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Bare It Or Bar It: Should Government Regulate Adult Pornography to Prevent Exposure to Minors? Transcript of the Symposium

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The Arlin M. Adams Center FOR LAW AND SOCIETY

Susquehanna University

The March 21, 2007, dialogue on "Bare It or Bar It: Should Government Regulate Adult Pornography To Prevent Exposure To Minors?" is the sixth in a series of annual lectures sponsored by The Arlin M. Adams Center for Law and Society at Susquehanna University. Established in 2001, the center focuses on the law and its impact on institutions and people, providing a rich learning and experiential resource for students, faculty, visiting scholars and members of the community.

The family of Sigfried and Janet Weis and The Degenstein Foundation of Sunbury, Pa., with support from the Annenberg Foundation, founded the center in honor of prominent Philadelphia jurist Arlin M. Adams whose distinguished legal career includes 17 years on the bench of the 3rd U.S. Circuit Court of Appeals.

The center explores the significant place law occupies in our ever-changing social, political, economic and cultural life. It provides a forum for thought-provoking examination of contemporary issues in areas such as human freedoms and civil rights, social responsibility, technology and privacy, and constitutional interpretation.

Susquehanna's emphasis on undergraduate liberal arts education and preprofessional studies offers an ideal home for the Adams Center. The center supports activities and resources that expose students to the theory and practice of law through internships and field experiences, networking, professional seminars, independent study, research projects, and enhanced library resources. The interdisciplinary programs and activities of the Adams Center enrich and inform civic life in the Central Susquehanna Valley and nationally.

Welcome Remarks

President L. Jay Lemons

Good evening, one and all, and welcome to the Degenstein Theater and to Susquehanna University for those of you who are guests. It is a great pleasure for me to have an opportunity to say welcome, to thank you for coming, and to say a few words about the Arlin M. Adams Center for Law and Society. My name is Jay Lemons and it's my pleasure and honor to serve Susquehanna and to have an opportunity to, as well, share in its program with these distinguished guests and you, as members of our own family, who also share in the program.

This is the sixth annual lecture that has been presented by the Arlin M. Adams Center for Law and Society. The first event was presented in 2002, as a lecture, but in our subsequent events, including this one, we have found that there is great value in having civil discourse and dialogue and that has become the format for this annual event by bringing together nationally recognized experts on an issue of significance and importance.

The Adams Center was created in 2001, through the generosity of the Degenstein Foundation and also supported by a grant from the Annenberg Foundation. It was established to honor one of Pennsylvania's most distinguished native sons, Judge Arlin Adams. Judge Adams is back here and I would ask all of you to join me in welcoming him tonight. Truly one of this nation's most distinguished jurists, he served on the Third Circuit for 17 years. He has had a long and deep association with this institution and we are so much the better for it.

The Center's mission is to explore the rich intersections that exist between law and other disciplines in our society which surface in contemporary thoughts and issues. The work of the Adams Center is guided by a steering committee composed of three Susquehanna faculty members, Professor Michele DeMary in political science, Jeff Whitman in philosophy, and Rich Davis in accounting. Professor Davis is in London this term, but I know Jeff and Michele are both here and present. I want to acknowledge and thank you. Where are they?

Tonight's lecture, Bare It or Bar It: Should Government Regulate Adult Pornography, will surely be a thought-provoking examination of these issues of civil liberties, civil rights, social responsibilities, technologies, privacy, and constitutional interpretation, accommodating freedom of speech and expression while protecting our children, raises questions that force all of us to apply critical thinking abilities and to consider all sides of the debate, and in the custom that has come to be one of the hallmarks of the Adams lecture, one that is touched with respect and intellectual curiosity. As I observed to a guest earlier tonight, I think the great challenge that I would give to our speakers is they should all find a way to open all of our hearts and minds. For our visitors, I hope that you will know and understand that Susquehanna annually selects a university theme that is reflected in programming and educational opportunities throughout the campus.

This year's theme came from Professor Davis Stein, On the Fringe, what flourishes and what fades. We began this year with a common reading by all first year students of Eric Sclosser's book, Reefer Madness, which, in fact, details the very significant black market pornography industry. So this program

this evening in many ways comes together in a beautiful expression of that. This year Susquehanna has also been blessed by an additional grant of the Degenstein Foundation that allowed us to recruit to Susquehanna Mr. Allan Sobel, who was most recently president of the American Judicature Society. Al, as he prefers to be called, has arrived in Selinsgrove with energy and passion and ideas and zeal. We are thrilled that he is here and he will serve as this evening's moderator and, thus, as I ask him to introduce not only the subject, but our presenters, I hope you will join me in welcoming Al Sobel to Susquehanna.

Introductory Remarks

Allan D. Sobel, Director

MR. SOBEL: Thank you and good evening. I am so pleased to see all of you here with us tonight for what promises to be a special evening. I deeply appreciate the work that the steering committee did in choosing the topic for tonight's program. It is truly a perfect topic for an Adams Center program. If one wanted to seek out information relevant to the question of tonight's dialogue, whether to regulate adult pornography to prevent exposure to minors, one could search for information from lawyers, from theologians, from psychologists, from sociologists, from parents and teachers and school administrators. Virtually every discipline would have something to offer in considering tonight's question. And that's exactly the kind of question that the Adams Center wants to consider in its programming. People have strong feelings about the question being discussed tonight and one thing that I ask you to do as a listening audience is to keep your minds open and do not come to this discussion with preconceived final judgments. Let the information enter your mind. Think about it, mull it over. And when you leave here, talk with others who are here tonight about the experience. Talk with those that you are close to about the experience. Make these issues, which are so important, ongoing subjects of discussion.

I am so pleased to have with us tonight as our primary speakers Professor Nadine Strossen and Michael Johnson. Professor Strossen is the president of the American Civil Liberties Union. Her position as president is full time in every respect but one; the pay. Professor Strossen volunteers to serve as ACLU President without compensation, other than the compensation one gets by pursuing something that they feel very passionate about. And clearly she feels very passionate about protecting fundamental freedoms that we enjoy in this country. Nadine works full time at a paying job as a professor at New York Law School, where she teaches constitutional law and civil liberties. As ACLU President, she has spoken on over 400 occasions about civil liberties. Professor Strossen has received numerous awards and she's even squeezed in a performance as an actress in a budding new career on the stage. She received her undergraduate and law degrees at Harvard.

Michael Johnson is an equally passionate person. He is senior legal counsel for the Alliance Defense Fund. ADF is a non-profit organization dedicated to preserving religious liberty, traditional family values, and the sanctity of life. Before he took that position, Mike served in two different very respected law firms in the State of Louisiana. He decided to go to work for a non-profit because he cares about the mission of that organization and the values that it seeks to preserve. Like Nadine Strossen, Mike is involved with many organizations as a board member and as counsel. The names of those organizations are in your program. He earned his undergraduate and law degrees at Louisiana State University. Mike has been the recipient of numerous awards which recognize his commitment to those values he seeks to preserve.

I want to mention three specific matters before I turn this all over to our primary speakers. First, I want to talk about the scope of the issue of adult pornography. How big of an issue is it in our society? By one account, the revenue generated by the porn industry in the United States annually exceeds the combined revenue of the NFL, the NBA, and major league baseball and is

estimated to be about \$13 billion a year. According to MSNBC, 60 percent of the websites on the Internet are sexual in nature. According to a recent report published by the American Academy of Pediatrics, approximately 42 percent of children between the ages of ten and 17 who use the Internet have been exposed to online pornography in the past year.

Second, what do we mean by adult pornography? Adult pornography is material that is sexually explicit and is intended to arouse sexual desires. Adult pornography involves exclusively adult actors. Child pornography, on the other hand, involves child actors. Both of our speakers agree with the United States Supreme Court that child pornography has absolutely no protection under the First Amendment to the United States Constitution and that it should be outlawed to protect children. On the other hand, they have differences with regard to adult pornography. Adult pornography is entitled to constitutional protection, says the United States Supreme Court, and the question that these speakers will address tonight is how much protection should it receive. Should it receive the same protection as other kinds of expression and speech or a lower level of protection? Should adults be allowed to view it whenever they wish, wherever they wish? Should children be allowed to view it whenever they wish, wherever they wish? Or should there be some restrictions consistent with traditional family values and morality.

Finally, the format for tonight will allow each of our speakers to present uninterrupted presentations for 20 minutes. When their presentations are over, I will have a couple of questions that they will each be given an opportunity to answer. And following my questions, all of you will be given an opportunity to ask our speakers whatever questions you like. Your questions need not relate to the issue that will be the subject of the dialogue, but they should relate to the First Amendment guarantee of freedom of speech. There are four aisle mics. As I'm asking questions of the speakers later in this program, that will be your cue for audience members with questions to proceed to the nearest aisle mic and get ready to ask your question.

Without any further comment from me, I will now call upon our first speaker, Mr. Michael Johnson.

The Dialogue

Michael Johnson

Thank you all. Thank you, Allan. It's a real pleasure to be with you. My wife actually traveled with me. She is the one in the white coat, the pretty blond in the middle. She doesn't get to travel with me very often, so this is a real treat for us. I take her with me because she gives me credibility. People say, "How did he get her?" And that's a great thing.

I am under no illusions tonight. I know I am far outgunned by the very able Nadine Strossen, who has been in the battle a long time. We are obviously on opposite sides of things. But my chagrin about this is even more than it might have been normally. When I got the form, the printed invitation in the mail this week, I recognized that actually my home office sent in the wrong bio for me. They sent in the 2002 version. So I look like even more of a kid next to Nadine, which is just no fun. But, look, here's the bottom line. Even if we did add, in all honesty, some of the cases I've won in the last five years, as well as national awards and that kind of thing, I would still be outgunned. This would still be a match up like a David versus Goliath contest tonight. And that is in respect to her, but also because I think it's an apt metaphor for really the battle over this whole issue of pornography and what to do about it on a local level. I mean, the bottom line here is that the porn wars are largely being fought on the ground. They are being fought by little grass roots pockets of resistance, by concerned moms and dads and individuals who have been ravaged and victimized, and some senior citizens who still remember and long for common decency in America. These little voices are battling and scrapping over little grounds and territories against the behemoth, multi billion dollar porn industry that is literally steamrolling across the culture and in its path cutting down families and harming our children and destroying what is left of our collective innocence. And some people smile. They look at that, they acknowledge it, and they say, "So be it. It's all in the name of free speech." My answer to the big question tonight, and again the central question is should government regulate adult pornography to prevent exposure to minors? Well, my answer may come as no surprise to you. It's a resounding yes. It simply has to be yes. And there are reasons for that.

It is and must be the duty of any civilized society to protect children from destructive material. To us it's unconscionable sometimes that anyone would argue the counter to that position and yet they do. I think most reasonable people today, including the courts, including the leading feminists, behavioral scientists, criminologists, and others now widely accept and acknowledge that pornography has harmful effects upon society and certainly upon individuals that are involved. The data certainly supports that finding. If something is proven to be destructive, it's logical, we think and we argue, for the government to restrict it as much as it is able under the law. Yet some stalwarts and ideologues will still try to twist the meaning of the First Amendment and pretend that it was somehow intended to protect even the most vile and toxic materials imaginable, no matter the effect on children and the most vulnerable and helpless among us.

It seems to me to analyze pornography's effects we have to get our definitions down. I appreciate what Allan did here in the beginning defining the terms. As you may have noted in the recommended reading, the word pornography comes from the Greek word porno and graphia. And it literally means, in translation, "depiction of the activity of whores." The federal government has described the term more specifically, as Allan has mentioned, as

"material that is sexually explicit and intended primarily for the purpose of sexual arousal." In 1986, there was an Attorney General's Commission on Pornography and that's the definition that they all agreed upon. Asked to define pornography one time, the late Supreme Court Justice Potter Stuart said, "I know it when I see it." You often hear people refer to that.

Now, obscenity, of course, is a legal term. It was also defined by the U.S. Supreme Court in 1973, in the case of Miller vs. California. Many of you are probably familiar with that. For something to be found obscene and, therefore, not protected by the First Amendment, a judge or a jury representing a cross-section of the community has to determine if the material meets potentially three criteria. Number one, taken as a whole, does it appeal to the prurient interests in sex, something that's sick or morbid or shameful or lascivious? Number two, does it depict sexual content in a patently offensive manner? In other words, does it go beyond contemporary community standards with regard to depiction of sexual content or activity? Number three, taken as a whole, does it lack serious literary, artistic, political, and scientific value? That's our legal definition of obscenity. That's what the courts look to define and recognize it. Now, the material has to meet all three tests before it can be found obscene in the eyes of the law and its distribution prohibited. And what our generation sometimes calls hard core porn is surely synonymous with obscenity in accordance with what the courts believe about it.

Now, here is the thing that might strike some people as surprising, but porn peddlers actually get a presumption of constitutionality on what they are going to sell or distribute or be involved in. They get a presumption because the law assumes and presumes that what they are selling may be sexually explicit, but it may not quite descend to the level of obscenity. So that's regarded, of course, as protected speech.

Now, I do a lot of work in this arena. Over the past several years I have helped scores of cities to draft and enact and defend in court when challenged what is often referred to as content neutral time, place, and manner restrictions on this so-called protected free speech. Sexually oriented businesses—and this is a very unfortunate acronym but it's a legal term of art, believe it or not—sexually oriented businesses are called SOB's—seriously—in the area. Now, it's really unfortunate for me, because I'm introduced to the church lady groups as the SOB lawyer, seriously, and it takes some explaining to do in that I'm actually on their side. But so be it. That's what it is. But the courts have consistently over the last few decades held that municipalities have the right within their police power, they can lawfully regulate that kind of protected speech. Why is that? Because the courts and everyone recognize that the sale and proliferation of that kind of material, even if you call it soft core porn, for example, can cause great harm to the surrounding community.

Countless studies prove that SOB's and the harm they bring to the community cause dramatic increases in things like crimes of rape, sexual assault, molestation, drug abuse, prostitution, indecent exposure, disturbance of the peace, increases in the spread of sexually transmitted diseases, levels of promiscuity, and a decline of community standards and property values. All of that is relevant, obviously, in the protection of children.

In acknowledging that overwhelming evidence, the U.S. Supreme Court has confirmed that it's constitutional for municipalities to strictly regulate the licensing and zoning and the activities of these businesses and their material

so long as the restrictions are protective and they are not based upon the government's disagreement or disapproval of the message that's conveyed, then they are consistent with the First Amendment. We certainly are glad for that.

Now, the increases in crime and decreases in property values are certainly not the only concerns by far. The scope and limited time of our debate tonight does not allow us to go into detail about the harmful effects that this material has upon adults, but we certainly note in criminal case data and field studies in clinical psychology, experimental laboratory type studies and tests, that pornography is a major contributor and facilitator in the development of the sexual addiction and depravity, such as child molestation, and exhibitionism, and voyeurism, sadomasochism, fetishism, and rape and all the other perversions. And yet so called soft porn, we know it's harmful. It can be a gateway to harder material and the societal ills that it brings, and yet it's protected. Some people say there should be no restriction on it whatsoever. Pornography can lead to all kinds of problems for the people who are involved. It certainly leads to many problems for young people. Young men, for example, men of dating age, they get involved in this and they become more interested in sex than developing normal, healthy relationships. We've got a growing percentage of young men, for example, who are getting hooked on porn. For many of them, their lust becomes insatiable and it becomes a real problem growing into adulthood. You heard the statistics. The largest consumer group for hard core pornography on the Internet is 12- to 17-year-olds. That statistic is acknowledged by everyone universally. But even with all that empirical data aside, we have to recognize that all of us who are conscientious citizens, we have to be in favor of the government using some kind of reasonable measure to limit this in a reasonable way. We have a legitimate crisis on our hands.

Here is a sampling of headlines that I pulled from the internet just in the past few weeks. Look at this. February 5th, USA Today, largest newspaper in the country, headline reads, "Study Says Rising Number of Teens Exposed to Online Porn." A journal called "Pediatrics" released a study the day before that said 42 percent of internet users ages ten to 17 have seen online porn recently. Most of them accidentally stumbled upon it. I referenced the figure a moment ago. Now, one of the pediatricians, Michael Wasserman, said, "It's beyond the Wild West out there. It's really taken away the age of innocence." That has impact to me, as a father of three little kids.

February 25th, a couple weeks ago, "Science Daily" headline reads, "Study shows one in three boys heavy porn users." The average teenager is exposed to nearly 14,000 sexual images a year. The American teenager is the most sexually active teen in all of the industrialized nations. American teenagers lead the entire world in unwanted pregnancies, abortions, and STDs. Sixty-five percent of young people have sex before finishing high school. A study reported to the federal government several years ago by Dr. James Bryant reported two-thirds of high school age males and 40 percent of the females reported wanting to try out some of the X rated behaviors they witnessed in these porn flicks. And 31 percent of the males and 18 percent of the females admitted to actually doing some of those things that they had seen in the pornography and they did it within just a few days after their exposure to it.

In a 1992 study conducted by the Los Angeles Police Department they found that in 60 percent of child molestation cases referred to them over a 10-year period, adult or child pornography was used to lower the inhibitions of the children molested in order to incite or sexually arouse the perpetrator of the abused. In another study of 43 pedophiles, child porn was found used in every

one of the cases investigated. The officers reported the abusers were repeatedly saying the same thing. They were saying, "I used this stuff to stimulate the child to break down his inhibitions."

Now, some people would say, "Look, it's an obscenity problem. You have a law, federal and state law, 40 states proscribe obscenity laws. Why don't you just enforce those laws?" Well, the problem is the enforcement is sporadic at best. Frankly, many district attorneys will just look you in the eye and say, "I've got too many commitments, too many priorities. We can't get around to this. It's not that pressing." They don't recognize all the secondary effects it's bringing to the community. And the push for regulation is not about censorship. Don't buy into that argument. I would never stand before you and say I'm in favor of censorship. I'm not. We don't support that. In the law we call that a prior restraint. That would mean the government would have to give you its approval or disapproval before you see it. We are not in favor of that at all. What we are in favor of is reasonable and necessary time, place, and manner restrictions on this kind of speech and that would be aimed at reducing the disastrous effects.

All of us are the victims of the pornography surge. My friend over at the Morality in Media organization summarized it this way. Who are the victims of pornography? This is their list. "Boys and girls who have lost their innocence by viewing pornography at a young age, wives of men pre-occupied with pornography and the sex industry, women who are being treated with disrespect and sexually abused as a result, young women trapped in an industry that exploits them and uses them as mere sex objects, children used for the sexual satisfaction of fathers and stepfathers and the men they trusted, young men exposed to a false image of sexuality, men who just can't stop using pornography or stimulating themselves while recalling those images in their mind, a society that has become desensitized and dependent upon sex-charged images, and neighbors that have increased crime and decreased property values because of the proliferation of pornography in their community. These people have real faces." I think they were right about that and to us that means something.

I am running short on time. I wanted to close with this in my opening. Earlier I mentioned that under the Reagan administration back in 1986, there was a landmark report that was published by the bipartisan Attorney General's Commission on Pornography. The Commission conducted an extensive year-long study and they released more than a thousand page report detailing the harms of pornography in America. The Commission's recommendations were adopted by Congress and in 22 states, widely recognized, and if you do any research in this area you will see it referenced today. One of the commissioners concluded with this comment at the preface of the report. You can find it online. He said this, "I will never forget a particular set of photographs shown to us at our first hearing in Washington, D.C. It focused on a cute nine-year-old boy who had fallen into the hands of a molester. In the first picture the blond lad was fully clothed and smiling at the camera, but in the second he was nude, dead, and had a butcher knife protruding from his chest. I served for 14 years as a member of a medical school faculty and thought I had seen it all, but my knees buckled and tears came to my eyes as these and hundreds of other photographs of children were presented showing pitiful boys and girls with their rectums enlarged to accommodate adult males and their vaginas penetrated with pencils, toothbrushes, and guns. Perhaps the reader can understand my anger and disbelief when a representative for the American Civil Liberties Union testified a few minutes later. He advocated the free exchange of pornography, all pornography,

in the marketplace. And he was promptly asked about this material depicting children such as those we had seen. And this man said with a straight face that it is the ACLU's position that child pornography should not be produced, but once it is in existence, there should be no restriction on its sale and distribution. In other words, the photographic record of a child molestation and abuse should be a legal source for profit for those who wish to reproduce, sell, grant, and distribute it for the world to see. And he said that that was the intent of the First Amendment of the Constitution."

Child pornography is not on the table tonight. It is not part of the debate. But in our minds all of this is wrapped up together. I think that official position speaks volumes about the chasm that exists between the two sides of this debate.

My time is up. We will have time for questions in a few moments. Thank you.

MR. SOBEL: Thank you, Mr. Johnson. I will now call upon Professor Nadine Strossen.

Nadine Strossen

Thank you so much. It's really a delight to be here with all of you celebrating the first day of Spring. So happy birthday to Spring to all of us. I would like to thank Allan Sobel and everybody else here for your outstanding efforts in planning this program. I am really honored to participate in this important forum named after such a distinguished jurist as Arlin Adams. I have very positive memories of my last visit here four years ago to address another free speech issue.

While everyone supports freedom of speech in general, we strongly disagree about exactly what that freedom means when it applies to particular controversial expression, including the sexual expression or pornography that is tonight's topic. Recognizing that such disagreements themselves promote free speech, Judge Adams has celebrated the very type of robust exchange that we are having tonight. As he wrote in a 1984 decision, "Spirited exchanges are likely to arise over virtually any First Amendment issue and the very existence of those exchanges demonstrates the vitality and value of the Amendment's guarantee". Given Judge Adams' endorsement of spirited exchanges about First Amendment issues, I'm sure he will be glad to hear that I strongly disagree with just about everything that Mike said, but very respectfully and cordially in the spirit of this dialogue. Unfortunately, I don't have time now to respond to everything Mike said. I have my little timing device here. I do not want to go over time. But I do urge the audience to use your free speech rights during the discussion period to ask questions or make comments about any of the points that Mike has made that might be of special concern to you.

Far more important than my disagreement with Mike's approach is the fact that it has been consistently rejected by a wide array of experts, ranging from organizations that are dedicated to protecting children and families, to the most recent government commissions on point, to the United States Supreme Court, and also Judge Adams' court, the Federal Appellate Court for the Third Circuit, as well as other courts.¹

In honor of Judge Adams, let me start with the strong judicial rejection of tonight's proposition that Mike has so ably and spiritedly defended. Courts have strongly protected adult sexual expression, or pornography, in all media. And I do have to use this occasion to stress a point that I think you might be a little bit confused about due to the last bit of Mike's opening statement. All judges and all civil libertarians have supported outlawing child pornography. That is material, as Al explained, that is produced by using actual children. Such exploitation of children's bodies may and should be outlawed, just as we outlaw all forms of child labor.

¹ The very day after this presentation, the U.S. District Court for the Eastern District of Pennsylvania issued yet another such ruling, striking down a federal law that criminalized sexually explicit online material that is deemed "harmful to minors," the Child Online Protection Act. *American Civil Liberties Union v. Gonzales*, 2007 WL 861120 (E.D.Pa.Mar. 22, 2007) (holding that the law is unduly vague and overbroad, violating the First Amendment's free speech guarantee).

In contrast, though, our discussion tonight, as Al also explained, focuses on sexual materials that are produced with consenting adults to be distributed to consenting adults. And the harm that some people believe that such adult material causes to minors is harm of a very different type, or alleged harm of a very different type. Specifically, some people, including Mike, believe that if minors view this material, it will harm their minds or their psyche. Social scientists have long fiercely debated whether, indeed, any viewer of any age suffers noticeable harm from seeing any controversial or upsetting expression, including sexual expression. There certainly is no consensus about this.

Indeed, the uncertainty about whether children are adversely affected by sexual expression was stressed by the researchers who conducted the most recent study about children's access to online pornography, the very study that Mike so strongly stressed, which was recently published in the Pediatrics journal compiled by researchers at the University of New Hampshire. The session's lead author, Professor Janis Wolak, noted the overreaction—that's her word, "overreaction"—to what the study actually showed. Here are some of her cautionary comments. "It's possible for people to overreact to children's exposure to pornography. It's important to give youth credit. Most kids have a lot of common sense. Most of the kids in our study were not particularly disturbed by the sexual images they saw. It's premature to say that pornography is harmful to them. We really don't know."

In any event, the Supreme Court has consistently protected many kinds of speech that many people consider upsetting, disturbing, or at least potentially harmful to various viewers, including children. Examples range from hate speech, to advocacy of crime or violence, to graphic violence and sexual images. In striking down government controls on all such expression the Supreme Court essentially invoked an old saying, "The cure is worse than the disease." In other words, the alleged cure of government censorship or regulation is worse than the alleged disease of the potential speech-induced harm. Instead of government expression, the court has championed two time-honored responses to any potentially negative expression; ignore it or counter it with positive expression. These strategies are not only more consistent with individual freedom, but they are also more effective than government control could ever be. After all, who would you rather trust to protect children's minds and psyches, their own parents or the government? In short, resisting government regulation of sexual expression is as good for the well-being of children and their families as it is for adult freedom.

To underscore this point, when Congress passed its first cyber censorship law for the asserted purpose of shielding children from so-called cyber pornography, a group of concerned parents formed an organization called Families Against Internet Censorship. Now, 11 years later, that fine group is still collaborating with the ACLU to oppose government suppression of sexual expression. Families Against Internet Censorship maintain that "an uncensored Internet is pro family because it places the responsibility for monitoring Internet access where it belongs, with us, the parents". This very same conclusion has been reached by two expert government commissions that have recently examined how best to shield children from inappropriate sexual material online. One panel was authorized by Congress and the other by the prestigious National Research Council, or NRC. Both groups were very diverse, including leading antipornography activists, as well as Internet experts. That NRC panel was chaired by one of the most prominent leaders from right here in

Pennsylvania, your former Republican governor, Richard Thornburgh, who was also U.S. Attorney General under President Reagan and Bush I. All members of both commissions rejected the proposition that we are discussing tonight, that adult pornography should be regulated to prevent minors from accessing it on the Internet. Instead, both groups most strongly recommended—and now I am quoting from the NRC report chaired by Dick Thornburgh—“social and educational strategies that teach children to make wise choices about using the Internet.” So we don’t have to choose between free speech and children’s well-being, or between individual rights and family rights. All of these important concerns are mutually reinforcing and they all weigh against government regulation. In case after case throughout the last half century the Supreme Court has consistently held that the government may not censor sexual expression that adults have constitutional rights to produce and receive for the sake of shielding minors from it. As the Supreme Court has put it, “the level of discourse reaching a mailbox cannot be limited to that which would be suitable for a sandbox.” Those many cases have been supported by justices from across the Court’s ideological spectrum, including such staunch conservatives as Anthony Kennedy and Clarence Thomas. Along with many other classic conservatives, they seek to minimize government power over our private lives, including the freedom of all mature individuals to make our own decisions about what expression to view or not to view in the privacy of our own homes; also, the freedom of parents to make their own decisions about what expression their own young children will see or will not see.

Likewise, Judge Adams’ own court, the Third Circuit Court of Appeals, has repeatedly upheld the ACLU’s anticensorship stand in all three major rulings it has issued recently, specifically concerning efforts to shield minors from sexual expression on the Internet. The Supreme Court affirmed all of these rulings. Both courts have agreed with the ACLU that these cyber censorship laws violate adult free speech rights with no countervailing gains for minors’ safety or welfare. These constitutional concerns closely track the concern that animate the family anti-censorship group that I mentioned earlier. I would like to share with you a portion of a recent affidavit by the cofounder of this group, Barry Fagin, who is a computer science professor at the U.S. Air Force Academy. For lack of time, I am going to read only four of the many reasons why this parents’ group opposes tonight’s proposition: First, “Government regulations create a false sense of security. No government regulation can prevent objectionable material from showing up on your computer, so it leads to a dangerous diminution of parental responsibility. Frankly, we are surprised to see supposedly pro family conservatives embrace government regulation.” Second, “Market alternatives give parents much greater control over their child’s Internet experience than government regulations ever can. These include filtering software, family friendly ISPs, and monitoring programs.” Third, “Raising a child is a nuanced process. What is inappropriate for a child of three may be desirable for a child of 13 and what is inappropriate for a child of 13 may be fine for one of 17. Different children mature differently. Different parents raise children differently. Only private, decentralized policy solutions are compatible with this reality.” Fourth, the last reason I’ll cite, “The tools already exist to track and punish child molesters and sexual predators, and to prevent minors from viewing hard core pornography by requiring a credit card. We should focus on enforcing the laws that already criminalize sexual abuse and solicitation of minors and not divert resources to prosecuting pornography that is made with and for adults.”

Now, in my brief remaining time let me explain the major reason why any measure regulating sexual expression for the sake of shielding children is

doomed to fail on all counts, violating the rights and interests of adults, children, and families alike. That central reason is the fact that in our wonderfully diverse society we all have widely divergent ideas, values, and taste, as is evident in tonight's dialogue. Those divergent values certainly and especially extend to matters about sexual expression, what we find positive, what we find negative for ourselves and for our children. Therefore, we can't responsibly delegate these inherently personal choices to anyone else, neither government officials nor our fellow citizens.

I would like to describe a cartoon that well captures this reality. It shows three people in an art museum looking at a classic nude female torso, a fragment of ancient sculpture minus limbs. Each viewer's reaction is shown in an air bubble. The first one thinks, "Art"; the second one thinks, "Smut"; and the third one thinks, "An insult to amputees." So in such an inescapably subjective, value-laden area, it makes it inherently impossible to come up with clear guidelines. In the last half century the Supreme Court has tried, but failed to come up with objective standards for defining the standard for constitutionally unprotected obscenity. And Mike quoted the definition that is best known to all of us. Potter Stewart was being very serious when he candidly admitted, "I cannot define it, but I know it when I see it."

The problem is that each and every judge, and each and every one of us, sees a different "it". We individuals even have different perspectives about whether any given expression has any sexual content at all. That is captured by the old joke about the man who sees every single ink blot that his psychiatrist shows him as wildly erotic. When the psychiatrist says to him, "Sir, you are obsessed with sex," the man answers, "What do you mean, I'm obsessed? You are the one who keeps showing me all these dirty pictures." The problem with such an irreducibly vague concept is that enforcing officials will necessarily exercise their unfettered discretion according to their own subjective taste or those of politically powerful community members. In consequence, the enforcement patterns are arbitrary at best; discriminatory at worse. At best which particular expression will be deemed off limits will be completely unpredictable, so people will self-censor, not engaging in expression that will be deemed unacceptable by the powers that be. I can illustrate the inevitably arbitrary, unpredictable nature of sexual censorship for the intended purpose of shielding minors by citing some recent examples of actions by the Federal Communications Commission, or FCC. These examples are directly relevant to tonight's topic since the express purpose of the FCC's rules is to shield minors from indecent sexual expression on broadcast TV or radio. These regulations are permitted because of some very old, much criticized Supreme Court decisions specifically about broadcast expression which the Court has not revisited for decades. There is now a strong movement to curb government censorial power of sexual expression over the broadcast media with support from across the ideological spectrum, but Mike is advocating a movement in exactly the opposite direction, urging that we extend the power that the FCC now has over broadcast to other media as well.

Would that really be good for children, not to mention adults? Just consider some of the rulings that the FCC issued in one single order last year about various broadcasts. All of these rulings were enforcing the FCC's conclusion that it can prevent and punish as indecent even the single passing use of a four-letter word, what it delicately calls "an isolated expletive" or "a fleeting expletive." However, underscoring the unavoidable subjectivity in this area, the FCC has stressed that it doesn't always punish these words because it has to exercise discretion to take into account the entire context. So in one single order one year ago, the FCC—forgive me; I have to

quote the words here—the FCC held that “bull shit” was indecent and illegal, but that “dick” and “dickhead” were not. It held that “fuck ‘em” was indecent, but that “up yours” and “kiss my ass” were not. It held that Blues musicians’ uses of “fuck” and “shit” in live interviews in Martin Scorsese’s documentary film about these musicians in which they were doing live interviews, held that those words were indecent, but it held that actors’ uses of the very same words in the fictional film “Saving Private Ryan” were not indecent.

In response to these inevitably erratic rulings, no wonder we have seen so much self-censorship in broadcasting recently, including material that most parents would probably consider valuable at least for their older children. For example, a PBS station cancelled a historical documentary about Marie Antoinette because it contained sexually suggestive drawings. Now, I do not mean to single out the FCC. To the contrary. My point is these kinds of arbitrary rulings will necessarily be issued by any government official enforcing any restriction on any sexual expression, given the inevitable vagueness of any regulations in this inherently subjective area. So rather than expanding this kind of government power, as Mike urges, we should do exactly the opposite.

I am coming to the end of my time and throughout my remarks I’ve been stressing the diverse judges and other allies who support the ACLU anticensorship position as being better for adults, children, and families alike. I would like to end by noting one other example of these diverse opponents of Mike’s approach. Since he is speaking on behalf of a Christian organization, I would like to note that other Christian groups and individuals have strongly disagreed with his position and strongly supported the ACLU’s. One example is a member of the Christian Coalition, who heard me on TV opposing Internet censorship that was advocated in order to shield children from sexual expression. She wrote me as follows and I am going to end with her words. “Dear Nadine Strossen, I am a mother of two, a member of the Christian Coalition, a pro lifer. I have very rarely agreed with anything the ACLU said until now. I saw you on TV. You knew what you were talking about. I don’t like pornographic material or some other speech on the net, but the First Amendment says that it can be there just as much as I can. The Internet is like cable. If you don’t want it, don’t subscribe to it. If you do but don’t want the kids to see all of it, then get free filtering programs. It is my responsibility to take care of my kids; not the government. I know this is a very strange letter to get and even stranger to write, knowing our stands on other issues, but I wanted you to know that not all Christians want to be Big Brother.” She then ends by quoting a famous passage from the philosopher Voltaire, which is also one of my favorites. “I may not agree with what you say, but I will defend to the death your right to say it.”

Thank you very much.

Question and Answer

MR. SOBEL: Thank you, Professor Strossen. If you have a question, please find your way over to one of the aisle mics. After I ask my questions and the two speakers are each allowed the opportunity to answer them, we will get to your questions. The one thing I would ask is that you tell us who you are before you ask the question.

Mr. Johnson, let me start with you, I have often heard people who are in favor of regulating adult pornography say that among other reasons to regulate adult pornography is the fact that it causes assaults against women, and that a certain number of children who would be exposed to adult pornography suffer from depression and other mental health problems as a result of that exposure. My question is whether those claims, to your understanding, are based on intuition or whether there are any scientific studies with control groups that make findings of that nature.

MICHAEL JOHNSON: It's a fair question. As I mentioned, one of the things I do is assist municipalities in regulating SOBs on a local level. One of the things that the courts look at when they are going to assess the constitutionality or legality of what one of these cities has done is they want to find out what the legislative intent was. In other words, are they proscribing these things, are they putting these protections in place because they disagree with the message or the speech that's being expressed in the SOB? And so we are very careful and cautious, because the courts have the right to do that, because we know the intent here is to reduce the negative secondary effects that these businesses would certainly bring to the community. How can we say that? Well, I have a stack about this high (indicating), Allan, of land use studies that go back to the late sixties and the early seventies. As one example in this arena, we are talking about time, place, and manner restrictions. Land use studies are universally true. They show in towns such as the City of Detroit, for example, the Supreme Court famously upheld the City of Detroit's efforts to regulate SOBs in its city limits. Why did they do that? There is a case back in the late seventies, the City of Detroit did an empirical study. They said, we looked at, we compared the crime rates, the rates of sexual abuse, molestation rates and the rest in areas where SOBs were concentrated, where pornography was being proliferated, and in other parts of the city. And they showed in some of those examples four and 500 percent increases in the incidences of those crimes in the locations where pornography was centered. That same finding has been echoed repeatedly time after time after time in cities as large as Los Angeles and as small as Ascension Parish, Louisiana. It's a universal truth that they bring negative harm to the community and to children in the neighborhood. Nadine said something that is related to what you asked. That is that, gee, do kids really get harmed by viewing this vile and disgusting stuff? Well, I mean, come on. Part of the reason there is not mounds and mounds of evidence on that is because there are serious ethical problems with doing any experiment. Who is going to subject their kids to the experiment? Here is a control group. You kids look at sadomasochistic rape for a few months and see what effect it has on you. I mean, obviously no one is going to do those studies. But this study that she and I both referenced from the February 5th, "USA Today" newspaper, "Rising Number of Kids Exposed to Online Porn." The University of Chicago psychiatrist, Sharon Hirsch, said, "Exposure to online pornography could lead kids to become sexually active too soon." I think the answer to that is to say, "Duh." "And puts them at risk for being victimized by sexual predators who like to prey on very young

children. " We all know that's true. We don't need empirical studies to show that. We have anecdotal evidence, certainly, and specific cases to point to. "So the exposure could also alter perception of what constitutes a healthy sexual relationship," said Janis Wolak, the study's leading author and researcher at the University of New Hampshire's Crime Against Children Research Center. I think they know a little bit about that. So I'm referring to what they said as a short answer to a big question.

MS. STROSSEN: As I understood, your question was about the dispute among social scientists about alleged adverse impact on adults, as well as children, from viewing sexually oriented material or any material. And the fact remains that the hypotheses are there. What Dr. Wolak said, if you listen to exactly her statement that Michael read to you, was it could. It might. We do not know. And the reason we do not know has nothing to do with the ethical problems about studying children. This stuff has been studied with respect to adults forever. There has been mega study upon mega study that has been done. It's a rather insulting view of human beings to believe that somehow we are without the moral capability or moral autonomy to make distinctions between negative things that we see and actions that we do or do not condone in our actual lives. You know, Mike cited anecdotes and I could cite counter anecdotes. That's not a scientific approach. He cited the Meese Pornography Commission. And while he said that was strongly accepted, the truth is exactly opposite. That was an extremely controversial report for many reasons. Two commissioners, two very respected members, dissented from it. They criticized the method as well as the conclusions. All of the social scientists whose research was cited by that report disputed it and said their conclusions had been distorted and misstated. The bottom line remains this is why I am not resting my case on social science any more than the Supreme Court and the Third Circuit Court have rested their holdings on social science. The bottom line holding has to do with what we believe we are responsible for as individual, mature adults and as individual, mature parents, that we are responsible ourselves for dealing with disturbing images that we see every day not only on the printed page, not only on the screen, but in real life. The reason why organizations that are devoted to kids' safety, such as the National Center for Missing and Exploited Children, oppose censorship, do not support censorship, the reason why organizations that are devoted to kids' minds oppose censorship, such as the American Library Association, is that they believe that the only way to prepare kids for life is to prepare them to deal with the critical, challenging, disturbing, provocative material that they are going to be seeing and that we—we cannot put them in a bubble and say, You are never going to see anything that will disturb you. Some people will be disturbed by sexual images. Some will be disturbed by violent images. I am in that category. Some are disturbed by discriminatory images. Some are disturbed by antireligious images. We all have very different values. But the answer to speech that some of us may find harmful to ourselves or to our children is not to get rid of it, not to regulate it. If we went down that road, there would be no free speech at all. And let me just say as an example—I have written almost a whole chapter about it in my book—the single word that has been most often blamed by individuals and by groups throughout history and around the world for spurring them to carry out heinous, violent acts, including rape and murder, is the Bible. They said, "The Bible made me do it." Now, do we then ban the Bible because some aberrant individuals—well, Mike relied on the anecdote, because some aberrant individuals say that that is what caused them to engage in antisocial acts?

MR. SOBEL: I am glad you have given me somewhat of a head start on my next question, because I had heard you say during your remarks that parents could secure a filter if they

wanted to prevent their children from having access to pornography on the home computer. And now you are talking about how it may be better for a child's development to expose the child to this type of expression, talk about it, and make it a learning experience. Typically when I hear those who advocate freedom of speech talk about why certain kinds of speech shouldn't be regulated, one of the primary arguments is that the best way to address unwanted or undesirable speech is with more speech, to bring everything out and then make some kind of a value judgment about what has merit or what doesn't have merit. Is that your position with regard to adult pornography potentially being exposed to children or is your position that there should be filters and that it should be left to those who are responsible for children to make sure that they are denied access rather than government?

MS. STROSSEN: My point is, Allan, that there is no one size fits all children, one size fits all parents, one size fits all families' solution. This is exactly why that group I quoted, Families Against Internet Censorship, opposes government intervention, is because of the individualized values of the family and, more importantly, the individualized state of each child. I mean, it's going to depend on a whole host of factors, including the age of child, the particular sensitivity of the child. Let me give you just one example, because I was thinking when—we can all use hideous general adjectives to describe certain scenes that sound horrific abstractly and yet for every single such description I can think of an example where it would be appropriate for an older minor to see in a certain setting. Violence against children, sexual violence against children, brutality, hatred, sexuality, nudity, terrible language, every vile thing that you can think of was in the movie called Schindler's List about the Holocaust concentration camps, Germany. My father is a Holocaust survivor. It's an incredibly disturbing film. A member of Congress wanted to fine a television network for showing that movie in prime time. You know, he had good grounds. If look at it, you know, it's got violence, it's got sex, it's got all these horrible things. I think many parents would say for many children it's not appropriate for them to see that below a certain age, but at some point I can see enormous value that a particular parent might decide that my child is mature enough, even though the minor has not attained the age of majority. I think for many kids below the age of majority that is a very important film to see, but with the right preparation, the right support, the right background. So it all is in context. There cannot be any right by the rules. I am saying government regulation, government censorship is too clumsy a tool to deal with these sensitive, nuanced issues.

MR. SOBEL: Mike, you have a chance to weigh in on this.

MR. JOHNSON: Wow. Thank you. I'm still hung up on the Bible comment and where it fits into our debate about pornography. At any rate, it's very interesting to me that the ACLU tries to put the onus on parents. It clearly is the parents' responsibility. I am a pro family guy. I think that it is the parents' right and their duty. You see, the problem with what she is advocating, she is not telling you the other side of the story. See, the ACLU maintains that the burden of preventing exposure of children to offensive and pornographic material rests with the parent. Okay. Fine. But the problem is the ACLU opposes practically every avenue parents have to limit their children's exposure to pornography. Here are some examples. They oppose reasonable time, place, and manner regulation of pornography. They oppose limits on the sale of hard core pornography to anyone at any time. They oppose restrictions on cable television access that she referenced. They oppose laws restricting the sale of indecent material to minors because, of course, they might be benefiting by some of this watching the sadomasochistic activity, I guess. In addition, they oppose

Internet filters in public libraries, which would be forcing online pornographers to simply provide only access to adults through their websites, they oppose that. You see, the problem with what they are saying is it's a cat and mouse game. They are hiding the ball. "It's the parents' job." But every time we try to get a reasonable regulation of time, place, and manner restriction to give parents that ability for me, as a dad, to protect my little kids, then they come in and file a lawsuit to challenge the law. The problem is the basis and premise on which she brings the argument is more relativism and it's the idea that there is no moral absolute. There is no right or wrong. She ably described it, "all of us might define it differently." There is not line that can be drawn. I am suggesting to you that that is not the case. I will tell you one moral absolute that I think no one in the room would disagree. It's wrong to slap an infant. If a little child crawled up on the stage and I smack him, you are going to think that's wrong, aren't you? I am, too. That's a moral absolute. See, the problem is if Nadine agrees with that as a moral absolute, then her argument fades away. Because if there is a moral absolute, then that must mean there are absolute rights and wrongs, and that we can draw the line somewhere. What I am saying is we need to draw the line where parents have the ability to protect their children. I get a little emotional about this because I'm a daddy. Look, I think all of America agrees with this. Here is the latest poll July 20th, 2006, news release from Morality in Media. Almost three in four, 73 percent of U.S. adults, think that viewing pornography websites and videos is morally unacceptable, according to a survey commissioned by Morality in Media. It has all the data there to tell you it's a valid study. Seventy-three percent of American adults know in their being, in their conscience, that this is wrong. So I reject everything that she says on that basis.

MS. STROSSEN: Well, I'm in very good company, because with one exception, every single ruling that Mike described—and I love the power he ascribes to the ACLU. He seems to be our biggest fan in some sense. Every single time that he says ACLU opposes X, with one sole exception he was describing something that the United States Supreme Court has struck down as unconstitutional. In talking about shifting grounds, Mike said that parental—he was supporting parental responsibility, but then he says he needs the government to regulate, to help parents exercise responsibility. So I think we are just engaging in a little bit of a language problem here. To me, government regulation is not parental responsibility. It is ousting parental responsibility. Interestingly enough, every one of these cases that we won in the Supreme Court with the support of conservative justices, including religiously devout people, openly religiously devout, such as Clarence Thomas and Anthony Kennedy, we have won not only on First Amendment rights of adults, but also on a long line of decisions that goes back to the early 20th century grounded in the due process clause that the Court has said that parents have the fundamental constitutional right to make basic decisions, moral decisions, and value decisions about the education and upbringing of their children and that right of the parents is equally violated by government regulations.

MR. SOBEL: Okay. Let's go to the three folks who are in the upper area there, and then we will take the two gentlemen down here in the lower area.

QUESTION ONE: Tyler Lane Carrick, junior, political science-music student. You sort of touched on this a little bit—this is to Mr. Johnson—but I would like you to, if you can, maybe clarify this a little bit for me. You talked about sort of some of the ways in which you are talking about regulation, but I think there's something I'm a little confused on. When we talk about

regulating pornography, what are we like really talking about? What are some of the measures which you would support in this battle for regulations? Are we talking outright censorship, removing all pornography from the internet or is it less than that?

MR. JOHNSON: It's less than that. That's why I said the word censorship is a big red herring in the debate. It's very often leveled against the conservatives or pro traditional family values folks. I know. I am a First Amendment lawyer. I defend religious liberties in the courts. Three hundred sixty-five days a year we're out doing that. I don't want censorship. Censorship can be used both ways. That is what free speech is all about. We value that. What I am saying is that reasonable, content neutral, not based upon the government's disagreement with the speech, content neutral time, place, and manner restrictions on some of these things are not only reasonable and constitutional, but necessary to protect the innocence of the next generation. What am I talking about? Well, an example is the Child Online Protection Act. Congress passed that by an overwhelming margin to protect children. It was a reasonable measure to protect children from what they might stumble on in the internet. Internet sexual predators are all out looking for our kids and we know that. The ACLU saw fit to file a lawsuit to challenge that and the Court struck it down. Most of the opinions are five to four. Don't be confused by that. It's not like nine to zero they're striking it down. There is a lot of disagreement on these issues and some very vigorous debate that goes on behind the scenes and in the written opinions. But five to four, they struck it down. The thing about that law was it was not doing anything for adults, not restricting in any way adults' rights to access pornography online. The bottom line, no one was restricting the rights for consenting adults to view online porn if they wanted to see it. It was a common sense control to protect children from harmful material and in the same way we are talking about restrictions at the local level.

MR. SOBEL: Let me exercise some discretion here as the moderator. I am going to limit the answer that each speaker gives to one minute--

MR. JOHNSON: Sorry.

MR. SOBEL: -- to accommodate all those people who have questions.

MS. STROSSEN: Well, here you see the problem with terminology that was raised by question. To call the Child Online Protection Act content neutral when it singles out, according to the District Court in Philadelphia twice, the Third Circuit Court of Appeals twice, the United States Supreme Court twice--we just had a third trial--to call that content neutral when all of those courts said it is written so broadly and so sweepingly that it essentially endangered any expression online with any sexual content including our clients, which, by the way, were not these multi bazillion dollar commercial pornographers, we talked about that. Our clients included Planned Parenthood of America, Human Rights Watch, Stop Prisoner Rape, Philadelphia Gay News, the American Association of University Women. Why? Because their websites contained some sexual material and the courts agreed with us that the law was written so broadly it endangered this valuable material. If that's not censorship, I don't know what it is.

MR. SOBEL: Next. Next question.

QUESTION TWO: You mentioned that the ACLU is opposed to child pornography, if I heard you correctly. What is your position with respect to virtual child pornography?

MS. STROSSEN: Exactly the same as the United States Supreme Court in an opinion written by Anthony Kennedy. It's not child pornography as we define it. It is not—real children are not used. Young looking adults are used. Computer techniques are used. The Supreme Court said it goes beyond the rationale for not protecting child pornography, which is protecting actual kids. Indeed, the Supreme Court said if these arguments that we hear about there being such a market for images of children are true, then this would actually be beneficial to minors, because real minors are not being abused in order to create this material. And the Court also said that the law was written so broadly that it would endanger Romeo and Juliet and several popular films that escape me, but I am sure all of you have seen, that involve scenes that look as if teenagers were having sex, but in fact, they were actual adults. They just looked like they were teenagers.

MR. SOBEL: Mike.

MR. JOHNSON: Um, I'm not getting it. How is it beneficial to children because real kids are not used in the creation of this stuff? Somehow it's good for society because they are using young-looking adults and cartoonish-looking kids? It's all vile and disgusting! Let's be honest about it. Where do you draw the line? You draw the line on something that harms children. The problem with this, it goes back to the idea about the library filters. This is a Washington Times report, February 24th, 2007. You probably saw this. Federal authorities charged the former president of the ACLU of Virginia with receiving and possessing child pornography. The irony is, this is the same guy, Mr. Russ Tierney, who was a leading proponent in the 1990s for unrestricted access to the Internet. He argued that the Loudoun County Library Board should continue to behave responsibly and appropriately and that they should expect people to do that, and they had should have maximum unrestricted access to the valuable resources of the internet. Well, this guy was caught with child porn.

MR. SOBEL: Next question.

MS. STROSSEN: And there are a lot of Catholic priests who have engaged in abusing actual children.

MR. JOHNSON: They weren't advocating it.

MR. SOBEL: Next question.

QUESTION THREE: I am concerned about something that we heard in the general argument. First of all, moral relativism has been raised. I would certainly say moral relativism. A certain number of students and professors could certainly speak to how it's happening. However, I have an issue to what I see with your limited construction of sexuality. For instance, in your oral argument the effects pornography on adults possibly causing incidences of rape, indecent exposure, and child abuse are certainly terrible things we do not want, but that in which there is an arrest non-consenting victim with things such as sadomasochistic sex and exhibitionism, both of which I think are catalyst as a sexual behavior that engages in with couples, individuals use as a healthy

sexual behavior, it's difficult to think of them as having sadomasochistic sex. Unless you think I am defending some personal preference of mine, I am a 23-year-old virgin. I have no problem saying that. I guess what I'm saying is I don't see any basis—rather, I don't see where you are or how you are defining what is immoral in terms of sexual behavior. I would like a clearer definition of that.

MR. JOHNSON: Well, it's not really about a definition or morality per se. It's not limited to the scope of this debate. Where are we going to draw the line? Where does the government have a right? What can they regulate? Why should they regulate that? Specifically to protect children. And what I am saying, based upon the data, this 1986 Attorney General Pornography Commission opinion was maligned, of course, by the radical leftists because they didn't like some of the findings. You read it yourself. Make your own judgment about it. Don't rely on what I say about it or what she says. You can make your own judgment about it. They brought in—they had hearings in multiple cities across the nation over a year-long period. They brought in behavioral scientists, clinical psychologists. They brought in all kinds of people. Every single witness spoke to the evils and the harms of pornography. I had a book with me earlier, *The Victims of Pornography*. It's about this thick (indicating). It was a compilation of the testimony of the Commission. It was on your reading list if you got a copy of it. Not one person appeared to suggest the benefit of pornography.

MS. STROSSEN: I am surprised that Mike is advocating that you read that report, because it is so filled with photographic images, about 2,000 pages of it. So read it with care, according to Mike. You might lose your virginity as a result. The problem is and you really put your finger on the one aspect of the subjectivity that I claim and that others—many have argued is inherent and, therefore, leads to many, many dangers here, including discrimination of various minority groups. Mike gave you a three-part definition that now exists for obscenity. You may remember that one of them has to do with a prurient interest in sex, which, as he told you, the Supreme Court has defined as a morbid or shameful interest in sex as opposed to a normal and healthy interest in sex. I am not making up these terms. This is what the Supreme Court has said. So what do we do? We ask the jury or the judge to decide whether sex that—some sexual images that some people find stimulating or enjoyable are disgusting to other people and, not surprisingly, major obscenity prosecutions lately have been brought against lesbian and gay and other sexual minority images and also against rap music that is created by and appeals to racial minority males.

MR. SOBEL: Okay. We're going to take these two gentleman and the three people who have been standing by that microphone at the upper level there.

QUESTION FOUR: Good evening. My name is Michael Garren. I am from Elizabethtown, Pennsylvania, father of five children. My question is for Ms. Strossen. This is kind of a two-parter. In your presentation you analogized, I thought, the use of children in pornography and obscenity with—you analogized that with child labor. The first part of my question, you see no distinction between children being abused in the making of pornography and child labor such as a child working to make furniture in an Amish furniture shop in Lancaster County? You seem to make that comparison. Secondly, with relationship to the harm to children, whether it's virtual child pornography versus actual child pornography, law enforcement officials consistently report that child molesters and abusers, including perhaps Catholic priests, use child pornography, whether real depictions or false depictions, to soften the inhibitions of the child and say, "this is what people do," and, therefore, use

that as material to then harm children. If government cannot stand in the way of that and stop that, what purpose does government have?

MS. STROSSEN: To answer the first part of your question, Michael, the harm that is caused by using young people who are not capable of meaningful consent, you cannot use them to exploit their bodies for any purpose, precisely because they are not capable of consent. I defend the right of mature individuals to decide to earn their living in any way, whether it be making furniture or making skin flicks, if that's a truly voluntary choice by a mature individual. A child cannot make that choice. It is inherently exploitive and abusive no matter what you are forcing a child to do. The second question about virtual porn, again, let me remind you that the United States Supreme Court in an opinion written by Anthony Kennedy, conservative Republican Catholic appointed by that flaming radical Ronald Reagan, wrote lead the opinion for the Supreme Court and, as he pointed out, sexual images can be used to lure children and have been, but so have ice cream cones and lollipops, and rides in cars. The fact that something can be used for a negative end is absolutely no reason to displace responsibility for the actor of the crime from the actual adult who commits the actual crime from the actual body of the child, to displace that responsibility onto whoever produced whatever it was that was used in the process, whether it be an ice cream cone or a nude depiction.

MR. JOHNSON: And yet we are not talking about ice cream cones. I appreciate the question from a father of five. We're relating on that. The idea—I go back to the study in Los Angeles, 60 percent of the child molester cases referred to them in a 10-year period, adult or child porn to use the lower the inhibitions of children molested or to excite or sexually arouse the perpetrators of the abuse. I think the way you handled that two-part question was perfect. If the government can't do this, then what can the government do? I am a strict constructionist, small government guy, but I think the government should regulate this material. I understood the role of government to be to protect its citizenry. If you can't protect the most innocent and smallest and the most defenseless among us, then what can the government do?

QUESTION FIVE: My question is for Professor Strossen. I would like Mr. Johnson to comment. For Professor Strossen, I have a two-part question. If our First Amendment rights are derived only from human institutions, then on what basis would you object to government regulating speech? The second part of my question is, can you distinguish the difference between sexually explicit images and an ice cream cone?

MS. STROSSEN: I'll try. The first part of the question, I believe in the theory of our Constitution and, in particular, of our Declaration of Independence. It came from the enlightenment era. And that is that we do not derive our freedoms from human institutions. They are rights that we all have inherently by virtue of being born human. For those who believe in God, they see the rights as God given. For others, I would say it just springs innately from our human nature. That is stated very well not only in the Declaration of Independence, but also in the Preamble to the Constitution, which talks about one of the chief purposes of this new government being to secure the blessings of liberty to ourselves and our posterity; not to grant the blessings of liberty. We already have those. The purpose of the government is to preserve our freedom; not to take it away. The second question, in the context that I was asked the previous question, what about the fact that some very bad people have used certain materials in order to lure children into dangerous situations? Shouldn't we outlaw those materials? I am saying no. What we should do—and

this answers Mike's question, if the government can't do that, what can it do? - the government can and should enforce zealously the existing laws that make it a crime to abuse a child, to exploit a child, to attempt to exploit or abuse a child no matter what methods you use.

MR. SOBEL: Mike.

MR. JOHNSON: Nadine makes the declaration sound like the humanist's manifesto. It's an amazing betrayal of a document. Go read it. It says we are endowed by our Creator, capital C, with inalienable rights. You know what it says. Don't trust her. Go read it yourself. You tell me if the fathers had an ideal-

MS. STROSSEN: I used the word God actually, Mike.

MR. JOHNSON: Yes. And then you said that the rights derive from our human relations or whatever. Here's the bottom line. Let's not rely on Justice Kennedy, because he is not a conservative, okay? He's the one that ruled in Larch vs. Texas in the summer of 2003, that the antisodomy statue in the State of Texas is unconstitutional. What did he base his reasoning on? He said morality is no longer a legitimate basis for legislation. Contrast that with what the father of this country, George Washington, said-you remember from civics class in high school-in his farewell address. He said of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable. They said that this house was built upon something. And if you whittle away those moral bases, then the whole house is subject to fall. I think that explains a lot of depravity in culture.

QUESTION FIVE: My name is Karla Bohmbach. I am a professor of political studies here at Susquehanna and also the coordinator of the women studies program. Professor Strossen argues rather than the government regulating pornography, we should look more to the family to do so. That position predisposes a rather optimistic idealistic view of families, though. And as most of us, our families are far from ideal. Besides neglect of parents toward children, whether overt or benign, abuse, whether sexual or otherwise, also occurs within the family contest. Given that scenario, how should our society wrestle with that?

MS. STROSSEN: That's exactly where the government does play a legitimate role. So, again, if kids are subject to abuse by anybody, including within the family, within the church, out in public places, it is government's responsibility to protect those kids from all kinds of abuse. If we have an abusive family-and I would say, yes, one manifestation of it is that the parents are not supervising their kids in terms of their Internet access or their media access, but there are a whole lot of other problems that are even more dramatic than that-it is the government's responsibility to deal with, to address in those situations. So I'm not a no-government kind of libertarian. And, unfortunately, when the family situation does break down, that is a perfectly appropriate role for the government to try to intervene.

MR. JOHNSON: Let remind me you of the statistics I cited earlier, that 31 percent of males and 18 percent of high school females admitted to doing some of the things they had seen on the X rated material within three days of their exposure to it. For some of these kids it was the first time. Admittedly by their own recollection. That clearly suggests that the modeling effect or

the imitative learning effect or the triggering effect of this pornography material has on human sexual behavior element to it. It encourages this kind of behavior. Pornography serves as the training manual for deviant, destructive behaviors for kids. Parents are trying and they don't have enough tools in the toolbox because people like the ACLU are filing lawsuits to get rid of the tools. She'll stand up here and say that, but it doesn't accord with the actual record. Read the cases. See for yourselves. Parents need the government's help.

MS. STROSSEN: I urge that, too. Read the cases and see for yourself.

MR. SOBEL: Okay. I am going to take three more questions from the audience and then I have a very brief closing remark. Then we are all going to go across the hall to the gallery for a very nice reception. Everybody that's here will have a chance to talk with the speakers in a less restrictive environment.

QUESTION SIX: I am a junior psychology major here at Susquehanna. You talked a lot about who defines what the prurient interests are in terms of the obscenity issue. I was wondering what both of your takes on who defines the community that is also part of that definition?

MS. STROSSEN: In the legal system now it is the community from which the jury pool is drawn, but for all practical purposes the community becomes either the individual jury or the individual judge, because it's all so subjective. There was one very famous pair of cases about 15 years ago that illustrated this very dramatically where the very same—it was a rap song that was being prosecuted as being obscene in Broward County, Florida. And in the very same county in one case the song was found to be obscene and there was a conviction and in another case it was found not to be obscene and there was no conviction. So the problem becomes compounded when you talk about the internet, the fact that the Third Circuit and the successful challenge by the ACLU and others to COPA said that in the context of the internet this concept of community makes no sense at all, because we were dealing with a global community, world wide, that has access to the same material. And we cannot allow anybody to reduce to the lowest common denominator of the least tolerant community in the world that has access to the internet.

MR. JOHNSON: It brings up a point. Nadine has made the argument that subjectivity is a problem in the enforcement of the law. But, see, the community standard has served us very well since the early seventies, when it was first defined by the U.S. Supreme Court. It's been upheld in courts ever since. Now, it's not enforced enough. There is a lot prosecution that should go on. Granted, what Nadine has seen by the jury pool in Las Vegas, Nevada may not be the same as the jury pool in your home town, but that's kind of the beauty of the system. If you get a jury pool together, I promise you if you go into an adult video store, just at random get a few videos, take them to the jury in your home town and see what they find, it's going to be obscene.

QUESTION SEVEN: Some cultures in the country the women are experiencing early breast development. One of the possible causes must be sexual saturation of the society changing hormones. In the 1940's and fifties Myron Genel said the average age of menstruation is ten and a half. It's now eight. Do you think it's a risk factor in developing cultures? There is something that becomes empirically studied about sexually saturated that if you don't support

reasonable controls to protect your children from sexual expression?

MS. STROSSEN: I probably didn't understand what you were saying, but I don't see any connection between what you said and exposure to sexually oriented expression. Let me just say what the Supreme Court standard is for all expression. It is not absolutely protected and the ACLU has never contended that, nor has any justice. You may restrict speech if, but only if, you can show that the restriction is necessary in order to prevent imminent grave harm that cannot be prevented in any other way. So if you could satisfy that standard, then, but only then, are you justified in suppressing the expression?

MR. JOHNSON: I am glad you are on record having said that, because there is a lot of empirical data—

MS. STROSSEN: Just read our brief. You'll see it over and over.

MR. JOHNSON: Well, I am glad to hear there is some standard by which they agree with regulation. It clearly is bad for children for some of the reasons you cited and all the others we have been talking about tonight and some we don't have time to get into. There are intellectual reasons, there are humanitarian reasons, there are medical and public health reasons, there are universal ethical principles, and our basic sense of decency. Many, many reasons we ought to be in favor of the government doing reasonable regulations on this material. It's not censorship. I just want to say this very quickly. If you remember, also, maybe from civics class, Alexis de Tocqueville, he famously said—he toured America in the founding era and he concluded that America was great because she was good and if she ever ceased to be good, she would cease to be great. I think that admonishment echoes down the generations to us. The challenge for our generation is, are we going to make sure that America means good? That's the bottom line.

QUESTION EIGHT: I am 17 years old. I attend high school. My argument is, I am a three sport athlete and I see daily what high schoolers go through as a result of pornography addiction and the seriousness of the addiction many people struggle with. It is life controlling. And my question is, if it is so addictive and it is constantly taking a toll on teens, many of my friends, and even myself, shouldn't it maybe be setting off alarms in high schools and for governmental purposes in high schools that there would be the same awareness as alcohol and drugs and cigarettes and the addictive consequences they cause has the same addictiveness that pornography causes. This is directed toward Ms. Strossen in her lack of information regarding the harmfulness of pornography to teenagers. This is a first-hand account.

MR. JOHNSON: There we go. There is your answer.

MS. STROSSEN: Well, I, again, am in very good company. The Chief Judge of the Third Circuit Court of Appeals, of which Judge Adams was a distinguished member, as well, Chief Judge Delores Sloviter in her opinion agreeing with the ACLU and Families Against Internet Censorship, among many other groups, in striking down the Child Online Protection Act said not only that the material that was censored under this law was material that was not demonstrably harmful to minors, but also included material that was affirmatively beneficial to minors. She went further than we had argued. And let me give you some examples. Some of it may be very helpful to many teenagers. I agree with her. The material that Planned Parenthood put online about contraception, about safer

sex. There was another organization's name I am forgetting now that specifically addressed teens with safer sex information given the epidemic of sexually transmitted infections among teens. I believe Mike himself talked about the number of unplanned pregnancies of teens in this country, that the information that is outlawed because it is sexually explicit under COPA is actually beneficial to the health and safety of teens. And one other example—she gave examples in art and literature, as well. One other example that to me was very poignant was with the tragic number of suicides among gay teens, the websites that are aimed at helping kids who have questions about sexual orientation, also is life affirming. Again, don't tell me that I'm ignorant. Please tell Chief Delores Sloviter and kids whose lives and welfare and health she was so concerned about.

MR. JOHNSON: We don't want hard core pornography available to anyone, certainly 16-year-old boys and younger. We know that it destroys their view. It gives them a distorted view of sexuality. It's going to be a problem that follows them into adulthood unless they get treatment for that problem. This is the number one instrument to destroy children in America. There is no question about it. It is worse than drugs and alcohol. We don't yet have our hands around it, because we don't have these loads of empirical data that they say they have to have before they will agree. It objectifies women to be more than receptacles and objects to be raped and sodomized. You know, if you look at and enjoy this. So these young men expect that in relationships. They think if a woman doesn't do all that she is somehow abnormal. It's a very twisted thing. I think it's going to have a very serious and sad effect on marriages. I think you are right. I appreciate your courage to come up and say that, because we need that kind of view on the record, obviously.

MR. SOBEL: I wish to make a few observations. I think we all learned a lot of valuable information tonight, information we can use to think about these issues, to discuss these issues with the people that we are close to, and ultimately draw some of our own conclusions. There are two notions that were clearly reinforced tonight which are important for us to remember. One, you may have a very passionate dialogue with somebody who has much different views than the views that you yourself have and at the same time be civil and be willing to listen to the other person and to show them the courtesy of the opportunity to speak their views.

And second of all, and maybe the most important thing, is it's great to be passionate about something, to feel so strongly about a cause or principle or a value that you will devote yourself to studying that cause, principle or value and then you'll go out and speak to others about it, to try to bring about a change in the world that you think is important. I want to thank both of our speakers for sharing their knowledge and passion with us tonight. I also want to thank Mimi Arcuri, who works very closely with me at the Adams Center, for all the great work she did in helping us to get this program off and running and to a great conclusion tonight, and to all of you, again, for being here and especially to those who asked questions and added to our conversation, and to all of the various staff people at the University in virtually every department who contributed in many different ways to making this program possible. Please join us across the hall.