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I. INTRODUCTION

Sex dominates American culture in the 1980's. It surrounds us, permeates our advertising, dictates fashion and has become one of the central topics of . . . conversation.1 People in every major city and many small towns can obtain copies of Fanny Hill, The Story of O, and many other publications which at one time or another have been labeled "pornographic" or "obscene." This was not always so.

One thing becomes immediately obvious when dealing with the subject of pornography and obscenity: as the cliche has it, "time is of the essence."2 What was obscene to the courts in the 1940's may be clearly a literary effort to the same court today. What was pornographic to the public of the 1940's may be inoffensive to the readers and audiences of the 1970's or 1980's.

America is deep into the Age of Porn, reports Time magazine in its April 5, 1976 edition. For most Americans, there is no need for Time to inform them of the present situation concerning pornography. "Every major U.S. city has its Santa Monica Boulevard . . . a garish, grubby, mile long gauntlet of sex-book stalls, theaters and 8-mm. peep shows for voyeurs, and massage parlors and sexual encounter centers for those who want direct action. . . . However, pornography is scarcely confined to such strips. . . .
Ix-prostitute Xaviera Hollander has sold 9 million copies of her paperbacks. Some 760 American theaters, including many elegant first-run houses, routinely show X-rated movies 52 weeks a year. Playboy is . . . occasionally coming out with cover shots of women masturbating at supermarket chains . . . on view for millions of customers of all ages." Books and magazines with words and photographs devoted in whole or part to sex and nudity have proliferated at a great rate since the 1950's and are sold openly in city after city in adult book shops.

The long history of attempts to ban pornography in the United States goes back at least as far as 1712, when such a ban was enacted in Massachusetts. Not only was this the first attempted restriction of pornographic material, but it also began the period of controversy and confusion concerning pornography that we have experienced in recent times. The recent controversy was twofold. The Supreme Court had to decide whether pornography was included in the sphere of constitutionally protected speech; and if it wasn't, how was pornography to be defined. "There is a natural tendency in most of us to feel that the First Amendment should protect the right to say those things we want to say or hear, while permitting the government to suppress those expressions which we find offensive." This type of situation concerning restrictions on First Amendment rights leads some to the view expressed by Justices Black and Douglas. They held that any exceptions to the First
Amendment put the court on a "slippery slope," on which one exception justified another, until there would be little if anything left of constitutionally protected speech. This inherent danger can produce controversial situations when the court deals with First Amendment rights. For example, how can we be sure that the court will not step in on other offensive ideas and leave bookstores filled only with books on mathematics and religion? After Justice Brennan had written his opinion in Roth (1957) holding obscenity, unprotected by the First Amendment, the court felt obligated to attempt to create a workable definition of obscenity. This attempt can best be demonstrated by the various definitions of obscenity that the court has pronounced. It is the definition of pornography that poses the largest problem for the Court. Therefore, any serious attempt to deal with the subject of pornography and obscenity requires answers to several closely connected questions. What is pornographic? What is not pornographic? What is obscene? What is not obscene? How does one judge? Not only are the answers difficult for students of constitutional law, they are also difficult for the Supreme Court Justices themselves. Justices Black and Douglas had also been certain that it was impossible to define obscenity. Any laws banning it, therefore, were doomed to be vague and unconstitutional. There could never be an obscenity law clear enough to meet the constitutional requirement that a person must know beforehand whether he is acting illegally. In Douglas'
dissent in Paris Adult Theater I. v. Slaton (1973) he wrote:

"I have expressed on numerous occasions my disagreement with the basic decision that held that "obscenity" was not protected by the First Amendment. I disagree also with the definitions that evolved. Art and literature reflect tastes; and tastes, like musical appreciation, are hardly reducible to precise definitions. That is one reason I have always felt that "obscenity" was not an exception to the First Amendment. For matters of taste, like matters of belief, turn on the idiosyncracies of individuals. They are too personal to define and too emotional and vague to apply. . . ."8

Likewise, Justice Stewart had written in Jacobellis v. Ohio (1964) that only "hard-core" pornography could be banned, but conceded the subjective nature of any definition:

"I shall not today attempt to further define the kind of materials I understand to be embraced within the short-hand definition, and perhaps I could never succeed in doing so. But I know it when I see it."9

Not only did Black, Douglas, and Stewart have their own personal definition of obscenity; but each of the remaining justices did as well. Consequently, what is obscene to one lay observer or legal participant may be an earnest artistic effort, even an elevating work of art, to another.

The question that now must be posed is whether the dissemination of pornographic materials should be controlled. Unfortunately, the answer to this question will have to be
left up to the reader. This thesis will not be concerned with advocating one side or another, nor will it address the effect of pornography on anti-social behavior. The purpose of this thesis is to determine whether legal norms influence the availability of pornographic materials. The first part of the thesis will review the legal background of pornography and obscenity in the United States. To understand the legal background, one must investigate and analyze the history of the United States Supreme Court obscenity cases. A chronological analysis of the holdings in each of the major obscenity cases will provide the reader with the necessary knowledge of the legal background. The second part of the thesis makes use of a case study comparing the influence of legal norms and enforcement activities (i.e., prosecution, police, courts) on the availability of pornographic materials in Champaign and Clinton, Illinois. The third and final part of the thesis will summarize the major findings of the case study.
II. LEGAL BACKGROUND

The first known United States court ruling on the issue of pornography was the case of *Commonwealth v. Sharpless* in 1815. Jesse Sharpless and five associates were convicted in Philadelphia of displaying for profit a picture showing "a man in an obscene, impudent, and indecent posture with a woman." Terrence G. Murphy notes that "for more than a half-century after Sharpless, the issue arose seldom, but when it did, the courts generally followed the Sharpless precedent." This precedent stated that the exhibition of an obscene picture is an offense tending to the corruption of morals, and is indictable at common law.

A precedent set in England was an important guiding force for United States courts concerning obscenity. In 1818, the case of *Regina v. Hicklin* was decided. This was a landmark case in England as it announced the first guide in determining obscene material. The Hicklin rule judged isolated excerpts of writings by their likely effect on the most susceptible persons. Lord Cockburn wrote in 1868 that "I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprive and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort..."
may fail.” The Hicklin test was followed by many of the American courts until the middle of the twentieth century.

In 1933 the Hicklin test was rejected in United States v. One Book Entitled “Ulysses”. Ulysses, decided in the New York Federal District Court, was the first major American obscenity case. The significance of the Ulysses case was that the definition of obscenity set forth by Federal District Judge John Woolsey was adopted by the United States Supreme Court in Roth. According to Woolsey, Ulysses was not “obscene within the legal definition of that word.” The meaning of the word obscene as legally defined by the courts is: “tending to stir the sex impulses or to lead to sexually impure and lustful thoughts.” Woolsey added:

"Whether a particular book would tend to excite such impulses and thoughts must be tested by the court's opinion as to its effect on a person with average sex instincts. Furthermore, the book must be read and weighed in its entirety."

Judging a book in its entirety with regards to the average person contrasted to isolated excerpts with regards to the most susceptible persons is the key difference between Ulysses and Hicklin. The author's objectives in the book and his treatment of the subject matter now had a bearing on the work's value and a whole new area of thought was established for obscenity rulings.

The United States Court of Appeals upheld Ulysses in 1934. Judge Augustus Hand wrote “that the proper test of
whether a given book is obscene is its dominant effect. In applying this test, relevancy of the objectionable parts to the theme, the established reputation of the work in the estimation of approved critics, if the book is modern, and the verdict of the past, if it is ancient, are persuasive pieces of evidence; for works of art are not likely to sustain a high position with no better warrant for their existence than their obscene content."

In 1957, the United States Supreme Court entered its first two decisions in the area of obscenity. The first of the 1957 opinions was the case of Butler v. Michigan. In Butler, the Supreme Court held unconstitutional a Michigan statute which forbade "any person" to sell or give away anything "containing obscene, immoral, lewd or lascivious language . . . tending to incite minors to violent or depraved or immoral acts, manifestly leading to the corruption of the morals of youth, . . ." The Court set aside the conviction of an adult who sold such a book to another adult, in this case a policeman, on the grounds that the state could not, under its police power, guarantee "the general reading public against books not too rugged for grown men and women in order to shield juvenile innocence. . . ."

Justice Felix Frankfurter wrote the Butler decision and attacked the Michigan statute for "reducing the adult population of Michigan to reading only what is fit for children."
In the second 1957 opinion, involving two separate cases decided together, Roth v. United States and Alberts v. California, the Supreme Court June 27 upheld, respectively, (a) a federal statute making it illegal to mail "obscene, lewd, lascivious, or filthy" material or "other publications of an indecent character," and (b) a California law banning the publication, advertising, sale or distribution of "any obscene or indecent" material.16

In the Roth case, two major principles were declared. First, the Court agreed that obscene material is not a form of expression protected by the First Amendment. Explaining his rejection of the argument that the First Amendment protected obscenity, Brennan stated: "All ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the First Amendment guaranties, unless excludable because they encroach upon the limited area of more important interests. But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance.17 Obscenity, like libel and slander, was never intended to be protected by the First Amendment.

The second principle declared in Roth was the majority's new rule for determining whether material is obscene. It is obscene if "to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interests."18
Brennan's opinion defined "prurient interest" as "having a tendency to excite lustful thoughts." In Roth, the first of the eventual three-pronged test was set forth. The material must appeal to "prurient interest."

In Manual Enterprises v. Day (1962) the second part of the three-pronged test was established. This case involved a ruling of the Post Office Department, sustained both by the District Court and the Court of Appeals, barring from the mails a shipment of petitioners' magazines containing pictures of nude men. The ruling was based on determinations that the magazines (1) were themselves "obscene" and (2) gave information as to where obscene matter could be obtained. The question whether these magazines were "obscene" was thought to depend solely on a determination "as to relevant audience in terms of their prurient interest."

The Court of Appeals rejected the notion that the "prurient interest" should be judged on "the average person" because they were not a "likely recipient" of the magazine. The majority in Manual Enterprises held that "these magazines cannot be deemed so offensive on their face as to affront current community standards of decency—a quality that we shall hereafter refer to as "patent offensiveness" or "indecency." Lacking that quality, the magazines cannot be deemed legally "obscene. ..."

To find material obscene now required proof of two distinct elements: (1) patent offensiveness; and (2) appeal to "prurient interest."
In *Memoirs v. Massachusetts* (1966) the third "prong" of the "three-pronged test" was established. Six members of the Court joined in overruling a Massachusetts court decision that the book *Fanny Hill* was obscene. This decision was announced without the Justices agreeing on a definition of obscenity. Justices Brennan, Warren, and Fortas reiterated the Roth rule that "(a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value." They held that the Massachusetts court had misapplied this test when they weighed the obscenity of *Fanny Hill* against its limited social value. "A book cannot be proscribed unless it is found to be utterly without redeeming social value. This is so even though the book is found to possess the requisite prurient appeal and to be patently offensive." Justices Black, Douglas, and Stewart concurred while Harlan, White, and Clark dissented. The dissenting justices did so on the grounds that although the book had some minimal literary value, they could not conclude that it was of any social importance. The "third-prong" placed the burden of proof on prosecutors to prove that nothing in a work "redeemed" it. Conservative members of the Court found it very difficult to convict anyone under this "three-pronged test." Virtually any publication could be shown to have
some type of redeeming importance. Publishers began to include medical reports or one line captions dealing with current problems of society to protect their publications.

Not only was the liberalism of the Warren Court reflected in the "three-pronged test" announced in Roth, Manual Enterprise and Memoirs but the liberal framework can also be detected in the following three cases. In 1959 the New York Board of Regents, later upheld by the New York Court of Appeals, had forbidden the showing of the movie Lady Chatterley's Lover "because its subject matter is adultery presented as being right and desirable for certain people under certain circumstances." This was held to violate the state education law, which forbids the licensing of motion pictures "which are immoral in that they portray 'acts of sexual immorality . . . as desirable, acceptable, or proper patterns of behavior.'" In Kingsley International Pictures Corp. v. Regents of the University of the State of New York, the Supreme Court reversed the decision and held it to be a clear violation of freedom of the press. Justice Potter Stewart, author of the Supreme Court's majority opinion, stated that the appeals court had misinterpreted the First Amendment by banning the film not because it was obscene but because of its alluring portrayal of "adultery as proper behavior." According to Stewart: "What New York has done, therefore, is to prevent the exhibition of a motion picture because that picture advocates an idea—that adultery . . . may be proper behavior. Yet,
the First Amendment's basic guarantee is of freedom to advocate ideas. The state, quite simply, has thus struck at the very heart of constitutionally protected liberty."24

In 1964, the Supreme Court rejected another obscenity finding in Jacobellis v. Ohio. The Court was badly divided as it reversed the conviction of a Cleveland Heights, Ohio cinema theater manager for showing the French film Les Amants (The Lovers). No more than two Justices agreed with one another on the test of obscenity which was to be applied. Justices Brennan and Goldberg reaffirmed the Roth test, but added that "community standards" meant national, not local, standards; and the question whether something was obscene could not be left solely to a jury, but must ultimately be decided by the Supreme Court itself. They also raised the "redeeming social importance" phrase to the level of an independent test, holding that any material having such importance, however slightly, could not be banned. Justices Black and Douglas joined in the judgment on the ground that punishing any publication was unconstitutional, and Justice Stewart held that the First Amendment forbids only hard-core pornography "and the motion picture involved in this case is not that." Justices Warren and Clark dissented on the ground that "community standards" meant local standards, such as those applied by the jury in this case. Justice Harlan dissented on the ground that the First and Fourteenth Amendments apply differently, and the state should be allowed to outlaw obscenity as it sees fit.25
In 1967, the Supreme Court without written opinion reversed obscenity convictions in Kentucky, New York and Arkansas on the grounds that the materials involved "were not obscene under the Court's current obscenity tests." The cases involved were: Redrup v. New York, Austin v. Kentucky and Gent v. Arkansas. The Per Curiam ruling stated that: "In none of the cases was there a claim that the statute in question reflected a limited state concern for juveniles. Prince v. Massachusetts 321 U.S. 158; cf. Butler v. Michigan, 352 U.S. 380. In none was there any suggestion of an assault upon individual privacy by publication in a manner so obtrusive as to make it impossible for an unwilling individual to avoid exposure to it. Cf. Breard v. Alexandria, 341 U.S. 622; Public Utilities Comm'n v. Pollak, 343 U.S. 451. And in none was there evidence of the sort of "pandering" which the Court found significant in Ginsburg v. United States, 383 U.S. 463." After these cases were decided in 1967, the Court reversed more than two dozen obscenity convictions under the Redrup decision.

Even within this liberal framework outlined by the Warren Court, there were still a few cases that permitted some restrictions in the area of obscenity. The first of these cases was Miskin v. New York, decided in 1966. The defendant was prosecuted for his dominant role in several enterprises engaged in producing and selling allegedly obscene books. Fifty books were involved in the case. They portrayed sexuality in many fashions. Some depicted
relatively normal heterosexual relations, but more depicted such deviations as sado-masochism, fetishism, and homosexuality. Many had covers with drawings of scantily clad women being whipped, beaten, tortured, or abused.

Mishkin's lawyer contended that the fifty books involved included both obscene works and others that were admittedly "sadistic and masochistic" but not legally obscene because they did not appeal to the prurient interest of the average person and "instead of stimulating the erotic, they disgust and sicken." Mr. Justice Brennan who delivered the opinion for the Court stated: "Where the material is designed for and primarily disseminated to a clearly defined sexual group, rather than the public at large, the prurient-appeal requirement of the Roth test is satisfied if the dominant theme of the material taken as a whole appeals to the prurient interest in sex of the members of the group." Mishkin was a clear departure from the decision set forth in Manual Enterprises v. Day (1962). In Manual Enterprises, the "prurient interest test" could not be judged according to that of a specific group of homosexuals. However, after Mishkin, the "prurient interest test" can now be applied to specific groups of individuals.

The second of these cases was Ginzburg v. United States (1966). The Supreme Court upheld the conviction of New York publisher Ralph Ginzburg for sending three sexually provocative publications through the mails. These publications included Eros, Liaison, and The Housewife's Handbook on
Selective Promiscuity.

Justice Brennan, the author of the Court's majority opinion, recalled the Roth test, but held that "consideration should be given to the setting in which the publications were presented as an aid to determining the question of obscenity;" "in close cases" it was permissible to hold "that questionable cases are obscene in a context which brands them as obscene. . . ." Brennan viewed Ginzburg's publications against their "background of commercial exploitation of erotica solely for the sake of their prurient appeal," and in this respect he found them to be obscene. The Court conceded that the publications were not in themselves obscene, but that they took their obscenity from the fact that Ginzburg was in the "sordid business of pandering." "Pandering" was defined as the business of purveying textual or graphic matter openly advertised to appeal to the erotic interest of their customers.

The third of these cases was Ginsberg v. New York (1968). In Ginsberg, the Court upheld the rights of states and cities to ban sales of certain books and magazines to minors. The 6-3 ruling was on the appeal of Sam Ginsberg of New York who had been found guilty of selling "girlie" magazines to a 16 year old boy.

The New York law involved prohibited selling to minors under seventeen years of age any picture or similar representation "which depicts nudity, sexual conduct or sadomasochistic abuse and which is harmful to minors," or any
printed matter that contains similar material "or explicit or detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole is harmful to minors." The law defined "nudity," "sexual conduct," "sexual excitement," and "sado-masochistic abuse" quite specifically. Nudity" was described as "the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state." The expression "harmful to minors" was linked to representations of any of the foregoing material that "(i) predominantly appeals to the prurient, shameful or morbid interest of minors, and (ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (iii) is utterly without redeeming social importance for minors." 

Justice William Brennan contended in the majority opinion that the New York legislature had decided that the material it was prohibiting was "a basic factor in impairing the ethical and moral development of our youth and a clear and present danger to the people of the state." Brennan said it was "very doubtful that this finding expresses an accepted scientific test." "But obscenity is not protected expression and may be suppressed without a showing of the
circumstances which lie behind the phrase 'clear and present danger': therefore it was necessary only that "we be able to say that it was not irrational for the legislature to find that exposure to material condemned by the statute is harmful to minors." Brennan also asserted that though the material was not obscene for adults, "the well-being of its children is a subject within the state's constitutional power to regulate."  

While the right to sell obscene material enjoys no protection under the First Amendment, the freedom of thought implicitly guaranteed by that provision insures the right of a person to enjoy such material in the privacy of his own home. The right to privacy was linked to obscenity law in a 1969 case, Stanley v. Georgia. Relying on the Court's statement in Roth that "obscenity is not within the area of constitutionally protected speech or press" the state of Georgia forbade the mere possession of obscene material.  

Justice Thurgood Marshall, writing the opinion in Stanley, stated that the Roth and following decisions involved the "regulation of commercial distribution of obscene material" but did not "foreclose an examination of the constitutional implications of a statute forbidding mere private possession of such material." Justice Marshall went on to say that "whatever may be the justification for other statutes regulating obscenity, we do not think they reach into the privacy of one's own home." He felt that obscenity
was largely a personal privacy question and that if the First Amendment means anything, it means that a state has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch. Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds."\(^{35}\)

Hundreds of cases began working their way up to the Supreme Court as defense lawyers attempted to expand the Stanley rationale. They contended that "if there was a constitutional right to possess obscene material in one's home, then there was a right to buy it. If there was a right to buy it, there was a right to sell it. If there was a right to sell it, there was a right to distribute it. If there was a right to distribute it, then there must be a constitutional right to write, photograph, or film it."\(^{36}\) If this were the case, the distinction between obscene and not obscene would become largely irrelevant. However, the Supreme Court Justices rejected this logic.

Clearly, the intent of the Burger Court's rulings on the issue of obscenity was to alter Warren Court policy. In a series of rulings the Supreme Court June 21, 1973 re-defined obscenity by handing down a new set of guidelines that would enable states to ban works that were offensive to local standards.\(^{37}\) The principle case was Miller v. California (1973). The Miller decision reversed a fifteen year court trend toward relaxation of controls against pornography.\(^{38}\)
The **Miller** case involves the application of a state's criminal obscenity statute to a situation in which sexually explicit materials have been thrust by aggressive sales action upon unwilling recipients who had in no way indicated any desire to receive such materials.\(^3\) Chief Justice Warren Burger wrote the majority opinion. He was joined by each of Nixon's Court appointees: Blackmun, Powell, and Rehnquist, as well as White.

The majority revised the "three-pronged test" in the following two ways: first, the "utterly without redeeming social value test" announced by the Court in 1957 and 1966 was changed to "whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." Chief Justice Burger contended:

"While *Roth* presumed "obscenity" to be "utterly without redeeming social value," *Memoirs* required that to prove obscenity it must be affirmatively established that the material is "utterly without redeeming social value." *Innu* even as they repeated the words of *Roth*, the *Memoirs* plurality produced a drastically altered test that called on the prosecution to prove a negative, i.e., that the material was "utterly without redeeming social value"—a burden virtually impossible to discharge under our criminal standards of proof. Such considerations caused Mr. Justice Harlan to wonder if the "utterly without redeeming social value" test had any meaning at all. . . ."\(^4\)

The implication of this change was to make what the prosecution has to prove easier. Second, the national standards test was replaced by community standards in deciding
obscenity cases. The majority contended that "to require a state to structure obscenity proceedings around evidence of a 'national community standard' would be an exercise in futility." Chief Justice Burger went on to say that:

"It is neither realistic nor constitutionally sound to read the First Amendment as requiring that the people of Maine or Mississippi accept public depiction of conduct found tolerable in Las Vegas or New York City."[1]

Lower courts can now rely on the values of the jury in the state where the prosecution takes place.

"According to the majority opinion: (a) states had to define explicitly the kinds of sexual conduct that would subject a publisher or distributor to prosecution; (b) states had the right to assume, in absence of clear proof, that there was a causal connection between pornographic material and crime and other antisocial behavior; and (c) no constitutional doctrine or privacy existed that protected the display of obscene material in public places, and government limits therein did not constitute thought control."[2]

The Miller decision makes it appear that the intent of the Supreme Court's ruling was to devise an "invitation" to the states or local communities to enable them to adjust obscenity laws as they see fit. Whether or not the local communities have accepted this "invitation" by the Supreme Court is an issue that will be addressed in the case study.
found in the second part of this thesis.

In *Jenkins v. Georgia* (1974), the Supreme Court made it clear that the state of Georgia went too far in applying the Court's "invitation" to ban pornographic publications. A Georgia movie theater had shown *Carnal Knowledge*, a movie dealing with sex, although not in an explicit manner. In charging the jury, the judge instructed them to apply local community standards. The jury found the movie obscene. However, the members of the Court implied that despite *Miller*, the last word on questions of obscenity rested with it. "Even though questions of appeal to the prurient interest or of patent offensiveness are essentially questions of fact, it would be a serious misreading of *Miller* to conclude that juries have unbridled discretion in determining what is patently offensive." *Carnal Knowledge* could not be found to portray sexual conduct in a patently offensive way.

In June of 1976, the Supreme Court upheld a Detroit ordinance regulating the location of "adult" movie theaters. The ordinance provided that "an adult theater may not (apart from a special waiver) be located within 1,000 feet of any two other 'regulated uses' or within 500 feet of a residential area." The term "regulated uses" applies to establishments such as adult bookstores, bars, hotels, etc. The District Court upheld the ordinances, and granted petitioners' motion for summary judgment. The Court of Appeals reversed, holding that the ordinances constituted a prior restraint on constitutionally protected communication and violated
equal protection.

The Supreme Court decision written by Justice John Paul Stevens said that "the city's interest in attempting to preserve the quality of urban life is one that must be accorded high respect. Moreover, the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems." 143

Now that the history and legal background of the issue of pornography and obscenity has been reviewed, let us turn to the central question of the thesis: how do legal norms effect the availability of pornographic materials? Because judicial policy-making is only one of a host of variables which relate to the access of pornography, other factors must be examined. This is why the Court's present doctrine in Miller cannot be viewed as the sole determinant of the availability of pornographic materials. Not only are there several different legal norms which determine the amount of pornography one might obtain, but these norms are also interdependent. For example, it will be seen that prosecutorial practices not only affect decisions about sales of pornography, but these practices also affect community values which in turn affect decisions about sales.
III. CASE STUDY

I have examined the relationship of legal norms, enforcement practices, and the availability of pornographic materials in two communities, Champaign and Clinton, Illinois. The legal norms in both communities were analyzed to determine if they had any impact on pornographic material found in area bookstores. The factors that were analyzed include: the recent Supreme Court doctrine, police enforcement, prosecutorial practices, interest groups, and community values. Each of these norms was examined to determine their impact on one another and their ultimate impact on the pornography that is available in Champaign and Clinton, Illinois. The case study utilized in this thesis will offer information that is both similar and unique to each of the communities observed.

Most of the information used in the case study was obtained through interviews. An introductory letter was sent out to those people who either determine legal policy or who were knowledgeable on the subject of obscenity in Champaign and Clinton, Illinois. The letter explained the type of information sought and what the information would be used for. A standard set of questions were used during each of the interviews. Each interview was recorded on tape.
and then transcribed at a later time. The footnoted mater-
ial in the following section is either paraphrased or quoted
from the respondent's interview. The introductory letter
and the written notes on each interview is included in
the Appendix.

The first legal norm to be reviewed is the present
Supreme Court doctrine concerning the issue of obscenity
announced in Miller v. California (1973). It is important
to determine whether the Miller decision is influencing be-
behavior on the local level. If the Supreme Court doctrine
has a direct effect on area officials and these officials
have an effect on the availability of pornography, it might
be reasonable to conclude that the Miller decision has an
indirect effect on the availability of these same materials.
Theoretically, the decision in Miller should make it easier
for states to regulate the sale of hard-core pornography
than the previous Memoirs ruling. However, as stated
earlier, the Supreme Court doctrine as an independent
legal norm is not the sole influence upon the availability
of pornography. The doctrine must be analyzed in relation
to other factors in the community.

The guidelines of the Miller decision comport with
the Illinois regulations on obscenity. The court case
which adjusted the Illinois obscenity statute to the con-
stitutional principles announced in Miller was Ward v. Illi-
nois (1976). For a publication or other type of material
to be obscene under Miller, three elements must be proven:
1. There must be an appeal to the pru­nient interest.

2. The material must contain patently offensive sexual conduct specifically defined by the applicable state law; and

3. The material must lack serious literary, artistic, political, or scientific value.

However, in Illinois there is a variation in the third "prong" put forth in Miller v. California. To prove a publication or material to be obscene it must be "utterly without redeeming social value." Illinois' third "prong" announced in People v. Ridens (1974) is the same test as that adopted by the Supreme Court in Memoirs v. Massachusetts (1966). In Memoirs, the test required prosecutors to prove that nothing in a work had redeeming social value. However, it is important to emphasize that the decision in Ridens does not render the Miller doctrine ineffective. This is so because the Miller decision gives the states discretion to control pornography as they see fit. And this was the intention of the Burger Court.

Before the effect of the Supreme Court doctrine on behavior can be measured, perceptions of that doctrine must be determined. I investigated the attitudes on the Miller decision by those individuals who determine legal policy in the Champaign and Clinton communities. From the interviews that were conducted in Clinton it can be concluded that there is a substantial lack of experience relating to
Supreme Court obscenity doctrine. One of Clinton's prosecuting attorneys was not familiar with any of the Supreme Court obscenity rulings. Likewise, neither was Clinton's city attorney nor a defense attorney who practices law in Clinton. This lack of knowledge might be a key variable in determining why, according to one of Clinton's prosecutors, "there have never been any prosecutions in the area for obscenity."

Both a member of the Champaign police department and a defense attorney who practices law in Champaign, seemed much more knowledgeable about the Miller decision than any individual interviewed in Clinton. Not only did the defense attorney give his interpretation of the Miller doctrine, but also outlined the obscenity tests that have been used by the Champaign State's Attorney in prosecuting obscenity cases. These tests will be discussed later.

The Court's "invitation" to curb obscene publications was evidently ignored in Clinton. One of Clinton's State's Attorneys said that materials which might satisfy the Miller guidelines are still being sold. He contends that this is true because of the substantial market that exists in Clinton for this type of material.

As stated earlier, the Supreme Court doctrine as an independent legal norm has little if any effect on the availability of pornography that exists in a community. Support of this contention lies in the fact that the Supreme Court is attributed little enforcement power. Without
government and community officials enforcing the law through available sanctions, Court decisions will make little difference. Because of this, the influence of other community factors become all the more important in determining the amount of pornography one might obtain in a community. It is these factors that will ultimately determine whether the Court's "invitation" to the states in its effort to curb obscene publications, is being implemented. Before each of the individual factors are examined to determine their effect on the availability of pornographic materials in Champaign and Clinton, the influence of the Court's doctrine on the effectiveness of these norms must be discussed.

The Supreme Court doctrine appears to have little or no effect on police activity or enforcement in the towns of Champaign and Clinton, Illinois. The Champaign police department will not get involved in the area of pornography. As a member of the Champaign police force stated, "Champaign is a very diverse community." This diversity elicits many different tastes and preferences among Champaign's citizens. It is this factor that inhibits the Champaign police from investigating materials sold in area bookstores.

The major factor that deters both the Champaign and Clinton police departments from interfering in the area of pornography is the absence of citizen complaints. According to a Champaign police official, "the department's role is to respond to complaints from the citizens." In Champaign, the police department has in recent years received no calls
regarding pornography or pornographic establishments. The only complaints the department has received have related to prostitution, and many are from the pornographic establishments themselves complaining about prostitutes loitering on their premises.

In Clinton, the police do not show much interest in the town's pornographic establishment, according to one of the Assistant State's Attorneys. The only attention they give the bookstore is when they frequent it.

The Supreme Court doctrine did seem to have an effect on prosecutions in Champaign in 1973. In June of that year Miller v. California was decided by the Court. And in July, the first prosecution had taken place in Champaign since the late 1960's. The State's Attorney at the time initiated these prosecutions to respond to elements in the community who felt something should be done about the "filth" in Champaign. Consequently, in July of 1973, the Art Theater was indicted for showing Deep Throat and at a later time charged by information with showing The Letcher. Both films played at the Illini Theater in Champaign. In May of 1975, the cases came to trial. The juries found the movies not obscene within the context in which they were shown. As a result of the juries' verdict a "consenting adult standard" was established. This standard is a policy used by local officials to determine whether proceedings should be initiated against pornographic publications. As long as the content of sexually explicit material is
not thrust upon unwilling adults nor made available to minors if it meets the consenting adult standard and the material is not to be examined.

The Champaign defense attorney that I interviewed believes that as long as the pornographic establishments "make their wares available under controlled circumstances," there will not be any further obscenity prosecutions. He also feels that the Champaign State's Attorney abides by this same policy. One of the intended purposes of the Miller decision was to make prosecutions of obscenity cases easier. However, because the Champaign State's Attorney relies exclusively on this "consenting adult standard," it appears to make the Miller doctrine of limited relevance. Likewise, this same policy might be an important variable that permits the easy access to pornography in Champaign. A wide variety of pornographic books, magazines and novelty items may be purchased in at least three Champaign adult bookstores.

In 1976, there was a problem pertaining to obscenity in the town of Clinton. This problem occurred when a minister became offended with the materials being sold at Bell's Bookstore (the only pornographic establishment in Clinton). The allegedly obscene material was sent to the office of the State's Attorney. The former State's Attorney decided not to proceed with any legal action. However, he suggested to the owner of the bookstore that he install swinging doors in front of the pornographic bookshelves. This would obstruct the view of anyone under age and likewise protect
those individuals who did not want to see this type of material. Clinton's city attorney contends that the most important issue with regard to obscenity is public view; and the swinging doors had taken care of this issue. The city's position is that it will not infringe on the right of an individual to possess pornography as no public harm is created.

It is fairly safe to assume that the Miller decision plays a negligible part in determining the expectations one might hold on the issue of pornography. These values are shaped by factors other than the present Supreme Court doctrine. A Champaign police official contends that the Miller doctrine has very little to do with the way one perceives pornography for the following two reasons: First, people do not pay much attention to the Supreme Court in general, let alone specific decisions; Second, since Miller v. California was decided in 1973, it is unlikely that many people are influenced by that doctrine today. It seems reasonable to presume that factors such as family socialization, religious affiliation, and one's level of education might determine the way one views pornography.

The influence of the Supreme Court doctrine on the availability of pornographic materials in Champaign and Clinton, Illinois was obtained by indirect evidence. When I first began conducting research, I had anticipated that the owners of area pornographic establishments would make themselves available for interviews. However, I was not
able to obtain any interviews. Therefore, no direct evidence exists on the manner in which area bookstore owners decide to stock materials. It remains uncertain whether the standards announced in Miller are having an effect on bookstore owners' decisions as to the materials they decide to sell. However, indirect evidence suggests that the present doctrine is taken into account before a decision is reached. When the owners of pornographic establishments contact the defense attorney I interviewed for legal advice regarding the sale of pornography, he uses the criteria set down in Miller v. California and Ward v. Illinois. He contends that each area bookstore owner abides by the guidelines announced in these cases in determining which materials to stock and sell. Nonetheless, the Miller criteria alone does not provide the basis upon which to judge the obscenity of particular books or magazines. This is true because the doctrine fails to provide an unambiguous criteria to allow the bookstore owners to make an accurate judgment. Furthermore, material cannot be deemed obscene until it is judicially determined to be so. As a result, it can safely be assumed that the present Supreme Court doctrine has minimal influence on the availability of pornography. However, a Champaign police official contends that as a result of Court decisions, owners are "alert legally" and "have their act together" as to which materials can be sold under the law. Moreover, owners realize they must abide by the "consenting adult standard."
Although the owners of pornographic establishments seem to be aware of the law, this factor alone would not necessarily limit the accessibility of obscene materials. As I looked at material displayed on the shelves at two adult bookstores in Champaign and the one located in Clinton, it appears to me that some material could quite possibly be classified as obscene under the Miller guidelines. This notion cannot be confirmed, of course, unless prosecutors pursue cases and a judicial determination as to the legality of the publications. The existence of this material could quite possibly be explained by one of the following two factors: First, because of the ambiguity of the Miller doctrine, bookstore owners find it difficult to stock materials according to the law. Second, the potentially obscene material could be a direct result of the owners themselves failing to take court decisions into account.

Police activity is not directed in the area of pornography in either Champaign or Clinton. As I stated earlier, the role of the police department is to respond to complaints from the citizens. Neither police department receives any objections from members of the community regarding pornography in general or pornographic establishments in particular. Therefore, a Champaign police official believes that "there is no time to fool around with pornography." Moreover, in expressing his personal views, the same officer stated that he does not consider pornography to be "a cancer, legally or morally." In addition to the
absence of formal police investigation, neither department applies informal pressure (i.e., police surveillance, identification checks of customers) at area bookstores. This is because police are reluctant to get involved in victimless crimes.

According to the Champaign defense attorney I interviewed, "police activity plays absolutely no part in the dissemination of pornographic materials." A police officer exercising his judgment that a publication is or is not obscene would constitute an invalid prior restraint. This sort of activity would subject the police officer and the municipality in which he is employed to federal civil rights liability for injunctive and monetary relief.

The only concern of the Champaign police department in the area of obscenity is child pornography. And as far as a Champaign police official knows, this material is unavailable in area bookstores. If child pornography was being sold, the officer feels the issue would have come to the department's attention. Child pornography is unavailable, in both communities, because of the wave of statutes specifically dealing with this material invoked in the late 1970's. Also, the police department informs each area bookstore owner of their position on this type of material. According to an officer of the Champaign police, the department's position is that of "intolerance." The position of the Clinton police department on the issue of child pornography according to one of Clinton's prosecutors is less
sensitive than the Champaign police chief's. Regardless, Clinton's prosecutor was sure that the material is nonexistent in the local bookstore.

The influence of local prosecutions on the availability of pornographic materials in Champaign and Clinton appears minimal. This assertion is reinforced by the following two facts: First, there has not been an obscenity prosecution in Champaign since 1975 nor has one ever been initiated in Clinton. Second, the State's Attorney's office of Clinton pays no attention to the sale of pornography and the bookstore owner realizes it. On the other hand, the Champaign defense attorney believes that the Champaign prosecutor has indirect influence over the materials that can be found in the area. This is because area bookstore owners are aware that prosecutors will enforce Champaign's "consenting adult standard." However, even if this statement is true, one important factor must be considered. The absence of a serious prosecutorial threat on the issue of obscenity must weigh heavily on decisions as to which materials should be sold by area bookstore owners.

The factor that has the most significant effect on the implementation of legal norms and the effectiveness of police enforcement is community values. The values of the community determine which decisions are made by local officials and the effectiveness of their decisions. Because community values are so important in determining local policy, these values have a strong direct as well as indirect
influence on the availability of pornography.

For example, the influence of community values play a substantial role in determining police activity. Because the police respond to citizen complaint, it is this variable that will determine the priority assigned to the issue by the Champaign and Clinton police departments. A member of the Champaign police department believes that the people in his community tend to possess liberal attitudes towards the pornographic establishments. Therefore, these establishments are ignored by the Champaign police force. In Clinton, an Assistant State’s Attorney contends that people in his community do not consider pornography to be a problem. Consequently, the Clinton police force also ignores the issue of pornography.

Not only do the values of the community appear to have great impact on police activity, but these same values play a substantial role in influencing local prosecutions. In May of 1975, when a Champaign jury returned a verdict of not guilty of obscenity (in the two cases that were discussed earlier) a “consenting adult standard” was confirmed and established. The present Champaign State’s Attorney believes that this standard adequately represents the sentiments of the community with regard to pornography. Consequently, he refuses to initiate any proceedings in the area of obscenity. I contend that the position held by the Champaign State’s Attorney in the area of pornography could very well be a self-fulfilling prophecy. In other words,
because the State's Attorney himself has no desire to prosecute obscenity cases, his defense rests on the values of the community. If local prosecutors would attempt to ban the publications of material that might meet the guidelines announced in *Miller v. California* and *People v. Ridens*, this action might incite the community to take a position on the issue of pornography. Consequently, action by local prosecutors can have a substantial effect on the way one might perceive pornography in a community.

Members of a newly formed interest group, Women Confronting Pornographic Media (W.C.P.M.) feel that community values have little if any effect on local prosecutions. When I interviewed a member of the group, she stated that "as long as a market exists for pornography, no prosecutions will be initiated in the area of obscenity. This is so regardless of the sentiments of the community." The group's member continued by adding that "District Attorneys are part of a patriarchal society that flourishes and can only exist through the subjugation of women, in which pornographic materials play an important role." In other words, the effective control of pornography is impossible because of the political structure of our society. A structure that continues to cater to the wants and needs of men. Pornography is just one of a host of variables that manages to keep women inferior in the Champaign community.

The Champaign defense attorney believes that this group operates under three fallacious assumptions. First, the
group contends that pornography is solely the exploitation of women. However, after examining the materials for sale in the Champaign and Clinton communities, I feel that only a small percentage of this material abuses women in this fashion. There is a substantial amount of materials that picture men and women in co-habitual sex acts. Therefore, pornographic material is not limited to females. And if pornography exploits women, it should also treat males in a similar fashion. Second, the group presumes that exposure to sexually explicit material leads to anti-social conduct. However, these women do not have enough evidence to make this assumption. Liberals, on the other hand, cite the most comprehensive study on this issue (The Report of the Commission on Obscenity and Pornography) to prove that pornography does not incite criminal behavior. After the results of this study had been published, many critiques of the methodology were written. At this time, neither side has any concrete evidence to make any flawless conclusions. Finally, W.C.P.M. have no legal concept of what obscenity is. And the group fails to understand how the concept of obscenity applies to First Amendment protections. The group urges government officials to take action against pornography because they find it to be unacceptable; but in turn, violate others' First Amendment rights by doing so.

The following ideas were synthesized from the views of local officials whose behavior determines legal policy in the Champaign and Clinton communities. It appears that
community values may effect the availability of pornographic materials in the following two ways: First, strong community pressure in the form of letter writing campaigns, telephone calls, and protest marches would likely have some effect on the way in which local officials perceive the sale of pornography. It seems doubtful to conclude that the State's Attorney and police department would ignore the views of their citizens. However, as long as the community remains silent about pornography, access to this material will generally be unrestricted. Second, the values of a community provide a market for the sale and distribution of pornography. Pornographic establishments cannot survive unless some demand for their product exists. Hence, members of the Champaign and Clinton community must be providing a market for pornography. Therefore, it seems reasonable to conclude that the influence of community values play a vital role in determining the availability of pornographic materials.

Presently, there are three adult bookstores in the Champaign area that sell exclusively pornographic publications and novelty items. And at least one bookstore devotes half of its stock to the sale of pornography. Many other pornographic establishments have attempted to open in Champaign. However, the owners of these establishments have found that the market is saturated. In other words, as more businesses attempt to open their doors, the supply of pornography begins to exceed demand. Consequently, the
new establishments cannot stay in business very long.

Each person that I interviewed believes that the issue of pornography does not pose a problem in his community, except for a member of the interest group, Woman Confronting Pornographic Media. Likewise, these same individuals feel that consenting adults should have the right to obtain any materials they wish. A Clinton prosecutor and a Champaign police officer both contend that unless complaints are received from the citizens, an issue such as pornography can never be considered a problem. On the other hand, a member of W.C.P.M. stated that pornography does constitute a problem. The problem it provokes is the violence it incites toward women. However, the member of this group was unable to present any substantial evidence to prove her claim. For example, the individual stated that pornography is the main cause of rape and woman beating. Nonetheless, she could not cite any relevant facts or statistics to support her contention. It appears that local officials are unpersuaded by the group's position on pornography.

The content of sexually explicit material is never examined by the Champaign police or State's Attorney for the reason that a "consenting adult standard" was established in 1975. And the owners of area pornographic establishments seem to abide by this policy. After conducting several extensive interviews with local officials who determine legal policy and having examined many bookstores myself, it appears
that the following two requirements are met in Champaign:

(1) The material is not forced on unwilling adults; and
(2) The material is not made available to minors.

The content of sexually explicit material is also never examined in the town of Clinton. This is because the owner of the local pornographic bookstore abides by what the Clinton State's Attorney refers to as the "public view" issue. When the owner of the area bookstore installed swinging doors in front of the display of pornography, the issue lost all its significance.

The issue of pornography is not given any priority in Champaign or Clinton law enforcement. After speaking to both a Clinton prosecutor and a Champaign police official I have come to the conclusion that there must be a motivating factor to compel prosecutors to initiate proceedings against pornographic publications. This motivating factor must be public outcry. A Clinton prosecutor contends that "most proceedings are initiated by citizen complaint rather than the State's Attorney or other local officials investigating what may or may not be a crime." Because there are no complaints in the Clinton community concerning obscenity and since the State's Attorney is not on a crusade against pornography, local officials are unconcerned with the sale of pornographic publications. However, it must be remembered that this situation could very well change if community uproar was generated. For example, this uproar could be created by an election issue or news
story. Therefore, increased community awareness could very well elicit the rebirth of future obscenity prosecutions.

I now would like to turn to the question of the distinction between obscene and non-obscene publications. According to the Champaign defense attorney, "there is no logical or rational explanation to the difference between pornography and obscenity." A classification of the material all depends on the jury deciding the case. This could be an important indicator as to the readily available supply of pornography in both Champaign and Clinton. If local officials cannot determine which materials might be classified as obscene, it therefore seems reasonable to conclude that we as citizens cannot expect legal action to be initiated in the obscenity area.
IV. CONCLUSION

In conclusion, it appears that area officials permit legal norms and enforcement practices to have minimal impact on the availability of most pornographic materials in Champaign and Clinton, Illinois. I feel this contention is supported by an analysis of the inter-dependent nature of the various factors that could have affected the sale and distribution of pornography. This analysis should have made it clear to the reader the ways in which local officials deal with and make decisions pertaining to the existence of pornography in a community. Though local officials in Champaign and Clinton seem to overlook most of the available pornography, the presence of legal norms are still responsible for the following conditions: First, materials that sexually exploit minors are unavailable for sale or distribution in Champaign and Clinton. This assertion is supported by the fact that I examined the materials available for sale in area bookstores. There was no child pornography available in the four bookstores in which I investigated. Second, juveniles are explicitly forbidden to enter pornographic establishments. A Champaign police official contends that every precaution is taken by the employees of these establishments to screen the age of patrons. Third and finally,
publications are not forced on unwilling adults by the means of sexually explicit advertising and mail solicitations. The absence of this type of advertising is evident by observing the establishments themselves. If members of the community were confronted with this material in the mail or on the streets, the police officer feels that the situation would have come to his attention.

The first condition prevails because of the wave of child pornography statutes written in the late 1970's. It seems reasonable to conclude that owners of area bookstores refuse to subject themselves to the heavy fines these statutes impose. The intent to disseminate child pornography carries a fine up to $25,000. Moreover, the issue of child pornography seems to generate a moral awareness among local officials in Champaign and Clinton. The Champaign police official assured me that any suspected violation of these statutes would result in an immediate police investigation. The second and third conditions exist because of the "consenting adult standard" and "public view policy" enforced in Champaign and Clinton respectively.

Finally, because local officials have chosen not to concern themselves with the communities' pornographic establishments, the right to obtain sexually explicit material is unrestricted for "consenting adults." Hence, legal norms and enforcement activities provide the easy access to the available pornography in Champaign and Clinton, Illinois. However, the existing conditions noted in the
previous paragraph are a direct result of these same norms and enforcement practices and the response of local officials to them. Moreover, these conditions should serve as proof that area officials have succeeded in determining and maintaining the legal environment they desire in the area of obscenity.
A. A Champaign Defense Attorney  
January, 1982

1. Are there any existing state and municipal statutes on obscenity and zoning in Champaign-Urbana?

The state statute is chapter 38, section 11-2 on criminal obscenity. The Champaign-Urbana municipal city ordinances have never been used.

In 1973, both cities enacted resolutions that had the intentions of setting a local community standard which was a "consenting adult standard." This means that the content of sexually explicit material is not to be considered provided it is not foisted on unwilling adults or made available to minors. The Art and Illini movie theaters meet the "consenting adult standard." There are no zoning ordinances that affect adult uses in Champaign County. However, these places of business must meet all the other requirements of a regular bookstore or theater.

2. Do you feel that pornography is a problem in the community?

The attorney does not feel that pornography is a problem in the community. He feels that consenting adults should
have the right to see what they want. However, he feels there is an exception to the rule. The exception is if people "make a stink" about it.

3. Are there current court decisions on the issue of obscenity?

The **Miller** decision sets basic guidelines for obscenity. These guidelines comport with the Illinois guidelines.

**Ward v. Illinois** (1976) set the Illinois statute in tune with the constitutional principles which the United States Supreme Court set in **Miller**.

*For a publication and/or material to be obscene, three elements must be proven:*

1. **There must be an appeal to prurient interest.**
2. It must contain patently offensive sexual conduct specifically defined by the applicable state law.
3. It must lack serious literary, artistic, political, or scientific value.

However, in Illinois there is a variation in the third element announced in **Miller**.

3. The material must be utterly without redeeming social value.

**Illinois' third element was set down in People v. Ridens** (1974). **People v. Ridens** held not to alter the third element in testing obscene materials.
4. What has been the trend in the number of prosecutions in the last ten years?

There had been prosecutions in the late 1960's. These prosecutions concerned magazines that were being sold at Smith Drug Store. However, these prosecutions were unsuccessful. The publications resembled "girlie magazines" and were found not obscene by the *Memoirs* criteria.

In June of 1973, the *Miller* case was decided. In July of 1973, the Art Theater Guild was indicted for showing *Deep Throat* and at a later time charged by information with showing a film called *The Letcher*. These films played at the Illini theater in Champaign. In May of 1975, both cases came to trial. Expert testimony was given for both the prosecution and the defense. The juries found the movies not obscene. Jim Burges, the State's Attorney at the time, started these prosecutions to respond to elements in the community that felt the law was there and that something should be done about the "filth" in the community.

By the jury returning a verdict of not obscene in the context in which it was shown, a "consenting adult standard" was confirmed and established. As far as the attorney is concerned, as long as the establishments make their "wares" available under controlled circumstances, there will not be any obscenity prosecutions. As long as community standards are met, the defense attorney feels that the State's Attorney's policy is the same.
5. Do local prosecutions have any influence on the materials that bookstore owners stock and sell?

There have been no prosecutions since 1975. In the late 1970's, there was a wave of child pornography statutes. If such a case (child pornography) was brought to the State's Attorney's attention, the lawyer feels that prosecution would be initiated. The attorney also feels that local prosecutors have an effect on materials available in the community.

6. Do court decisions have any influence on the materials that bookstore owners stock and sell?

When pornographic establishments contact the defense attorney, he uses the criteria set down in court decisions.

7. Does police activity have any influence on the materials that bookstore owners stock and sell?

Police activity plays absolutely no part. A police officer exercising his judgment that material is or is not obscene plays no part in determining whether the material is disseminated. This act would be an invalid prior restraint and would subject the police officer and the municipality in which he is employed to federal civil rights liability for injunctive and monetary relief.
8. Why are publications that look like they would satisfy the Miller guidelines or the Illinois obscenity statutes still being sold? And if police officers are not allowed to make any determination, does this mean that there will continue to be a flood of this type of material?

Material is not obscene until it is judicially determined to be so. The attorney feels that the Miller criteria alone does not make anything obscene. It's a judicial decision that does. It is a legal concept. The attorney said that looking at a magazine or film fails to take into account the following:

1. Community standards
2. The context of the dissemination

9. Have any publications been banned by either court decisions or state statutes (i.e., child pornography)?

There have been no child pornography cases in Illinois. This is because of the heavy penalties that the statutes carry with them. The attorney also feels that there is no market for this type of material.

10. In your opinion, what is the major distinction between obscene and non-obscene materials?

It all depends on the jury. There is no logical or rational explanation at all.
11. What has been the trend in the number of pornographic establishments in the Champaign-Urbana community?

Many bookstores have attempted to locate in the Champaign-Urbana community. However, these owners have found the location to be lacking. Establishments do not do enough business to remain in operation.

12. What causes these establishments to close down?

Solely economic factors.

13. Would less ambiguity in the Court's definition of obscenity elicit greater compliance with the Court doctrine by prosecutors, bookstore owners, and lower courts?

The attorney feels that this question has an implied assumption that cannot be met. This assumption is the greater possibility for specificity. "It would be a sad day if someone felt that the concept of obscenity could be defined and carved in granite; and, all that you would have to do is touch a piece of litmus paper to a book or magazine and if it turned blue it was obscene.

14. How do you think that the local community perceives these pornographic establishments?

A newly formed group, Women Confronting Pornographic Media,
overstates and simplifies the pornographic problem for their own use and benefit. They have no legal concept of what obscenity is. They feel pornography is solely the exploitation of women. However, pornographic material is not limited to females. And if pornography treats women as sex objects, it must likewise treat males in the same fashion. This group calls on government authority because they find pornography unacceptable; but in turn, violate others First Amendment rights by doing so. The group presumes that exposure to sexually explicit material leads to anti-social conduct. They hold this assumption even though the best known study (Report of the Commission on Obscenity and Pornography) shows this material does not.

15. Does this group apply any pressure to local officials to influence prosecutions?

Their goal is to protest, picket, and pass out leaflets in front of these pornographic establishments. There have been acts of violence against property. For example, bricks have been thrown at windows and movie screens have been defaced. These acts of violence leave doubt to whether people really understand that they are able to express the view that they are because dirty bookstore owners have fought the cause of the First Amendment.
16. Do you feel that "consenting adults" should have the right to obtain any materials and/or publications they desire?

Consenting adults should have the right to see what they want.

B. A Champaign Police Official
January, 1982

1. Are pornographic establishments a problem in the community?

The police department's role is to respond to complaints from the citizens. The police official said that he gets no calls regarding pornography or pornographic establishments. The only calls the police department gets are calls relating to prostitution. These calls are from the establishments themselves concerning prostitutes loitering on their premises.

2. There are many sources of laws. How do you find out about all of them and is there a good channel of communication?

The State's Attorney receives any change relative to law enforcement. They establish procedures and the police abide by the State's Attorney's interpretation of those laws.
3. Have prosecutions become easier in the last ten years?

Because there have not been any prosecutions, it is a hard question to answer. He believes they would become easier if the police department would receive complaints. The police department does not make legal decisions in terms of prosecutions. Their role is only to investigate (gather the facts). The department relies on the State's Attorney's advice on how to proceed. The police have not been called upon to look at bookracks. Some communities in Illinois do, however.

4. Why doesn't the police department have to look at this material?

It is a combination of many things. The most relevant factor is that Champaign is a very diverse community. Likewise, no pressure is exerted by religious organizations, parents, or any other citizens.

5. Are selling practices influenced by court decisions?

Owners are alert legally and have their act together. They realize that they must abide by the "consenting adult standard." The police department's concern is child pornography. And as far as the officer knows, this material is unavailable in the bookstores.
6. Do you think that child pornography is sold under the counter?

No. The department makes it our business to let the owners of these establishments know how we will react legally to any such material. The officer assumes that if these types of publications were available, they would have come to his attention.

7. What do you feel the community's beliefs are on the existence of these pornographic establishments?

The people in this community tend to have a liberal attitude and ignore these establishments. Most of the people who frequent the establishments are visitors.

8. Do you feel that "consenting adults" should have the right to obtain any materials and/or publications they desire?

Yes. As long as it does not violate someone else's privacy.

9. Why are publications that look like they would satisfy the Miller guidelines or the Illinois obscenity statutes still being sold?

There is no time to fool around with this type of material because there are no complaints from the citizens concerning
pornography. The official does not consider pornography to be "a cancer, legally or morally."

In victimless crimes, police are reluctant to investigate. Champaign does not have a vice squad because the problem is not large enough to employ this type of staff. Pornography is not a priority in Champaign.

C. A Clinton Prosecutor  
February, 1982

1. Are there any existing state and municipal statutes on obscenity and zoning in Clinton?

Statutes concerning obscenity are found in the criminal code. There are no city ordinances that prohibit obscenity. There are no zoning laws that deal directly with pornographic establishments. The nuisance sections in the state statutes might deal with zoning.

2. Do you feel that pornography is a problem in the community?

Pornography does exist; but the people in the community do not consider it a problem.

3. Has action ever been taken concerning pornographic establishments?

There has been one raid in the last ten years. There was never an actual prosecution. The city official feels that
the raid was ineffective because all the materials are still available.

4. Why hasn't more action been taken?

There must be a motivating factor to make prosecutors want to prosecute. In Clinton, there is an absence of public outcry.

5. Are there any current court decisions on the issue of obscenity?

The city official knew that there were but did not know them off hand.

6. Does police activity have any influence on the materials that the bookstore owner stocks and sells?

The police do not show much interest in the pornographic establishment. The interest that they do show is in frequenting the bookstore. It must be kept in mind, however, that the one pornographic bookstore that exists in Clinton also sells materials that are not pornographic.

7. Have any publications been banned by either court decisions or state statutes?

Not to his knowledge. As for child pornography, the city official does not know whether it exists. At this time, the
child pornography issue is a hot one. This is because a local photographer was just indicted for taking indecent liberties with children (high-school boys). He would pay these boys to pose in the nude and sell their pictures to homosexual magazines in the East.

8. Are the police responsible for any type of regulation dealing with pornographic establishments?

The police would be an investigative arm if prosecutors ever decided to prosecute. The city can use them to apply informal pressure to the bookstore owners. However, the city official does not think that they apply this type of pressure.

9. What has been the trend in the number of pornographic establishments in the Clinton community?

In the last ten years there has only been one pornographic bookstore, and it has not closed down.

10. Would less ambiguity in the Court's definition of obscenity elicit greater compliance with the Court doctrine by prosecutors, bookstore owners, and lower courts?

The city official feels that it would because the community standard can be very inconsistent.
11. How do you find out what other jurisdictions say or do concerning obscenity and does this influence decisions that are made in this office?

1. State Bar Association
2. Chicago Law Bulletin

12. How do you think that the local community perceives these pornographic establishments?

They probably oppose pornography but do not take much notice of it. This is all the more true because the bookstore has a dual purpose.

13. Do you feel that "consenting adults" should have the right to obtain any materials and/or publications they desire?

Yes. The city official finds it offensive when others restrain access to what people have the right to read. Especially, if these people wish to read this type of material.

14. Why are publications that look like they would satisfy the Miller guidelines, or the Illinois obscenity statutes still being sold?

There is a market for the publications and people buy them.
15. Is it your responsibility to prosecute if you feel that a publication could be deemed obscene?

The problem of obscenity is very vague. It does not occupy the time of the State's Attorney. If people would complain, then a prosecutorial determination would have to be made.

D. Clinton's Local Officials
February, 1982

1. Do you feel that pornography is a problem in the community?

The city official does not feel that pornography is a problem in the community. Since 1976, he has not heard a complaint concerning pornography.

2. What has been the trend in the number of prosecutions in the last ten years?

The city official cannot recall any. At this time however, there is a case that will soon be prosecuted. The issue does not necessarily involve pornography. It involves taking pictures of young males in the community by a local photographer. The city official does not consider the pictures to be pornographic.

3. Why don't you feel the pictures are pornographic?

It is just like if you went to a photographer as an adult
and decided to have your picture taken in the nude. If the photographer wants to take it, he can. The only difference here is that the people are 16 years old and younger. Mr. Justice Powell's rule of law, stated in the Brethren, is the "limp dick test." Using this test the pictures are not pornographic.

4. Why are you prosecuting this case?

This case concerns the exploitation of minors.

5. Did the Miller case make prosecutions easier?

The city official said that he was not really familiar with the Miller decision and similarly has not had any prosecutions. Therefore, he would not be able to answer this question.

6. Does the State's Attorney have any effect on the materials that the local bookstore sells?

He does not think so.

7. Have any publications been banned by either court decisions or state statutes (i.e., child pornography)?

There are certain restrictions against child pornography.
8. Are the police responsible for any type of regulations dealing with pornographic establishments?

The only thing that they are responsible for is the enforcement of the obscenity laws and child pornography laws. There are no local ordinances dealing with pornography or X-rated movies. There has been one proposed. How far it has gotten he does not know.

The most important concept is "public view." The swinging doors took care of this issue.

The city's position is that it will not infringe on the right of an individual to possess pornography. The city does not see any public harm done.

9. What has been the trend in the number of pornographic establishments in the Clinton community?

Just one bookstore.

10. How do you think that the local community perceives these pornographic establishments?

As a joke; they laugh about it.

11. Do community groups apply any pressure to local officials to influence prosecutions?

No.
12. Would less ambiguity in the Court's definition of obscenity elicit greater compliance with the Court doctrine by prosecutors, bookstore owners, and lower courts?

"I suppose it would but I do not know how in the hell someone could make it less ambiguous."

13. Do you feel that consenting adults should have the right to obtain any materials and/or publications they desire?

Yes.

14. You said that the materials that Bell's Bookstore sells might be obscene. If this is the case, why don't you or the police go into the bookstore and attempt to prosecute the allegedly obscene material?

Most prosecutions are initiated by citizen complaint rather than the State's Attorney checking on what may or may not be a crime and then initiating the criminal proceeding on his own. Since there is no uproar in the community and because the city of Clinton is not on a crusade against pornography, he does not go out to see if the materials are pornographic.
1. Do you feel that pornography is protected by the First Amendment?

We feel that, in part, the First Amendment is supposed to protect the rights of all persons to free speech. This must include the rights of all women to speak about their feelings on the issue of pornography and the effect it has had (and is having) on their lives. We do not feel it is the First Amendment that encourages violence against women unless these First Amendment rights are accorded only to the white male population and not to all women as well. If the First Amendment really does protect the rights of all persons to free speech, then it accords this right to pornographers (and consumers thereof) and women alike. At this point we must look at what pornography is saying, how it is accepted in society, and how it in turn affects society. This is not a question of free speech, but instead a question of truth.

Since pornography is a statement about all women as a gender class, the truth of this statement can only be examined and determined by women in the context of their past and present realities.

2. Do you frequently challenge the constitutionality of pornographic publications?
The fact that pornography can exist in this society and culture and under the laws set up by this society reflects the silencing of women. If we are to talk about the "constitutionality" of pornographic publications, we must first discuss the role of women as set up by government and therefore by the Constitution. In a country where basic rights can still be denied on the basis of sex, it can be quite fruitless to challenge the constitutionality of the existence of statements regarding one of those sexes. We see challenging the constitutionality of pornographic publications as a very difficult task in light of this country's refusal to recognize women as full human beings.

3. Are you aware of any legal norms that hinder the dissemination of pornographic materials?

It is against the law to mail pornographic publications to any person under the age of 21. Since pornography (and prostitution) are heavily linked to organized crime, legal norms can be avoided.

There are frequently zoning regulations that prohibit pornographers from setting up business in certain areas of a community.

4. Do you perceive the materials that pornographic establishments sell to be protected by the First Amendment?

Yes, they are protected by a patriarchal society that
flourishes and can only exist through the subjugation of women, in which pornographic materials play an important role.

5. If not, why aren't the State's Attorneys prosecuting? District Attorneys are part of this patriarchal society.

6. What type of action does your group take in the community?

We choose to arouse community action and/or awareness.
Dear Sir or Madam:

I'm writing to introduce Steve Taxman, a senior majoring in political science who is writing his honors thesis under my direction. Mr. Taxman is studying the effects of court decisions and law enforcement activities upon the availability of sexually explicit books and movies. In addition to reading court decisions, he plans to conduct interviews with bookstore owners, attorneys, police officers, prosecuting attorneys and other interested individuals in the local area.

I hope that you will agree to talk with him. He is a responsible person and will respect all confidences. His purposes are strictly academic, and material from the interviews is solely for the purpose of preparation of his thesis.

If you have any questions which I can help answer, please contact me at 333-1858 or 333-3880. Thanks for your consideration.

Sincerely,

Jonathan D. Casper
Professor
December 1, 1981

Dear Sir or Madam:

The University of Illinois' political science department offers an undergraduate honors thesis program in which I am presently enrolled. I have chosen the area of constitutional law as my topic. The purpose of this thesis is to analyze and ultimately explain whether legal norms (i.e., court decisions, state statutes, police enforcement) in the Champaign-Urbana community effect the availability of pornographic publications and the behavior of bookstore owners.

In order to obtain accurate information on the topic, I feel it will be necessary to conduct empirical research. I would like to arrange an interview with you or members of your department at a convenient time. Through this interview, I hope to gain valuable information that will aid me in developing this thesis. I can assure you that all information will be treated as confidential and used only for the purpose of writing this thesis. I am enclosing a copy of a letter from the professor with whom I am working.

I will call your office in a few days to arrange a time to meet with you.

Sincerely,

Steven Taxman
VI. ENDNOTES


4Sobel, p. 4.


6Sobel, p. 2.


10Sobel, p. 7.

11Sobel, p. 7.

12Cushman, p. 485.

13Sobel, p. 9.

14Sobel, p. 9.

15Cushman, p. 479.

16Sobel, p. 10.

17354 U.S. 476.

18Ibid.

19370 U.S. 478.

20Ibid.

21Cushman, p. 486.

22Cushman, p. 482.

23Sobel, p. 11.
25 Cushman, p. 485.
26 Sobel, p. 16.
28 Sobel, p. 15.
30 390 U.S. 629 (1968).
31 Sobel, p. 23.
33 Cushman, p. 486.
34 Cushman, p. 486.
37 Sobel, p. 23.
38 Sobel, p. 23.
40 Ibid.
41 Ibid.
42 Sobel, p. 23.
43 Sobel, p. 25.
VII. BIBLIOGRAPHY


