

HEINONLINE

Citation: 90 Cal. L. Rev. 2143 2002

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Sun Aug 22 19:52:56 2010

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/ccc/basicSearch.do?
&operation=go&searchType=0
&lastSearch=simple&all=on&titleOrStdNo=0008-1221](https://www.copyright.com/ccc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0008-1221)

Essay

Representing the Forbidden

Anne M. Coughlin†

INTRODUCTION

One of the advantages of taboos is what can happen when you defy them.

Philip Thody¹

How do scholars speak about that of which it is forbidden to speak? This question occupies a margin of the debate over the regulation of pornography since, whatever else it may be, pornography always has been unspeakable. Pornography is a way of representing sex that is enabled by and parasitical on cultural norms forbidding us to represent sex that way.² Porn is delivered through many media, including art, photography, and cinematography, but it continues to find a home in prose too. Hence the dilemma for scholars and the critical question for this Essay: with what language and through which methods may we present the forbidden without representing it?

Our dictionaries still define porn as something “[t]hat may not be spoken (about);” porn is an “unmentionable.”³ Contemporary bystanders are likely to pooh-pooh this definition. Surely, “unspeakable” or “unmentionable” are misnomers for language, pictures, scripts, and texts

Copyright © 2002 California Law Review, Inc. California Law Review, Inc. (CLR) is a California nonprofit corporation. CLR and the authors are solely responsible for the content of their publications.

† Professor of Law and Class of 1948 Research Professor, University of Virginia School of Law. This Essay is dedicated to Micheal Klepper, Xinh Luu, Kent Olson, Cathy Palombi, Barbie Selby, Joe Wynne, and Taylor Fitchett, who are reference librarians at the University of Virginia Law Library. They helped me out of more scrapes than I (and, I hope, they) care to mention, and, more to the point, they are the most wonderful people on the planet.

1. PHILIP THODY, *DON'T DO IT! A DICTIONARY OF THE FORBIDDEN* 145 (1997).

2. As Jeffrey Weeks has explained, pornography

exists as a historical phenomenon because of the regulation and control of what can and cannot be said in relation to sexuality, and thrives on the belief that sex is naughty and dirty, that what is being purveyed is being distributed *because* it is illicit. The institution of pornography results from the designation of certain classes of representation as in some way “objectionable.”

JEFFREY WEEKS, *SEXUALITY AND ITS DISCONTENTS: MEANINGS, MYTHS, & MODERN SEXUALITIES* 232 (1985).

3. *THE NEW SHORTER OXFORD ENGLISH DICTIONARY* 3510 (Lesley Brown ed., 4th ed. 1993).

that receive so much press. Such anxious modifiers merely betray outmoded (Roman Catholic?) norms about sexually explicit materials. Yet, even as porn proliferates, it remains “unspeakable.” Pornography can be found in, on, and around many corners, but it does not appear everywhere. The silent, still-squeaky-clean places speak eloquently to porn’s unspeakable quality. If you are skeptical, try this little thought experiment. Suppose, for just a minute, that you consume porn. Where do you put it? You might give pride of place to your first, or maybe even your twenty-first, edition of the Marquis de Sade’s *Justine*. But where do you stash the other stuff? Do you plunk it down on your coffee table? Do you file it on the shelves of your home or office library? Do you stick it among the magazines placed, for your guests’ convenience, in a basket beside your powder-room john? Or do you borrow a leaf from Samuel Pepys?⁴ On February 8, 1668, Pepys bought a “mighty lewd book;” in order to economize, he said, he chose the edition “in plain binding.”⁵ He read through it “to inform himself,” and he explained, “I resolve, as soon as I have read it, to burn it, that it might not stand in the list of books, nor among them, to disgrace them if it should be found.”⁶ After we have read it, we are likely at least to hide it, if not burn it.

Moreover, people are disinclined to talk about porn. More precisely, they limit their remarks to certain times, places, and companions. Assuming that you are one of those who use it, with whom do you discuss it? Exactly what do you say, and where do you carry on your conversation? Like Pepys, you might confide to your diary the effect that the stuff has on you, recording which parts leave you cold, which hot. You might tell your spouse or your shrink, your priest or your pals, but how about the woman behind you in line at the grocery store? Would you turn to her and ask if she has seen *A Tale of Two Titties* on video yet? Go ahead, picture yourself making this inquiry. You might have to repeat the title twice before she gets it, but imagine her response when she does. Will your question shock her into silence? Will it provoke her to punch you? If she does punch you, whose actions will the others condemn, hers or yours? Or will it provoke her to say something ordinarily unspeakable?

Porn is unspeakable for a reason. Indeed, the designation “unspeakable” highlights the paradoxical character of these sexually explicit materials. “Unspeakable” normally means “[i]ndescribably bad or objectionable.”⁷ However, a rarer definition of “unspeakable” refers to that which is “indescribably good or enjoyable.”⁸ Although some insist that

4. THE DIARY OF SAMUEL PEPYS 57-58 (Robert Latham & William Matthews eds., 1976).

5. *Id.*

6. *Id.*

7. THE NEW SHORTER OXFORD ENGLISH DICTIONARY, *supra* note 3, at 3510.

8. *Id.* Catharine MacKinnon seems to have yet another meaning in mind when she characterizes as “unspeakable” the sufferings of women who are abused in or through pornography. See CATHARINE

only one of the two meanings cover porn, this stew is made from ingredients that, like it or not, taste “indescribably bad” and “indescribably good” at one and the same time.

No matter what her scholarly and pedagogical agenda, her methodological and political commitments, our porn scholar aims to produce a work not “of” but “on” pornography. As philosophers might say, she wants to mention porn, not create it. If she succeeds, her text will describe it, not do it. What language is available to describe the pornographic that is not itself pornographic? For example, can an author explain what “fucking” means without using the f-word? If there is no effective alternative vocabulary, what should the author do? May she reproduce pornographic words or images, but nonetheless find a way to prevent them from doing in and through her text the work they do when pornographers use them? On the other hand, if there is an alternative vocabulary available, some decent way to describe the indecent, the author may find herself confronting yet another question: Can clean words precisely communicate the dirty thing? And if communicating the dirty thing is in itself the point, isn’t that porn?

My inquiry presupposes an author who is determined, at least some of the time, in some places and for some purposes, to talk about talk that is taboo. But why on earth would a scholar make it her business to talk that way? Why would she want to lecture people about fucking or, good grief, *A Tale of Two Titties*? What precisely is it that attracts some of us to take on the job of studying or teaching about pornography or, for that matter, any other forbidden subject? What do we get out of it by way of professional and personal rewards and gratifications? To be sure, there are countless legitimate reasons to research and write about pornography, and most porn scholars expose themselves to the dirty stuff to satisfy their sense of moral and political obligations to society. But the authors’ legitimate intentions do not necessarily control how their work affects them and others. Then, too, we might want to acknowledge the possibility of mixed motives.

Where should we go to see whether porn scholars are grimacing, grinning, or groaning, as they come and go about their daily grind? War stories make for lively reading and, I suppose, for lively writing, so I might try to interrogate the authors themselves. Unlike the people standing in my hypothetical grocery line, porn scholars are fair quarry. They have opened the door to cross-examination, at least about the materials cited in their texts. But, we may suspect that if mixed motives did exist, these authors will deny them. An anthropological expedition might be more fruitful,

A. MACKINNON, ONLY WORDS 3 (1993). Whereas I intend to signify in matters as to which we possess speech that we are forbidden to utter (i.e., matters “that may not be spoken”), MacKinnon refers to matters “that cannot be spoken,” matters “[t]hat cannot be expressed in words.” See THE NEW SHORTER OXFORD ENGLISH DICTIONARY, *supra* note 3, at 3510. Women lack language with which to represent them. See MACKINNON, *supra*, at 6 (“You learn that language does not belong to you, that you cannot use it to say what you know. . .”).

assuming I could infiltrate the porn scholars' own habitat, the rooms where the authors read, write, and bat around ideas with colleagues and students. As a fly on those walls, I could observe and record the scholars' everyday diction: the words they use and, as important, the words they omit; their tone and demeanor as they utter or elide those words; the people with whom they talk or avoid talking about their work; the sites (and cites and maybe even sights) from which they obtain their texts; the configuration of the spaces where they perform their research. Perhaps, there, on the margin, hidden within the quotidian, within scholarly decisions so routine that scholars may not perceive themselves to be making decisions at all, we might discover clues that will assist in resolving more central puzzles about the nature of pornography, its power to enthrall even as it disgusts us,⁹ and the various discourses that have been deployed to study and, ostensibly, to contain that power.

This Essay has smaller, more preliminary aims in mind.¹⁰ Rather than reproduce the inquisition, I propose to perform the more lawyerly task of building a circumstantial case about the experience of researching and writing about materials that we are forbidden to view and discuss. My evidence will be the textual deposits that the taboo on porn leaves on pornography scholarship. Every porn scholar must include in her work some references to prohibited images or conduct.¹¹ At the moment of introducing the pornographic references into her own text, the scholar necessarily confronts the question of whether and how to comply with the prohibition that she purports to be evaluating, which forbids the very representations to which she is about to refer. In effect, the taboo denies the scholar any neutral rhetoric within which to locate her argument. Neutrality is impossible because the taboo always thrusts upon her the question of whether and precisely how she will obey or defy its prohibition. The scholar must decide exactly what, and how much, she should say about the porn. Should her text be concise or expansive, terse or turgid? Like it or not, the taboo inevitably influences the composition of the scholarly text.

In this Essay, I argue that evidence of the taboo peeks out from and between the lines of these texts. The taboo produces diffuse and contradictory rhetorical strategies. It erupts in curious locutions and even more curious circumlocutions, nervous and naughty slips of the tongue,

9. See JESSICA BENJAMIN, *LIKE SUBJECTS, LOVE OBJECTS: ESSAYS ON RECOGNITION AND SEXUAL DIFFERENCE* 175 (1995) (noting that, for many viewers of porn, the "awareness of sexual objectification and degradation, even their revulsion, [does] not exclude fascination and excitement"); see also Robert Jensen, *The Pain of Pornography*, in *PORNOGRAPHY: THE PRODUCTION AND CONSUMPTION OF INEQUALITY* 157 (Gail Dines et al. eds., 1998) [hereinafter *PORNOGRAPHY*].

10. Besides, as Donald Barthelme counseled in a related context, "'small' is one of the concepts that you should shoot for" if you are interested, as I am, in figuring out how to subdue (since you cannot slay) the authorities who oppress you. DONALD BARTHELME, *THE DEAD FATHER* 145 (1975).

11. Of course, the references may be indirect, though I do not yet see how they could be altogether absent, since circumspection is likely to be one of the taboo's primary effects.

prim silences and tantalizing omissions, embarrassing confessions and puzzling concessions, verbal peccadilloes, and lapses in scholarly judgment. This Essay investigates a handful of the textual strategies available to and employed by pornography scholars, some of which sound in a rhetoric of evasion and others in a rhetoric of confrontation. Either way, these strategies testify to the authors' consciousness that they are doing something wrong, that they are consuming, describing, and, perhaps, making texts that are transgressive. I also may suggest that the authors' sense of transgression—of violation—tells us much of what we need to know about the impulses that bring them and their readers to the study of porn. Indeed, the scholars' transgressive consciousness probably is no less self-revelatory than the pornographers' vivid understanding that they, too, are doing something wrong, though there are differences between porn scholars and pornographers.¹²

As for my performance in this Essay, there is no denying that my diction is liable to betray the same anxiety and exhilaration for which I am about to search in others' writings, and, there, I do not deny it. When scholars write about pornography, whether they choose to handle the naked stuff itself or the kind that comes tarted up in scholarly dress, abstractness and obscurity possess special charms, not the least of which is the cover they may throw over the scholar's own involvement with and, indeed, potential complicity in the forbidden. You are and should be a fly on my wall, even as I try to join the flies on others' walls. You should criticize my own strategies as I criticize others or, perhaps, accuse me of worse.

Still, it might be prudent for you to consider your own motives, lest you find yourself in the same fix as the "literary lady" who praised Dr. Johnson for not admitting "any improper words" into his dictionary.¹³ True, you will not be offering me that lady's compliment, alas, and I will not be in any position to bounce back some version of Johnson's wonderful retort—"No, Madam," he replied, "I hope I have not daubed my fingers. I

12. Scholars have attempted with only partial success to describe, theorize, and criticize the rapture of transgression. From SIGMUND FREUD, *TOTEM AND TABOO* (1903), reprinted in *THE BASIC WRITINGS OF SIGMUND FREUD*, at 773 (A.A. Brill ed., 1995), to Ernest van den Haag, *The Case for Pornography Is the Case for Censorship and Vice Versa*, in *PERSPECTIVES ON PORNOGRAPHY* 123 (Douglas A. Hughes ed., 1970), to JEFFREY WEEKS, *supra* note 2, at 232, to CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 214 (1989), scholars have endeavored to unfold the theoretical and political implications of the erotic charm of the forbidden. By contrast, pornographers do not hesitate to declare that the sensation of violation makes their work thrilling to themselves as well as to their audiences. Of his first performance in a pornographic film, an actor had this to say:

I was extremely excited and extremely nervous at the same time. . . . [T]here's an incredible excitement, something stirring inside of me that was "this is wrong to do, this is wrong to do." Of course, that had been drilled into my head, but it made it all the more exciting, it was wonderful. The first time was great!

See ROBERT J. STOLLER & I.S. LEVINE, *COMING ATTRACTIONS: THE MAKING OF AN X-RATED VIDEO* 170 (1993) (interviewing Randy Spears).

13. Allen Walker Read, *An Obscenity Symbol*, 9 AM. SPEECH 264, 271 (1934).

find, however, that you have been looking for them.”¹⁴ But I am not sure how or why my soiled hands could make yours less dirty than they otherwise might be.

I

NICE WRITERS

I do not favor the use of the “euphemistic dash”; it succeeds only in throwing a smutty atmosphere over a subject. The proper course is to print a word in full or not at all.

Allen Walker Read¹⁵

Pornography scholars do not share a political agenda, but each must resolve the same basic rhetorical dilemma.¹⁶ Some porn scholars seem to approach this dilemma indirectly, and some even may believe that they need not confront and resolve it for themselves. For, at some times and in some places, authors are obliged (or privileged?) to refer this dilemma to a third party. You remember that character, the one so reviled by free-speech types, known as the official censor, who spends her days ferreting out and

14. *Id.* Allen Walker Read reports that this anecdote was first recorded by “(Sir) Herbert Croft, a friend of Johnson’s, in the front of his copy of the *Dictionary*,” which later was acquired by Read himself. *Id.* at 271 n.42.

15. *Id.* at 278 n.82.

16. Of course, scholars who want to outlaw porn do not face precisely the same problems or run the same risks as those who want to allow it. Writers who are eager to outlaw it confront at least two big conundra. First, everybody seems to agree with Ernest van den Haag that pornography is sexually exciting because it is forbidden. See Ernest van den Haag, *The Case for Pornography is the Case for Censorship and Vice Versa*, in PERSPECTIVES ON PORNOGRAPHY 123 (Douglas A. Hughes ed., 1970) (“Isn’t the thrill, the excitement, the rapture of pornography associated with, if not altogether dependent on, its being forbidden? Wouldn’t its piquancy be blunted were it officially tolerated or sanctioned?”). For example, Catharine MacKinnon, the most prominent antiporn feminist, agrees that we get a “kick” out of porn because porn is “against the rules.” See MacKinnon, *supra* note 12, at 214. Nonetheless, she insists that a feminist prohibition may usher in a day when porn will be gibberish, mere “nonsense syllables.” See MACKINNON, *supra* note 8, at 109. But if the older, prefeminist taboos are “false” in the sense that they invite their own violations—we relish obscenity in large part because, when we talk, read, and look at dirty things, we know we are breaking the rules—why would we think that a feminist taboo could make pornography “truly unavailable or truly illegitimate”? See MacKinnon, *supra* note 12, at 214. The would-be censors face a second, more fundamental problem, which is the focus of this Essay. These authors want to legislate prohibitions against sexually explicit representations, and, to state the obvious, prevailing scholarly conventions require them to read, teach, and write about the very representations that they are urging lawmakers to forbid. Through these activities, the writers seem to be reinforcing the state of affairs that they would displace and even to be implying that pornography is not really against the rules, at least not for them. By contrast, contemplate the position of authors who line up against regulation, as well as those who straddle the fence. Most of these authors say they have no special moral or political ax grind; they are merely observers of the pornographic scene. Their agenda is positive, not normative; they come to describe, not judge. Yet many agnostics, as well as those who oppose state regulation of porn, use judgmental language. Their uneasy rhetoric implies that porn is filthy stuff that should be taboo, at least or, maybe, especially for them. To the extent that they speak about porn in derisory or denunciatory tones, these foes of regulation ally themselves, rhetorically at least, with their opponents.

expunging dirty words and pictures. If professional censor is on your list of career objectives, the job is back in fashion.¹⁷ When authors must march to the censor's beat, rather than to their own, my questions are no less pertinent; ask them of our censor, as well as of individual authors themselves. I am willing to assume, and not just *arguendo*, as law students are taught to do, that the censor is acting in good faith. She is not working only for the paycheck or the perks. She really believes that she is making the world a cleaner place, morally, psychologically, and politically, as the case may be. But does the censor's work have that effect, or, more precisely, can we imagine a set of conditions under which her work might have that effect? Then, too, we must wonder not only whether her work is doing us any good, but what effect her do-gooding is doing on her as she survives repeated exposure to these hazardous materials.

To begin teasing out the connections among censor, author, and the proper presentation of porn, consider remarks made by Robert Graves in an essay on the "nature and necessity" of obscenity, published in 1927.¹⁸ While I am not suggesting that obscenity and pornography are necessarily identical, at the time that Graves was writing, the obscene was thought to (and hence did?) subsume the pornographic. Graves spoke candidly about the anxiety that contemporary porn scholars also must manage: how should he write so as to avoid offending the readers whose attention he craved? Graves was not alone in this quandary. In his case, the buck stopped with a censor, whose job was to certify that Graves's text was clean. As things turned out, however, the censor's ministrations made Graves's assignment more nerve-wracking. Graves approached the project with his eyes wide open. He knew that obscenity was a "ticklish theme,"¹⁹ one that required meticulous diction, but, no matter how carefully he picked his way from word to word, the censor invariably demanded that he further alter his route. You see, Graves's censor was attached to the peculiar idea that readers might be tickled by clean, as well as foul, writing. As Graves explained:

17. In 2000, Governor Mike Leavitt of Utah (a Republican, of course) signed a law under which the state became the first in the nation to have a "pornography czar." *Utah Creates Unusual Job: Porn Czar*, WASH. POST, Mar. 19, 2000, at A19. Though they do not always confer such grand titles as "czar" or, presumably, "czarina," other jurisdictions have been busy hiring censors as well. In April 2001, Mayor Rudolph Giuliani reconstituted New York City's dormant Cultural Affairs Advisory Commission. Dubbed by some the "decency panel," the Cultural Affairs Advisory Commission was charged with the task of recommending decency standards for art in New York City museums. See Elisabeth Bumiller, *Giuliani Names His Panel to Monitor Art at Museums*, N.Y. TIMES, Apr. 4, 2001, at B3. Or, if you prefer to work in the private sector, you might hire yourself out to one of the companies offering virtual-nanny services to anxious parents and other guardians of children.

18. ROBERT GRAVES, LARS PORSENA, OR, THE FUTURE OF SWEARING AND IMPROPER LANGUAGE 5 (2d ed. 1927).

19. *Id.* at 5.

This book is written for the Nice People. Then, though it is in its first intention a detached treatise on swearing and obscenity, it cannot claim a complete innocence of obscenity, while consenting to the publishers' limitations of what is printable and what is not. Observe with what delicacy I have avoided and still avoid writing the words x— and y—, and dance round a great many others of equally wide popular distribution. I have yielded to the society in which I move, which is an obscene society: that is, it acquiesces emotionally in the validity of the taboo, while intellectually objecting to it. I have let a learned counsel go through these pages with a blue pencil and strike through paragraph after paragraph of perfectly clean writing. My only self-justification is that the original manuscript is to be kept safe for a more enlightened posterity in the strong-room of one of our greater libraries.²⁰

This account suggests that censors cut with double-edged swords: they are more likely to contaminate, than to sanitize, the linguistic domain. Graves is an obedient little writer; he chops, shaves, and slices to satisfy his censor's every dictional whim. But so what? Where do we imagine that the dirty bits go? Stuffed into the library strong room, along with all the other authors' offal, safely removed from (unauthorized) peeking? Of course not. At best, the naughty words stay right where they always have been—in our heads and on our tongues.

Here are a few of the flies in the censor's ointment. First, consider the perverse effects of the popular censorial medicine prescribed in Graves's case: the euphemistic dash. The regimen does not require authors to scrub dirty words altogether or even to render them unintelligibly, to wit, as x— or y—. Rather, the censor is diverted by far more transparent renditions, such as "b." That particular elision satisfied Graves's censor, and yet, Graves had no doubt that his audience would identify the then-bawdiest b-word to which his "b." referred.²¹ Nor, in our era, does any reader scratch her head over f_k or, even, f__.²² As Judge Richard Ervin remarked in his hilarious dissenting opinion in *C.J.R. v. Florida*, no reader is going to think that the exclamation "f pigs" might refer to cops who are "foolish,' 'fawning,' 'finicky,' 'fiaccid,' 'foppish,' 'frantic,' 'fretful,' [or] 'fascist.'"²³ Everyone knows "that the word excised is none of the above and that it is generally considered by society as far more profane than any of the examples listed."²⁴ If the vast majority of readers did not get these abbreviations immediately, authors would be wasting their time in using them, and scholars, not to mention judges, do not have time to waste.

20. *Id.* at 35.

21. *See id.* at 10, 17. Have you guessed what Graves's b-word was?

22. What word could it be? Fork, folk, flack, fink, funk, feck?

23. *C.J.R. v. Florida*, 429 So. 2d 753, 755 (Fla. Dist. Ct. App. 1983) (Ervin, J., concurring and dissenting).

24. *Id.*

Second, and more portentously for our censor, the abbreviations are the verbal equivalents of nudges, winks, and leers. They are the pasties and G-strings with which some would-be nude dancers are required (by state law or industry-rating standards) to call attention to their breasts, bottoms, and, in our world of equal employment opportunity, penises. The dashes announce that the words themselves are too naughty for a dignified author. Whatever other work it may be doing, therefore, a taboo-compliance regime that relies on the euphemistic dash ensures that our dirty words stay dirty.

Let's pause and ponder whether and how the euphemistic dash may assist authors who want to avoid violating other speech taboos, such as the prohibition on defamatory speech. Consider this scenario: I am worried that some of my remarks might offend a scholar whose work I discuss. To stretch just slightly the scholar's potential reaction, imagine that I fear that she might accuse me of defamation because she believes that my text takes liberties with hers. I want to stick to my claims without being pestered by libel accusations, so I seek a salvific strategy. Here is what I propose: forgo using the scholar's full name and write only, for example, M_cK_nn_n. Do the dashes do the trick? How, for, and on whom? Surely, they do not conceal the identity of my hypothetical target and thereby spare her the embarrassment, indignation, and reputational harms that defamation inflicts. To the contrary, just as readers know the referents for Graves's "b." and Judge Ervin's "f. . . .," so, too, most readers of this Essay will identify my subject right off the bat. After all, I carefully selected a name attached to texts that circulate widely in the legal academy and beyond. Where would be the remuneration for me, and the interest for you, in debating the views of Professors X___ and Y___, scholars who publish, if they do, and perish, when they do, in obscurity? Not only do the dashes fail to disguise the name, their effect (and, I suppose, at least in some cases, their purpose) is to draw attention to the name and, more precisely, to its owner. The dashes prod the readers who are dozing; they draw alert readers directly to the good bits.

Graves's account implies that censorship can do a whole lot more than maintain the dirty status quo. Whether wittingly or unwittingly, Graves's censor was one of those regulators who, as other writers have remarked, "creates the obscenity where none existed before."²⁵ An energetic and enterprising expurgator may beat the bushes for business, and one way for her to expand her market is to discover that some of us have been using dirty words, obscene expressions, and naughty turns of phrase that no one ever had noticed before.²⁶ For the author and, of course, her publisher, however,

25. Read, *supra* note 13, at 264.

26. Morris Ernst and William Seagle made this observation of vice societies:

the censor's condemnation often has a silver lining. Suddenly, readers clamor to see for themselves whether the book is filthy, just good fun, or both filthy and good fun, and they cannot resist inviting their friends to share the secret. Not surprisingly, this (very Freudian and maybe Foucauldian) insight is something that publishers and writers have known for a long time. As Katherine Anne Porter remarked, "it did not take many of them very long to discover that the one best way to sell a book with 'daring' passages was to get it banned in Boston, or excluded from the United States mails."²⁷ Nor has this perverse effect been lost on lawmakers debating the wisdom of obscenity legislation. In 1930, for example, Senator Bronson Murray Cutting, Republican of New Mexico, warned Senator Reed Smoot, Republican of Utah, that his proposal to confiscate "Lady Chatterley's Lover and other such rotten stuff" at the United States border was going to backfire.²⁸ Indeed, Cutting predicted, "[A]fter the publicity which the Senator has given to this book, . . . a hundred years from now Lady Chatterley's Lover may . . . be compulsory reading, perhaps in the kindergarten classes. [Laughter.]"²⁹ The more the censor crams into her Collection de l'Enfer,³⁰ the more she stocks our shelves with curses, obscenity, and pornography.

[I]n most cases the "obscenity" is discovered by the societies organized for the purpose of finding it. In the offices of vice societies sit secretaries, clerks, and stenographers avidly looking for more business. Their activity can only be appraised by results, and results are only obtained by the filing of public charges. Naturally during periods of public lethargy these crusaders go out on independent searches for violators of the law. The business must be kept up to last year's record. A pure literature is inconceivable and the absence of complaints may be used by the financial supporters as an excuse for the discontinuance of contributions.

MORRIS L. ERNST & WILLIAM SEAGLE, *TO THE PURE . . . : A STUDY OF OBSCENITY AND THE CENSOR* 3 (1928).

27. Katherine Anne Porter, *A Wreath for the Gamekeeper*, ENCOUNTER, Feb. 1960, at 69. Contemporary feminists have noticed this phenomenon too. Forbidden books often become "bestsellers." See MACKINNON, *supra* note 8, at 87. If regulation has this (from the regulator's perspective) perverse effect, why bother? Or, less hyperbolically, on precisely what grounds may we justify our censorship efforts anyway?

28. 72 CONG. REC. S5490 (1930) ("The passage of a law does not necessarily abolish the evil which the law is meant to correct; in many cases it has just the opposite effect.") (statement of Sen. Cutting).

29. *Id.*

30. Just as the British Library had its Private Case, so the Bibliothèque Nationale in Paris housed the Collection de l'Enfer, a repository of pornography, obscenity, and erotica. See Lynn Hunt, *Introduction: Obscenity and the Origins of Modernity, 1500-1800*, in *THE INVENTION OF PORNOGRAPHY* 9 (Lynn Hunt ed., 1993). As of 1963, the materials shelved in the Private Case were "regarded by the authorities there as so unsuitable for readers to consult freely that their titles and press-marks [did] not even appear in the General Catalogue or subject index." PETER FRYER, MRS. GRUNDY: *STUDIES IN ENGLISH PRUDERY* 16 (1963). If a reader wanted to examine a book he thought might be included in the Private Case, he had to submit a form identifying his (legitimate) reasons for looking at the book. A member of the library staff would consult a "secret catalogue" to determine if the book was located there, and, if so, retrieve it for the reader to peruse under a librarian's watchful eye. *Id.* But, it was rumored, the library was more protective still:

The British Museum is also said to possess a number of books which no readers (and precious few members of the staff) are ever allowed to see, and of which no catalogue is known to

Graves's account also invites us to ponder the paradoxical character and function of an author's deference to the censor's limitations. Most of the time, we imagine, conforming to social and legal norms secures our innocence against the wrongs or harms those norms aim to prevent. Yet, according to Graves's account, his compliance with the taboo on obscene speech had a perverse effect. Though he is obedient, he confesses that he is not "completely innocent" of the obscenity his obedience ostensibly abjures.³¹ Graves might have liked to pretend that he brought a detached perspective to his topic, for he was writing at a time when detachment still was considered a scholarly virtue. But the gesture would be futile. He knows that we know that he knows the dirty stuff when he sees it. He knows which words to allow, which to abbreviate, and which to avoid altogether. If he did not know, his "ticklish theme" would not even be a theme, let alone a ticklish one. Knowledge is what compromises Graves, and his insight brings us to the core of the porn scholar's dilemma.

Much porn is the kind of stuff that we expect normal people to find pleasurable even if they do not want to find pleasure there.³² The pleasure delivered by porn is sexual arousal. To put it delicately (if unscientifically), sexual arousal can be a heck of a lot of fun. The sensation is normal, even healthy, provided that it occurs at the proper time and place and is elicited and acted upon in a proper manner. For at least two centuries,³³ some religious leaders and lawmakers, as well as scientists and scholars, have argued that porn is not a proper mechanism for distributing sexual arousal (indeed, some have insisted that porn is more dangerous for consumers than narcotic drugs³⁴), and they have urged legislatures to include porn on the list of poisons that government experts routinely handle, identify, and quarantine. But making and enforcing such regulations require exposure to porn. Porn must be identified before it can be isolated, seized, and destroyed and before its perpetrators can be punished. In making such determinations, regulators employ exactly the same equipment (for starters, their eyes) used by those who consume porn for its harmful, mind-altering, but pleasurable, effects.

exist. This "Hell" beneath the "Hell" is spoken of as the "S.S." collection, the initials presumably standing for "Secret Shelf".

Id. at 17.

31. See GRAVES, *supra* note 18, at 35.

32. See BENJAMIN, *supra* note 9, at 175; Jensen, *supra* note 9, at 157.

33. Of course, sexually explicit materials have been around for more than 200 years, but scholars tend to agree that the "legal and artistic category" of pornography as we know it today came into being at the beginning of the nineteenth century. See, e.g., Hunt, *supra* note 30, at 10-13.

34. Senator Smoot informed his colleagues, though I hope not his kids, that he "would rather have a child of mine use opium than read these books." 72 CONG. REC. S5418 (1930) (statement of Sen. Smoot).

As Justice Potter Stewart famously said of obscenity, "I know it when I see it."³⁵ We seem to have no means by which to know it in the sense of identifying it without also knowing it in the sense of having it. To know porn, you must see porn, but when you see porn, you probably are going to have porn. If only for a moment, you will have the rush of sexual arousal that pornography provides. After all, the rush is what separates representations that are pornographic from those that are not. The rush is what porn is. Then, if, like Graves's contemporaries, you "acquiesce[] emotionally in the validity of the taboo," the fact that you had the rush makes you feel—and, presumably, in the regulator's books, makes you actually be—guilty of it.³⁶ So, no, according to this way of thinking, the scholar who writes about obscenity or porn is not going to be, as Graves puts it, "completely innocent."³⁷ Moreover, as Graves's account also reveals, the irony is that the writer's culpability is exposed through, even created by, his readiness to comply with, rather than to defy, the censor's demands. Why, a writer's alacrity in anticipating some of those demands reveals his entanglement with, and possibly his complicity in, the obscenity his abbreviations are calculated to avoid.³⁸

If Graves is right, though, if porn scholars are guilty due to the rhetorical gestures they submit to satisfy their censors, who ever could be completely innocent? The censor and her minions are not innocent, so let's set that gang aside for now. And don't pin your hopes on the innocence of Graves's Nice People either. Graves did not pretend to be writing for "the chastest Reader, or the modestest Hearer," whose sensibilities allegedly guided Daniel Defoe's pen.³⁹ To the contrary, Nice People are "people with dirty minds."⁴⁰ This was Graves's sly way of describing the "intelligent" readers with whom he would converse about cursing. Nice People are not completely guilty, for Graves does not use "dirty mind" pejoratively. The emphasis is not placed on "dirty" to refer to those whom we have called dirty old men and whom, in the interest of sex and age neutrality, some of us might now name dirty people or, perhaps, mental lechers. Instead, Graves is inflecting "mind," for his Nice People turn out to be people who have minds of their own. Unlike lechers or censors, they do not mindlessly adore or abhor it. Rather, they discriminate, recognizing a line "between the humorously obscene and the obscenely obscene."⁴¹ And, at least to my early-twenty-first-century way of reading, Graves surely is a Nice Writer.

35. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

36. See GRAVES, *supra* note 18, at 35.

37. *Id.*

38. By contrast, regulators and their agents seem to be able to identify other inhibited commodities without ever having them.

39. See DANIEL DEFOE, *MOLL FLANDERS 2* (Oxford Univ. Press 1971) (1722).

40. See GRAVES, *supra* note 18, at 34.

41. *Id.*

All of his examples of obscenity are soft and comfortably humorous, really hilarious; he gives the hard core a wide berth, never treading in the vicinity of materials that we and he would deem pornographic. However, as I have already remarked, Graves's rhetorical agility betrays his familiarity with and potential complicity in the forbidden.

Nice People and Nice Writers are not completely guilty, but they are not completely innocent either. Surely, those of us who laugh are in no position to hurl any stones. As some of Graves's examples imply, it is pretty easy for a text to turn readers' heads and enlist them as accomplices. The writing flirts with us and we with it. The diction draws us in; the prose invites us to play, to follow the drift, to fill in the blanks, and to penetrate the abbreviations. Sample this bit, if you please. In his study of what he called "prudery," Peter Fryer tells us:

[T]he British Ministry of Transport discreetly bans the use of certain combinations of letters on the registration plates of motor vehicles. The Aberdeen three-letter series starts at BRS; Birmingham jumps from BOC to DOC and from BOK to DOK; Leeds from AUM to CUM; London from EUC to GUC; Wolverhampton from EUK to GUK.⁴²

Do you get it? Of course you do. What about those guys in Leeds? Do you think they did a slip-shod job?

Each time we catch the naughty allusion, spot the dirty double entendre, grin at the off-color joke, we too are having it through and with the text. Then, too, we are pleased and satisfied when we get it and have it, even if getting it tends to make us groan. At least, we seem to be happier when we get it than when we don't. Think about how you feel when you know it is there, but you either don't get it or suspect that you might not be getting it. Test your own reaction with an example. In their book on soldiers' songs and slang, John Brophy and Eric Partridge include the following lyric to which they append a note explaining that they "have, to avoid the rigours of the law, slightly euphemised three lines":

Tiddleywinks, old man,
Find a woman if you can,
If you can't find a woman,
Do without, old man.
When the rock of Gibraltar
Takes a flying leap at Malta
You'll never find a woman in a bully-beef can.⁴³

42. FRYER, *supra* note 30, at 27.

43. SONGS & SLANG OF THE BRITISH SOLDIER: 1914-1918, at 32 (John Brophy & Eric Partridge eds., 3d ed. 1931) [hereinafter SONGS & SLANG].

Can you identify the three lines that Brophy and Partridge euphemized? If so, you are still one of the Nice People, right? If not, how do you feel about it?

Perhaps, as Graves implies, Nice People should not be too hard on themselves or even hard at all. We may appreciate the humorously obscene, but, surely, we are far less culpable than those who seek out and savor the obscenely obscene, a kind of obscenity that must include the pornographic. Yet, like Graves, we may shudder slightly as we accept this comfort, for it reveals that we know the difference between the soft and the hard cores, and, therefore, however fleetingly, we must have had it.

If not Graves, not the censors, not the Nice People (and, I suppose, the latter two groups cover most of us), who then is completely innocent? Lest you think I am too quickly maligning us, consider this example suggested by some comments from Allen Walker Read. Imagine that I want to translate my text into the (fictitious) Mitakoodi language, and that, at some point in the paper, I am going to use the word vulva. (Yes, yes, of course, there's Chekhov's loaded rifle.) How do I choose from the four Mitakoodi terms for vulva: me-ne, koon-ja, puk-kil, or yelma-rung-o? From their spelling and what I suppose their sound to be, each seems acceptable to me, and so I feel free to base my choice on aesthetic considerations. At this moment, Read portrays me as an innocent speaker or, as he puts it, an "unbiased" one.⁴⁴ This attribution would be appealing, but for the fact that I suspect that you suspect that the vulva talk, however properly worded, might give some authors a prickle of rhetorical anxiety. In any event, whether the author is anxious from the start or not, look at how fragile her innocence is. As it turns out, if you directed me to use koon-ja, puk-kil, or yelma-rung-o, I would not be saying vulva; for that, you should have told me to say me-ne. Rather, I would be using what Read's sources call the "most blackguardly words,"⁴⁵ Mitakoodi terms comparable (I suppose) to "pussy" or "cunt." Our linguistic innocence is compromised, our bias arises, as soon as the obscene terms are identified, particularly when they correspond directly to obscenities we know. Certainly, now that I have translated the word, my criminal-law students would be deeply offended if I used "koon-ja" when explaining that the traditional definition of rape required penetration of the victim's vagina. Depending on the context and manner in which I utter the foreign epithet, I may be sued for sexual harassment.⁴⁶

44. Read, *supra* note 13, at 266.

45. *Id.*

46. A woman who worked at Friend of a Farmer restaurant in Manhattan brought a hostile environment suit against her employers and coworkers based on, among other allegations, the fact that one of the cooks "call[ed] her sexual names such as 'Sasha cara pistola' and 'Sasha cara kimba,' Spanish for 'face of a penis' and 'face of a cunt.'" See *King v. Friend of a Farmer Corp.*, No. 97 Civ. 9264, 2001 WL 849460 (S.D.N.Y. July 26, 2001).

We may not know the unspeakable when we see or hear it in another language, but even then, it is hard to imagine circumstances under which, after the first occasion, we could use it innocently. Imagine, for example, Mitakoodi words whose obscene associations would forever be meaningless to us, as would be the case if the language has both a clean and a dirty word for elbow. Are we not innocent when we use the dirty version? Even in this case, we would not be completely innocent, at least not after our first bite or, more accurately, after we witness our Mitakoodi listeners grimacing (or grinning?) at its foul taste. The Mitakoodi dirty version is not obscene or pornographic to us because using it fails to arouse our own strong emotions or call forth in us some guilty mixture of disgust and delight, as our own coarse terms for vulva do. Still, when we utter the Mitakoodi word for the second time, we will use it with both the understanding that it is obscene and the knowledge of why obscenity is used. Most likely, then, we will avoid the word completely except when we desire to thrill and offend our Mitakoodi-speaking acquaintances. We also might include or allude to it, as I like to think I am doing with the dirty words rendered here, in a scholarly discussion of tabooed expressions.

With our own virtue so easily compromised, who is left? How about our kids? Are they completely innocent of obscenity? Some writers have remarked that "there appears to be something inherently 'bad' about some letters and combinations thereof."⁴⁷ For example, John Brophy and Eric Partridge doubted that anyone could be completely innocent, at least insofar as a few wicked words (two or three, by their count) are concerned. These bad words just are foul in and of themselves.

[They] rear their unlovely heads out of the page, gibbering abominably. A completely innocent and childlike mind might read the book without differentiating these words. But even this is doubtful; they look ugly, their vocalization is uncouth; so far from being onomatopoeic, the sound of them belies and profanes their meaning.⁴⁸

Still, most of us probably believe that, at some early moment, our children are innocent. They can see it and hear it without having it at all. Brophy and Partridge imply that children are innocent in the days before they can read or at the moment before they learn to talk. Therefore, perhaps the appropriate question is whether there is some way that we can mention obscenity or pornography that will not turn our children on to what it is. Is there some way that we can write and talk about it that our children might read and hear without them also having it? As Read illustrates with the

47. See HUGH RAWSON, *WICKED WORDS: A TREASURY OF CURSES, INSULTS, PUT-DOWNS, AND OTHER FORMERLY UNPRINTABLE TERMS FROM ANGLO-SAXON TIMES TO THE PRESENT* 4 (1989).

48. *SONGS & SLANG*, *supra* note 43, at 15-16.

following anecdote, the euphemistic dash is a self-defeating tactic even where children are concerned:

When I was a very small child (I read a lot in those days) and came across abbreviations like h—, or d—, etc., I had the idea that they were printed in this way to protect small children like myself from learning these wicked words, and I felt very cute and discerning because I knew the words that were indicated; and so felt, also, that the trouble to disguise them had been wasted, so far as I was concerned. And as I grew older I became more and more puzzled at the initial letter and stroke, seeing that everybody knew what was intended. If it wasn't liked, why was it used at all? and if it was, why disguise it?⁴⁹

If textual strategies such as replacing “fuck” with “f___” remind us and, more ominously, inform our children how naughty, hence how thrilling, it is to say fuck, are there other, more promising options the Nice Writer might pursue? One of Charles Dickens's great characters, Mr. Podsnap, used another technique. There were many words, indeed entire subjects, that Mr. Podsnap did not like, and he permitted no one to mention them in his presence: “I don't want to know about it; I don't choose to discuss it; I don't admit it!”⁵⁰ “No Dosing” worked for or, more precisely, on Mr. Podsnap himself—“whatever he put behind him he put out of existence”⁵¹—but would it work for and on anyone else?

II

THE ACADEMY OF NO DOSES

I shall not mention the name of the book, because I do not care to give it the advertisement.

Coleman Livingston Blease⁵²

Mr. Podsnap was not an official censor (he prospered, rather, in “the Marine Insurance way”⁵³), but he was a protective father. You probably know the type, one of those guys who insists that all conversation in his household be “adapted to the cheek of the young person.”⁵⁴ Mr. Podsnap had only one “young person” in his care, his daughter Georgiana, but the institution she embodied was far more “inconvenient and exacting”⁵⁵ than the Nice People for whom Graves plotted his rhetorical course. For Mr. Podsnap:

49. Read, *supra* note 13, at 266 (citation omitted).

50. CHARLES DICKENS, *OUR MUTUAL FRIEND* 124 (Modern Library 1992) (1865).

51. *Id.*

52. 72 CONG. REC. S5503 (1930).

53. DICKENS, *supra* note 50, at 124.

54. *Id.* at 135.

55. *Id.* at 125.

The question about everything was, would it bring a blush into the cheek of the young person? And the inconvenience of the young person was that, according to Mr. Podsnap, she seemed always liable to burst into blushes when there was no need at all. There appeared to be no line of demarcation between the young person's excessive innocence, and another person's guiltiest knowledge. Take Mr. Podsnap's word for it, and the soberest tints of drab, white, lilac, and grey were all flaming red to this troublesome Bull of a young person.⁵⁶

Mr. Podsnap might sound like a caricature, but Charles Dickens was not exaggerating. Mr. Podsnap's real-life counterparts⁵⁷ wanted to forbid conversations on certain themes, and their strategy was to outlaw all representations that might bring those topics to mind. Not only did they banish naughty words, they also scrubbed those words' homonyms, synonyms, antonyms, and abbreviations. On Georgiana Podsnap's birthday,

[i]t was somehow understood, as a secret article in the state propertities of Podsnappery, that nothing must be said about the day. Consequently this young damsel's nativity was hushed up and looked over, as if it were agreed on all hands that it would have been better that she had never been born.⁵⁸

That is, better to ignore the anniversary than to allude in any manner to her birth and the carnality that preceded, attended, and succeeded it. Unlike Graves's censor, Podsnap tolerated no references whatsoever to the b word. In Podsnappery, "b ___ day" and "___ day" are as offensive as birthday. Not content with euphemism, Podsnappery sought to have the entire subject matter "swept away."⁵⁹

Can we just agree that Mr. Podsnap's own strong form of Podsnappery will not work?⁶⁰ First, consider the problem of determining what should be forbidden. Mr. Podsnap used the presence of the blush to identify the words, themes, topics, and representations that were

56. *Id.* at 125-26.

57. The intrepid Anthony Comstock was one of the figures whom Dickens must have had in mind. See ANTHONY COMSTOCK, TRAPS FOR THE YOUNG (2d ed. 1884); ANTHONY COMSTOCK, FRAUDS EXPOSED; OR, HOW THE PEOPLE ARE DECEIVED AND ROBBED, AND YOUTH CORRUPTED. BEING A FULL EXPOSURE OF VARIOUS SCHEMES OPERATED THROUGH THE MAILS, AND UNEARTHED BY THE AUTHOR IN A SEVEN YEARS' SERVICE AS A SPECIAL AGENT OF THE POST OFFICE DEPARTMENT AND SECRETARY AND CHIEF AGENT OF THE NEW YORK SOCIETY FOR THE SUPPRESSION OF VICE (1880).

58. DICKENS, *supra* note 50, at 131.

59. *Id.* at 124.

60. Leo Tolstoy was a skeptic. One of his characters, Prince Stephen Arkadyevich Oblonsky, has this to say of Podsnap:

It's all very well for you to talk like that—it's like that gentleman in Dickens, who with his left hand threw all difficult questions over his right shoulder. But denying a fact is no answer. What am I to do? Tell me, what am I to do?

LEO TOLSTOY, ANNA KARENINA 49 (Louise Maude & Aylmer Maude trans., Knopf 1992) (1887).

unspeakable.⁶¹ But if the young person truly was innocent of it, why on earth would she burst into blushes upon hearing it mentioned? Far from indicating her purity, the innocent state in which her father desires to preserve her, her blush signifies that she already possesses the knowledge he deems guilty. As John Keats argued, albeit in his poetical way: "O blush not so! O blush not so! Or I shall think you knowing."⁶² If Podsnap's daughter is liable to blush when hearing the "many dismal returns of the day,"⁶³ she is not excessively innocent but excessively guilty. Indeed, she must be a dirty young person, a juvenile mental lecher, one whose mind is so thoroughly in the gutter that virtually all communication becomes embarrassing and perverse.

Second, and more to the point, I doubt that anyone about whose opinion we care finds Podsnappery an appealing solution. No sensible person wants the subject of sex (not to mention sex itself) to be "put out of existence."⁶⁴ Porn scholars want to discuss porn, without creating it. Consider again (sorry) the word "cunt." Some people feel strongly that the word is nasty and should not be used. Surely, feminists want to reject early definitions of "C**t" as "a nasty name for a nasty thing."⁶⁵ But we do not also want to feel that the part of our anatomy to which the word refers is nasty. We protest "cunt" because of its nasty connotations, not its point of reference. In more pointed political terms, feminists want to refuse a sexual vocabulary that inevitably defines female persons as body parts, that reduces us to, in a word, our cunts. If you doubt that the word can be rehabilitated in your lifetime (after all, speakers have found "cunt" to be "nasty" and "sexually energizing" (because it is nasty?) for centuries⁶⁶), should you try to make others stop saying it? Should we ban "cunt," but permit "vulva" and "vagina"? Let's investigate a No Dosing tale told by the Honorable Ruth Bader Ginsburg, in which she censors her own speech to banish improper thoughts from the heads of judges.

In the early 1970s, Justice Ginsburg worked for the American Civil Liberties Union, challenging sex-based legal classifications. The litigation produced a whole batch of landmark decisions in which the United States Supreme Court agreed that sex-based legislation usually violates the Equal Protection Clause. Many years later, both before and after her own ascension to that Court, Ginsburg went around telling a story about why she

61. For a delightful and instructive discussion of blushing and embarrassment, see CHRISTOPHER RICKS, *KEATS AND EMBARRASSMENT* (1974).

62. John Keats, *Sharing Eve's Apple*, in *THE COMPLETE POEMS OF JOHN KEATS* 237 (Modern Library ed. 1994).

63. DICKENS, *supra* note 50, at 131.

64. See *supra* note 51 and accompanying text.

65. FRYER, *supra* note 30, at 46 (internal quotation marks omitted).

66. *Id.* at 45-46; see also THODY, *supra* note 1, at 142-46.

decided to come up with a way to talk about sex discrimination without saying “sex.”⁶⁷ Here is Ginsburg’s reason for scrubbing the word:

I owe it all to my secretary at Columbia Law School, who said, “I’m typing all these briefs and articles for you and the word sex, sex, sex, is on every page. . . . Don’t you know that those nine men [on the Supreme Court]—they hear that word, and their first association is not the way you want them to be thinking? Why don’t you use the word gender? It is a grammatical term and it will ward off distracting associations.”⁶⁸

Although touching on issues other scholars deem significant,⁶⁹ Ginsburg’s story is a joke about being saved from talking dirty, in the United States Supreme Court of all places. For the joke to work, it must itself be a little dirty. That is, we must glimpse the latent dirty talk from which the vigilant secretary spared her boss. And the story is a little dirty, not because of anything that Ginsburg says, but because of what she does not say. Sure, she uses the word “sex,” but she says nothing about the possibly naughty thoughts the Justices might have been enjoying, and she knows that she does not have to describe those thoughts explicitly or at all. Circumspection, omission, and silence are conventional gestures that supply, rather than remove, sexual connotations, since we know that “reticence has to be chosen like any other form of speech.”⁷⁰ Ginsburg’s silence tells us exactly which of the possible meanings of “sex” is the distracting one.

67. D.H. Lawrence objected to “sex” on aesthetic grounds. He lamented, “It is a pity that *sex* is such an ugly little word. An ugly little word, and really almost incomprehensible.” D.H. LAWRENCE, *SEX LITERATURE AND CENSORSHIP* 51 (Harry T. Moore ed., 1953).

68. Catherine Crocker, *Ginsburg Explains Origin of Sex, Gender*, L.A. TIMES, Nov. 21, 1993, at A28. Ginsburg has told this story on a number of occasions, and, as you would expect, each version is slightly different, with the nuances surely determined (at least in part) by the composition and expectations of her audiences. Here is the version she told members of the Senate Judiciary Committee during the hearings on her nomination for Associate Justice of the United States Supreme Court:

In the 1970’s, when I was at Columbia and writing briefs, articles, and speeches about distinctions based on sex, I had a bright secretary. She said one day, “I have been typing this word, sex, sex, sex, over and over. Let me tell you, the audience you are addressing, the men you are addressing”—and they were all men in the appellate courts in those days—“the first association of that word is not what you are talking about. So I suggest that you use a grammar-book term. Use the word ‘gender.’ It will ward off distracting associations.”

Nomination of Ruth Bader Ginsburg, to be Associate Justice of the Supreme Court of the United States: Hearings Before the Senate Comm. on the Judiciary, 103d Cong. 166 (1993) (statement of Honorable Ruth Bader Ginsburg).

69. For example, is “gender” really just another, grammatically correct, way of saying sex in the sense that Ginsburg intended to say sex? If the secretary was wrong, that is, if “gender” and “sex” are distinct descriptions of the qualities that separate woman from man, her change in nomenclature may have led the Court to revise the scope of the equal-protection guarantee. See Mary Anne C. Case, *Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence*, 105 YALE L.J. 1 (1995); see also Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of “Sex,” “Gender,” and “Sexual Orientation” in Euro-American Law and Society*, 83 CALIF. L. REV. 1 (1995).

70. BERNARD CAUSTON & G. GORDON YOUNG, *KEEPING IT DARK, OR, THE CENSOR’S HANDBOOK* 16 (1930).

Therefore, Ginsburg expects us to get the joke; we will know that “sex” here means sexual intercourse or having sex. And, of course, we do get it. We are Nice People, remember? We are those readers with dirty minds for whom Graves also wrote, those listeners who grin when they hear (some) naughty jokes. So, in the end, Ginsburg’s humor succeeds but because the secretary’s censorial strategy fails, as we instantly make and appreciate the dirty connections from which she aimed to forbid the Justices.

Might this No Dosing work anywhere else? For starters, what does the strategy do for Ginsburg, both as a character in and the narrator of the vignette? Within the episode she narrates, Ginsburg plays the part of a true innocent, a prelapsarian Georgiana Podsnap, a speaker who unblushingly (that is, unknowingly), utters a foul word in polite company. Ginsburg was unaware that she was using off-color language until the secretary unearthed the dirty connotation. But notice the effect of the secretary’s intervention. By the end of their tête-à-tête, Ginsburg is an ingénue no longer. As the secretary thrice intoned the word “sex,” Ginsburg must have started blushing, her innocence lost, as the word conjured up the distracting associations those naughty Justices would have indulged.

But how innocent is Ginsburg ultimately? Why tell this joke in the first place? Ginsburg was not asked, let alone coerced, to tell the tale. She volunteered the story, once, in testimony for the politicians who were evaluating her fitness to be a judge and, at other times, in remarks for law school audiences. Presumably, she thought that the word “sex” had something in it both for her and her listeners. So, what does the story do for her? Unquestionably, her remarks on these occasions are carefully scripted, and she must include the story to make her audience laugh and warm up to her, and the story works. One suspects, at the very least, she must get a kick out of her power to give us that little kick.

But the story empowers her in other ways, by having her both not talk and talk about sex. First, consider again Ginsburg’s position as a character in the tale. By describing her decision to suppress “sex” during that momentous litigation, the story cunningly draws our attention to Ginsburg’s enormous influence over the course of contemporary constitutional jurisprudence. Surely, Ruth Bader Ginsburg is and always will be remembered as one of the giants of our profession, precisely because she was at the head of a powerful movement that aimed to seize authority over the word “sex” and what it represents in our culture. The story suggests that women would achieve equal social and economic opportunities only when judges changed the way they talked and, hence, thought about women, only when they ceased describing and seeing women as creatures who are for, indeed, who are sex, sex, sex. Thus, with a little help from her secretary, Ginsburg moved to expunge the word and its power to remind men of the erotic benefits they have received from women’s subordination.

Now, consider how the story empowers Ginsburg as the narrator of the tale. Many years have passed, and she feels free to say “sex” again. Why? Have the tables been turned? Has the world, hence, the word, been rehabilitated? Perhaps. Though it still is incomplete, the social transformation in which Ruth Bader Ginsburg figures so largely may have progressed to the point where the word has lost its power to distract men or, more precisely, its power to make them picture women in those ways we do not (always? ever?) want them to be thinking. Or has Ginsburg turned? After all, she now is one who sits, rather than waits, at the table. She has been initiated into an elite, formerly all-male club that previously held the power to make her pick and choose her words with care and even apprehension. Maybe she delights in her newfound power to use a word that she once feared would get the old boys going, for, by using it, she establishes that she has arrived. Her use of the word might confirm that she now is one of the boys.⁷¹

By this point, I suspect that if I were you I’d be thinking, come on, knock it off, you are making a mountain out of a molehill. All the poor woman did was say “sex,” she did not say “fuck” or “cunt.” There is nothing in “sex” to delight and disgust anyone, not even those little old Justices. Besides, the secretary is the butt of the joke. Ginsburg is poking fun at her punctilious, even prudish, employee, and along the way she cleverly draws our attention to the lengths to which (some) bosses will go to placate valued members of their staffs. But, are you so sure that the secretary is a prude, or, more to the point, even if she is (or maybe because she is), does she nonetheless accurately assess the evocative power of that little word?⁷² Before you answer, let me offer two additional observations.

First, at the time of the episode itself, Ginsburg seemed to agree that the word was a really nasty one. In 1976, she published an article on the law of what she then was trying to rename “gender discrimination,” and she there remarked that “[f]or impressionable minds, the word ‘sex’ may conjure up improper images of issues like those that the Supreme Court has left to ‘contemporary community standards.’ See *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973).”⁷³ Improper images, indeed! Like numerous

71. To be fair, thanks to Ginsburg’s splendid efforts, many of us have been given the opportunity to be one of the boys, an opportunity that some of us are ecstatically pursuing.

72. Of course, Ginsburg’s secretary was not the first to try to strike “sex” from the lexicon. To pick just one fairly recent example, Peter Fryer reports:

In the thirties the Hollywood list of banned words, which might never be spoken in any motion picture, included *cocotte*, *courtesan*, *eunuch*, *harlot*, *madam* (for “brothel-keeper”), *slut*, *tart*, *trollop*, *wench*, *whore*, *son-of-a-bitch*, *sex*, and *sexual*. The words *virtuous* and *bum* were to be avoided, and the expression *traveling salesman* might not be used “where reference is made to a farmer’s daughter.”

FRYER, *supra* note 30, at 28.

73. Ruth Bader Ginsburg, *Gender in the Supreme Court: The 1973 and 1974 Terms*, 1975 SUP. CT. REV. 1, 1 n.1 (1976).

other professionals writing about sex, Ginsburg here speaks in a way that seems calculated to mystify lay readers; her diction is designed to withhold from them (because they are impressionable?) the improper images to which she refers. The citation to *Slaton* performs the signifying work, as her language otherwise is hopelessly obscure (what on earth does an “image of an issue” look like?). But we law types understand. She figured that the word “sex” might give the Justices obscene thoughts (after all, some of those guys might be impressionable too), and I am willing to wager that the images she had in mind were not humorously obscene, but obscenely obscene. To put it bluntly, she implied that “sex” is as evocative and as offensive as those ugly words I keep using. Ginsburg’s concern may be far-fetched. But, remember, during the era in which she litigated for equal protection for women, most of the Justices were faithfully doing their duty, showing up term-in and term-out, to scrutinize the sexually explicit exhibits screened for them on dirty “movie day.”⁷⁴

That was the first kick, and there is a second. You know those people who make the adult movies Ginsburg feared might be reeling through the Justices’ minds, those producers of the obscenely obscene images that reduce woman and man to body parts for which we use filthy names? Well, some of them are sure that the secretary was right on the money. In *Coming Attractions*,⁷⁵ the late Robert Stoller and Ira Levine describe the making of a pornographic video by transcribing a series of interviews with the people who wrote, produced, directed, and performed in it. While the video was being shot, its director, a woman who aspired to make artistic porn, decided to substitute “gender” for “sex” in one line of dialogue. This change infuriated her producer, a man,⁷⁶ and he insisted that “sex” be dubbed back in during editing. As he put it:

Hairsplitting but . . . Okay, we’ve got this dialogue. How do we do it? Do we want to trust [me] and [my] sense of America and what will fly? Sharon had one line: “cavorting naked in the woods, having sex with members of your own sex.” . . . Sharon changed it to “having sex with members of your own gender.” That’s fine if you’re making *Lamp unto My Feet* for Sunday morning religious

74. For some vignettes of the Justices and their clerks enjoying “movie day,” see BOB WOODWARD & SCOTT ARMSTRONG, *THE BROTHERS: INSIDE THE SUPREME COURT* 198-200 (1979).

75. STOLLER & LEVINE, *supra* note 12, at 55-56, 81, 147.

76. In his movies’ credits, though, this male producer uses a female pseudonym. For the movie studied by Stoller and Levine, the man used the name “Abigail Beecher, as in the Freddy Cannon song ‘Abigail Beecher, Our History Teacher.’ Deliberately misspelled.” STOLLER & LEVINE, *supra* note 12, at 79. When Stoller asked, “[w]ere women’s names chosen [by the men] for any particular reason?,” the producer explained:

I always use a woman’s name because I believe in . . . If you use a woman’s name long enough, maybe people will get the idea that it’s okay for women to make these [films]. And our cameraman uses a female name [Jane Waters]. It produced the great line, “Us girls gotta stick together.”

Id.

TV. But if you're making a fuck film, "having sex with members of your own sex" is the clear-cut choice.⁷⁷

To be sure, this producer was not referring to words that make federal judges fidget, but to those that raise the spirits of the "lunchbucket audience," men (and women?) who "want to hear the word *sex* as many times in one sentence as is humanly possible."⁷⁸ Yet, it may not be so easy to know who shares the erotic fancies of the lunchbucket crowd.⁷⁹ With her story, Ginsburg reminds us that boys will be boys, and, whether they are sitting on the bench or working on the line, hearing the word *sex* is likely to make them daydream about, well, *sex*.

But what happened when those judges suddenly found themselves reading pleadings that spoke of gender rather than sex discrimination? Did the secretary's No Dose strategy work on them? Did it expunge the "distracting associations"⁸⁰ and help to make them more attentive to women's claims for equal social rights? Ginsburg surely turned a lot of those men on to her way of thinking. But, when we consider what Ginsburg's strategy entails, it seems unlikely to fix what ails and thrills porn scholars and their readers. For one thing, the strategy requires a whole new vocabulary, and I cannot think of anyone who has the time or the imagination, not to mention the clout, for that task. Moreover, the strategy worked for Ginsburg, if it did work, because her objective was to remove the very meaning of "sex" that pornography scholars aim to present. These scholars at least could try, and, certainly, most do try, to sterilize their prose. They give up "fucking" for "copulating," insert "penis" for "cock," scratch "cunt" for "vulva." But the problem is deeper still, for pornography does not reside solely in our diction. There may be some words that for us, at this time, just are pornographic, but avoiding them does not alone secure our innocence.

77. *Id.* at 196; *see also id.* at 129.

78. *Id.* at 129.

79. After all, those fancies are unspeakable; most people who own them refuse to claim them openly. One male actor in porn videos mentioned that, from time to time, ordinary people give themselves away. They recognize him or one of his colleagues, but they "can't remember where they saw you. They just look at you and say, 'I think I know you from somewhere. I can't picture it. Do you go to my health club?' You just kind of smirk and go, 'Yeah, I know where you know me from.'" *Id.* at 172.

80. In some eras, speakers and listeners have gotten a kick out of "gender" too. Peter Fryer reports that "feminine gender" once was "schoolboys' slang" "for the organ whose components are known technically as the vulva and vagina:"

Amo, amas,
 I loved a lass,
 And she was tall and slender;
Amas, amat,
 I laid her flat,
 And tickled her feminine gender.

FRYER, *supra* note 30, at 49.

Certainly, it is easy for speakers to swap clean for dirty words and still remain within the realm of the obscene. Take soldiers, who are notorious for their swearing. Sometimes, they get bored with “fucking,” and they adopt alternative adjectives and adverbs, for example, “conjugal” and “matrimonial,”⁸¹ words that scholars would have thought clean and that seem to be clean in many contexts. The substitution adds a layer of meaning to the soldiers’ conversations. Now, they do not merely deride or admire the objects to which their new modifiers attach, they also satirize themselves and their attachment to dirty words. But even if the substitution implicitly criticizes those who like talking dirty, it does not wholly eliminate the dirt. The satire works only because the speakers’ affection for obscenity is real and because the clean word draws our attention to the dirty one it replaces. If only temporarily, therefore, the soldiers are adding new coins to their base collection, which they circulate among themselves and, perhaps, pass off on some of us. Of course, scholars do not have to worry about these precise complications because they usually do not replace dirty words with clean ones in the service of satire; they come to bury or praise porn by other rhetorical means. But, then, our porn-video director did not have satirical aims, either. And, notwithstanding her producer’s sarcastic advice, I think that her fuck film still would have been a fuck film whichever word—sex or gender—passed the leading lady’s lips.

III

THE ACADEMY OF LARGE DOSES

A. *The Large Dosers*

Paraphrase will no longer suffice.

Roger Shattuck⁸²

Far from insisting that nothing must be said about pornography, as the No Dosers do, most porn scholars have heaps of things to say about porn. Some even take the time and trouble to procure samples of the stuff (sometimes large samples) to show their readers and students. Most Large Dosers are outraged by pornography, and they campaign for laws suppressing it. Nonetheless, they do not find it necessary or, presumably, a good strategy, to hide or beat around the bush when discussing pornography. What happens to these teachers and, perhaps more urgently, to the students who matriculate in the School of Large Doses? When a large dose of porn

81. As Paul Fussell reports, “even the troops wearied of *fucking* and tried substituting equivalents like *conjugal* or *matrimonial*, as in ‘Where’s the conjugal NAAFI in this camp?’ or ‘What the matrimonial bloody hell do you think you’re doing?’” PAUL FUSSELL, *WARTIME: UNDERSTANDING AND BEHAVIOR IN THE SECOND WORLD WAR* 95 (1989).

82. ROGER SHATTUCK, *FORBIDDEN KNOWLEDGE: FROM PROMETHEUS TO PORNOGRAPHY* 271 (1996).

is confined within a scholarly text or by classroom walls, does it lose its power to do the things it does in other places?

In both the world of pornography scholarship and the domain of porn proper, large doses of porn come in different strengths. Some authors⁸³ give us the hard stuff straight up by providing excerpts, some long, some short, from works that they, other scholars, and impressionable students judge to be the real thing. Other Large Dosers, such as Andrea Dworkin⁸⁴ and the authors of the Meese Commission Report,⁸⁵ do not reproduce pornographic works themselves; instead, they provide lengthy and explicit descriptions of dirty books, magazines, movies, and photographs. Although these descriptions also are the authors' interpretations of the pornographic works, they nonetheless are of, as well as on, the pornographic.⁸⁶

Contemplate what we know about the effects of large doses of dirty words. At least in some contexts, frequent and open usage deprives obscene words of their power to arouse, express, and give relief to anger, delight, despair, and other strong feelings. Consider this example, which suggests that even the f-word loses its obscene quality through overuse. During World War I, British soldiers said "fuck" so often that it amounted to nothing more than a "warning that a noun [was] coming."⁸⁷ Among the soldiers, John Brophy and Eric Partridge remarked:

[This word was] so common indeed in its adjectival form that after a short time the ear refused to acknowledge it and took in only the noun to which it was attached. . . . From being an intensive to express strong emotion it became a merely conventional excrescence. By adding -ing and -ingwell, an adjective and an adverb were formed and thrown into every sentence. It became so common that an effective way for the soldier to express emotion was to omit this word. Thus if a sergeant said, "Get your —ing rifles!" it was understood as a matter of routine. But if he said, "Get your rifles!" there was an immediate implication of urgency and danger.⁸⁸

According to this account, large doses may make the obscene ordinary, the forbidden familiar, and the unspeakable routine. When mentioned repeatedly, the unmentionable becomes unremarkable, incapable of producing a blush or even a rush and, hence, no longer worth mentioning. In the School

83. See James Lindgren, *Defining Pornography*, 141 U. PA. L. REV. 1153, 1224-53 (1993); see also Robert Jensen & Gail Dines, *The Content of Mass-Marketed Pornography*, in *PORNOGRAPHY*, *supra* note 9, at 65.

84. ANDREA DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* (1989).

85. ATTORNEY GENERAL'S COMM'N ON PORNOGRAPHY, FINAL REPORT 1613-1843 (1986).

86. The Meese Commission Report is a good example. *Id.* Have your students told you about their adolescent friends who use(d) it as pornography? Unlike scholars, these young people read the report only for the good bits.

87. SONGS & SLANG, *supra* note 43, at 16.

88. *Id.* at 16-17.

of Large Doses, the absence of the word, not its presence, is the noteworthy occurrence. At most, though, the anecdote stands only for the proposition that such transformation may occur within a discrete group and perhaps, even there, only under special circumstances. The soldier might feel free to go around chattering the f-word with his mates and, sometimes, to exchange it with his superiors or inferiors,⁸⁹ but he will be mortified if the word slips out in polite company. For example, one soldier “shot through the buttocks at Loos, . . . [when] asked by a [female] visitor where he had been wounded, could only reply ‘I’m so sorry, ma’am, I don’t know: I never learned Latin.’”⁹⁰

We might worry about the precise character of the rhetorical transformation large dosing incurs, if any, in the ranks of the military. During the Revolutionary War, George Washington was so alarmed by reports that “profane cursing and swearing (a Vice heretofore little known in an American Army) [was] growing into fashion” that he issued an order expressing his “hop[e that] the officers will, by example, as well as influence, endeavor to check it.”⁹¹ Alas, Washington and his officers lost that particular battle. By the time of World War I, “swearing had become universal.”⁹² Indeed, Graves, who was an officer in the military before he became a writer, admonished officer-cadets that if they “restrain[ed] their tongues altogether,” they might lose the confidence of their men.⁹³ These days, not even the “FNG’s”⁹⁴ are going to blush when hearing the f-word.

Still, we must ask again, what exactly does blushing, or failing to blush, mean? Contrary to Mr. Podsnap’s view, the innocent speaker is not likely to be he who blushes, but he who fails to blush. But, a failure to blush in the presence of the obscene is not conclusive evidence of innocence. The f-word does not make a soldier blush; nonetheless, we are likely to hesitate before acquitting him of impropriety. He knows what the word properly signifies, and he does not blush only because he is indifferent to

89. The f-word has been a staple of soldiers’ vernacular at least since the First World War. Still, it has been uttered less frequently by officers than by their men, and, not surprisingly, it was used to signal and express class differences. *See, e.g.*, FUSSELL, *supra* note 81, at 92-95. Graves recalls:

At the beginning of the War, I was advised by peace-time soldiers never to swear at my men; and I was hurt by the suggestion that I could ever feel tempted to do so. But after putting the matter to a practical test in trench-warfare I changed my opinion, and later used to advise officer-cadets not to restrain their tongues altogether, for swearing had become universal . . .

GRAVES, *supra* note 18, at 32-33.

90. *Id.* at 19.

91. GEN. GEORGE WASHINGTON, ORDER OF AUGUST 3, 1776 (Aug. 3, 1776) (discussing use of profanity by American troops).

92. *See* GRAVES, *supra* note 18, at 32-33.

93. *Id.*

94. Fussell reports that “fucking” had become so common among soldiers “by the time of the Vietnam War that the Americans merely alluded to it and accommodated it to the more modern abbreviation habit. Thus a new arrival was a FNG or Fucking New Guy.” FUSSELL, *supra* note 81, at 95.

or, we might fear, hardened towards, its offensive connotations. As we have seen with soldiers, when obscene words are used very frequently, speakers and listeners stop blushing, and the words eventually become impotent and either disappear altogether or begin to take on innocuous connotations. Formerly condemned words sometimes are reformed, eventually judged fit to circulate freely.⁹⁵ The commentaries of Fussell⁹⁶ and Graves point toward other potential outcomes. Fussell remarks that the soldiers did get sick and tired of saying the f-word over and over again, but their solution was not to drop the word completely, or at all, but to replace it.⁹⁷ In Fussell's account, the soldiers substituted seemingly innocuous words for the offensive one, but Graves reminds us that they have other options. As he notices, our language includes a whole hierarchy of obscenity, with some expressions far more offensive than others,⁹⁸ so when "fucking" becomes domesticated, the soldiers might intensify or escalate the offensiveness of their speech, take up harder and uglier obscenities, and, once those vulgarisms become tame, intensify and escalate yet again, even if doing so ultimately requires them to create new expressions.

Might this same process of intensification, this escalation of offensiveness, occur with pornography too? Richard Posner seems to think so.⁹⁹ Posner suggests that when a community admits some pornographic images into circulation, "the more the demand for pornography will shift (not entirely, of course) toward aspects of sexual depiction that remain tabooed."¹⁰⁰ Therefore, while people who are exposed to porn morning, noon, and night probably do begin to find the images more tedious than titillating, they may only lose interest in porn that has become familiar. We would predict that, like our soldiers, some of them will begin scrounging

95. For example, one author claimed that, at the time he was writing, the word "ornary" was "shocking, and should never pass the lips of anyone." RICHARD MEADE BACHE, *VULGARISMS AND OTHER ERRORS OF SPEECH: INCLUDING A CHAPTER ON TASTE, AND ONE CONTAINING EXAMPLES OF BAD TASTE* 127 (1868). And Peter Fryer reminds us that other words we find inoffensive—naked, belly, leg, tail—were unmentionables in the not too distant past. See FRYER, *supra* note 30, at 31-41.

96. See *supra* note 81 and accompanying text.

97. FUSSELL, *supra* note 81, at 95.

98. See GRAVES, *supra* note 18, at 32-37.

99. RICHARD A. POSNER, *SEX AND REASON* (1992). If Posner is not your cup of tea, consider the Marquis de Sade's thoughts on the escalation effect:

But joy is seldom succeeded by joy. There are libertines so hardened in vice that the simpler, the more delicate and banal be the thing they do, the less effect it has upon their execrable minds.

THE MARQUIS DE SADE, *THE 120 DAYS OF SODOM AND OTHER WRITINGS* 308 (Austryn Wainhouse & Richard Seaver trans., 1966). Or those of Catharine MacKinnon:

Greater efforts of brutality have become necessary to eroticize the taboo—each taboo being a hierarchy in disguise—since the frontier of the taboo keeps vanishing as one crosses it. Put another way, more and more violence has become necessary to keep the progressively desensitized consumer aroused to the illusion that sex (and he) is daring and dangerous.

MACKINNON, *supra* note 12, at 200.

100. POSNER, *supra* note 99, at 364.

around for “heavier stuff.”¹⁰¹ By reproducing large amounts of pornography, Large Dosers may actually be participating in the move towards the hard core.

Now, you are thinking, let’s be real: legal scholars, even the Large Dosers, do not reproduce enough porn to contribute to this larger cultural process of escalation. Scholarly doses, no matter how massive, are not even a drop in the pornography bucket. However, the distribution of scholarly works is not as limited as you might expect (isn’t that good news?), and references to the scholarship turn up in the darndest places.¹⁰² More to the point, the works are being peddled in places that the scholars themselves and, probably, many of us, want to keep spotless, including the spaces where we live, our offices, our classrooms, our libraries, and our homes. And, if you believe that these sanctuaries still might contain a clean corner or two, the irony is devastating. This scholarship is pornography, and some feminists, with their fellow travelers, are bustling around turning everybody and her brother on to what it is.

B. *Antidotes and Antipyretics*

Mothers will forbid their daughters to read [this volume].

Donatien Alphonse François, Marquis de Sade¹⁰³

Bystanders long have worried about the health and hygiene of the officials who are forced to handle large doses of obscenity. (Imagine the

101. GRAVES, *supra* note 18, at 33.

102. A female porn star interviewed by Stoller and Levine speculated about the likely reaction of the “procensorship feminists” to her new movie. Stoller (“RJS” in the excerpt below) and Nina, the female porn star, had this exchange:

RJS: How will they argue? The argument that turns out not to be true is that the scenes are all aimed at the man’s satisfaction, depict nothing about women. How will they argue that this is nonetheless antiwomen?

Nina: They are so conflicted about heterosexual intercourse that the mere presence of naked bodies and erections and vaginas will cloud over their ability to look at this objectively.

RJS: So what will they then say? That beneath the surface of what looks like consensual heterosexuality . . .

Nina: . . . The proponents of this argument, like [Catharine] MacKinnon and [Andrea] Dworkin, believe that all heterosexual intercourse is nothing but disguised rape, that there can be no true consent by a woman.

RJS: Well, Dworkin has a slightly different position: if two people masturbate each other, then maybe it would be okay.

Nina: But no penetration can be consensual. For me, if my vagina says, “Yes, I want stimulation internally,” I can’t worry whether it is politically correct or not because it gets in the way of my orgasm. . . . “If it ain’t broke, don’t fix it.” If two people are enjoying their sexual lives, don’t come up and say, “I’m sorry, honey, you’re brainwashed. You’re actually having a terrible time.” Very condescending, very arrogant. I happen to understand her [Dworkin’s] anger and respect her intelligence, but she goes out into the ozone. Most people are not going to want to cut off all men.

STOLLER & LEVINE, *supra* note 12, at 162.

103. THE MARQUIS DE SADE, *THE COMPLETE JUSTINE, PHILOSOPHY IN THE BEDROOM, AND OTHER WRITINGS* 180 (Richard Seaver & Austryn Wainhouse trans., 1965) (epigraph to second edition of *Philosophy in the Bedroom*).

uproar there would be if police investigators could separate marijuana leaves from other herbs only by smoking them.) For example, Morris Ernst and William Seagle once remarked:

By the time the legal complaint is filed, no matter what its origin, the officers, stenographers, and clerks of the vice societies, and even the prosecutors, have been exposed to the corrupting influences of the provocative paragraphs. We must assume that familiarity produces a satisfactory sexual anti-toxin.¹⁰⁴

Likewise, many Large Dosers seem to be well aware that they might be running and their texts imposing moral and political, as well as psychological and physical, risks whose outcomes they cannot predict, much less contain. Not surprisingly, therefore, the administrators of the School of Large Doses have tried to concoct antipyretics, to develop antidotes or even a vaccine. Perhaps they imagine that home remedies will satisfy the “good rule of thumb” followed by social scientists under which “no subjects should come out of research in any worse shape than when they entered.”¹⁰⁵

For starters, as I mentioned above, Large Dosers tend to make justificatory gestures. Himself a Small Doser, Richard Posner notices that these apologetic gestures are almost mandatory for any scholar who writes about sex. As is his wont, Posner opens *Sex and Reason* bluntly: “Anyone in our society who wants to write about sex without being accused of prurient interest had better explain what the source of his interest in the subject is.”¹⁰⁶ Apologetic gestures come in predictable shapes and tones: Gentle reader, make no mistake, I am not writing about sex, but about Sex—that mysterious and misunderstood subject. Or, my topic forces me, it just plain forces me, to write about sex, but I am strutting the stuff in the service of a grave and important public undertaking. Recall Ken Starr’s assertion that he just had to render all the ins and outs of Bill Clinton’s amorous escapades with Monica Lewinsky:

104. ERNST & SEAGLE, *supra* note 26, at 3-4.

105. MICHAEL STEIN, *THE ETHNOGRAPHY OF AN ADULT BOOKSTORE* 30 (1990). When social scientists administer porn to subjects in the laboratory, they debrief those subjects and then try to determine that the debriefing has been effective. For example, after exposing subjects to pornographic (or other) films valorizing implicit or explicit rape themes, experimenters conduct a session in which they aim to resensitize the subjects to the harms of nonconsensual sex. Then, to discover whether the counseling session eliminated harmful attitudes that may have been introduced by the porn, the scientists require the subjects to complete questionnaires probing their views on the credibility of rape complainants. Subjects who receive poor scores are debriefed again, required to retake the test, and so on until they achieve satisfactory scores on the rape-sensitivity scale. As some of the leading researchers on violent pornography explain, “exposing subjects to sexually violent depictions and *not* debriefing them . . . would be unethical.” EDWARD DONNERSTEIN ET AL., *THE QUESTION OF PORNOGRAPHY: RESEARCH FINDINGS AND POLICY IMPLICATIONS* 187 (1987).

106. POSNER, *supra* note 99, at 1.

The Narrative is lengthy and detailed. It is the view of this Office that the details are crucial to an informed evaluation of the testimony, the credibility of witnesses, and the reliability of other evidence. Many of the details reveal highly personal information; many are sexually explicit. This is unfortunate, but it is essential. The President's defense to many of the allegations is based on a close parsing of the definitions that were used to describe his conduct. We have, after careful review, identified no manner of providing the information that reveals the falsity of the President's statements other than to describe his conduct with precision.¹⁰⁷

At first glance, these gestures appear designed to protect only the author and to operate against only one set of harms. In my neck of the woods, a scholar would be dismayed to hear the grapevine muttering that she is writing about porn because she gets off on it or, in Posner's words, because the research allows her to indulge a "prurient interest."¹⁰⁸ According to Murray Davis, himself a porn scholar, unpleasant gossip may be the least of your worries. When you get them really aroused, Davis says, readers will be inclined to "slam [your] book, snub [your] person, and try to deprive [you] of [your] job[!]"¹⁰⁹ Thus, we would suppose, the more risk-averse the scholar, the more thin-skinned she, the more well-padded her protests will be. Notice though that antiporn feminists seem to possess an exemption from these conciliatory gestures. This immunity is not surprising. If you are one who alleges that porn is the key to all misogyny, you do not have to apologize for talking about it; to the contrary, you must apologize whenever you don't.

Feminists aside, virtually every other porn scholar feels obliged to explain why he or she is studying porn. Why else would James Lindgren bother to publish the fact that he did not "own any pornography and had never bought any before"?¹¹⁰ True, his library did contain some texts with feminist sex scenes, but, when he tried to figure out whether or not definitions of porn work in practice,¹¹¹ he had to run out to his "local academic

107. KENNETH W. STARR, A REFERRAL TO THE UNITED STATES HOUSE OF REPRESENTATIVES FILED IN CONFORMITY WITH THE REQUIREMENTS OF 28 U.S.C. §595(C), H.R. DOC. NO. 105-310, at 9 (2d Sess. 1998).

108. POSNER, *supra* note 99, at 1.

109. MURRAY S. DAVIS, SMUT: EROTIC REALITY/OBSCENE IDEOLOGY xxi (1983).

110. Lindgren, *supra* note 83, at 1161.

111. Lindgren's study focused on the definition of pornography proposed by Andrea Dworkin and Catharine MacKinnon, Cass Sunstein's refinement of that definition, and the obscenity test promulgated in *Miller v. California*, 413 U.S. 15 (1973). Lindgren aimed to learn whether "these definitions are vague, overbroad, or underbroad," so he took a bunch of pornographic sex scenes and feminist sex scenes, stuck them in a questionnaire, gave the questionnaire to his students, and asked them to decide whether the scenes were obscene or pornographic according to these criteria. See Lindgren, *supra* note 83, at 1156. Lo and behold, the students had a really tough time making the classifications that Lindgren believed were appropriate. Here follow his summary conclusions:

[T]he performance of the MacKinnon-Dworkin definition was mixed. It suffers from overbreadth by MacKinnon and Dworkin's standards. An excerpt from Andrea Dworkin's

bookstore” in order to purchase some porn that he had heard about from Andrea Dworkin.¹¹² Why else would Richard Posner commence *Sex and Reason* by representing that, when it comes to sex, federal judges are regular guys? In fact, Posner decided to write his great big book when he noticed that, when it comes to sex, judges are more naïve than the average guy. Judges know “next to nothing about [sex] beyond their own personal experience,” and their personal experience is “limited, perhaps more so than average.”¹¹³ (No wonder they get distracted when they hear the word “sex.”)

Certainly, many scholars want to sell us on the idea that sex research, especially pornography research, is risky business for them. They calculate the personal risks, measure them against the collective benefits, and, by their reckoning, are obliged to go for it. As Murray Davis exclaimed: “The maxim ‘nothing ventured, nothing gained,’ is nowhere more aptly applied than to sex research.”¹¹⁴ These days, for law types, the gains range from the emancipation of women from social bondage to the education of lawmakers who are asked to regulate sexual speech and activity to the condemnation or, maybe, vindication of a man accused of bringing the presidency to its knees and so forth and so on. To secure these laudable objectives, the authors must spend their days and nights poring over sexual images that, among other things, may be frightening, violent, ugly, and sad. For some writers, developing a (healthy?) misanthropy is the point of the exercise, so we may imagine that they would not count anger, hatred, or depression as costs, but as benefits, of their labors. But what if, as some feminists argue, viewers emerge from porn with permanent political blemishes, with

own novel *Mercy* is pornographic under their test. The MacKinnon-Dworkin test is, however, less vague than the Supreme Court’s obscenity test, although many people may still find it disturbingly vague. On balance, the performance of the Supreme Court’s obscenity standard is perhaps slightly worse. It’s the most vague of the three tests and by various measures either overbroad or potentially underbroad. Indeed, the results vary markedly depending on how the data are aggregated. Yet the Sunstein test performs even worse. Nothing is close to pornographic under its standard. A piece of porn that Sunstein cites as “easily characterized” as pornographic was found to be pornographic under his test by only 3% of the subjects in the study. And under the Sunstein standard as applied, feminist works rank as more pornographic than real porn.

Id. at 1160-61 (citations omitted).

112. *Id.* at 1166-67, 1170. Did it ever occur to porn scholars to tell their readers precisely where—the bookstore, the library, personal shelves—they obtained the texts investigated in their scholarship? Why or why not? In what sense would that information count as “methodology”? Do porn scholars collect only those books recommended by one particular expert in the field? By the way, where would porn scholars go to get porn? Their local academic bookstore? Somewhere else?

113. POSNER, *supra* note 99, at 1. Why are we stuck with judges whose knowledge of this important subject is so impoverished? You can fault or, if you like, thank the F.B.I. for this state of affairs. Our scrupulous federal agents do their best to keep judicial nominees “with irregular sex lives” from squeaking through the appointments process. (But, wait, for Posner’s “irregular,” are we supposed to read “gay”? Come to think of it, can you name any federal judges who are gay? One? More than one?) *Id.*

114. DAVIS, *supra* note 109, at xxi. You’ve got to love the hyperbole.

durable blind spots, with psychological and physical scars? Do an author's ethical and political commitments, or her critical, even, furious attitude, preserve her from these harms? Since she is exposing herself to porn day in and day out, we would not expect to discover our scholar blushing when she sees it, but we must wonder what her cool cheeks mean. According to Graves, she cannot be innocent of it. If not innocent, has she become hardened, and, if so, what does it now take for her to get her rage up? For her to get it up and keep it up day after day, will she also not need to escalate, turning ever to dirtier, nastier, raunchier stuff?

As for her readers and students, we may hope that the doses our scholar doles out will not make them crave a taste of harder stuff. The recent trials of Larry Matthews, a free-lance radio journalist, may furnish a cautionary tale for Large Dosers.¹¹⁵ Charged with trafficking in child porn, Matthews insisted that he was completely and totally innocent. You see, he had written a story on the industry several years earlier, and he thought he should do some more reports for National Public Radio on this important topic.¹¹⁶ Real consumers of child smut refused to touch him with a ten-foot pole when he approached them as a journalist, so he pretended to be one of them.¹¹⁷ In the end, the only way for him to establish his criminal bona fides was to exchange forbidden images with some of the pedophiles who lurk in internet spaces. The prosecutor claimed that this defense was fabricated, that Matthews was not an impersonator, but the real McCoy, and that he was invoking First Amendment credentials as a pretext for his own culpable tastes.¹¹⁸ Might the truth not reside somewhere between these two accounts? Maybe when Matthews commenced his first project, he was ignorant and, therefore, innocent of child porn. He merely was doing what journalists and, for that matter, scholars routinely do—research an article on controversial material that he had read about, but never seen. But, when he saw it, he knew it; when he knew it, he had it; when he had it, he liked it; and, he wanted to see, know, have, and like more of it. Might the readers and students of our Large Dosers be having this same experience? Might some scholars themselves be having it too?¹¹⁹

Porn scholarship probably does not present every writer with these particular interesting complications. Yet, we might be willing to wager that, like other kinds of risky business, porn research will hold some notable moments, little payoffs, immediate and special gratifications. When you finally decide to take the plunge and write that first porn paper, your workdays may be painful, but they also have a certain *je ne sais quoi* that

115. See Ruben Castaneda, *Writer's Internet Porn Case Tests 1st Amendment*, WASH. POST, Apr. 27, 1998, at B1.

116. *Id.*

117. *Id.*

118. *Id.*

119. See BENJAMIN, *supra* note 9, at 175.

they lacked before. Recall Lindgren's tale about trotting off to the bookstore? When was the last time that a trip to the bookstore was not routine, but a remarkable, daring thing to do? Indeed, so remarkable, so daring, that you're just bursting about it, bursting to tell your friends, colleagues, perfect strangers, whoever happens to be within earshot. All this from buying a book? Oh, yes, and buying it is just the beginning.

Still, what about the risks Large Dosers may be imposing on their readers? Do the authors' apologetic disclaimers, their justificatory protests, do anything to protect readers? For one thing, these gestures may rescue readers from similar accusations of prurience. Even if they are getting their hands dirty, readers may say, indignantly, that they are pursuing the same significant social purposes the scholar cites. For example, everyone suspects that Special Prosecutor Starr could simply have told the House members, "Look, President Clinton did so touch Intern Lewinsky's genitals and she touched his. If you people don't believe me, go ahead and consult pages thus and such of the record." However, once Starr concluded that justice demanded that he and his staff locate and then spill all the beans, surely, justice placed us under a similar obligation. As Starr had lamented, the situation was terribly unfortunate. But, darn it, there was nothing to be done. We had no choice but to march right out to the bookstore, purchase a copy of that report, and pick through it, bean by bean by bean.

The more interesting and difficult question is whether the gestures may shield readers not only from accusations of prurient interest, but from having the prurient experience itself. It seems unlikely that a justificatory gesture alone could have that effect, and, of course, virtually every Nice Writer provides additional commentary that fortifies the readers who decide to forge forward into the text. Nice People do not skim Large Dose texts, searching for and savoring the good bits. They also study the commentary that introduces and surrounds them. By opening with the justificatory gesture, the author gives her audience a reassuring heads-up about the content and tone of the commentary to come. "This text is scholarship," the gesture announces, "this text is going to be as serious and sober as it gets. True, the large doses may tend to get you all hot and bothered, but, dear reader, do not worry, you will, at regular intervals, be immersed in and restored by the author's clean prose." Indeed some scholars have implored readers not to skip about in their texts, hunting for and pecking at the good bits, but to consume each and every single solitary word. Consider this advice from the author of a modern sex-education manual:

It is the author's sincere request that no one glance here and there through this book and so attempt to appraise it. A wrong impression might possibly be so derived.

This book deals with the most intimate, and at the same time, the most sacred relationship between husband and wife, and in so doing speaks frankly and openly, as is necessary, for all who feel

the need of help and instruction. The many lessons it teaches can be understood and appreciated only if every word be read thoughtfully and without skipping a single line.¹²⁰

Ruminations by Richard Posner suggest that this cold bath may be salubrious: Porn scholarship should lack the “aphrodisiacal properties” of the objects it represents because the package will contain “other messages” that blunt the pornographic thrust.¹²¹ What sort of “other messages” must the Large Doser stir into her pot to dilute the flavor of the porn? Alas, Posner speculates about art, not scholarship, but he opines that a “seemingly pornographic painting” or poem will “los[e] much of its sexual kick” if the work “provides information concerning the dangers of sex, or treats sex as degrading.”¹²² But would scholarly commentary that insists that pornographic representations of sex are bad or harmful really work at “cross-purposes” with those sexual representations, as Posner supposes artistic messages do?¹²³ Many theorists claim that it is the taboo, or the convention placing certain sexual images off-limits because they are dangerous, degrading, or immoral, that makes the images irresistible. Rather than defeat the “aphrodisiacal operation” of the porn, then, would we not expect such commentary to contribute to or, even, create the aphrodisiac in the first place?

Porn researchers, therefore, may feel obliged to help prevent some readers from tumbling into their texts. All writers are pleased when their products sell like hotcakes, and many thrive on controversy, but no scholar wants her stuff to fall on really hostile ears, to be picked up, say, by students who go running off to her Dean or Department Chair to report not just outrage but injury, or, worst of all, to come into the clutches of readers who thereby will be aroused to injure others. What can a Large Doser do to prevent these painful outcomes? How about selecting a title or subtitle that describes the perils awaiting those who venture into her text? Armed with this information, readers sensibly may choose for themselves whether they should withdraw or venture forward. Titles are not wholly reliable. There are readers (censors, maybe, or mental lechers?) who will uncover naughty meanings in perfectly innocent titles, as some learn to their dismay.¹²⁴

120. ALFRED HENRY TYRER, *SEX SATISFACTION AND HAPPY MARRIAGE: A PRACTICAL HANDBOOK OF SEXUAL INFORMATION TO ENABLE COUPLES TO ACHIEVE NORMAL, HAPPY MARRIAGE; INTENDED FOR THOSE MARRIED OR ABOUT TO BE; ALSO FOR USE IN THEIR WORK BY DOCTORS, THE CLERGY, SOCIAL WORKERS, LAWYERS, AND OTHERS IN THE ADVISORY PROFESSIONS, WHO MAY FIND RECOMMENDATION OF THIS BOOK A CONVENIENT AND TIME-SAVING METHOD OF IMPARTING ADVICE*, at vi (Emerson Books, Inc. 1970) (1936).

121. See POSNER, *supra* note 99, at 375.

122. See *id.*

123. *Id.*

124. Officials at Beaver College recently discovered that filters designed to detect sexual content were blocking prospective students from access to the college’s website. Nina Willdorf, *Leaving Beaver Behind*, CHRON. OF HIGHER EDUC., Mar. 10, 2000, at A12. Ridicule is nothing new for Beaver

Then, too, there are authors who deliberately choose spicy titles to help sell bland books. Robert Graves mentions a publisher whose ads promised “erotic delights,” but who delivered “photographs of classical paintings and statuary” to schoolboys in exchange for five shillings and a signed statement vouching that the recipient was not a minor.¹²⁵ Sounds familiar, doesn’t it? More recently, Deborah Rhode decided to stand by her title—*Speaking of Sex*—after she discovered that it already was circulating on the cover of a sexually explicit video. Though disquieting, the coincidence did confirm her instinct that the title was, well, “sexy.”¹²⁶

But a title provides some information about what lurks below, and, with prudent drafting, responsible scholars may hope to avoid the most serious mistakes. Moreover, the cautious writer always can follow James Lindgren’s advice and attach an explicit warning to her text. The author might supply a title that itself incorporates a warning and thereby ensures that readers know exactly what they are getting into. For example, in the interests of full and fair disclosure, this Essay might have been entitled thus: *Representing the Forbidden: Herein of MacKinnon and the Marquis, and Other Philosophers of the Bedroom, with an Incomplete Compendium of Dirty Words Contemporary, Obsolete, Foreign, and Imaginary, and Containing a Few Small, or, Maybe, Moderate, Doses of Porn, Which Are Set Forth for Strictly Exemplary Purposes Only*. Too cumbersome? Then go ahead and do what Lindgren did; drop a discreet little footnote that covers all the bases: “Warning: This Article contains pornographic, sexist, and racist materials.”¹²⁷ Lindgren himself never refers directly to the functions his warning serves or, for that matter, to what he hopes to accomplish by the procedure he recommends for obtaining the “informed consent” of students to whom instructors distribute porn.¹²⁸ Like a doctor or medical researcher, he at least seems concerned to get porn scholars off the hook should we mangle our operations or bungle our experiments. Beyond that, he may imagine that these devices will bring to our texts and classrooms only those readers and students who really, really want to see some dirt. Are these the people whom porn scholars should most want to attract or most avoid?

And what about the scholar’s poor colleagues who accidentally brnsh against her work and get burned up about it? For example, what should you do if a colleague stops by and barks: “Look, everyone passing by your

College administrators, students, and alumni, as they frequently are treated to “derogatory remarks pertaining to the rodent, the TV show *Leave It to Beaver* and the vulgar reference to female anatomy.” *Id.* However, the internet incident was the final straw, for it prompted Beaver College’s Board of Trustees to take seriously proposals to change the school’s name. *See id.*

125. GRAVES, *supra* note 18, at 51.

126. DEBORAH L. RHODE, *SPEAKING OF SEX: THE DENIAL OF GENDER INEQUALITY* vii (1997).

127. Lindgren, *supra* note 83, at 1153.

128. *See id.*

office can hear you and your research assistant carrying on about Cass Sunstein and Beaver Hunters. Do you think you could keep it down already?" No, you are not Georgiana Podsnap, but you blush anyway, apologize, and wring your hands. But you've got to keep doing your research. What should you do? By simply closing your office door, you might protect these delicate bystanders. But wait, if you close the door, are you sending a signal to those outside that something private and, uh oh, naughty is occurring within? At second blush, it dawns on you that the closed door may be incriminating too. So which option—open or shut—should you choose? Don't ask me; ask Ken Starr. In making his case to impeach our President, Starr identified some devices by which Clinton tried to conceal his misconduct with Lewinsky. For one thing, Starr alleged that when Clinton and Lewinsky were cuddling in the Oval Office, Clinton left "the door between the private hallway and the Oval Office several inches ajar . . . , both so that he could hear if anyone approached and so that anyone who did approach would be less likely to suspect impropriety."¹²⁹ Open, shut, you're in trouble either way. But, hold on, I've got it, why not go ahead and replace your old wooden door with a glass one?¹³⁰

V

THE ACADEMY OF SMALL DOSES

I wonder if any other readers . . . stopped reading to masturbate.

Carol A. Queen¹³¹

If Large Dosing and No Dosing are the proverbial rock and the hard place, is there some safe space between them? Many porn scholars try to avoid both the law and the high road. Their alternative strategy is Small Dosing.

Distinguish, please, this academy from the School of No Doses. As you will remember, No Dosers (if there are any left) follow Justice Potter Stewart's famous dictum, which advocates a strategy Mr. Podsnap probably would have endorsed. When classifying a work as obscene or

129. STARR, *supra* note 107, 25.

130. That's what Gary Bauer did during his short-lived presidential campaign. Here's the story. Two of Bauer's campaign aides quit and started plugging rival Steve Forbes. Why? It turns out that Bauer was having a whole lot of closed-door meetings with a female deputy, and the aides claimed that he thereby was creating (and willfully, mind you) an appearance of impropriety within his headquarters. After these allegations surfaced, Bauer called a press conference, at which he denied that he'd been up to no good. No, Bauer did not then rush off and fire his female deputy. After all, who knows what two men or two women might do behind closed doors? Instead, Bauer had his office fitted out with a glass door so that everyone could see that there was absolutely nothing naughty going on in there. See Melinda Henneberger, *Sex, Politics and the Open Door*, N.Y. TIMES, Oct. 10, 1999, § 4, at 1.

131. Carol A. Queen, *Talking About Sex*, in MADONNARAMA: ESSAYS ON SEX AND POPULAR CULTURE 139 (Lisa Frank & Paul Smith eds., 1993).

pornographic, No Dosers believe they need only say, "I know it when I see it."¹³² According to the No Dose way of thinking, censors may have to daub their fingers to determine whether to ban or allow a particular work, but they need not and, presumably, should not furnish readers the opportunity to dirty theirs. By contrast, Small Dosers reckon that they have some obligation to establish that they do know it when they see it, and, therefore, they give us a little taste of what they think it is.

Why is the small dose salutary? It does not immunize against the associations that worried Justice Ginsburg's secretary; the small dose is administered for the purpose of evoking at least a few of those distracting thoughts about sex. May the small dose satisfy readers that they need not venture beyond those thoughts, that they need not personally handle the allegedly pornographic materials? One type of small dose, suggested by Ronald Dworkin, seems measured to induce that result. In an essay on porn, Dworkin tells us what porn is by giving us titles of a couple of novels and films, titles such as *Whips Incorporated* and *Sex Kittens*.¹³³ These references might beg the same question that the No Dose strategy begs (what is porn anyway?), but you should notice that they do so while seeming, at least initially, to answer that question. Yes, yes, we are meant to think that this stuff must be pornography. There is no reason for us to have to read *Whips Incorporated* or see *Sex Kittens* to know that Dworkin has got it right. The fact that the titles are silly, as well as dirty, creates, justifies, and invites us to share Dworkin's dismissive attitude towards them.

There is one type of small dose that does seem likely to satisfy the reader that our Small Doser has got it all right; the reader need not also see it to know it and, thereby, risk having it. This small dose is a distillation of the hardest of the hard-core pornography, which is material that no one really disputes should be regulated. Consider a small dose along the lines of a snuff film. A snuff film is a pornographic movie whose climax occurs when an actress is killed for the purpose of sexually arousing the audience.¹³⁴ No one has been able to establish that snuff films really exist, but assume that they do, and assume further that the phrase is being used by a

132. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). No Dosing used to be the rage among judges in any case involving sexual themes. Long ago, the Supreme Court of Pennsylvania lamented in a rape case, "This case discloses an amount of social and moral degradation that is not pleasant to contemplate. Its discussion will be confined within the narrowest possible bounds." *Commonwealth v. Allen*, 19 A. 957 (Pa. Super. Ct. 1890). Likewise, as Fred Schauer points out, most courts in early obscenity cases did not require indictments to quote or describe the offensive language with specificity because they did not want these "bawdy and obscene matters" to foul their records. FREDERICK F. SCHAUER, *THE LAW OF OBSCENITY* 11 (1976). Some contemporary judges continue to echo this sentiment. Writing for the Court in *Oncale v. Sundowner Offshore Service Inc.*, 523 U.S. 75 (1998), Justice Scalia declined to offer a precise description of the episode giving rise to a sexual harassment claim "in the interest of both brevity and dignity." *Id.* at 77.

133. RONALD DWORKIN, *A MATTER OF PRINCIPLE* 335 (1985).

134. See *THE NEW OXFORD AMERICAN DICTIONARY* 1617 (2001).

sensible author, by which. I mean one who is not inclined to conflate the snuff film with the *Playboy* centerfold.¹³⁵ Neither the reader nor, for that matter, the author herself must see a snuff film to know that she would be willing to do whatever it takes to have them eliminated from the face of the earth. True, she may wonder whether, why, and how these themes sexually excite viewers, but she either feels no desire to test her own reaction, or she is able to overcome quickly any such temptation. She is sickened at the mere thought of seeing the movie and even more sickened at the thought that it might be arousing to entertain seriously the possibility of actually watching it herself to find out. As I suggested, though, this small dose is effective only because everybody already agrees that the material is pure poison. Outside this narrow context, when we move away from the hard fringes towards the soft core of pornography, into those erotic materials whose toxic effects are hotly disputed, the function and value of the small dose may be more unpredictable.¹³⁶

Some small doses may have side effects, ones you might consider unwholesome, at least when they break out in your students, not to mention yourself. Contemplate what could happen if, on one of your syllabi, you included Cass Sunstein's article, *Pornography and the First Amendment*.¹³⁷ In the article, Sunstein throws his weight behind the feminist antipornography ordinance, tailored to suit him, of course. Sunstein's objective is to promulgate a definition of "regulable" pornography that will work, both in the sense that it cuts right to the most serious harms that he believes pornography inflicts on women and in the sense that liberal judges actually might go for it. Sunstein intends his definition of pornography to be different from both the conventional approach to obscenity and the radical-feminist approach to pornography, the latter of which is embodied in an ordinance drafted by Andrea Dworkin and Catharine MacKinnon, passed by the City of Indianapolis, and invalidated on First Amendment grounds by the United States Court of Appeals for the Seventh Circuit.¹³⁸ According to Sunstein's definition of regulable porn, a work may be outlawed when three elements are present. The work: (1) is sexually

135. For example, Catharine MacKinnon refers to *Playboy* and the snuff film in the same breath, really, in the same sentence, since she believes that both promote the sexual abuse of women, albeit (I assume) among different groups of consumers. See MACKINNON, *supra* note 8, at 22-23.

136. Consider the small-dose *Snake Fuckers*, which is the title of a movie that provided the basis for a federal obscenity conviction. See *United States v. Guglielmi*, 819 F.2d 451, 453 (4th Cir. 1987). Does it have the same effect as snuff film? Maybe, maybe not. What about *Horney Boar* or *Horsepower*? See *id.* at 453-54. In *Guglielmi*, the court rejected the defendant's claim that the movie was too disgusting to be sexually arousing, as obscenity doctrine requires. Could the court have said, "Look, readers, all we must do to make our case is to disclose the title of the movies?"

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

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

explicit; (2) portrays women as enjoying or deserving physical abuse; and (3) has the purpose and effect of producing sexual arousal.¹³⁹

Initially, Sunstein expresses confidence that, unlike those he aims to supplant, his abstract test will do the job for which it is intended. He also seems to imagine that we will get it right away, that we will understand which materials he proposes to ban and which to allow; as he puts it, “the basic concept should not be obscure.”¹⁴⁰ In the next breath, however, he worries that the abstract definition alone may be insufficient to tell us precisely where on the continuum of sexually explicit and violent materials it draws the line. As he concedes, “It is difficult to capture the nature of genuine pornography without presenting examples.”¹⁴¹ He then mentions one work that satisfies his three criteria, a work that he deems “genuine pornography”: “One such example is the ‘Beaver Hunters’ advertisement in *Hustler*, which shows a nude woman strapped to the top of a car; the copy below the photograph states that the woman would be ‘stuffed and mounted’ as soon as the ‘hunters’ got her home.”¹⁴²

Now, go ahead, and picture yourself as a teacher in class. There you are, discussing Sunstein’s article. The students begin to ask questions, as you have participated in training, even encouraging, them to do, and one of their questions is whether *Beaver Hunters* really satisfies Sunstein’s own definition. Like Sunstein, the students tend to agree that pornography is harmful, but, also like him, they do not want to ban all (or, for that matter, very many) materials with sexual themes. When they encounter the description of *Beaver Hunters*, they begin to doubt that Sunstein really knows it when he sees it even when he is the one who is defining it. True, Sunstein’s sources do seem to be impeccable. *Beaver Hunters* was published by that Larry Flynt, and Sunstein reports that he got it from the same cite where James Lindgren obtained most of his porn, namely, Andrea Dworkin’s collection, *Pornography: Men Possessing Women*.¹⁴³ But, still, the students are puzzled. As they point out, Sunstein refers to *Beaver Hunters* as an “advertisement,” and they speculate that it might be a cartoon rather than a photograph. If it is a cartoon, it must be intended to be a joke, maybe, a satire, and the target of the joke, the satire, might be the male hunter, rather than the female hunted. Maybe, just maybe, the cartoon tacitly criticizes, rather than glorifies, male sexual violence. After all, they reason, a guy must be a loser or a creep if he has no other way to get a date. But, they wonder, what precisely is that way? What does the woman look like? What exactly is her posture, her facial expression? And what about

139. Sunstein, *supra* note 137, at 592.

140. *Id.*

141. *Id.* at 593.

142. *Id.*

143. *Id.* at 593 n.31.

the men? With whom, and how, is the viewer to identify? The students have no idea because they have not seen *Beaver Hunters*; indeed, some of them raise their hands to advise you that they have never seen any pornography at all. Is this pornography, and, if so, do you really think it satisfies Sunstein's sexual arousal criterion? Can a cartoon do it for you? Well, you intimate, you certainly are in no position to enlighten them, as you have never laid eyes on *Beaver Hunters* either.

So, what happens next? Suddenly, the students and you get the idea, oh dear, perhaps you do have to see it after all. As I mentioned, some of them still have a soft spot for the First Amendment, and you might too. After class, a student comes up to report that she thinks *Beaver Hunters* is not a cartoon at all, but a photograph, because she may have spotted it once in a (feminist) anthology in a bookstore in San Francisco. Another student stops by your office to mention that a former roommate has a *Hustler* collection; maybe, *Beaver Hunters* is included there. By the way, though, what was the issue in which *Beaver Hunters* appeared? Sunstein didn't cite it, did he?¹⁴⁴ Oh, well, no problem, Professor, it won't take long to skim the whole pile of magazines. When these helpful leads take you nowhere, what do you do? Come on, you are a lawyer, as well as a scholar, you know how to do research, right? Of course, you know how to do it; you ask your reference librarians to pick up the scent. After all, there is absolutely no point in making a trip all the way to your local bookshop to look for a dirty magazine published in 1978. Your librarians exhaust themselves running down all of the available academic sources of pornography, but, unlike Lindgren, they come up empty. Then, at last, one of them suggests, why not go ahead and order a copy of the back issue directly from *Hustler's* corporate offices? (Well, okay, sure, why not? You can request reimbursement from your research account since the thing is wanted for bona fide scholarly purposes. But, for heaven's sake, persuade the librarian to place the order for you on the library's American Express card or, if *Hustler* won't take American Express, on the librarian's own VISA card. That way, you kill two birds with one stone: You avoid the bother of filling out and submitting a reimbursement form, and you make sure that your name won't be the one that pops up on Larry Flynt's *Beaver Lovers* mailing list.) Finally, *Hustler* arrives in your mailbox (in an opaque envelope, I hope), but, before you even have a chance to retrieve it, what happens? You receive emails from your students and librarians asking if they may come and take a look at it. You knew they would want to see it too, didn't you? And you weren't thinking of blaming them for it, were you? After all, they assisted you in the hunt, they collaborated with you in becoming the hunter, in being the one whom Sunstein says he would outlaw. That's right, you have become a *Beaver Hunter*, if only virtually, but you don't have to

144. See (if you can and care to find it) *HUSTLER*, Dec. 1978, at 18.
HeinOnline -- 90 Cal. L. Rev. 2182 2002

buy the radical feminist arguments to know that, these days, the virtual is the real. And you must be one who is a total loser, a real creep, since you are not socially and economically disadvantaged, excuses that you might be inclined to extend to those men depicted in that cartoon or photograph, but not to yourself.

Sunstein may have intended for his readers to undertake this exercise, if only hypothetically, as we have done. But, wait a minute, even in the hypothetical, we haven't gone all the way. Look, the envelope is there, on your desk. What are you waiting for? Go ahead, open it. No, of course, you do not have to. You know what it is, don't you? Sure you do; at least, you've got a pretty good hunch. By now, you've realized that it probably is a representation of a dead woman. She's got to be dead. When was the last time you saw a hunter, whether out of hunger or for amusement, strap a live animal to the top of his car? And you know that the representation is sexually arousing since Sunstein has vouched that Beaver Hunters meets each of his three criteria. But, are you sure that Sunstein saw it? And, even if he did, are you sure that, when he saw it, he correctly concluded that it was it? Psychiatrists have a name for people who get off looking at pictures of dead women. So, maybe, you'd better go ahead and take a look at it. It couldn't be that bad, could it? Or that good?

