the average person, applying contemporary adult community standards, find that this depiction, taken as a whole, appeals to the prurient interest?	<i>Beaver Hunters</i>	Sup. Ct.	35	37	28
50. Would the average person, applying contemporary adult community standards, find that this is a patently offensive depiction of (a) masturbation, or (b) excretory functions, or (c) lewd exhibition of the genitals, or (d) ultimate sexual acts, normal or perverted, actual or simulated?	<i>Beaver Hunters</i>	Sup. Ct.	74	6	20
51. Would a reasonable person find that this depiction, taken as a whole, lacks serious literary, artistic, political, or scientific value?	<i>Beaver Hunters</i>	Sup. Ct.	83	2	15
52. Is this hierarchy, objectification, submission, or violence?	<i>Beaver Hunters</i>	Mac-Dw	90	5	4

APPENDIX C
PORNOGRAPHY DEFINITIONS

MACKINNON-DWORKIN MODEL DEFINITION

Pornography is the graphic sexually explicit subordination of women, whether in pictures or in words, that also includes one or more of the following:

- (i) women are presented dehumanized as sexual objects, things or commodities; or
- (ii) women are presented as sexual objects who enjoy pain or humiliation; or
- (iii) women are presented as sexual objects who experience sexual pleasure in being raped; or
- (iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or
- (v) women are presented in postures of sexual submission, servility or display; or
- (vi) women's body parts—including but not limited to vaginas, breasts, and buttocks—are exhibited, such that women are reduced to those parts; or
- (vii) women are presented as whores by nature; or
- (viii) women are presented being penetrated by objects or animals; or
- (ix) women are presented in scenarios of degradation, injury, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual.

CATHARINE MACKINNON, *Not a Moral Issue, in FEMINISM UNMODIFIED* 146, 146 n.1 (1987).

SUNSTEIN MODEL DEFINITION

In short, regulable pornography must (a) be sexually explicit, (b) depict women as enjoying or deserving some form of physical abuse, and (c) have the purpose and effect of producing sexual arousal.

Cass R. Sunstein, *Pornography and the First Amendment*, 1986 DUKE L.J. 589, 592.

MILLER V. CALIFORNIA OBSCENITY DEFINITION

The basic guidelines for the trier of fact must be: (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to

the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

....

We emphasize that it is not our function to propose regulatory schemes for the States. That must await their concrete legislative efforts. It is possible, however, to give a few plain examples of what a state statute could define for regulation under part (b) of the standard announced in this opinion, *supra*:

(a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.

(b) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals.

Miller v. California, 413 U.S. 15, 24-25 (1973) (citation omitted).

RIDINGTON MODEL DEFINITION

"Pornography is a presentation, whether live, simulated, verbal, pictorial, filmed or videotaped, or otherwise represented, of sexual behaviour in which one or more participants are coerced, overtly or *implicitly*, into participation; or are injured or abused physically or *psychologically*; or in which an *imbalance of power* is obvious, or *implied* by virtue of the immature age of any participant or by contextual aspects of the presentation, and in which such behaviour can be taken to be advocated or endorsed."

Myrna Kostash, *Second Thoughts*, in WOMEN AGAINST CENSORSHIP 32, 34 (Varda Burstyn ed., 1985) (quoting Jillian Ridington) (emphases added by Kostash).

WESSON MODEL DEFINITION

[T]he "new hard core," [is] defined as depictions, in any medium, of violence directed against, or pain inflicted on, an unconsenting person or a child, for the purpose of anyone's real or apparent sexual arousal or gratification, in a context suggesting endorsement or approval of such behavior, and likely to promote or encourage similar behavior in those exposed to the depiction.

Marianne Wesson, *Sex, Lies and Videotape: The Pornographer as Censor*, 66 WASH. L. REV. 913, 915 (1991).

POLLARD MODEL DEFINITION

I. Definitions.

(a) Violent pornography shall mean a film that concurrently depicts both sexual explicitness and physically violent acts between or among those engaged in the sexual activity.

(b) Sexual explicitness shall mean:

1) human genitals in a state of sexual stimulation or arousal,

2) acts of human masturbation, sexual intercourse, or sodomy, or

3) fondling or other erotic touching of human genitals, pubic region, buttock, or female breast;

(c) Physically violent acts shall mean:

1) assault,

2) battery,

3) murder,

4) rape,

5) torture, or

6) coercion by physical force.

II. Violations. The following acts will be violations of this ordinance:

(a) Production. It shall be a violation to participate in any capacity in the production of violent pornography. Participation means:

1) filming,

2) directing,

3) acting (playing a role in the film),

4) coercing another to play a role in the film,

5) creating manuscripts for production,

6) editing films,

7) knowingly supplying the financial backing for producing the film,*

8) knowingly supplying the studio or other place where the film is to be made,* or

9) knowingly supplying actors for such films, such as an agent, or parent or relative of a minor;*

(*The standard for knowledge shall be the "reasonable person" standard, i.e., the defendant knew or should have known.)

(b) Trafficking. It shall be a violation to deal in violent pornography. Dealing means:

1) selling films,

2) buying films,

3) exhibiting films, or

4) distributing films.

III. Sanctions. The following criminal and civil actions shall apply to the foregoing violations:

(a) Criminal sanctions. It shall be a crime to violate this ordinance. Penalties shall be determined by the appropriate legislative bodies.

(b) Civil actions. A civil action is created and treble damages shall be awarded for torts such as assault, battery, and false imprisonment that occur in production of the film.

Deana Pollard, *Regulating Violent Pornography*, 43 VAND. L. REV. 125, 155 (1990).

TAYLOR MODEL DEFINITION

No person with knowledge of the character of the material shall knowingly distribute or exhibit, to the public or for commercial purposes, any hard-core pornography.

Hard-core pornography means any material or performance that explicitly depicts ultimate sexual acts, including vaginal or anal intercourse, fellatio, cunnilingus, anilingus, and masturbation, where penetration, manipulation, or ejaculation of the genitals is clearly visible.

Congress and state legislatures should make the statute applicable to importation, interstate shipment, mailing, public dissemination, and commercial distribution. The law should also provide an affirmative defense for bona fide scientific, educational, or research purposes, and/or provide an exception for serious literary, artistic, political, or scientific uses. Under such a scheme, only the commercial pandering of explicit sex would be prohibited.

Bruce A. Taylor, *Hard-Core Pornography: A Proposal for a Per Se Rule*, 21 U. MICH. J.L. REF. 255, 272 (1987-88).

INDIANAPOLIS STATUTE

Pornography shall mean the sexually explicit subordination of women, graphically depicted, whether in pictures or in words, that also includes one or more of the following:

- (1) Women are presented as sexual objects who enjoy pain or humiliation; or
- (2) Women are presented as sexual objects who experience sexual pleasure in being raped; or
- (3) Women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt, or

as dismembered or truncated or fragmented or severed into body parts; or

(4) Women are presented being penetrated by objects or animals; or

(5) Women are presented in scenarios of degradation [sic], injury, abasement, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual; [or]

(6) Women are presented as sexual objects for domination, conquest, violation, exploitation, possession, or use, or through postures or positions of servility or submission or display.

INDIANAPOLIS, IND., CODE § 16-3(q) (1984), *reprinted in* Nan D. Hunter & Sylvia A. Law, *Brief Amici Curiae of Feminist Anti-Censorship Taskforce, et. al., in American Booksellers Association v. Hudnut*, 21 U. MICH. J.L. REF. 69, 69 n.1 (1987-88).

MINNEAPOLIS STATUTE

Pornography. Pornography is a form of discrimination on the basis of sex.

(1) Pornography is the sexually explicit subordination of women, graphically depicted, whether in pictures or in words, that also includes one or more of the following:

(i) women are presented dehumanized as sexual objects, things or commodities; or

(ii) women are presented as sexual objects who enjoy pain or humiliation; or

(iii) women are presented as sexual objects who experience sexual pleasure in being raped; or

(iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or

(v) women are presented in postures of sexual submission; or

(vi) women's body parts—including but not limited to vaginas, breasts, and buttocks—are exhibited, such that women are reduced to those parts; or

(vii) women are presented as whores by nature; or

(viii) women are presented being penetrated by objects or animals; or

(ix) women are presented in scenarios of degradation, injury, abasement, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual.

(2) The use of men, children, or transsexuals in the place of women in (1)(i-ix) above is pornography for purposes of subsections (l)-(p) of this statute.

Ordinance amending MINNEAPOLIS, MINN., CODE OF ORDINANCES tit. 7, ch. 139.20(gg) (passed Dec. 30, 1983; vetoed Jan. 5, 1984), reprinted in Randall D.B. Tigue, *Civil Rights and Censorship—Incompatible Bedfellows*, 11 WM. MITCHELL L. REV. 81, 85 n.24 (1985) (alterations in original).
