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Adult Entertainment and the First Amendment: A Dialogue and Analysis with the Industry's Leading Litigator

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Paul Cambria has been called “probably the best obscenity lawyer in America” by Larry C. Flynt, the man behind the publishing empire that is Larry Flynt Publications, Inc., (“L.F.P.”) and sexually explicit magazines such as *Hustler* and *Barely Legal*.¹ Cambria represented him when a twenty-something Flynt first faced obscenity charges in Cincinnati, Ohio,² in the 1970s³ and several years later when Flynt was struck down and left wheelchair bound by a sniper’s bullets.⁴ Today, he serves as Flynt’s general counsel.

By almost any objective measure, Flynt’s description of Cambria is borne out. First, he wins cases. For instance, in October 2000, Cambria

prosecution in Kansas.¹⁰ Today, Cambria’s clients include some of the leading companies in the adult video market, including Vivid Video¹¹ – Flynt’s L.F.P., Inc. recently acquired the contract for the video and DVD distribution arm of the Vivid Entertainment Group, including its warehousing, sales and shipping duties¹² – and Wicked Pictures.¹³ He also is the west coast general counsel for the *Adult Video News*, the leading trade industry publication.¹⁴

Despite his reputation in the adult entertainment industry and his defense of some other high-profile individuals,¹⁵ Cambria largely toils outside of the public limelight. The critically

Adult Entertainment and The First Amendment:

A Dialogue and Analysis

with the Industry’s Leading Litigator & Appellate Advocate

- By Clay Calvert^{**} and Robert D. Richards^{**}

successfully argued before a jury of twelve women that two sexually explicit videotapes – *Rock Hard* and *Anal Heat* – depicting anal, oral and vaginal sex among women and between men and women were not obscene.⁵ As he later reveals in the interview, female jurors today often can be more free-speech friendly than macho males who feel the need to protect women from such adult content.⁶

Second, Cambria currently represents and has represented some of the major players in the adult entertainment field for more than a quarter century. Back in 1976, he defended Al Goldstein,⁷ the now-aging publisher of *Screw Magazine* who has been described variously as the “Fred Flintstone of Flesh”⁸ and the “King of Porn,”⁹ in an obscenity

acclaimed¹⁶ movie *The People vs. Larry Flynt*¹⁷ overlooked Cambria and instead cast its spotlight on another of Flynt’s top attorneys – Alan Isaacman,¹⁸ who successfully represented Flynt before the United States Supreme Court in *Hustler Magazine v. Falwell*.¹⁹ The Isaacman character in the movie, played by actor Ed Norton,²⁰ was actually a composite of many different attorneys – Cambria included – who have represented Flynt over the years.²¹

This article gives Cambria the legal spotlight, at a time when conservatives control the White House and Congress,²² to discuss the never-ending tension between the First Amendment²³ freedom of speech, which sometimes, although certainly not always, protects the \$10 billion adult entertainment

industry²⁴ in the United States and the voices of censorship who would squelch such content. It is a tension that clearly affects many people, given the sheer popularity of sexually explicit speech and the mainstreaming today of adult content;²⁵ sales and rentals of adult videos in 2002 totaled more than \$4 billion, according to the *Adult Video News*.²⁶ Pornography on the Internet generates another \$2 billion.²⁷ As a February 2003 article in the *Washington Post* observed, “[t]he popularization of pornography is everywhere.”²⁸ The Video Software Dealers Association predicted in its most recent annual report that by 2006, adult entertainment will be among the three most significant online content providers.²⁹

Adult clubs, featuring nude and nearly-nude dancing, comprise another strong sector of the adult entertainment industry³⁰ – one that faces continuous First Amendment-based fights against communities that try to zone these establishments, as well as adult video stores, out of business.³¹ Cambria, as this article makes clear, fights such battles on a routine basis across the country.

In this article, Cambria discusses, from his perch as one of the nation’s leading obscenity lawyers, a myriad of First Amendment-based issues including: (1) the continued viability of the obscenity test set forth by the United States Supreme Court in *Miller v. California*;³² (2) the regulation of so-called virtual child pornography;³³ (3) his tactics in both selecting and arguing before juries in obscenity cases; (4) the zoning of adult entertainment establishments and the constitutionality of such efforts; (5) the so-called Cambria List of sexually explicit acts that often attract prosecutors’ attention; (6) his beliefs about the intent and purpose of the First Amendment in a democratic society; and (7) his representation of, as well as relationship with, Larry Flynt during the last quarter of a century. Along the way, Cambria comments on the state of the adult entertainment industry and the way it has now become a part of mainstream society.

It might seem, at first, to be an odd juxtaposition – analyzing and discussing in the scholarly context of a law journal a subject matter that is anything but scholarly and far more carnal than cerebral. However, the economic reality is that: the adult entertainment industry is “a bigger moneymaker than the NFL, NBA and Major League Baseball combined,”³⁴ and the constitutional reality is that the First Amendment provides that mega-industry with a very controversial shield. To not

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I. The Setting

The interview took place on the morning of June 17, 2003, in the tenth-floor conference room of the headquarters of one of Paul Cambria’s best-known clients, Larry Flynt. The room, replete with a large portrait of Flynt’s late wife, Althea Leasure, and decorated with ornate jade and ivory tusk carvings, as well as several large vases perched on pedestals, features an expansive boardroom-style wood table around which sit sixteen chairs. The authors and Cambria fairly sink into the overly soft seats at one end of the table. The glass-walled Flynt Publications Building, located at 8484 Wilshire Drive on the car-choked corner of LaCienega in Beverly Hills,

California, is also home to another of Flynt's attorneys, Alan Isaacman. Isaacman's offices are located on the eighth floor.

The building, which boasts a larger-than-life-size bronze statue of a horse-riding John Wayne in front of the main entrance, houses a number of different Flynt-related companies, including L.F.P., Inc., Flynt Aviation, Inc., L. Flynt, Ltd., and Flynt Digital. Flynt's offices take up the ninth and tenth floors – the top two levels – of the building.

Although his law practice is headquartered in Buffalo, New York, with the firm of Lipsitz Green Fahringer Roll Salisbury & Cambria,³⁵ Cambria has been licensed to practice law in California since 1995³⁶ and now frequently makes business trips to Los Angeles. It is, of course, a fitting place to carve out a niche in the world of adult entertainment law, given that the San Fernando Valley often is described as the "porn capital of the world"³⁷ or "the world capital of porn."³⁸ (In fact, when the interview ended, Cambria rushed off to do the pre-publication review of an adult magazine.)³⁹

II. The Interview

This part of the article is divided into six sections, each of which includes a brief introduction to the section's theme followed by a question-and-response format. The authors have added footnotes, where relevant, to both the questions and responses to enhance details, define concepts, and provide citations to cases mentioned.

A long-established and "traditional" exception to First Amendment speech protection is the content category of obscenity. Its non-protection is a remnant of the so-called two-class theory of expression that "treated certain types of expression as taboo forms of speech, beneath the dignity of the First Amendment."

A. The Regulation of Obscenity and Sexually Explicit Speech

A long-established and "traditional" exception to First Amendment speech protection is the content category of obscenity.⁴⁰ Its non-protection is a remnant of the so-called two-class theory of expression that "treated certain types of expression as taboo forms of speech, beneath the dignity of the First Amendment."⁴¹ The justifications for this absence of protection are many. As Professor Don Pember of the University of Washington writes, "[m]any women believe pornographic material fuels violence against women. Parents express concern about what children may see and hear. Many individuals find such material antithetical to their religious beliefs."⁴²

The issues associated with the regulation of such sexually explicit words and images, whether in print, celluloid or digital form, remain a source of legal debate. The initial stumbling block has been the inability to define adequately what is legally *obscene*.⁴³

That definition is critical because, more than forty-five years ago, the United States Supreme Court ruled that obscene speech falls outside the ambit of First Amendment protection⁴⁴ and thus its distribution and exhibition are subject to criminal prosecution.⁴⁵ In the evolution of this doctrine, the Court needed to construct a test – a line that, if crossed, would dismantle the shelter of constitutional protection afforded to sexually explicit materials. Drawing that line has proved to be a formidable task.⁴⁶

The result was a three-prong test, articulated by the Supreme Court in 1973 in *Miller v. California*.⁴⁷ This test set forth the guidelines used to assist the trier of fact in making an obscenity determination. Specifically, the *Miller* test, which remains in effect today, asks:

(a) whether "the average person, applying

contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest;

emergency meeting in New York City, and everyone thought this was basically the Armageddon of First Amendment cases. But it turned out, over the years, I have grown to embrace *Miller* because I think it's useful in actually broadening the amount of material that's available to the average adult.

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The reason I say that is when I address juries I routinely say, "This test was designed to protect expressive material. The Supreme Court set up a system of very high hurdles for the government, and the government must basically disprove beyond a reasonable doubt each one of these

- (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.⁴⁸

If all three prongs of the test are met, then there is no First Amendment protection for the work in question. While the *Miller* test has found favor with many, critics of this test point to the confusion jurors face in applying it, along with the disparate results across jurisdictions when differing community standards are used.⁴⁹

In this section of the interview, Paul Cambria initially discusses his views on the *Miller* test, including both its strengths and weaknesses. In the process, he describes some of the strategies he uses before jurors in obscenity cases involving the *Miller* test. Along the way, he touches on the dangerous reality of selective prosecutions in these cases.

QUESTION: In 1973, the United States Supreme Court, in *Miller v. California*,⁵⁰ created a three-part test defining obscenity that's still in use today, 30 years later. What is your opinion about the usefulness and workability of the *Miller* test?

RESPONSE: At the time *Miller* came out, the First Amendment Trial Lawyers Association was in its infancy. It was maybe a year old. We had an

emergency meeting in New York City, and everyone thought this was basically the Armageddon of First Amendment cases. But it turned out, over the years, I have grown to embrace *Miller* because I think it's useful in actually broadening the amount of material that's available to the average adult.

I found the community standard aspect of *Miller* to be the most useful. I now say to juries, "Look, this is the real community standard – what does one adult accept as available to another adult in your community? What does the average adult find acceptable as the level of explicitness of adult material in your community?"

And then we discuss with them all of the various indicators – more of a circumstantial evidence analysis. For example, you have to first look at the context. Granted, there have been a number of cases – mostly in the Sixth Circuit – that said that context was irrelevant. But context is never irrelevant. For example, I say to a jury, "Who doubts that any individual could have a *Playboy* in the privacy of his or her home, open it up and observe the centerfolds?" That would be acceptable. On the other hand, to take that centerfold and put it on a billboard on a very busy thoroughfare, I venture a guess the average adult would not find it acceptable.

So, context is important. Is it consenting adults engaging in the activity? They are adults. They're not young people. Is it something that the person chose for himself? If so, all of that is factored into deciding whether this is an acceptable level of sexual explicitness.

In addition, we look at the kind of conduct. Is it conduct that people readily engage in? This

includes anal sex, which we know people readily engage in, although we always have this dichotomy of individuals who say one thing but do something else. I tell the jurors, "This is about what is real, not what you want someone to think, but what we really know is true. Let's be honest."

So anyway, the *Miller* test has become very useful for us over the years. Moreover, the third prong of *Miller*, which deals not with community standards, but with an objective approach, is very useful. The first two prongs are measured against community standards. The third prong is not. The third prong is measured from the standpoint of the reasonable person. Would a reasonable person find that the material lacks serious literary, artistic, political or scientific value? In some cases, we will submit proof to a jury that there is scientific value to certain materials, for example, and it's not unusual to do so.

We had a case in St. Louis where we had an all-woman jury.⁵¹ The prosecutor thought that it was nirvana for him. The assistant prosecutors literally were all high-fiving each other when they picked the all-women jury, all of them in their forties, fifties, and sixties – including the alternates. They came down from the office upstairs and were high-fiving this

prosecutor who was their most experienced trial lawyer – a homicide and special projects prosecutor. They were convinced that they had a slam-dunk.

Well, one of the things that we did was have an individual testify from the Kinsey Institute⁵² about the value – indeed scientific value – that the materials had. For example, he said that sometimes older couples would use these movies as a stimulus. Other couples would use certain movies as an opportunity to discuss relationship problems they might be having. He emphasized the fact that these folks were not weird people, but your everyday schoolteacher, banker, individual laborer, and so forth. These problems are common, and these materials have value because they open dialogue and help treatment. People could basically trust themselves. These

materials help to fuel the imagination, which is an important part of sexual activity. So they have value.

Now, on the other hand, so as not to appear ridiculous, you have to be able to draw a line at child pornography. Otherwise, why couldn't a prosecutor say, "Well, under your theory everything has value. Nothing would be obscene." The old expression, "the law is an ass," would be an appealing argument to a jury. But the expert pointed out that we were discussing *serious* scientific value. Scientific value isn't serious if it violates the law. Child pornography is per se illegal.⁵³ It has nothing to do with the First Amendment. It's per se illegal. For example, it might be nice for me, from a scientific standpoint, to see just how someone's head collapses under the force of a hammer, but I couldn't do that as a serious scientific experiment because I would be committing a crime. So forget child pornography because it

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wouldn't have serious scientific value. No serious scientist would engage in breaking the law in order to further science regarding that kind of thing.

So those are the two most important parts of the test. The first part of the test, which says the material appeals to the prurient interest, is a very difficult concept to explain. No one really understands what that is – let alone lay jurors. The law says prurient interest means a morbid or shameful interest in sex.⁵⁴ It doesn't mean you're ashamed to look at something like this. The definition says a shameful *interest* in the material. In other words, for the average person to have an interest in this material would be shameful, as opposed to feeling ashamed if you looked at this material. It doesn't work that way. I find that concept to be a quagmire

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and something that you can't easily explain. It's not conducive to a persuasive jury argument. So, for the most part, I stay away from that part of the test.

QUESTION: What about the artistic value part of the test?

RESPONSE: The pitfall of the artistic value part is that if you have a movie and there's graphic sexual conduct – and you're trying to make an argument that it has artistic value – you're going to lose the jurors. Now, on the other hand, if you're Robert Mapplethorpe⁵⁵ and you're taking the position that the light, pose, and composition of your photographs are something that photographers or art aficionados would find artistic, that's a different story.

QUESTION: But the argument doesn't work with videos?

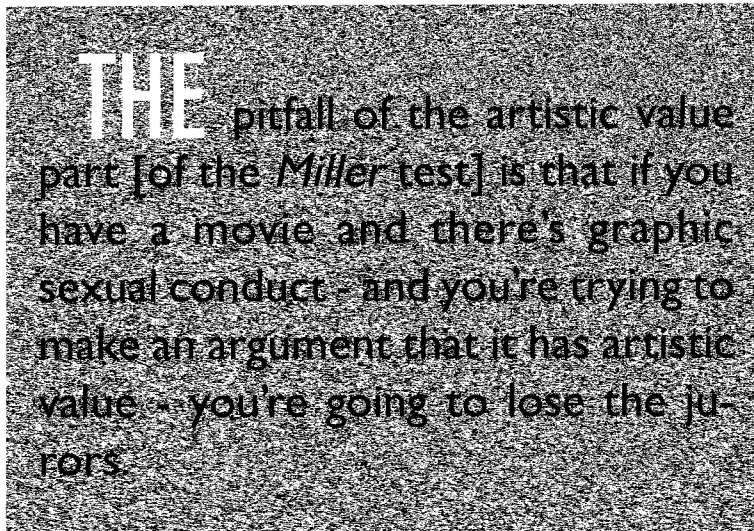
RESPONSE: With a video, it would depend. If it were a unique kind of sepiia shot that really had some artistic bent to it, that probably is something the jury could handle. But 99 percent of the movies aren't that at all, and if you make an argument like that, the jury is going to ask, "Where is this guy coming from?"

I would rather say to a jury, "Look, the First Amendment is never, ever, ever majority rule." My favorite quote is, "It's not six foxes and a sheep deciding what to have for dinner."⁵⁶ By the way, Larry Flynt says that he came up with that line. I maintain that I came up with it.

QUESTION: That line surfaced in our research.

RESPONSE: Well, it's a very important concept. It is not majority rule. Jurors need to understand that they don't have to accept this material in order

for it to be deemed not obscene. In fact, the First Amendment works entirely to the contrary. For example, with the most hateful speech – bigoted speech or white supremacy speech – nobody doubts that it's protected by the Constitution. Furthermore, no one doubts that such views are not a majority concept. This type of hate speech is not something that 51 percent or more of us in the populace accept as our doctrine – that is, as something with which we agree.



You don't have to agree with speech to accept it as a permissible thing to say. For example, here's the question I ask to jurors all the time: "Do you not agree that in this day and age, in your community, adults who choose to have the ability to rent or purchase one of these movies

should, in fact, be able to do so? Just like those of you on the jury who like to hunt should be able to hunt, those who have guns should be able to possess guns, and somebody who wants to listen to country music should be able to listen to country music."

It's not a matter of what the majority thinks. If that were the case, we would go to the library, take every book and hold it up and say, "All right, all those in favor of this book raise their hand," and if we didn't get a majority, we would throw the book away. Then we'd get the next one and so forth. We know that doesn't work.

We are a society in which we allow other people to be different. You be you, and I'll be me. That's what we accept. This is a very persuasive argument. Now, where it breaks down is where the conduct really starts flying off the meter. If it's clear that it looks like the woman is being raped or beaten and it's something that clearly is painful, jurors might say, "Well, wait a minute. I'm with you, but I'm not with you at this point."

As time goes on, the bar gets higher because people have seen more and have become accustomed to more, and, consequently, they accept

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more. That's why, in the last ten or twelve years, there really have been no federal prosecutions. What that's done is to allow the community as a whole to become educated about what is out there and what people are consuming. It's obvious that it's acceptable to a large number of people because they're spending literally billions of dollars on adult material.⁵⁷ There is no greater barometer of acceptance than people taking their money and allocating it toward something like that.

Don't get confused with prosecutors who like to make the argument that says, "Well, what's the difference between this and drugs? People spend their money on drugs." The difference is there is no First Amendment in the drug laws. There is no community standard in drug laws. There is no free speech component to drug laws. That's a totally different thing. Don't get sucked into that argument. We make that point all the time. This is the only situation where there is a community standard expansion joint in the law. It's up to the community to decide the level of acceptance. It's not that way with drugs. It's not that way with any other criminal

administration has targeted – as did the Clinton administration – child pornography on the Internet.⁵⁸ There has been a lot of rumbling that they funded a number of new prosecutors to prosecute adult materials as opposed to just child pornography. Whether that's true or not, we haven't seen any evidence of it. There's only one major federal investigation going on now that we're aware of and that's in Texas. It was something that basically started locally and the federal government is involved in it now.

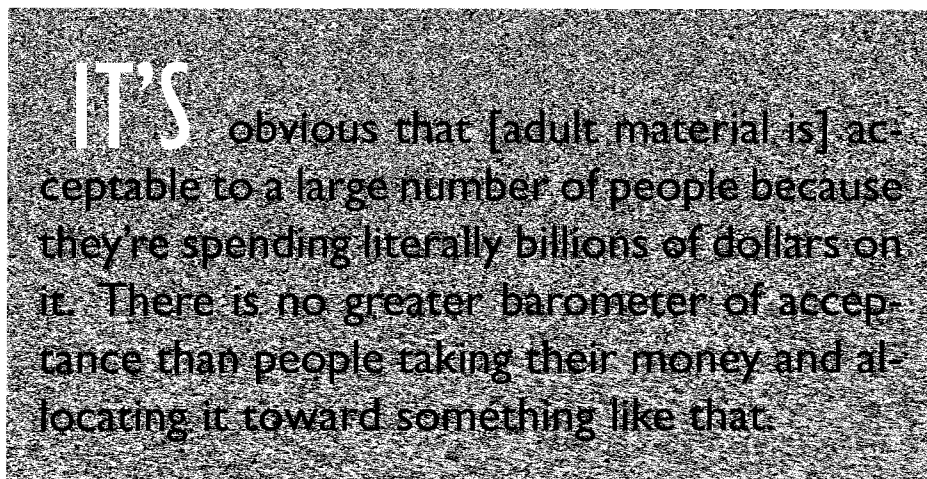
QUESTION: Does the case deal with obscenity?

RESPONSE: It definitely deals with obscenity.

QUESTION: So much of the prosecution in these types of cases is on the local or state level. What motivates a prosecutor in a particular community to go after a business that trades in sexually explicit expression?

RESPONSE: It's usually all simply a matter of politics or religion – either the local right-wing

religious or conservative groups go to the local sheriff or prosecutor and basically convince the official that they are a significant constituency, and if he doesn't do something, they're not going to vote for him, or it's a politician, for example, like Attorney General John Ashcroft, who has a very fundamentalist religious bent and has a personal agenda. I mean, that's



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offense. Why? Because it's expression, and it is protected by the First Amendment.

QUESTION: Has there been a rise in obscenity prosecutions since George W. Bush became president of the United States?

RESPONSE: No, there has not been an increase. It may very well be that the government has its hands full with all the things that are going on in the world. That could be it. It may also be that the Bush

really it. That's what we see time and time again.

QUESTION: Do you anticipate any easing up on state and local regulation of obscenity given that adult entertainment is becoming more mainstream or, at least, has somewhat less of a stigma attached to it?

RESPONSE: No, I don't. As long as politics exist, and as long as church groups and others are calling the D.A.⁵⁹ and the police chief and the sheriff, there are going to be prosecutions.

QUESTION: In your experience, is this an area of law in which selective enforcement of obscenity laws – or selective prosecution – is a factor?

RESPONSE: Yes. They know if they pick on the ones who are well funded in their defense, like Larry Flynt, they're in for the long haul. And they know that the best talent is going to be against them, so they're better off picking on the lesser lights. Recently, there was a raid of this company called Extreme Associates and a fellow named Rob Black.⁶⁰ I think that was a direct result of a television show. I've forgotten now if it was the Diane Sawyer piece or if it was public television. I can't recall, but in the show it appeared that the actress was being forced. She was crying. It almost looked like a rape scene. The camera crew stopped filming. They said they couldn't take it anymore. It was that sort of thing, and the next thing you know he's raided.

Interestingly enough, it's federal prosecutors from Pittsburgh who have come out to Los Angeles and executed a number of warrants. Mr. Black had contacted me to represent him initially, but I declined and referred it to Lou Sirkin,⁶¹ who was the fellow who defended the Mapplethorpe case. He's a good friend of mine. In this situation, I think the government is aggressive because Rob Black specialized in sticking it in everyone's face – essentially saying, "Here I am. I'll do whatever I want. And whatever the big companies are refraining from doing, I'm going to pick as my flagship video." I think that's exactly why the government chose him.

QUESTION: Is that where the problems are going to come in the future? Companies like Hustler and the other mainstream adult entertainment outlets will stay within certain limits, but the people on the fringe will go beyond what might be considered acceptable?

RESPONSE: Well, there are always fringe people who can't compete with the mainstream companies, so they try to find their own niche, and that niche becomes the extreme – fisting, urination, bondage, bestiality, and all the crazy freaks-of-nature kind of thing. They're at great risk.⁶² There's always a market for them, but they're at great risk because their material is more difficult – not impossible, but more difficult – to convince a jury that it's acceptable, and it doesn't exceed the community's level of acceptance. They become more difficult cases. The

Flynts, the Vivids, VCAs, and Wicked – all those mainstream companies – are safer because their movies are hugely popular with couples.

The woman's market is a very important market for adult entertainment.⁶³ Up until these mainstream companies started putting out the movies, that market was untapped. It was mainly a man's market, and no one realized that there was a great couple market out there and even just a woman's market. And now with satellite and cable, you notice that most of the movies on these systems are the mainstream movies from the mainstream houses – Flynt, Wicked,⁶⁴ Vivid Video,⁶⁵ VCA Pictures,⁶⁶ and so on.

B. Litigating Obscenity Cases

Defending obscenity cases is not an easy task. By most measures, the odds appeared to be stacked against Paul Cambria in the fall of 2000. His client, an adult video establishment in O'Fallon, Missouri, was charged with selling obscene films – *Anal Heat* and *Rock Hard* – under a local ordinance that could put the store out of business.⁶⁷ The prosecutor's main point in trying to drive the business out of town was that residents should be able to choose "what they want in their neighborhood."⁶⁸ The jury before him was a panel comprised entirely of women – 12 in all.⁶⁹ Yet, it took only two-and-a-half hours for that jury to agree – easily agree, it turned out – that the movies did not meet the definition of obscenity,⁷⁰ and Paul Cambria, as the Introduction to this article suggested, walked out of the courthouse with another victory, despite the odds.

Cambria has been fighting these odds for more than a quarter of a century. His message to the jury in the O'Fallon case was simple: "[F]inding the tapes obscene and removing them from the shelves would limit the choice and freedom of normal people wanting to 'add spice' to their relationship."⁷¹ It is the kind of argument he has to make in obscenity cases over and over again. He constantly reminds jurors – in one turn of a phrase or another – that their freedom of choice is at stake.

Litigating for an industry that struggles for mainstream acceptance⁷² is a daunting task. The legal issues can be complicated. As Cambria has remarked in the past, "You need to know constitutional law, state law, federal law, [and] zoning law."⁷³ Moreover, the healthy heaping of politics that enters into the mix in so many of these cases can lead to discriminatory enforcement of these laws.⁷⁴ Groups

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organized with the sole purpose of rooting out adult businesses in their communities or on the Internet often proselytize with the message that pornography “is one of the biggest threats to the family today”⁷⁵ – hoping that law enforcement will listen and take action.

Cambria discusses the special problems associated with litigating obscenity cases in this part of the interview. His comments stretch from the voir dire process to his closing arguments.

QUESTION: As for litigating these types of obscenity cases, tell us a little bit about what you look for in a potential juror. What are some of the questions you commonly ask during voir dire?

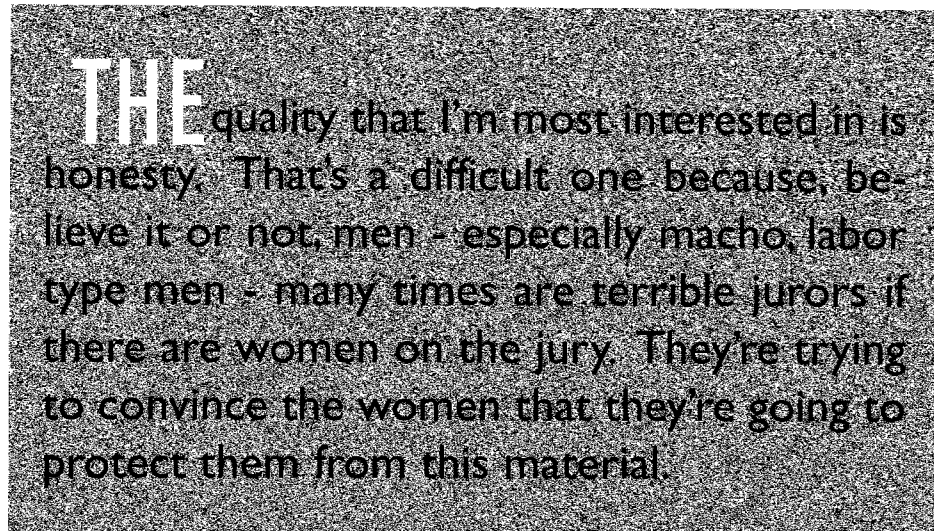
RESPONSE: The quality that I’m most interested in is honesty. That’s a difficult one because, believe it or not, men – especially macho, labor type men – many times are terrible jurors if there are women on the jury. They’re trying to convince the women that they’re going to protect them from this material. Or it’s almost like they’re saying, “I know that you think that I’m going to say this stuff is great, but guess what? I’m not going to say it’s great.” And that’s not honest because they probably do think it’s great or they’re indifferent to it, but they want to project this image of being a protector or guardian. So I watch out for them all the time.

Older women who’ve been there, seen it all, raised children, worked in the workplace, and all of that, become good jurors. They know life is life. Even though they may not rent any of these movies, or care for them, they can relate to this concept of live and let live. There’s room for everybody and everything. As long as it’s not illegal, then why not? I find them to be better jurors.

QUESTION: So it’s counterintuitive.

RESPONSE: Exactly. As for the macho guy, forget about it. They are in there basically faking it and

saying, “Well ladies, I don’t blame you for being offended over this. We can’t have this.” Who are they kidding? I’m very much tuned into that. And if I’m stuck with people like that, I talk about it in my summation. I’ll say, “You know, I’ve had a lot of juries over the years where I get these guys in there, and they’re going to protect the women. Yet, really and truly, they themselves don’t have a problem with this material. They just think it’s their duty to protect the women. Women can stand on their own two



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feet.” I’ve already found some friends at that point. And if some guy starts doing that, inevitably one of the women will say, “Hey, we don’t need you. We can handle this ourselves.”

QUESTION: Are there other common themes that you use in your closing arguments?

RESPONSE: Well, every case is different. There are certain themes that go through our summations, but this is what we have to convey to the jury:

Let’s be realistic. Let’s be honest. And let’s realize that we all live in this society together. We’re all different and we have to make room for our differences. And the best society is one where we do make room for our differences. If I’m 65 years old and I’ve been married to my wife for 42 years and our sexual relationship is better or is enhanced because we watch one of these movies, why would you tell us no? That’s what happens in these cases.

That's what is going on. Or if I'm a person who's physically challenged, and my only outlet [is] movies like this, why would you tell me no? Or if I'm just a regular young couple and this is fun to us, why tell me no? What is the problem with that? I'm a law-abiding citizen, but I have my own interests.

And I regularly say to them, "Let you be you and me be me. That's how our society works." Then, as I indicated before, I take things that they can relate to, like country music. Not all of us like it, but we certainly wouldn't question the fact that it's acceptable for people to listen to it. I say, "You like to hunt? Great. Not all of us do, but we wouldn't question it." We go down the line. Then, I let them know there is no difference here. We've got adults who are consenting adults. We know they're of age because, "Look, it says so right here on the cover." That's how we do it. I say, "There are no children involved. And if there were children involved, there would be a criminal charge, so don't get sucked into this theory that this is really a child. This is not a child case. This is about adults. This is an adult world from an adult viewpoint."

QUESTION: Have your tactics changed over time?

RESPONSE: Oh, sure. Years ago, when I was more influenced by my elders, I would try to mirror some of the arguments that they made – which, by the way, I wasn't all that keen on back then. But I thought, "Who am I to question them?" But as the years went by, I said, "Wait a minute. I'm not buying this. I don't think that's a persuasive argument at all."

One of my partners in the old days was fond of quoting great passages from Ambrose Bierce⁷⁶ and Lincoln and all this sort of thing. I have to tell you

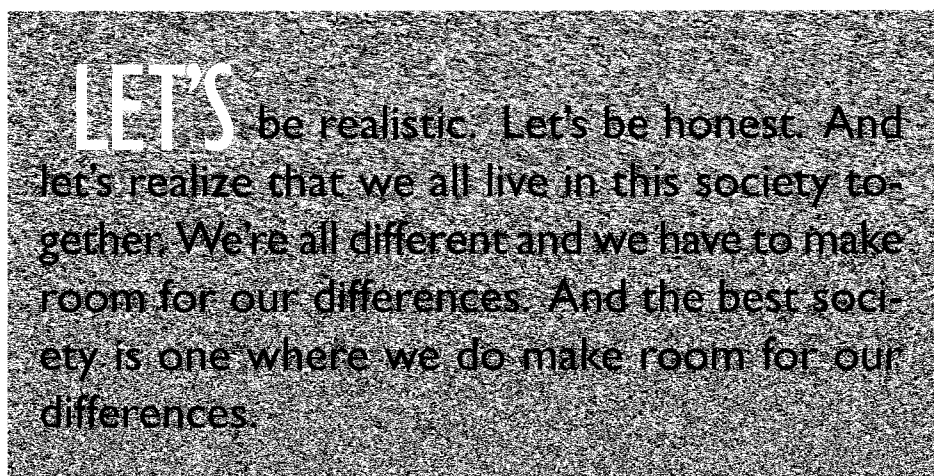
that these jurors were sitting there saying, "What's up with that?" One thing he used to say all the time, but I could never understand why, was, "Don't give

in. You know a wise man once said, "Wretches hang, the jurors may dine." This simply meant, they'll vote somebody guilty so they can go to dinner. And the jurors are sitting there thinking, "Wretches hang? What the hell is that?" And you'll find that line in about 49 of his summations. And it's funny,⁷⁷ that particular fellow I'm talking about is a Penn State alumni.⁷⁸

I was lucky because I had every job you could ever have – from construction worker to dishwasher to blast furnace operator, restaurant owner, bartender... . You name it. I did it. Short order cook, landscaper – I mean, I did it all. And the good part about that is that now, when I look at jurors who come from one of those walks of life, I can remember what they talked about and what is important to them. I knew what it was that made their world go round. And this is what you need to know in order to be persuasive with jurors because, in the end, the jury has the most power of anyone. The jury has the last laugh as far as what is going to happen, so you have to get to them.

C. The First Amendment and Free Expression: Purposes and Policies

The First Amendment to the United States Constitution provides in relevant part that "Congress shall make no law ... abridging the freedom of speech, or the press."⁷⁹ A laundry list of reasons has developed over the years for protecting freedom of expression, including the promotion and discovery



of the truth, the facilitation of wise and informed decision making in the processes of democratic self-governance, the individual fulfillment and self-

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realization achieved through both the act of speaking and the receipt of speech, and the promotion of tolerance in a free society.⁸⁰ Ultimately, there is no agreement that one theory or rationale necessarily trumps another.⁸¹

In this section, Paul Cambria describes what he believes to be the primary purpose of the First Amendment's protection of free speech. He also takes a verbal jab at the school of feminism that would suppress sexually explicit speech.

QUESTION: What, in your mind, is the primary purpose or primary purposes of protecting freedom of expression?

RESPONSE: Let you be you, and let me be me – that's what it is all about. It's not a majority concept, and so we need to be able to be individuals, and this is the greatest way we have to express ourselves. Ask Natalie Maines from the Dixie Chicks.⁸² I think that she's right on the money in this sense – she should be able to say what she wants all day long. Obviously, if you were in Saddam's country and you said that, he'd bury you alive. That's what would happen with that.

So, it's extremely important, and it filters its way down to all aspects of life. What it really lets us do is have our little microcosm of individuality in this big crucible of society. That's what it lets us do. And it lets us express ourselves, for good or bad. It provokes discussions, provokes anger, provokes action – the more you can talk about things and criticize them.

Look at one of the great reasons why they're trying to keep us out of the battlefields today. Because in the Vietnam War, when the reporters were all over the battlefields and they were able to expose things like the Mi Li Massacre, the public turned against the government and said, "Hey, we want out of here." And eventually that filtered down to the legislators who also said, "Hey, we want out of here." And eventually we got out of there. I think it had a lot to do with the media exposure at the time. So the First Amendment has always been a shining light on society. It shines the light of day on what's going on.

QUESTION: Have your own views on the First Amendment changed over time?

RESPONSE: No. I grew up in a little place called Ferdonia, New York – a very conservative place. My dad was an auto shop owner. I worked for him in a very regular, sort of humble beginning thing. And I was never one of these people that thought the First Amendment was absolute. I'm a practical person, and I think that nothing is black or white. I'm not going to spend my time standing in the street and say, with Rob Black, that the First Amendment definitely has to protect one person beating the shit out of someone else on film. I don't go for that.

I think that, in order for the First Amendment to survive and not become a joke, that it needs to be flexible and you need to be flexible. You need to be realistic about it.

In the early days of the ACLU, I felt that sometimes some of the causes that they went after diminished their stature with the nation. In fact, I can remember having a conversation with one of their directors who wanted to file an amicus brief in a case that we had in the Supreme Court. And I said, "I'd appreciate it if you don't because I think you will hurt us more than help. If you're really interested in the ultimate issue rather than you and your organization, you'll take a pass." He couldn't believe it. He just could not believe it. So, no, I'm not an absolutist on any of this stuff. You have to be practical.

QUESTION: Consider the justices who are currently on the Supreme Court. Who are the ones that you consider the most free speech friendly?

RESPONSE: Well, Kennedy clearly is. Kennedy, Ginsburg, Stevens and Breyer. It seems to me that they are.

The ones who obviously are death are Scalia and Thomas. I mean, they are really death on this. Just imagine living in their world. Thomas' world seems to be mired in hypocrisy, if you believe any of that stuff that went on during his confirmation hearings.⁸³ But Scalia's world and Rehnquist's world – I don't want to live there. I don't see it that way. They clearly are the enemies of adult speech, anyway.

QUESTION: Certainly not all of the cases get to the Supreme Court, but many are filtered through the federal courts. Are you confident in the federal courts' ability to sift through the political maneuvering and uphold the Constitutional

principles when they're faced with these regulations coming out of Congress?

RESPONSE: Well, look at what they did with the presidential election.⁸⁴ Do I think that they are devoid of political influence? No, I don't. Do I think that the Republican influence on the Supreme Court is going to make a big difference? Sure.

The other day, I'm sitting in federal court. Things have changed there such that some days you feel like your only function is to stand there while the federal judges put your clients in jail. It's as if the judges are saying, "You, as a defense lawyer, must stand here while we do this. You can't do anything, can't say anything and we don't care about the sentencing guidelines and the rest of it."

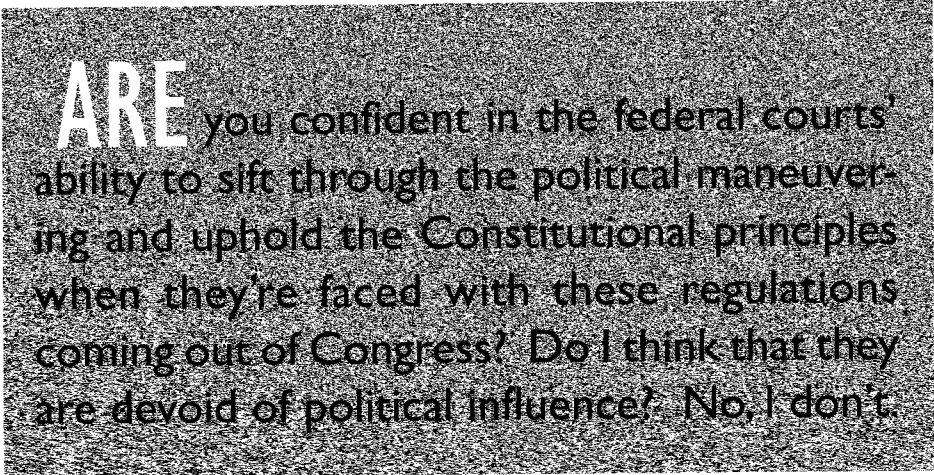
I leaned over to a couple of my colleagues and I said, "Boy, could we use another Warren era as catharsis so that we could get back to the bottom and then they could spend the next 30 years eroding the base again." We are at a point now where it's like everything that we understood to be important – *Miranda*,⁸⁵ search and seizure, whatever – is gone. I mean it is gone. Rules of evidence have been relaxed so that everything comes in.

The penalties are Draconian. Everybody is in jail, and they're in jail for the longest of times. And you wonder why government costs so much to operate, with all these storage places for people in jail. It's that politicians, as far as I'm concerned, are the poison of society. We wouldn't have half the financial problems we have if politicians were just reduced by ten percent.

Government perpetuation of employment for people who don't deserve to be employed in the regular competitive world has gotten so far out of hand. What will be the end result? Buffalo, New York, where I spend a lot of my time, is under a control board now that was put in place by the governor because of financial crisis. And it's filled in with all politicians who couldn't get a job in the real world. What is going on here?

QUESTION: In the era of Britney Spears,⁸⁶ belly piercings,⁸⁷ and low-riding jeans,⁸⁸ has the Catharine MacKinnon⁸⁹ and Andrea Dworkin⁹⁰ school of feminism been relegated to the history shelves at university libraries?

RESPONSE: Well, you know, I think that people like Andrea Dworkin do more harm to the NOW movement. Look at this person. You look at her



ARE you confident in the federal courts' ability to sift through the political maneuvering and uphold the Constitutional principles when they're faced with these regulations coming out of Congress? Do I think that they are devoid of political influence? No, I don't.

and you say to yourself, "Here's the poster child for abandoning self discipline in all respects." And no wonder.

The average person is going to say, "Well what the hell do you expect her to say?" Look at what a mess she is. She's totally undesirable, so she wants to outlaw everything else where there are people in there that are very desirable. I mean, it would be different if Sharon Stone⁹¹ or someone else was spokesman for NOW – I would certainly give it some more credibility.

People at the extreme never help the issue as far as I'm concerned. I don't think that guys like Rob Black and Extreme Associates⁹² are the ones that should be fighting the battle of free speech in the adult fields, and I don't think Dworkin should be fighting the battle of censorship of adult speech in the women's movement.

D. The Client of a Lifetime: Larry Flynt

For any lawyer whose practice focuses on securing First Amendment protection for adult entertainment fare, Larry Flynt – perhaps America's best-known pornographer – has to be the coveted prize. In the movie, *The People vs. Larry Flynt*, actor Woody Harrelson, as Flynt, explained why he is a

lawyer's dream client: "I'm the most fun. I'm rich. And I'm always in trouble."⁹³ Flynt, by his own estimate, has spent "roughly \$50 million" in attorneys' fees and litigation costs defending himself, his magazines, and the First Amendment for more than a quarter century.⁹⁴ And setting the "fun" part aside for a moment, Flynt is known to the legal community as someone who "can pay his bills and does."⁹⁵

Paul Cambria first had the chance to showcase his courtroom skills to Larry Flynt back in 1977 when he represented another Flynt – younger brother Jimmy.⁹⁶ Larry Flynt and his wife Althea Leasure Flynt, along with his sibling, and associate Al Van Schaik were on trial in Cincinnati for "pandering, obscenity and organized crime"⁹⁷ in a case that pitted the foursome against Flynt's nemesis, prosecutor Simon Leis, Jr. Cambria's partner, Herald Fahringer, represented Larry Flynt, while a local attorney was brought on board to defend the others.⁹⁸ Flynt reported that his staff referred to Fahringer and Cambria as "Batman and Robin," a designation likely borne of their distinctive styles.⁹⁹ While Flynt considered Fahringer to be "the embodiment of genteel charm,"¹⁰⁰ addressing the jury with deference, he described Cambria's contrasting approach as "the hard-ass, continuing the opening statement for the defense in a tone that was aggressive and almost arrogant."¹⁰¹

In the end, the hard-line approach prevailed. Of the four defendants, Larry Flynt was the only one convicted, and in a scene depicted in the film, Flynt told the reigning judge who was about to sentence him: "You haven't made an intelligent decision during the course of this trial, and I don't expect one now."¹⁰² He was given the maximum sentence of seven to twenty-five years in prison.¹⁰³ The verdict was appealed, and Flynt eventually was acquitted.¹⁰⁴

Flynt has seen Cambria's loyal and compassionate side as well. In 1978, during a recess at another trial in Lawrenceville, Georgia, Larry Flynt was gunned down as he left the courthouse accompanied by his attorneys, including Cambria.¹⁰⁵ Cambria was at his side in the hospital. He had contacted Althea Flynt immediately after the shooting

and shielded her from the news that her husband would most likely not survive the injuries.¹⁰⁶ Larry Flynt did survive, and for the next quarter century has been providing Paul Cambria with enough legal fodder for him to build a top-flight reputation and a career as an adult entertainment industry lawyer.

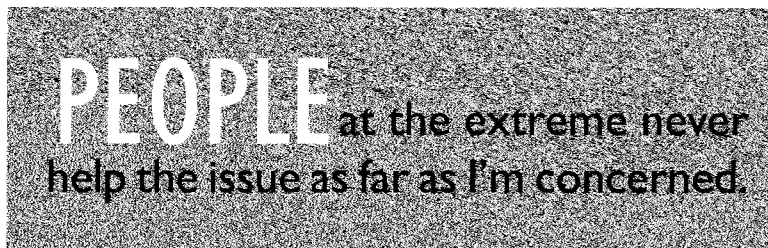
In this section, Cambria talks about his long association with Flynt, from their first meetings to the present.

QUESTION: How did you first become involved in obscenity litigation? Was it an area in which you intended to practice when you were in law school?

RESPONSE: No. I came to work as a law clerk at the law firm that I'm in now¹⁰⁷ when I was a student. At that time, the big guy in the firm was doing cases like this. He and I both primarily practice as criminal defense lawyers – every day tax, white-collar crime, homicide, you name it. That's what I do 75 percent of my time. That's what he did. But during about 25 percent of his time, he was involved in a number of First Amendment cases. Clients picked him because he looked like a million dollars with all the taxes paid. I mean, he just was a very tall, handsome, white-haired fellow, and, at the time, he was only in his 40s. With his white hair, he just looked great. This is Herald Fahringer.¹⁰⁸ Who better to have in a case like this than someone who looked like that? I was his young assistant.

Larry Flynt had called one day to interview Herald. Herald and I had represented Al Goldstein in Wichita, Kansas.¹⁰⁹ The case eventually wound up, nine to three, hung for acquittal. The government finally gave up after five years. The corporation took a plea, paid a fine, and the charges were dismissed against Al. Larry called because he had just started publishing *Hustler* and wanted to interview Herald. Herald wasn't in the office, so the call was transferred to me, and the receptionist simply said, "There's a fellow on the phone from Cincinnati who wants to interview Mr. Fahringer."

The voice on the phone said, "I'm Larry Flynt, and I publish a magazine called *Hustler*." I had never heard of it. He said, "Well, we just started. We got



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three issues out. And I'm a friend of Al Goldstein's, and we wanted to interview Mr. Fahringer about the trial." So I told him I would set it up.

Larry and I continued talking during this initial conversation in 1974. He asked, "Do you guys just do the obscenity work?" I said, "No. As a matter of fact, our main business is criminal defense." Flynt said, "Oh, well, I've got a case pending down here in Cincinnati. I'm indicted for bribery and firing off a weapon, possession and all this other stuff for bribing a police chief." And he asked, "Would you guys be interested in representing me?" And I said sure. He asked how much it would cost, and I said we needed a \$5,000 retainer – that was a real big number back then. He said, "Well, I don't have it all, but I could give you a down payment. Then I'll make payments." And I said okay.

WE'VE represented Larry in all of his criminal cases. We were his general counsel in the beginning when he was in Ohio. And when he was being held in contempt in the DeLorean case, and he started swearing at judges and all that stuff, that is when I left. I just didn't want to deal with it.

So when Fahringer came back from New York, I told him this guy Flynt called, and he wants to interview you for his magazine. By the way, he has a case in Cincinnati, and I made a deal with him for \$5,000. He's going to pay us on time. Fahringer and I went down to Cincinnati to meet with him to start working on this case. He was indicted. His brother Jimmy was indicted, along with a girl whose name I've forgotten. We made an appearance for them, and we were defending them. And while that happened, the prosecutor came down and indicted *Hustler*. It was just a natural progression.

He said, "Well, I'd like you guys to represent me in the *Hustler* case." That was around the time that he bought the Jackie Kennedy photos¹⁰ and wound up making a ton of money off of those. Everything just started spiraling up in the air.

The government charged him with organized crime, which was a joke, but it was big deal back then. That's how we got into the case.

QUESTION: How many cases over the years have you represented Larry Flynt?

RESPONSE: We've represented Larry in all of his criminal cases. We were his general counsel in the beginning when he was in Ohio. When he moved to Los Angeles, none of us was really interested in coming out here on a regular basis and doing the work. Indeed, he had a falling out with Fahringer after the Cincinnati trial, and I was representing him then. And when he was being held in contempt in the DeLorean case,¹¹ and he started swearing at judges and all that stuff,¹² that is when I left. I just

didn't want to deal with it. It was zaniness, and I was doing it long distance from Buffalo. Then, Alan Isaacman became his general counsel.¹³

QUESTION: What year was this?

RESPONSE: This was in the 1980s. Isaacman came in as the civil lawyer, and he handled the *Falwell* case¹⁴ for Larry, along with what

seemed to be a cast of thousands in terms of lawyers, but he argued it and did a great job. It's a great case, but he never represented Larry on any of the criminal cases. He was involved in the Cincinnati case basically in name only. That really wasn't his game, and that's when the relationship between Larry and me came back together.

I got a call from Larry out of the blue on a Saturday afternoon. I hadn't talked to him in ten years. He said, "You've always been my criminal lawyer, and I'm fixing to get arrested in Cincinnati. I want you to represent me." I said, "Well, what happened with Isaacman?" He said he would handle it with Alan, who wouldn't be happy about it. I agreed to represent him and arranged to meet him in Los Angeles. By that time, I had already established an office in L.A. and was a member of the California

Bar. I was representing a number of very big companies – Vivid, VCA, and all the rest. Larry was

Twenty years ago, Larry decided that the way to make money was to distribute everybody else's magazines, plus his own, and now he's distributing videos for other companies, plus his own. And of course, he's bought certain ones up. He's probably the largest now in the video business.

TWENTY years ago, Larry decided that the way to make money was to distribute everybody else's magazines, plus his own, and now he's distributing videos for other companies, plus his own. And of course, he's bought certain ones up. He's probably the largest now in the video business.

QUESTION: So he's larger than Vivid and everybody?

RESPONSE: He bought their distribution company, so he doesn't

not in the video business. He was in the magazine business. And I met him. He's a big guy, you know, and he started crying. He hadn't seen me in years and all this stuff.

QUESTION: When was this?

RESPONSE: About nine years ago. In any event, a year later he got arrested. I was representing him. Isaacman was there. We brought Lou Sirkin in as our local counsel because it was Cincinnati.¹¹⁵ And when that trial was over, Larry had a fallout with Isaacman. They had a huge fallout after that.

About a year before I took over, which was about four years ago, I got a call from Larry and he said, "I'm going to be letting Alan go. I want to know whether you can gear up your office here in L.A. to handle all my work again." I said with enough time I could. And then he had a real blowout with Alan – just one of those things that was unbelievable – and he fired him.

In any event, we took over then as general counsel, and one of the first things we did was discuss the fact that he wasn't in the movie business, which we couldn't believe. So I arranged a meeting with a number of my clients – Vivid and the others – and he got into the movie business with Vivid. Then, after a couple of years, when they were a huge success, he took it over and does his own movies now. And then he wound up buying Vivid's distribution arm and now he distributes all the Vivid products, and, just recently, he bought VCA.

actually hold Vivid. Vivid is still its own company, and is a very long-term and important client of mine, but I would say Flynt now is the largest distributor.

QUESTION: Do you find that when Larry was on trial it was more difficult to pick a jury because of his notoriety?

RESPONSE: Well, sure. There's a ton of baggage with Larry, although what has happened over the years is that he's become almost a folk hero. He's the broke guy from Kentucky who figured out how to become a huge financial success and really is almost a symbol now of free speech from the adult standpoint. He lost his ability to walk, and it was all tied into this. The guy who shot him did so because he had a black and white centerfold in *Hustler*, and the shooter was a white supremacist who said, "That shouldn't happen, and you should die."¹¹⁶

QUESTION: Did the judges react differently to Larry?

RESPONSE: They know that Larry is not your average bear. Something that might work with another defendant would only fuel Larry's interests. A lot of people just pass on doing anything with Larry because he isn't your conventional thinker. You know, where other people would retreat, Larry sounds the charge.

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QUESTION: Here's an example of that, perhaps. You are representing Larry Flynt in his battle against Secretary of Defense Donald Rumsfeld and the federal government seeking access to the special operations ground forces in Afghanistan.¹¹⁷

RESPONSE: That's right.

QUESTION: In the past, Flynt sued the government for access to the troops in Grenada when Ronald Reagan was President.¹¹⁸ Is Flynt really serious in these cases? I imagine many people believe he's simply joking around.

RESPONSE: Oh no. You know what? Nothing he does is a joke – I can tell you that. Some people may think that with Larry it's all giggles, jokes, tweak the world, and all that, but he's one of the most serious guys you'll ever meet in your life. He's serious about everything. We've known each other for a long time, and we're friends, so I can kid around with him. But he's not one of these guys who sits around and just yucks it up. That's not his deal. Everything has a purpose.

He really feels that the American public should know exactly what's going on over there. But they're not going to know that if the government gets to pick and choose what they tell media outlets and who gets in. So, no, he is definitely serious about this lawsuit and asks me about it every week – “How's the appeal? When is it going to be filed?”

I had dinner with him last night, and he wanted to know when it was going to be filed. I said, “Larry, we've called the court a dozen times. Believe it or not, I've never seen this before, but we are still waiting – months now – for a briefing schedule from the D.C. Circuit.”

QUESTION: Larry Flynt seems like he is very involved in the cases and very knowledgeable about the issues. Is he so in tune with the issues that he tries to control the case?

RESPONSE: No. He clearly is involved in the case. He is a very smart guy and he knows exactly

what the issues are when we file our complaint, the briefs, and so on. He reads them, and it's not unusual for him to call me, talk about it, and totally understand everything that we're doing and why. And, he has plenty of suggestions, but he believes in his lawyers. Every year at his holiday parties he says, “I want to thank my lawyers and my doctors for being here.” And he believes it – he's always been that way. That doesn't mean that he gets happy about everything, but he rarely interferes to the point where you can't do your job. He doesn't do that. But he clearly understands the law.

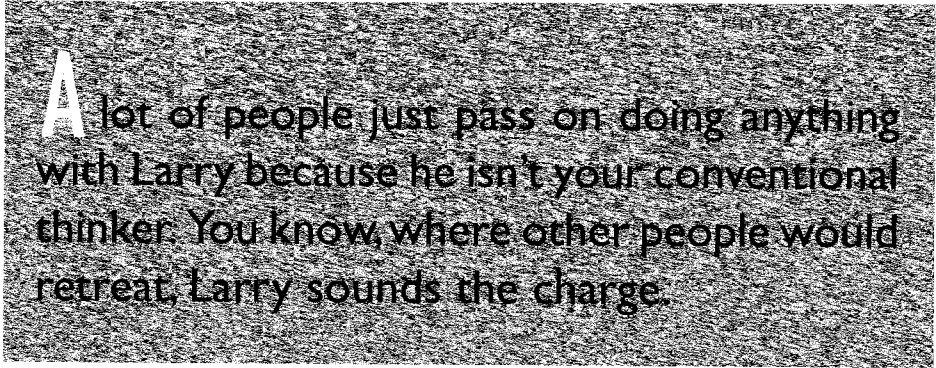
QUESTION: In most of the cases that you have represented Mr. Flynt, you have out-of-town counsel, such as in Ohio or Georgia, associated. Does that pose any special problems, particularly given the circumstances that Larry Flynt is the client?

RESPONSE: Well, in the older days it was difficult to represent Larry. He was more controversial than he is now.

Today, he's almost revered by people as such a symbol of what he believes in and so on. He has a great deal of credibility. When he did the exposé that brought down the Speaker of the House, people really sat up and took notice of Larry.¹¹⁹ It's almost easier to defend him now than it was before.

QUESTION: One question I had relates to the movie, *The People vs. Larry Flynt*.

RESPONSE: Right. We got screwed out of that.



A lot of people just pass on doing anything with Larry because he isn't your conventional thinker. You know, where other people would retreat, Larry sounds the charge.

QUESTION: Yeah, I was going to ask you.

RESPONSE: But this is before I was back talking to Larry. It wasn't that Larry and I were estranged – I just left, and I hadn't seen him.

I remember the first night that Larry told me about it. He goes, "Oh, by the way, they're doing a movie, and they sort of wrapped all the lawyers into one of the attorneys, Alan. It's not fair, but you know how it goes." I said, "Yeah, well, whatever."

Alan was here on the scene working with the producers and writers everyday, so they gave him the role. He did not even know Larry when Larry was shot.

QUESTION: You were there in Georgia.

RESPONSE: Absolutely – every case. I saw him get shot. I was right there.¹²⁰

QUESTION: Across the street?

RESPONSE: Absolutely. Right out across the street.

QUESTION: And in Cincinnati, the first case involving Larry Flynt, you were there?

RESPONSE: Absolutely. We were with them from day one – all of his criminal cases, every one of them. But it made for a good movie, so, whatever.

QUESTION: After Larry Flynt reached a plea bargain in Cincinnati in 1999 . . .

RESPONSE: Which I was against. Isaacman engineered that.

QUESTION: Oh, really?

RESPONSE: Absolutely. I was totally against it.

QUESTION: You were quoted as stating at that time, "Personally, I'm disappointed, because I really do like the combat."¹²¹ I imagine that is the case – that you enjoy the fun of litigating obscenity cases. Are they somehow more intriguing and exciting, given the subject matter or the Constitutional implications?

RESPONSE: Well, they're tougher because the politics are involved, plus you've got a complicated statute. It's the only criminal case where everybody knows who did it. The question is whether it's actually crime. In every other case, you're trying to

figure out who did it, and you know it's a crime, but here it's a totally different deal.

Yeah, I wouldn't have settled that. I would've gone forward – I think we could've won.

E. The Cambria List

The election of President George W. Bush and subsequent appointment of John Ashcroft as U.S. Attorney General sent shivers through the adult entertainment industry.¹²² During the 2000 Presidential campaign, Paul Cambria endorsed the Democratic ticket of Al Gore and Joseph Lieberman, telling members of the industry that "[t]his is a get-out-the-vote effort. No one should underestimate the power of adult industry consumers."¹²³ Cambria's primary motivation behind the endorsement went beyond the occupant of the Oval Office. Calling on X-rated Web site producers "to use their sites to promote Gore's candidacy,"¹²⁴ he warned industry operatives that they needed to think about judges and prosecutors and fully understand that "the Democrats may just prove to be the lesser of two evils."¹²⁵

When the Republicans emerged as winners, the adult entertainment industry, led by key players VCA Pictures, Vivid Video, Hustler, and Video Team, caucused with Cambria to discuss strategies for dealing with the next four years of conservative reign.¹²⁶ One result of that meeting was the creation of a list of guidelines to govern the production and marketing of adult films. These "Box Cover and Movie Production Guidelines"¹²⁷ became known throughout the adult entertainment world as the "Cambria List."¹²⁸ But the list did not remain with just that select population, and, as Cambria makes clear in his comments, it includes many items that he did not suggest.

The rest of the country was introduced to it on February 7, 2002, when the PBS program *Frontline* aired an episode entitled "American Porn," featuring Cambria himself reading portions of the list.¹²⁹ The now controversial list – which includes such admonitions as "[n]o spitting or saliva mouth to mouth,"¹³⁰ "[n]o fisting,"¹³¹ and "[n]o food used as sex object"¹³² – met with resistance from some industry players and even a First Amendment attorney who dismissed it as "complete horseshit."¹³³ The concern that the critics have is that while the top producers may adhere to the guidelines, "smaller maverick producers may reap a windfall by breaking all the rules."¹³⁴

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In this section, Cambria talks about the controversial list that bears his name. As he makes it clear, the list is not necessarily his list, as it has grown over time from its original elements.

QUESTION: Tell us a little bit about the so-called Cambria List.

RESPONSE: In a nutshell, what happened was one of my clients – one of the big video companies – said to me, “Will you give me a list of those subjects most frequently selected by the police and prosecutors to prosecute?”

I said sure, and I did that – verbally. He then put that to writing and added five or six things on there that his people were producing that he personally didn’t like. Then said to his company, “This is what Cambria said we can’t do.” Because it served his purpose and, of course, Cambria didn’t say he couldn’t say that. Cambria said, “Here are the things most frequently selected for prosecution.” That is the Cambria list.

The one that’s been circulated has things I never discussed – wax and coffins, for example. I didn’t put any of that on it. I agree that those would be subjects that probably would attract attention.

R e m e m b e r , when the police go into a store, they don’t have VCRs and DVD players. They are looking at covers. So that was the whole purpose of this – how should we change our covers so that we’re not selected? That was what this was all about.

Then it went crazy. Everybody used it for whatever their own purpose was. If they were a producer and they wanted to curtail some of their creative people, as they call themselves, ... they would say, “Well, Cambria said we can’t do this.”

QUESTION: So it expanded out of control?

RESPONSE: Totally, and to the point where I got a call from a black actor saying, “You’re discriminating against blacks. I’m going to hire Johnnie Cochran to sue you.” I said this is just nonsense.

One of the things on the list was [sex scenes with] black men/white women, and the last five cases I had involved tapes with black men/white women. That’s one of the things they pick. Well, the black women/white men they don’t pick. They pick the black men/white women. Larry Flynt got shot because of that¹³⁵ – what better proof do I have than that?

So that’s the Cambria list in a nutshell.

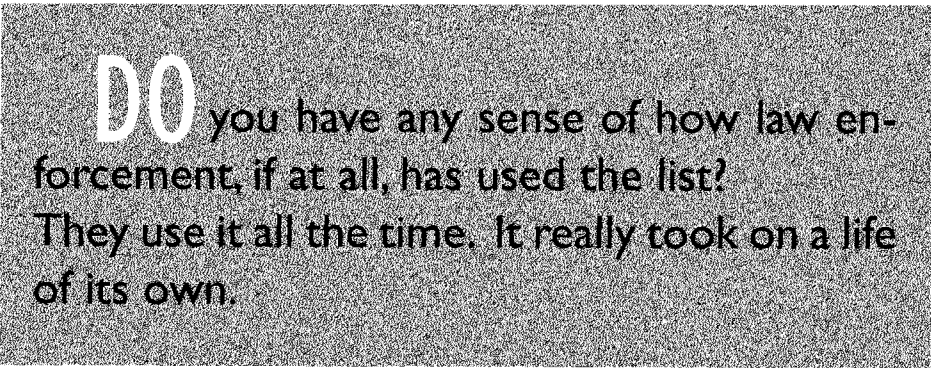
QUESTION: Do you have any sense of how law enforcement, if at all, has used the list?

RESPONSE: They use it all the time. I know that because when they did that PBS show with Debbie Sanchez with the Los Angeles DA’s office, [she referred to the list].¹³⁶ Plus, when they tried Max Hardcore in Los Angeles, they were cross-examining his expert about the Cambria list.¹³⁷

QUESTION: It really took on a life of its own.

RESPONSE: And I told him, “Call me, and I’ll tell you about the Cambria list.” Not a problem.

QUESTION: So you’re glad it’s called the Cambria list? Would you rather they call it something else?



DO you have any sense of how law enforcement, if at all, has used the list?
They use it all the time. It really took on a life of its own.

RESPONSE: No, they can call it whatever they want. I just have to keep explaining it all the time. Most people in higher ranks of the business know exactly what the list was all about. And, indeed, every bust that has occurred since the time that list came out has involved something that’s been on that list.

F. Sexually Explicit Speech: From Cyberspace to Strip Clubs

No matter the venue – be it the high-tech locale of a Web site on the Internet or the low-tech location of a sexually oriented business like an adult movie store or a so-called gentleman's club – sexually explicit content and conduct attract the attention of politicians and lawmakers. To the latter locations, lawmakers frequently attribute a bevy of problems – lower property values,¹³⁸ increased crime rates,¹³⁹ and aesthetic and urban blight.¹⁴⁰ And to rectify these wrongs – perceived or real – those lawmakers have typically taken two different but related kinds of regulatory activity – “the use of traditional urban zoning strategies to restrict the time, place, and manner in which adult entertainment may be marketed, and the use of traditional public indecency statutes to prohibit certain types of sexually expressive conduct.”¹⁴¹

The United States Supreme Court has approved local governments' use of zoning ordinances to “regulate the location of adult bookstores and movie theatres.”¹⁴² Communities are greatly helped in this endeavor by the secondary effects doctrine, which turns laws that seem to be content based in content-neutral laws, once the government provides a purpose “unrelated to the suppression of expression.”¹⁴³ The distinction is important because content-neutral laws are much more likely to be upheld as constitutional under the intermediate scrutiny standard of review than are content-based laws, which are subject to strict scrutiny.¹⁴⁴

As the United States Supreme Court observed regarding its 1986 holding in the seminal secondary effects zoning case of *City of Renton v. Playtime Theatres, Inc.*:¹⁴⁵

...[T]he Renton ordinance was aimed not at the content of the films shown at adult theaters, but rather at the *secondary effects* of such theaters on the surrounding community, namely at crime rates, property values, and the quality of the city's neighborhoods. Therefore, the ordinance was deemed content neutral. . . . Finally, given this finding, we stated that the ordinance would be upheld so long as the city of

Renton showed that its ordinance was designed to serve a substantial government interest and that reasonable alternative avenues of communication remained available.¹⁴⁶

In 2000, the United States Supreme Court extended the secondary effects rationale to justify more than just the zoning of adult oriented businesses. In particular, in *City of Erie v. Pap's A.M.*,¹⁴⁷ the Court used the secondary effects doctrine to support an ordinance banning nude dancing inside those businesses. As Justice Sandra Day O'Connor wrote:

Erie's ordinance is on its face a content-neutral restriction on conduct. Even if the city thought that nude dancing at clubs like Kandyland constituted a particularly problematic instance of public nudity, the regulation is still properly evaluated as a content-neutral restriction because the interest in combating the secondary effects associated with those clubs is unrelated to the suppression of the erotic message conveyed by nude dancing.¹⁴⁸

Legal efforts to regulate sexually oriented businesses stretch, quite literally, from neighborhood strip clubs like Kandyland to the distant reaches of cyberspace. The legal landscape, in turn, is strewn with flawed and failed legislative efforts to prevent minors from gaining access to sexually explicit speech on the World Wide Web, from the Communications Decency Act¹⁴⁹ to the Child Online Protection Act.¹⁵⁰

In this section, Paul Cambria discusses both the issues of zoning and the regulation of so-called virtual child pornography on the World Wide Web. He notes that recent Supreme Court decisions have actually been favorable in attacking statutes regulating the activities with, and locations of, adult entertainment businesses.

QUESTION: What are the biggest legal issues facing the adult entertainment industry today, be it video, Internet, or the clubs?

RESPONSE: The most difficult thing that the adult industry has to deal with is the power of the federal government. If the federal government targets you

because of a personal agenda, let's say of our Attorney General, and they take all their might, power and money and focus on you, that's pretty serious.

There was a core of some really nasty federal prosecutors in there at one time that had strong personal agendas. What they would do is indict a company in one state, like Utah, and then they would simultaneously indict them in another state, or two or three other states.

Their theory would be, "We can't beat them in the courtroom, so we'll break them." Finally, there was some relief in the courts from that. But that really is the biggest problem and it's a shame because, by in large, I think the public would rather not have their government spend their money on this subject when there are so many other things that those resources could be directed at.

QUESTION: You mentioned the federal government going after people who deal with this material. Have they been able to successfully use the RICO¹⁵¹ statute?

RESPONSE: They tried that a long time ago, and then it seemed to fizzle out, although there were a couple of forfeitures. A fellow named Ferris Alexander forfeited about nine or ten million dollars.¹⁵² That was the most successful one. But after the Supreme Court's decision in *Fort Wayne Books*,¹⁵³ which basically said that pre-adjudication freezing of all the assets and the rest of it would be scrutinized, they sort of laid off RICO and then enacted their own forfeiture section in Title 18 in the obscenity section.

We haven't seen a lot of federal government action. Now, if the federal government just goes after the mainstream material, I think they're going to have a huge problem because society isn't ready for that like they were ten years ago. They're much more sophisticated now than they were then, and so we'll see.

In fact, I tried a case in Manassas, Virginia, a couple of years ago. After the fellow was acquitted, the next day the *Washington Post* had an editorial that said the next indictment should be of the prosecutors for wasting the public's money prosecuting this kind of material.¹⁵⁴ Well, an editorial like that in the *Washington Post* goes a long way. They never had another prosecution there. And, in St. Louis, when we won that case with an all-woman jury, the prosecutor said, "Forget it. I'm done."

QUESTION: How did the owner of that store in St. Louis find out about you, and how did you come to represent him?

RESPONSE: Well, he owns 180 video stores. When he got arrested, they had local counsel there. They called the distributors and the producers of the movies and asked them for a recommendation, and they recommended me.

QUESTION: In April 2002, the United States Supreme Court struck down the Child Pornography Prevention Act of 1998, which regulated so-called virtual child pornography, as fatally overboard.¹⁵⁵

RESPONSE: Right, which they now reenacted with a new statute.¹⁵⁶

THE most difficult thing that the adult industry has to deal with is the power of the federal government. If the federal government targets you because of a personal agenda and they take all their might, power and money and focus on you, that's pretty serious.

QUESTION: Exactly, under the so-called "Amber Alert" law. Is Congress wasting its time here by essentially wasting taxpayers' dollars having to regulate fake child pornography?

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RESPONSE: Well, I think so. What could be more protected than that sort of thing? You create something – totally create it. You know, it seems to me that that always has to be protected. Lou Sirkin, who handled the original case for the Free Speech Coalition, has contacted me and asked if I would join him in attacking the latest statute. I suspect we will.

QUESTION: The so-called secondary effects doctrine often is used by cities when it comes to zoning sexually oriented business establishments as a way to convert seemingly content-based laws into content neutral ones. What is your opinion of the secondary effects doctrine?

RESPONSE: The most important thing that I think has happened is the *Erie v. Pap's A.M.*¹⁵⁷ case out of Erie, Pennsylvania, which I did the amicus brief on for the Pennsylvania Supreme Court, which broke from the U.S. Supreme Court in that case, and the *Los Angeles v. Alameda Books*¹⁵⁸ case.

What's happened now is the Court is recognizing that you can challenge the government's claimed basis for their loss. In the *City of Renton v. Playtime Theatres*¹⁵⁹ case, the Supreme Court said that even though we're looking at adult speech, the law really isn't geared toward that content. It's geared toward "secondary effects" that occur as a result of this speech, and the proof we have of that is a few of these studies that were done. The court allowed other communities to borrow from these studies.¹⁶⁰

So now communities didn't even have to do their own study. They just kept borrowing from these studies, which we unraveled to be bogus studies in the first place, but they perpetuated themselves. Well, we finally saw a glimmer of change. Souter, in his concurring opinion in *Pap's*, basically says that if there's a challenge to that evidence-sharing basis, perhaps we can challenge the evidence-sharing basis and not just take it for granted. Now we've seen *Alameda* embrace that.

So now what we're regularly doing is going into communities. We filed an action in Arlington, Texas, within the last two months where we're challenging their claim that a law is needed to combat secondary effects as demonstrated by these studies. We're challenging the studies and the claim that there are secondary effects because we claim there are not secondary effects.

And so those laws, I think, have peaked now with the secondary effects and now we're going to see more litigators like myself, in addition to being appellate lawyers, who are going to start attacking the foundation that supposedly supports these secondary effects – studies that they borrowed. The courts are starting now to say that the government needs to justify the necessity for this rather than simply to borrow wholesale studies from other communities. So I think they've peaked and they're going to be on the way out.

QUESTION: What's going on in Arlington?

RESPONSE: They're saying they need a six-foot buffer rule because there are secondary effects.¹⁶¹

QUESTION: Six feet separating the men in the audience from the women dancing?

RESPONSE: Yeah, from the women dancing and so on. And, of course, there are no secondary effects. Then they say, "But we had a no-touch statute and it was violated, so we need to enact this buffer zone." But, with the no-touch statute, they never let the club owners participate in the litigation, so if the dancer, for example, is charged with a no-touch violation and they took deferred prosecution because that only is a \$100 fine, that was counted as a conviction, and then it was used against the licensee, who was never invited to the dance. They could never argue in court that there wasn't a no-touch violation in the first place. We're involved in that, and we just filed a lawsuit there.

QUESTION: It seems like a lot more towns are trying to enact such laws.

RESPONSE: They're all doing it. Remember groups like the old CDL – Citizens for Decent Literature?¹⁶² They've adopted a number of these bogus child acronyms – you know, like "Protect the Children from Dirty Men, Bad People, Government" sort of acronyms. They all have these now.

It's like, for example, with the virtual pornography law called the "Child Pornography Prevention Act" – it's always children. That's how they justify it – who would be against protecting children? So the Bruce Taylors¹⁶³ of this world who are general counsels for these organizations¹⁶⁴ put together legislative packets with the studies and the

suggested legislation and sent it around to all the communities. They said, "Here, enact this," and so that's why you see them all over the place.

QUESTION: Is that really what's happening?

RESPONSE: Absolutely.

QUESTION: And Bruce Taylor is?

RESPONSE: He's been around forever.¹⁶⁵ He shows up like the grim reaper at all of our trials. He originally was a disciple of Charles Keating, and Keating, of course, is the one who started the prosecution against Larry when he was in Cincinnati.¹⁶⁶

As a funny aside, about two months ago I was representing Playboy. It was being sued by a sort of semi-retired lawyer as a private attorney general under the California statutes. We went to Van Nuys to argue the motion to dismiss in superior court, and I looked down the hall and I see this tall guy with kind of out-of-date glasses and so on walking in my direction. There were a number of people outside.

He walks up and says, "Cambria?"

And I go, "Charles Keating?"

He goes, "Yeah."

And I said, "I thought you were in jail."

And he said, "No. Long time since Cincinnati."

And I said, "Yeah, right."

Well, Keating started this whole group, and Taylor was one of his boys. Taylor is still around representing the child and family – another one of these bogus acronym kind of things. That's what he's doing. They

show up all the time. Briefs, arguments, legislation – the whole works.

III. Analysis and Conclusion

Before critiquing the substance of Paul Cambria's remarks, it is worth noting both the candor and clarity with which he spoke. For instance, Cambria revealed much about his strategies before juries, apparently not feeling the need to keep his methods protected like a trade secret. His comments about feminist Andrea Dworkin, in turn, leave little to the imagination and cut deep. It would be difficult, however, to expect anything else from a man who so passionately believes in freedom of expression and who views Dworkin as a massive force of censorship.

What's more, at no point during the interview did Cambria refuse to answer a question or ask to go off the record. The answers he gave were never dodges. And for a litigator and appellate attorney – a somewhat rare combination – who is so busy (Cambria was in Los Angeles during the week of the interview primarily to deal with depositions), he never appeared distracted or disturbed from the task at hand while his cell phone repeatedly vibrated with incoming calls during the interview.

Turning to the substance of his comments, one might find it surprising that Cambria actually embraces most aspects of the *Miller* obscenity test, including the notion of contemporary community standards.¹⁶⁷ In contrast, free speech advocate and ACLU President Nadine Strossen squarely rejects the test, calling it "ambiguous, open-ended, and subject to interpretation" and contending that "it can create a chilling effect and will inevitably lead to

the suppression of expression that should be protected."¹⁶⁸

Likewise, former Flynt counsel Alan Isaacman believes that the "*Miller* test is an unworkable test, ... [that it] ought to be thrown out, and [that] there ought to be either a different standard or no standard adopted in

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the areas that *Miller* is brought to bear.”¹⁶⁹

Of particular interest are Cambria’s comments about the third prong of the *Miller* test, which asks jurors to consider whether the material in question has serious literary, artistic, political, or scientific value. As Cambria makes clear, it is often easier to argue, at least with some of the more explicit adult videos, that the material has serious scientific value – value to couples, for instance, in enhancing their sex lives – rather than artistic value.¹⁷⁰

In litigating these cases, Cambria initially focuses his attention on the one quality that all jurors should have, regardless of the type of case they are deciding – honesty.¹⁷¹ It is this guiding principle of honesty that often leads him to select for obscenity jurors “[o]lder women who’ve been there, seen it all, raised children, worked in the workplace and all of that.”¹⁷² They, not the macho blue-collar male, are more likely to embody honesty during deliberations.

It is, perhaps, not surprising that the lynchpin of Cambria’s closing argument to jurors in obscenity cases often mirrors what he sees as the primary purpose of the First Amendment – “Let you be you, and let me be me – that’s what it is all about. It’s not a majority concept, and so we need to be able to be individuals, and this is the greatest way we have to express ourselves.”¹⁷³ Cambria’s view about the importance of protecting speech that is unpopular or that falls outside the majority’s viewpoint – whether it is adult entertainment or, as he notes, the dissenting political views of Natalie Maines – is embraced by the United States Supreme Court’s dicta in *Texas v. Johnson*.¹⁷⁴ In this case, the court says that “[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”¹⁷⁵ Seen in this light, those who find adult entertainment “offensive or disagreeable”¹⁷⁶ should nonetheless let others who enjoy it have the opportunity to read and view it. This is necessary to protect minority opinion and keep the majority from controlling decisions and to prevent, as Cambria

would put it, “six foxes and a sheep deciding what to have for dinner.”¹⁷⁷

In litigating these cases, Cambria initially focuses his attention on the one quality that all jurors should have, regardless of the type of case they are deciding – honesty.

Despite such admonishments, and despite the steady mainstreaming of adult content today to the point where its general acceptance and tolerance may soon very well fall within the majority perspective, Cambria makes it evident that it is the politics of prosecution that often keeps him busy. He notes that obscenity prosecutions are all simply a matter of politics or religion. Either the local right-wing religious or conservative groups go to the local sheriff or prosecutor and basically convince the official that they are a significant constituency, and if he doesn’t do something, they’re not going to vote for him. Or it’s a politician, for example, like Attorney General John Ashcroft, who has a very fundamentalist religious bent and has a personal agenda. I mean, that’s really it. That’s what we see time and time again.¹⁷⁸

Cambria’s sentiment that religion often plays a large role in obscenity prosecutions is reflected in the words of his best-known client, Larry Flynt. As Flynt once told the authors of this article during an interview, “the church has had its hand on our crotch for over 2000 years.”¹⁷⁹

In an era in which “[t]eenage girls are snapping up the very symbol of a lifestyle their mothers’ generation derided as sexist and exploitive,”¹⁸⁰ with the once reviled Playboy bunny logo, now embossed on all variety of women’s clothes, and the public is spending about \$10 billion a year on all varieties of adult entertainment,¹⁸¹ the church and the government may be losing their grip over adult entertainment. Indeed, Cambria suggests

that successfully prosecuting the works of more mainstream adult video and DVD companies like Vivid and Wicked Pictures will be increasingly difficult.¹⁸² However, he also notes that individuals like Max Hardcore and Rob Black who push the boundaries of explicitness, as well as what he calls the “lesser lights” who cannot afford top-shelf legal counsel, will face problems in the future.¹⁸³

The one man who can afford such top-shelf legal counsel is, of course, Larry Flynt. Flynt, as Cambria makes clear, is acutely in touch with both the law and the cases in which is involved,¹⁸⁴ and despite the flamboyant image of Flynt painted in the Milos Forman film *The People vs. Larry Flynt*, Cambria observes that the man whose company slogan is “Hardcore Since ‘74” is “one of the most serious guys you’ll ever meet in your life. He’s serious about everything.”¹⁸⁵ Perhaps that seriousness is one reason why, as Cambria asserts, Flynt is “almost revered by people as such a symbol of what he believes in and so on. He has a great deal of credibility.”¹⁸⁶

Cambria himself, as this interview reveals, is a symbol of man who comes from a common background,¹⁸⁷ who fights and scraps for civil liberties like free speech and free press, and who ultimately will be there as a bulwark protecting those rights the next time the Bruce Taylors of the world, as he calls them, attempt to squelch those freedoms. His no-holds barred comments about Andrea Dworkin, while perhaps offensive to some, reveal his intense and deep-seeded displeasure with censorship and with those who would shut down First Amendment rights. Ultimately, Cambria, like Flynt, is a man who fights for what he believes is right. It is thus the authors’ distinct impression that Cambria has that one singular quality that he looks for in the jurors he selects – honesty.

ENDNOTES

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Bar of Pennsylvania. The authors thank Kathleen W. Collins for her generous financial support of the Center.

¹ Clay Calvert & Robert Richards, *Larry Flynt Uncensored: A Dialogue with the Most Controversial Figure in First Amendment Jurisprudence*, 9 COMM.LAW CONSPICUOUS 159, 168-69 (2001).

² Nearly 30 years after that first battle in Cincinnati, Flynt’s troubles there continue, this time relating to off-premise signage promoting one of his stores. *Hustler Store Sues State to Keep Banner Up*, ASSOC. PRESS NEWSWIRE, May 23, 2003.

³ Calvert & Richards, *supra* note 1, at 168; see *Leis v. Flynt*, 439 U.S. 438 (1979) (involving Cambria’s *pro hac vice* representation of Flynt stemming from a 1977 indictment in Hamilton County, Ohio, for allegedly disseminating harmful material to minors); *Ohio v. Hustler Magazine*, No. C-77101, 1979 Ohio App. LEXIS 10141, at *1 (Ohio Ct.App. April 4, 1979) (identifying Paul J. Cambria, Jr., as one of the attorneys defending Flynt and *Hustler Magazine* in a prosecution in Hamilton County, Ohio, stemming from the publication and distribution in that county of eleven issues of *Hustler* between July of 1975 and May of 1976 and alleging that Flynt both engaged in organized crime and published obscene material for commercial exploitation).

⁴ See Dan Herbeck, *Cambria Remembers Flynt as Both Degenerate, Hero*, BUFFALO NEWS, Jan. 5, 1997, at A1 (writing that “Flynt was walking across the street to meet Cambria at a Lawrenceville, Ga., courthouse” when Flynt was “gunned down by a sniper in 1978”).

⁵ See Michele Munz, *Obscenity Trial Opens with Showing of 3 Store Videos Family Lawyer Says No Violations of Standards Occurred*, ST. LOUIS POST-DISPATCH, Oct. 25, 2000, at 1 (describing part of Cambria’s closing arguments on behalf of the owner of the video store).

⁶ *Infra* Part II, Section B.

⁷ Goldstein has been dubbed by some in the media as the “Sultan of Smut.” Nancie L. Katz, *Porn King Freed Until His Appeal*, DAILY NEWS (N.Y.), May 14, 2002, at 14. In 2002, he was represented in a harassment case by one of Paul Cambria’s law partners, Herald Price Fahringer. Andy Newman, *6 Days in Jail Broke Him, Freed Pornographer Says*, N.Y. TIMES, May 18, 2002, at B3.

⁸ See Anne V. Hull, *A New Act in Broward County’s Circus*, CHI. TRIB., Feb. 28, 1992, at B.

⁹ *Id.*

¹⁰ *United States v. Goldstein*, 431 F. Supp. 974 (D. Kan. 1976).

¹¹ Vivid Video is “one of the world’s largest producers of explicit adult entertainment.” Greg Hernandez, *Tough Times Don’t Hurt Adult Video*, DAILY NEWS (Los Angeles), Nov. 1, 2001, at B1. It is part of the Vivid Entertainment Group, “the nation’s leading producer of pornographic films” headquartered in Van Nuys in California’s San Fernando Valley. Stuart Elliott, *Stars of Pornographic Films are Modeling in a*

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Campaign for Pony, the Shoe Company, N.Y. TIMES, Feb. 24, 2003, at C9.

¹² See *Vivid Entertainment Licenses Distribution to LFP*, ADULT INDUSTRY NEWS ONLINE, May 29, 2002, at <http://ainews.com/Archives/Story3447.phtml> (last visited Feb. 10, 2004).

¹³ See P.J. Huffstutter, *Los Angeles; Tests Urged for Actors in Adult Films*, L.A. TIMES, Mar. 13, 2003, at B3 (identifying these companies as among the "adult-film producers" Cambria represents).

¹⁴ See *Contact Us*, ADULT VIDEO NEWS ONLINE, at http://www.avn.com/index.php?Primary_Navigation=Contact_US (last visited Feb. 10, 2004) (identifying Cambria as "General Counsel, West Coast" for the *Adult Video News*).

¹⁵ Non-adult entertainment industry clients of Cambria include goth rocker Marilyn Manson, whom Cambria has represented in a defamation action. See Salvatore Arena, *Shock Rocker is Sued for \$24M*, DAILY NEWS (N.Y.), Jan. 6, 1999, at 8 (identifying Cambria as "Manson's lawyer" in the case). In addition, Cambria has represented the rap artist known as DMX in an assault case. See Matt Gryta & Kevin Collison, *DMX Faces Assault Charge*, BUFFALO NEWS, Mar. 7, 2001, at 1B (noting how DMX, whose real name is Earl Simmons, was being represented "by Buffalo lawyer Paul J. Cambria").

Outside of such entertainers, Cambria has defended James C. Kopp in the murder case of Barnett A. Slepian, a doctor who performed abortions and was killed at his home in October 1998. See Randal C. Archibald, *Man Denies Murdering a Doctor Who Performed Abortions*, N.Y. TIMES, June 7, 2002, at B5 (identifying Cambria as Kopp's attorney). Cambria later withdrew from Kopp's defense team, stating "I'm glad to be off the case." Dan Herbeck, *New Lawyer is Assigned to Kopp*, BUFFALO NEWS, Dec. 31, 2002, at B2. In May 2003, Kopp was sentenced to 25 years to life in prison for Slepian's murder. Carolyn Thompson, *Abortion Doctor's Killer Sentenced*, PATRIOT-NEWS, May 10, 2003, at A5.

¹⁶ See, e.g., Janet Maslin, *Film Festival Review; Larry Flynt, His Epiphanies Showing*, N.Y. TIMES, Oct. 12, 1996, at 13 (calling *The People vs. Larry Flynt* "a blazing, unlikely triumph" and "[s]mart, funny, shamelessly entertaining and perfectly serious too").

¹⁷ THE PEOPLE V. LARRY FLYNT (Columbia Pictures 1996). The film, while critically acclaimed, drew the wrath of many feminists. See, e.g., Suzanne Espinosa Solis, *Feminists Protest Film's Portrayal of Flynt*, S.F. CHRON., Dec. 28, 1996, at A21 (describing a protest in San Francisco outside of the Kabuki Theater where the movie was being shown).

¹⁸ See generally Clay Calvert & Robert D. Richards, *Alan Isaacman and the First Amendment: A Candid Interview with Larry Flynt's Attorney*, 19 CARDOZO ARTS & ENT. L.J. 313 (2001) (describing Isaacman's representation of Flynt and setting forth his views on First Amendment topics such as obscenity and media violence).

¹⁹ 485 U.S. 46 (1988).

²⁰ See Cindy Pearlman, *7 in '97: Hollywood's Hottest New Stars*, CHI. SUN-TIMES, Jan. 12, 1997, at Show Section 1 (writing that

Norton "has critics gushing about his portrayal of Larry Flynt's lawyer Alan Isaacman").

²¹ See Joanna Connors, *Flynt Haters, Steel Yourselves: 'People' Is Good*, PLAIN DEALER (Cleveland), Jan. 10, 1997, at 4 (writing that the movie's version of Isaacman is "a composite character of all Flynt's attorneys, nicely played by Edward Norton").

²² As one newspaper put it, "For US pornographers, the Clinton era represented eight years of expansion. The Justice Department adopted a hands-off role, and having a horny president didn't hurt." John Patterson, *Natural Porn Killers*, GUARDIAN (London), Mar. 9, 2001, at 5. In direct contrast, "the Bush Administration has vowed to prosecute obscenity cases." Tom Walter, *Porn Gets Hardball, Kid-Glove Coverage*, COMMERCIAL APPEAL (Memphis), Feb. 9, 2002, at E1.

In May 2002, Attorney General John Ashcroft sent a memorandum to all United States Attorneys in which he stated that "the proliferation of obscenity, both via the Internet as well as through more traditional channels, has become a pervasive and destructive element in our society. I am committed fully to dedicating the resources necessary to combat this burgeoning problem." Memorandum from John Ashcroft, Attorney General, to "All United States Attorneys" (May 7, 2002) (on file with authors).

²³ The First Amendment to the United States Constitution provides in relevant part that "Congress shall make no law . . . abridging the freedom of speech, or of the press." U.S. CONST. amend. I. The Free Speech and Free Press Clauses have been incorporated through the Fourteenth Amendment Due Process Clause to apply to state and local government entities and officials. See *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

²⁴ See Lev Grossman, *Keep Off the Grass*, TIME, Apr. 28, 2003, at 71 (describing "America's \$10 billion porn industry").

²⁵ See Evan Pondel, *Porn Film Company Moves into Sports with Line of Snowboards*, DAILY NEWS (Los Angeles), May 9, 2003 (observing that adult entertainment is a "world that has become increasingly more mainstream with the ease of access to adult films"). As Chad Beecher, the organizer of the 2003 Erotica LA Convention, observed, "Sex is so much more mainstream now." Julia Gaynor, *The Alternatives; Erotica Goes Mainstream*, L.A. TIMES, June 19, 2003, at Calendar Weekend E16.

²⁶ Mark Pothier, *Stimulating Local Business Independent Video Stores See Adult Fare as a Way to Keep up with Competition*, BOSTON GLOBE, Feb. 9, 2003, at Globe South 1.

²⁷ *Id.*

²⁸ Linton Weeks, *Pornography Goes From XXX to Zzz*, WASH. POST, Feb. 24, 2003, at C01.

²⁹ Video Software Dealers Association, 2002 Annual Report, at <http://www.vsga.org/Resource.phx/vsga/publications/2002annualreport/index.htm> (last visited Feb. 10, 2004).

³⁰ Annual revenues from adult clubs are around \$14 billion in the United States. See Selwyn Crawford & Berta Delgado,

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Taking the Wraps off, DALLAS MORNING NEWS, Oct. 4, 2003, at Religion 1.

³¹ See, e.g., *Encore Videos, Inc. v. City of San Antonio*, 330 F.3d 288 (5th Cir. 2003) (striking down on First Amendment grounds a zoning ordinance regulating sexually oriented businesses); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003) (upholding local ordinance's ban on live nude dancing).

³² 413 U.S. 15 (1973).

³³ In April 2002, the United States Supreme Court declared Congress's first effort to regulate virtual child pornography – the Child Pornography Prevention Act of 1996 – unconstitutional on grounds that it was overbroad. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002). Congress quickly responded by drafting new legislation. See Nick Anderson, *New Bill Targets 'Virtual' Child Porn*, L.A. TIMES, Feb. 25, 2003, at 14 (describing the Senate's unanimous approval of a new version of the law struck down the Supreme Court). That legislation was eventually rolled into the so-called "Amber Alert" legislation that was signed into law by President George W. Bush in April 2003. See *Bush Signs Amber Alert Bill*, NEWSDAY (N.Y.), May 1, 2003, at A08 (noting how the bill makes virtual child pornography illegal). The bill signed by President Bush was called the PROTECT Act – a somewhat tortured acronym for Prosecuting Remedies and Tools Against the Exploitation of Children Today Act of 2003 – and became Public Law No. 108-21 (2003).

³⁴ Paul Lomartire, *It's A Dirty Business; (And You'd Be Surprised Who's In It)*, PALM BEACH POST, Aug. 15, 2002, at 1E.

³⁵ A description of the firm and its attorneys can be found on the World Wide Web at <http://www.lipsitzgreen.com> (last visited Feb. 10, 2004).

³⁶ Cambria's membership status in the State Bar of California can be found online using the attorney search command on the State Bar of California's Web site at http://members.calbar.ca.gov/search/member_detail.aspx?x=177957 (last visited Feb. 10, 2004).

³⁷ Dana Bartholomew, *Porn Fair Expects 25,000 Visitors*, DAILY NEWS (Los Angeles), July 15, 2001, at N4.

³⁸ Johnny Maldoro, *Bright Lights, Fake Titties*, VILLAGE VOICE, Jan. 28, 2003, at 45.

³⁹ The interview lasted approximately 90 minutes. It was recorded on two different audiotapes. The tapes were later transcribed by a professional secretary and then reviewed by the authors. The authors made minor changes in syntax, but did not alter the substantive content or meaning of Cambria's comments. Some of the questions and responses were reordered to reflect the themes and sections in Part II of this article, and other portions of the interview were deleted as extraneous or redundant.

The authors offered at the time of the interview to send Paul Cambria a copy of the transcript to review for accuracy, but he felt no need to review it, perhaps given his hectic bi-coastal work schedule. Cambria thus exercised no editorial control over the authors' questions, analysis, and

commentary regarding his remarks and did not review this manuscript prior to publication.

For purposes of full disclosure and preservation of objectivity, it should be noted that neither of the authors of this article has ever worked for or on behalf of Paul Cambria. In fact, neither author had met Cambria in person prior to the date of this interview. The interview had been arranged by telephonic and email correspondence.

⁴⁰ See DANIEL A. FARBER, *THE FIRST AMENDMENT* 127 (2003) (writing that "[o]ne of the traditional exceptions to First Amendment protection was for a category of content called obscenity" and observing that "[o]bscenity prosecutions have a long history in the United States").

⁴¹ RODNEY A. SMOLLA, *FREE SPEECH IN AN OPEN SOCIETY* 160 (1992).

⁴² DON R. PEMBER, *MASS MEDIA LAW* 2003/2004 436 (2003).

⁴³ As Justice Potter Stewart once wrote, the United States Supreme Court in obscenity cases "was faced with the task of trying to define what may be indefinable." *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

⁴⁴ See *Roth v. United States*, 354 U.S. 476, 481 (1957).

⁴⁵ The possession of obscene materials in one's home, however, is not a crime. *Stanley v. Georgia*, 394 U.S. 557 (1969).

⁴⁶ From 1957 to 1973, the United States Supreme Court reviewed numerous petitions for certiorari in cases involving its definition of obscenity. The justices became sharply divided over whether a workable definition would ever be possible. For a discussion of the internal struggle the justices faced during this time, see ROBERT D. RICHARDS, *UNINHIBITED, ROBUST, AND WIDE OPEN: MR. JUSTICE BRENNAN'S LEGACY TO THE FIRST AMENDMENT* 47-73 (1994).

⁴⁷ 413 U.S. 15 (1973).

⁴⁸ *Id.* at 24 (citation omitted).

⁴⁹ The Court in *Miller* specifically rejected the application of a uniform national community standard, writing that questions of whether speech appeals to a prurient interest or is patently offensive "are essentially questions of fact, and our Nation is simply too big and too diverse for this Court to reasonably expect that such standards could be articulated for all 50 States in a single formulation, even assuming the prerequisite consensus exists." *Id.* at 30.

⁵⁰ See *supra* notes 47-48 and accompanying text.

⁵¹ See Munz, *supra* note 5, and accompanying text.

⁵² The non-profit Kinsey Institute for Research in Sex, Gender and Reproduction was founded in 1947 "to promote interdisciplinary research and scholarship in the fields of human sexuality, gender, and reproduction." See The Kinsey Institute, *About the Institute*, at <http://www.kinseyinstitute.org> (last visited Feb. 10, 2004).

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(describing the mission of the Institute, which is located at, and affiliated with, Indiana University in Bloomington, Indiana).

⁵³ *New York v. Ferber*, 458 U.S. 747, 758 (1982) (observing that “the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child” and giving states wide latitude to criminalize the manufacture and distribution of such materials).

⁵⁴ See *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504 (1985) (holding that “prurience may be constitutionally defined for the purposes of identifying obscenity as that which appeals to a shameful or morbid interest in sex”).

⁵⁵ See Laura Mansnerus, *The Cincinnati Case: What are the Issues and the Stakes*, N.Y.TIMES, Apr. 24, 1990, at C15 (describing the controversy over the photographic retrospective of the late artist Robert Mapplethorpe, whose work – “175 photographs of the erotic, the innocent, the lyrical and the sadomasochistic” – sparked criminal obscenity charges against a museum director and forced the cancellation of an exhibit at the Corcoran Gallery of Art in Washington, D.C.).

⁵⁶ See, e.g., Munz, *supra* note 5, at 1 (describing Paul Cambria’s closing argument to the jury during which he used the line, “This isn’t majority rule . . . It’s not about six foxes and a sheep deciding what’s for dinner”).

⁵⁷ See generally Paul Wilborn, *San Fernando Valley’s Porn Business Booms Despite Economy*, ASSOC. PRESS WIRE, Nov. 26, 2002 (writing that “[s]ales and rentals of adult videos by American companies was a \$4 billion business last year,” with one company alone – Vivid – grossing “\$1 billion in retail sales last year”).

⁵⁸ This appears to be the case, as evidenced by Operation Candyman, a federal crackdown in 2002 that has been described as the “first phase of a nationwide crackdown on Internet-based child pornography” under Attorney General John Ashcroft. Cheryl W. Thompson, *FBI Cracks Child Porn Ring Based On Internet; 89 Charged So Far in ‘Operation Candyman’*, WASH. POST, Mar. 19, 2002, at A02.

⁵⁹ District Attorney.

⁶⁰ See Huffstutter, *supra* note 13, and accompanying text.

⁶¹ H. Louis Sirkin, a First Amendment attorney based in Cincinnati, successfully represented the Free Speech Coalition in its challenge to the Child Pornography Prevention Act of 1996, a measure that would have prohibited the production of so-called virtual child pornography – computer-generated material created without the involvement of any minors. See *Ashcroft v. The Free Speech Coalition*, 535 U.S. 234 (2002). Sirkin has been recognized in his local community as the “Best First Amendment Defender” for his representation of “Larry and Jimmy Flynt in their ongoing battles with Hamilton County (Ohio).” *2000 Best of Cincinnati*, CINCINNATI CITY BEAT, at

<http://www.best-of-cincinnati.com/bestof2000/heroes.html> (last visited Feb. 10, 2004).

⁶² For instance, a Lewisburg, West Virginia couple – Michael J. Corbett and Sharon E. Corbett – who operated a Web site called *Girlspooping.com* were arrested in 2003 for “selling movies depicting bodily functions in a sexual manner,” including one called *Pottytime with Brittanie 2*. Toby Coleman, *Obscenity Question Revisited, W.Va. Pair Named in Federal Case Over Internet Porn Sales*, CHARLESTON DAILY MAIL, Apr. 24, 2003, at 1A. The criminal complaint filed in federal court against them provides that they “offered recordings of graphic and sexually explicit scenes of defecation and urination.” Christopher Tritto, *Couple Charged in Use of Mail to Deliver Obscene Videos, DVDs*, CHARLESTON GAZETTE, Mar. 28, 2003, at 3C.

⁶³ One organization that has cashed in on this is called Cake, “a New York company that creates erotic entertainment for women.” Nicholas Kulish, *Bachelorettes Partying Heartier*, SAN DIEGO UNION-TRIB., Sept. 13, 2002, at E-14. Cake “hosts soirees featuring pornography, free condoms, sex toys, lubricants, lap dancers . . . and intelligent discussion.” Paige Smoron, *Are Folks Sexually Uptight? Let Them Meet Cake*, CHI. SUN-TIMES, Jan. 17, 2002, at 44.

⁶⁴ See Huffstutter, *supra* note 13.

⁶⁵ See Hernandez, *supra* note 11 (describing Vivid Video).

⁶⁶ VCA Pictures, another Southern California-based adult entertainment video and DVD producer, can be found on the World Wide Web at <http://www.vcapictures.com> (last visited Feb. 10, 2004).

⁶⁷ Munz, *supra* note 5, at 1.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Anthony Flint, *An Industry Still Fights for Acceptance*, BOSTON GLOBE, Dec. 2, 1996, at A1 (recognizing that although the adult entertainment industry is a \$10 billion business and a major employer, “the industry can’t shake its reputation for trouble”).

⁷³ *Defenders of Strip Clubs*, CONN. L. TRIB., Aug. 30, 1999, at 1.

⁷⁴ See, e.g., Tara Mack, *Judge Won’t Drop Obscenity Charges Against Video Club*, WASH. POST, Jan. 24, 1998, at V03 (quoting Paul Cambria as saying the prosecution was “a great example of discriminatory enforcement” in a Manassas, Virginia, case in which the police had told the video store owner that her inventory was legal).

⁷⁵ Flint, *supra* note 72, at A1 (quoting a spokeswoman for Concerned Women for America, a group that advocates against pornography, who argues that “the more of this

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[material] that gets into the home, the more addicted people will get”).

⁷⁶ See generally ROY MORRIS, JR., *AMBROSE BIERCE: ALONE IN BAD COMPANY* (1995) (describing Bierce, a caustic writer during the Civil War period, as a man “who labored long and hard to make himself hateful, and in the end he succeeded all too well”).

⁷⁷ The authors of this article are professors at The Pennsylvania State University, and that presumably is why this is “funny” in the sense of being a coincidence.

⁷⁸ Herald Price Fahringer is now of counsel to Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria, LLP. He graduated from Pennsylvania State University in 1950 with a bachelor of arts degree and in 1951 with a master of arts degree. The homepage of the firm can be found at <http://www.lipsitzgreen.com> (last visited Feb. 11, 2004).

⁷⁹ U.S. CONST. amend. I. The Free Speech and Free Press Clauses have been incorporated through the Fourteenth Amendment Due Process Clause to apply to state and local government entities and officials. *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

⁸⁰ See generally Clay Calvert, *The Voyeurism Value in First Amendment Jurisprudence*, 17 *CARDOZO ARTS & ENT. L.J.* 273, 273-74 (1999) (identifying these and other values typically associated with First Amendment jurisprudence).

⁸¹ See JOHN H. GARVEY & FREDERICK SCHAUER, *THE FIRST AMENDMENT: A READER* 35 (2d ed. 1996) (writing that “there is little scholarly or judicial agreement about the theory of the First Amendment”).

⁸² Maines, the lead singer for the Dixie Chicks, told a London concert audience on March 10, 2003, “We’re embarrassed the president of the United States is from Texas.” Lorraine Ali, *Caught Between Rock and a Hard Place*, *NEWSWEEK*, Mar. 31, 2003, at 6.

⁸³ See generally David A. Kaplan et al., *Anatomy of a Debacle*, *NEWSWEEK*, Oct. 21, 1991, at 26 (describing Thomas’ confirmation battle involving harassment allegations by Anita Hill, who had worked for Thomas and described him “as a boss who pestered her for dates and spoke graphically about pornography, bestiality, rape and his skills as a lover”).

⁸⁵ See *Bush v. Gore*, 531 U.S. 98 (2000) (holding that the Equal Protection Clause of the Fourteenth Amendment was violated by the Florida Supreme Court’s ordering of a manual recount of that state’s results in the 2000 presidential election).

⁸⁵ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁸⁶ Britney Spears embraces the role of teen nymphet, with a recent article in the *San Francisco Chronicle* describing her as: a whipless kitten longing to be eternal jailbait. Her lips are as pink as fresh bubblegum, her voice as modulated as Minnie Mouse’s, her sexuality still that of

the calculating nymphet. Humbert Humbert would be the first to say that, at 20, she’s too old to play the Lolita role, but Britney offers little to replace it.

Neva Chonin, *The Divas: From Girls to Women*, *S.F. CHRON.*, Apr. 7, 2002, at Sunday Datebook 60.

Spears has influenced teen fashions, producing what some have called a “Britney Effect” that has produced “more skin on today’s 14-year-old girls than the tabloids would allow in their ads for pornographic movies a generation ago.” Froma Harrop, *Parents Must Counter the ‘Britney Effect,’* *SEATTLE TIMES*, Aug. 15, 2002, at B6.

⁸⁷ See generally Sarah Perpich, *Innies & Outies in the Limelight*, *WASH. POST*, Aug. 20, 2001, at C08 (writing that “[m]any teenagers and preteens wear fake or clip-on belly jewelry, awaiting the time when they can finally get pierced – often 16 with an adult’s permission or 18 without”).

⁸⁸ See generally Laura Sessions Stepp, *Nothing to Wear: From the Classroom to the Mall, Girls’ Fashions are Long on Skin, Short on Modesty*, *WASH. POST*, June 3, 2002, at C01 (describing “the naked world of fashion for girls from high school on down – even to elementary school – the less-is-more look flaunting breasts, bellies and bottoms”); Emily Wax, *Parents Can’t Bear Girls’ Skimpy Attire; Midriff-Flashing Clothes Bring Quick Veto From Schools, Too*, *WASH. POST*, Aug. 11, 2001, at A1 (writing that “the classics of young girls’ clothing are being supplemented – or replaced – by tighter, flashier and sexually alluring attire”).

⁸⁹ See generally CATHARINE A. MACKINNON, *ONLY WORDS* (1993) (providing MacKinnon’s views on pornography). In a nutshell, MacKinnon believes that pornography subordinates women to men as a hegemonic force, sustaining and maintaining power relations between the sexes.

⁹⁰ See generally Andrea Dworkin, *Against the Male Flood: Censorship, Pornography and Equality*, in *PORNOGRAPHY: WOMEN, VIOLENCE AND CIVIL LIBERTIES* 515 (Catherine Itzin ed., 1992) (providing Dworkin’s views on pornography).

⁹¹ Sharon Stone is a “glamorous Hollywood actress” who “rocketed to success playing an ice pick-wielding femme fatale in the 1992 film *Basic Instinct*.” Sean Westmoreland, *Sharon Stone’s Hubby Files for Divorce After Five Years’ Marriage*, *BOSTON HERALD*, July 4, 2003, at 13.

⁹² In April 2003, federal agents, postal inspectors, and Los Angeles Police Department officers raided the offices of Extreme Associates and “seized records, videos and Model Releases relating to several movies.” Lawrence G. Walters, *Adult Industry Update June 2003*, *ADULT INDUSTRY NEWS*, June 8, 2003, at <http://ainews.com/story/5034> (last visited Feb. 11, 2004). Black discusses the raid in a statement posted on the World Wide Web homepage of Extreme Associates, and he identifies the movies in question, which he has dubbed as the Federal Five, as *Extreme Teen #24*, *Cocktails #2 - Director’s Cut*, *Ass Clowns #3 - Director’s Cut*, *1001 Ways to Eat My Jizz*, and *Forced Entry*. See Extreme Associates, *America’s Most Wanted*, at <http://www.extremeassociates.com/federal5.html> (last visited Feb. 11, 2004).

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⁹³ Calvert & Richards, *supra* note 18, at 346 (explaining that the line from the movie was a paraphrase of a response that attorney Alan Isaacman used to give when asked how he could represent Flynt).

⁹⁴ Calvert & Richards, *supra* note 1, at 166 (estimating that Flynt has been involved in sixty or seventy cases since 1974).

⁹⁵ Calvert & Richards, *supra* note 18, at 346.

⁹⁶ LARRY FLYNT, AN UNSEEMLY MAN 133 (1996).

⁹⁷ *Id.* at 155.

⁹⁸ *Id.* at 133.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 139.

¹⁰¹ *Id.* at 140.

¹⁰² *Id.* at 155.

¹⁰³ *Id.*

¹⁰⁴ Herbeck, *supra* note 4 (describing Cambria's long-time representation of Larry Flynt).

¹⁰⁵ *Id.*

¹⁰⁶ FLYNT, *supra* note 96, at 173 (observing that after a doctor had told Cambria that Flynt would not survive the shooting, Cambria responded, "His wife is due here any minute – please don't tell her that").

¹⁰⁷ Cambria is a senior partner at the Buffalo, New York law firm of Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria, LLP. The homepage of the firm can be found at <http://www.lipsitzgreen.com> (last visited Feb. 11, 2004).

¹⁰⁸ See *supra* note 78.

¹⁰⁹ See *supra* note 10 and accompanying text.

¹¹⁰ See Nigel Andrews, *Soft Look at a Pornographer*, FINANCIAL TIMES (London), Apr. 10, 1997, at 27 (describing *Hustler* magazine's "nude photo-spread of Jackie Kennedy sunbathing on a beach" as depicted in the biographical movie, *The People vs. Larry Flynt*).

¹¹¹ See Jay Mathews, *Lawyers Say TV Tapes Taint DeLorean Case*, L.A. TIMES, Oct. 23, 1983, at A2 (describing the videotapes of an FBI sting operation targeting auto designer John DeLorean who was accused of conspiring to import cocaine. The tapes were delivered to CBS News by publisher Larry Flynt who claimed he "got them from the government."). See also Jerry Adler and Martin Kasindorf, *A Smut Peddler Who Cares?*, NEWSWEEK, Nov. 14, 1983, at 58 (observing that Flynt played an audio tape for reporters purporting to be of DeLorean stating that he wanted no part of the drug deal); Tim Cornwell, *Angel with a Dirty Face*, THE INDEPENDENT (London), Jan. 17, 1997, at 2 (recalling the scene from the movie, *The*

People vs. Larry Flynt, in which "Flynt was hauled up in front of a judge for refusing to divulge the source who leaked the him the video footage of the businessman").

¹¹² When Flynt was called into federal court to reveal his source for the DeLorean tapes, he wore an American flag as a diaper – an action for which he was charged with desecrating the flag by Judge Robert Takasugi. See Chuck Concini, *Personalities*, WASH. POST, Nov. 18, 1983, at C3. Flynt violated a condition of his bond in the matter when he left California to fly to Alaska. See *Larry Flynt Arrested After Flying to Alaska*, N.Y. TIMES, Dec. 18, 1983, at A18. When he was arrested in Alaska after a bench warrant was issued, Flynt was dressed in a Santa Claus suit. See *id.* Also in November 1983, Flynt was arrested in the United States Supreme Court on the order of Chief Justice Warren E. Burger after Flynt yelled, "Fuck this court. You denied me the counsel of my choice." Al Kamen, *Flynt Arrested After Cursing the Supreme Court*, WASH. POST, Nov. 9, 1983, at A1.

¹¹³ See Calvert & Richards, *supra* note 18, and accompanying text.

¹¹⁴ 485 U.S. 46 (1988). Anthony Lewis, long-time columnist and Supreme Court reporter for *The New York Times*, described the case this way:

The decision in *Hustler v. Falwell* was important for freedom of speech generally. It showed that the Supreme Court, including judges considered conservative, had an expansive sense of the kind of speech about public matters that the Constitution requires American society tolerate – not just George Washington as an ass but Jerry Falwell and his mother in an outhouse.

ANTHONY LEWIS, MAKE NO LAW: THE SULLIVAN CASE AND THE FIRST AMENDMENT 233 (1991).

¹¹⁵ See *supra* note 61.

¹¹⁶ See *infra* note 135 and accompanying text.

¹¹⁷ *Flynt v. Rumsfeld*, 245 F. Supp.2d 94 (D.D.C. 2003). In February 2004, a federal appellate court rejected Flynt's claim, holding that there is no First Amendment right for legitimate press representatives to travel with the military during combat. *Flynt v. Rumsfeld*, 2004 U.S. App. LEXIS 1561 (D.C. Cir. Feb. 3, 2004).

¹¹⁸ *Flynt v. Weinberger*, 588 F. Supp. 57 (D.D.C. 1984) (challenging, on First Amendment grounds, the U.S. government-imposed press blackout after the United States invaded the island of Grenada in October 1983. The case was dismissed as being moot).

¹¹⁹ See generally Clay Calvert & Robert D. Richards, *Defending Larry Flynt: Why Attacking Flynt's "Outing" of Sexual Affairs is Misguided*, 21 HASTINGS COMM. & ENT. L.J. 687 (1999) (describing this incident and defending Flynt's actions).

¹²⁰ Flynt was shot outside the Gwinett County courthouse in Lawrenceville, Georgia, on March 6, 1978, by serial killer and avowed racist Joseph Paul Franklin with a .44-caliber rifle. Also wounded in the attack by Franklin was Flynt's local counsel, Gene Reeves. See Christopher C. Warren, *The People Vs. Larry Flynt; Movie stirs memories of shooting; Lawrenceville 'was in total chaos'*, ATLANTA J. & CONST., May 15, 1996, at 1J (describing recollections of the attack by local residents). See also Colin Bessonette, *Q&A on the News*, ATLANTA J. & CONST., Jan. 12, 1999, at 2A (describing the attack and writing that "Flynt and Reeves had eaten at a cafeteria. As they walked back to court, they were struck by the sniper's bullets. One pierced Flynt's spine and another cut through his back, continuing through Reeves' arm and into his abdomen").

¹²¹ Terry Kinney, *Flynt Plea Bargain Disappoints His Lawyers*, ASSOC. PRESS STATE & LOCAL WIRE, June 4, 1999. In this case, Larry Flynt and his younger brother, Jimmy, "were indicted in April 1998 on charges of pandering obscenity, disseminating material harmful to a juvenile, conspiracy and engaging in a pattern of corrupt activity." *Id.* The plea bargain "allowed the Flynts to substitute one of their corporate entities on two of the counts of pandering, and the other 13 counts were dropped." *Id.* In June 2003, the settlement agreement that Cambria objected to was again at issue when prosecutor Michael Allen "asked the judge who approved the 1999 agreement to throw it out and reinstate the original 1998 indictment of Flynt and his brother, Jimmy Flynt. Allen said he wants to have the Flynts arrested and tried on the 1998 charges of pandering obscenity, disseminating matter harmful to juveniles, conspiracy and engaging in a pattern of corrupt activity." John Nolan, *Prosecutor says Flynts violated deal, could be tried*, ASSOC. PRESS NEWSWIRE, June 19, 2003.

¹²² Mark Cromer, *Porn Jitters*, LA WEEKLY, Feb. 23, 2001, at 22 (describing how the election of George W. Bush sent the adult industry scrambling for ways to avoid conservative wrath).

¹²³ Jennifer Harper, *Gore Has Adult-Entertainment Support*, WASH. TIMES, Sept. 19, 2000, at A16 (describing the prediction of an adult entertainment industry spokesman that the "endorsement will not be welcome").

¹²⁴ *Gore Gets Thumbs Up at Internet Gathering*, ADULT INDUSTRY NEWS, Sept. 23, 2000, at <http://www.ainews.com/Archives/Story1084.phtml> (last visited Feb. 11, 2004).

¹²⁵ *Id.*

¹²⁶ Tristan Taormino, *Panic in Pornville*, VILLAGE VOICE, Feb. 20, 2001, at 146, available at <http://www.villagevoice.com/issues/0107/taormino.php> (last visited Feb. 11, 2004).

¹²⁷ *Id.*

¹²⁸ See Cromer, *supra* note 122, at 22.

¹²⁹ See Joanne Ostrow, *Series Puts Porn in Focus*, DENV. POST, Feb. 7, 2002, at F09 (explaining that PBS made two versions of the documentary available to affiliates, the tamer of which

"bleeps words (and) has a few extra boxes over body parts").

¹³⁰ The list was published in its entirety on the PBS "Frontline" homepage, available at <http://www.pbs.org/wgbh/pages/frontline/shows/porn/prosecuting/cambria.html> (last visited Feb. 11, 2004). The remaining items on the list are as follows:

- Before selecting a chrome, please check facial expression.
- Do not use any shots that depict any unhappiness or pain.
- No shots with appearance of pain or degradation.
- No facials (body shots are OK if shot is not nasty).
- No bukakke.
- No food used as sex object.
- No peeing unless in a natural setting, e.g., field, roadside.
- No coffins.
- No blindfolds.
- No wax dripping.
- No two dicks in/near one mouth.
- No shot of stretching pussy.
- No fisting.
- No squirting.
- No bondage-type toys or gear unless very light.
- No girls sharing same dildo (in mouth or pussy).
- Toys are OK if shot is not nasty.
- No hands from two different people fingering same girl.
- No male/male penetration.
- No transsexuals.
- No bi-sex.
- No degrading dialogue, e.g., "Suck this cock, bitch" while slapping her face with a penis.
- No menstruation topics.
- No incest topics.
- No forced sex, rape themes, etc.
- No black men-white women themes. *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ See Cromer, *supra* note 122, at 22.

¹³⁴ *Id.*

¹³⁵ Flynt was shot by a white supremacist named Joseph Paul Franklin after Flynt enraged him "by publishing pictures of interracial couples." *Killer Who Shot Flynt, Jordan Convicted of Murdering Teens*, SEATTLE TIMES, Oct. 21, 1998, at A5.

¹³⁶ The complete text of the interview to which Cambria refers can found online from the *Frontline* Web site at <http://www.pbs.org/wgbh/pages/frontline/shows/porn/interviews/sanchez.html> (last visited Feb. 11, 2004).

¹³⁷ Max Hardcore is "a hugely successful porn impresario who specialises in getting his actresses to dress in young girls' clothing, spitting and urinating on them, choking, gagging and inserting speculums into their vaginas and anuses and widening them to extreme degrees." Katharine Viner, *Feminism Today*, GUARDIAN (London), June 5, 2002, at Guardian Features 3. Hardcore was prosecuted on obscenity charges in 2002 for a video called *Max Extreme #4*, a video described by Steve Nelson, the editor-in-chief of the *Adult Video News*, as

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"rather tame considering the later productions." Steve Nelson, *Max Hardcore Trial Travesty*, ADULT INDUSTRY NEWS, July 21, 2002, at <http://ainews.com/Archives/Story3636.phtml> (last visited Feb. 11, 2004). In October 2002, Hardcore's trial ended in a hung jury, with Hardcore proclaiming victoriously that he had "taken the best of what they could throw at me." Steve Nelson, *Max Hardcore: "Victory is Ours!"*, ADULT INDUSTRY NEWS, Oct. 10, 2002, at <http://ainews.com/Archives/Story3962.phtml> (last visited Feb. 11, 2004).

¹³⁸ See generally *Pleasureland Museum, Inc. v. Beutter*, 288 F.3d 988, 993 n.1 (7th Cir. 2002) (noting that council for the City of Mishawaka, Indiana "believed that sexually-oriented businesses increased crime and urban blight, decreased **property values**, and contributed to the spread of sexually transmitted and communicable diseases") (emphasis added).

¹³⁹ See generally *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 430 (2002) (writing that a study conducted by the City of Los Angeles in 1977 "concluded that concentrations of adult businesses are associated with higher rates of prostitution, robbery, assaults, and thefts in surrounding communities").

¹⁴⁰ See generally *Jake's, Ltd., Inc. v. City of Coates*, 284 F.3d 884, 888 (8th Cir. 2002) (observing that "[i]t is well-settled that a city's interest in preserving the quality of urban life and the character of its neighborhoods justifies zoning restrictions intended to minimize such effects").

¹⁴¹ *SOB, Inc. v. County of Benton*, 317 F.3d 856, 859 (8th Cir. 2003).

¹⁴² ERWIN CHERMERINSKY, *CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES* 836 (1997).

¹⁴³ See John B. Kopf III, *City of Erie v. PAPS's A.M.: Contorting Secondary Effects and Diluting Intermediate Scrutiny to Ban Nude Dancing*, 30 CAP. U.L. REV. 823, 829 (2002) (writing that "[u]nder the secondary effects doctrine, laws that are content-based are analyzed as if they were content-neutral if they are justified as being unrelated to the suppression of expression").

¹⁴⁴ See generally Clay Calvert, *Free Speech and Content-Neutrality: Inconsistent Applications of an Increasingly Malleable Doctrine*, 29 MCGEORGE L. REV. 69 (1997) (discussing the differences between content-based and content-neutral laws).

¹⁴⁵ 475 U.S. 41 (1986).

¹⁴⁶ *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 434 (2002) (describing *City of Renton v. Playtime Theatres, Inc.*) (emphasis added) (citations omitted).

¹⁴⁷ 529 U.S. 277 (2000).

¹⁴⁸ *Id.* at 296.

¹⁴⁹ See *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) (declaring part of the Communications Decency Act unconstitutional).

¹⁵⁰ See *American Civil Liberties Union v. Ashcroft*, 322 F.3d 240 (3d Cir. 2003) (affirming the issuance of a preliminary injunction against the Child Online Protection Act).

¹⁵¹ RICO is the acronym for the Racketeer Influenced and Corrupt Organizations Act, which is codified at 18 U.S.C. §§ 1961-1968 (2002).

¹⁵² See *Alexander v. United States*, 509 U.S. 544 (1993) (involving Ferris Alexander's claim that the RICO forfeitures violated his First Amendment and Eighth Amendment rights).

¹⁵³ *Fort Wayne Books v. Indiana*, 489 U.S. 46 (1989).

¹⁵⁴ See Steve Twomey, *An Obscene Crusade Against Smut*, WASH. POST, Dec. 8, 1997, at E01 (writing that the chief prosecutors of Fairfax and Prince William counties "ought to seek their own indictments on multiple counts of wasting the public's money and time" and noting that "only crime turned out to be the theft of precious time from the jurors, who could have used it to do something with a point").

¹⁵⁵ *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

¹⁵⁶ See *Bush Signs Amber Alert Bill*, *supra* note 33 (describing the new law that is buried in the so-called PROTECT ACT, which stands for Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003).

¹⁵⁷ 529 U.S. 277 (2000).

¹⁵⁸ 535 U.S. 425 (2002).

¹⁵⁹ 475 U.S. 41 (1986).

¹⁶⁰ For instance, the City of Renton "relied heavily on the experience of, and studies produced by, the city of Seattle." *Id.* at 50. The Supreme Court held that "Renton was entitled to rely on the experiences of Seattle and other cities." *Id.* at 51.

¹⁶¹ See generally Sally Claunch, *Arlington, Texas Strip Club Challenges Codes Regulating Adult Business*, FORT WORTH STAR-TELEGRAM, July 1, 2003 (describing the lawsuit filed by owners of a strip club called the Fantasy Ranch who are attacking several provisions in Arlington's code, which requires a raised stage or glass enclosures around dancers, imposes ban on direct tipping of dancers, and enacts a six-foot buffer zone between dancers and customers). The Arlington ordinance is based on one enacted in Wichita County, Kansas. See J. Taylor Rushing, *Kansas Rules Set Example for Arlington, Texas, Adult-Business Crackdown*, FORT WORTH STAR-TELEGRAM, Apr. 10, 2003 (describing the law in Wichita County and how "Arlington city attorneys copied" it).

¹⁶² See Mary Anne Sharkey, *It Was God's Work Or, Uh, Secret Research*, PLAIN DEALER (Cleveland), Aug. 15, 1993, at 1C (describing how Charles Keating became "a national figure in the Catholic Church by forming Citizens for Decent Literature and starting chapters all over the country. He wound up going to jail last year for a multitude of felonies, including bankrupting his own bank"). The organization "was

renamed after Charles Keating's involvement in the 1989-1990 home savings and loan scandal was made known. It was later called National Coalition Against Pornography and now known as Children's Legal Foundation." EDWARD DE GRAZIA, *GIRLS LEAN BACK EVERYWHERE* 650 (1992).

¹⁶³ Bruce Taylor "handled more pornography cases during his 20-year tenure than any other federal prosecutor." Gloria Goodale, *Erotica Runs Rampant*, CHRISTIAN SCI. MONITOR, Feb. 1, 2002, at 13. Today he works as president and a lawyer for the National Law Center for Children and Families; see Deborah Alberto, *Polk XXXs Out Obscenity*, TAMPA TRIB., Mar. 2, 2003, at Metro 1 (quoting Taylor in a story about regulating adult businesses in Florida); Kitty Bean Yancey, *Coalition Wants to Change Hotel Porn Channels*, USA TODAY, Sept. 24, 2002, at 1D (quoting Taylor on a story about adult movies available in hotels and identifying him as the "president of the non-profit National Law Center for Children and Families").

¹⁶⁴ For instance, the National Law Center for Children and Families, of which Bruce Taylor currently serves as president, describes itself on its Web site as:

a specialized resource to those who enforce state and federal obscenity and child exploitation laws, to counsel federal, state, and local legislators on the constitutionality and effectiveness of amendments to existing criminal and civil codes; and to provide a training and information clearinghouse on the specialized issues involved in illegal pornography and First Amendment related cases. NLC also provides advice and information to community leaders and concerned citizens on the laws and their enforcement at the local and national levels. NLC works to accomplish its mission through tested legal tools, the filing of "friend of the court" amicus curiae briefs in important cases, law enforcement training seminars, legal and reference publications, one of the nation's largest specialized law libraries on child exploitation and pornography, video resources and guidance manuals for professionals involved in sexual exploitation issues, citizen conferences to build support for law enforcers media appearances to educate the public on the issue, and federal state, and local legislative assistance. In each of these areas, we have a strong record of accomplishment.

National Law Center for Children and Families, NLC Profile, at <http://www.nationallawcenter.org/profile.htm> (last visited Feb. 11, 2004).

¹⁶⁵ Indeed, Taylor's official biography details his lengthy involvement in obscenity litigation, providing that:

Mr. Taylor first served as a Prosecutor and Assistant Director of Law for the City of Cleveland, prosecuting over 600 obscenity cases and 100 appeals, including an argument before the United States Supreme Court. For ten years, Mr. Taylor was then General Counsel to Citizens for Decency through Law, Inc., where he assisted prosecutors, police, and legislators nationwide in the enforcement, investigation, and improvement of laws against obscenity, child pornography and exploitation, and child sexual abuse. He also served

as Assistant Attorney General of Arizona. Since 1973, he has prosecuted nearly 100 state and federal obscenity jury cases, as well as trials on prostitution, RICO, child pornography, and child sexual abuse, has written over 200 appeal and amicus curiae briefs, presented over 50 appellate arguments, and has represented public officials, law enforcement personnel, and citizens in civil lawsuits on civil rights, zoning, Internet pornography, nuisance abatement, injunction and forfeiture actions, criminal procedure, defamation, and federal challenges to federal, state, and municipal laws.

National Law Center for Children and Families, Bruce A. Taylor, Esq. Biography, at <http://www.nationallawcenter.org/BRUCE%20A.htm> (last visited Feb. 11, 2004).

¹⁶⁶ See Sharkey, *supra* note 162, at 1C.

¹⁶⁷ *Infra* Part II, Section A.

¹⁶⁸ Robert D. Richards & Clay Calvert, *Nadine Strossen and Freedom of Expression: A Dialogue with the ACLU's Top Card-Carrying Member*, 13 GEO. MASON U. CIV. RTS. L.J. 185, 219 (2003).

¹⁶⁹ Calvert & Richards, *supra* note 18, at 323.

¹⁷⁰ *Infra* Part II, Section A.

¹⁷¹ *Infra* Part II, Section B.

¹⁷² *Id.*

¹⁷³ *Infra* Part II, Section C.

¹⁷⁴ 491 U.S. 397 (1989).

¹⁷⁵ *Id.* at 414.

¹⁷⁶ *Id.*

¹⁷⁷ *Infra* Part II, Section A.

¹⁷⁷ *Id.*

¹⁷⁸ Calvert & Richards, *supra* note 1, at 167.

¹⁷⁹ Laura Sessions Stepp, *Playboy's Bunny Hops Into Teens' Closets; Sexist Symbol of '60s Now a Hot Seller*, WASH. POST, June 17, 2003, at C01.

¹⁸⁰ See Wilborn, *supra* note 57 (observing that "[a] 1998 study by Forrester Research in Cambridge, Mass., estimated that the industry generates \$10 billion a year").

¹⁸¹ *Infra* Part II, Section F.

¹⁸² *Infra* Part II, Section A.

¹⁸³ *Infra* Part II, Section D.

¹⁸⁴ *Id.*

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¹⁸⁵ *Id.*

¹⁸⁶ As Cambria recently told a reporter in an article about one of his favorite hobbies – drag racing – “I grew up in Fredonia [New York] and my father had a collision shop there which he operated for 45 years. So I grew up around cars and things mechanical.” Larry Ott, *Speeding Legally; Attorney Returns to His Youthful Pastime – Drag Racing*, BUFFALO NEWS, June 5, 2003, at F6.

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