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The Myth Revisited: Obscenity Law Since 2015

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Abstract

Over the past decade, the legal doctrine of obscenity has undergone a quiet transformation, challenging the widespread assumption of its obsolescence. While legal scholars have often dismissed obscenity law as a relic, recent enforcement patterns reveal its persistent—if evolved—role in American jurisprudence. This Article systematically examines federal and state obscenity prosecutions from 2015 to 2025, revealing a marked shift in both the targets and rationales of enforcement.

At the federal level, traditional obscenity prosecutions against adult content producers have all but disappeared. In their place, federal authorities now invoke obscenity statutes primarily as adjuncts to child pornography cases, repurposing these laws to address offenses involving minors rather than consensual adult expression. This development signals a departure from earlier decades, when federal prosecutors focused on commercial purveyors of adult material, particularly those operating online.

State-level enforcement has also changed course. Rather than pursuing large-scale distributors, state prosecutors increasingly apply obscenity statutes to cases involving non-consensual creation or dissemination of sexually explicit content—commonly referred to as "revenge porn." These cases typically involve individualized harm, such as the unauthorized sharing of intimate images via social media or personal devices, rather than the mass distribution of commercial pornography. As a result, obscenity law at the state level now functions as a tool for remedying interpersonal violations, foregrounding issues of privacy and autonomy.

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This Article situates these enforcement trends within a broader political and constitutional context. Recent calls for renewed enforcement of the Comstock Act—a 19th-century federal statute that criminalizes the mailing of obscene materials and abortion-related products—have elevated obscenity law's political significance. Also, legislative blueprints, like Project 2025, advocate for aggressive federal action against all forms of pornography, echoing historical cycles of heightened obscenity enforcement. These developments suggest that obscenity law may be poised for resurgence, with implications for both sexual expression and reproductive rights.

Through detailed case cataloging and statistical analysis, the Article provides a descriptive account of obscenity prosecutions over the past decade, enabling comparison across jurisdictions and illuminating the shifting geography of enforcement. Notably, state and local prosecutions now occur more frequently in Northern states and urban centers, defying traditional expectations of rural or religious locales as enforcement hotspots.

Normatively, the Article argues that the contemporary application of obscenity law reflects a reorientation from community morality to the protection of individual victims. This evolution has intertwined obscenity doctrine with ongoing debates about privacy, autonomy, and free speech. By tracing enforcement patterns and their underlying rationales, the Article demonstrates that obscenity law remains a dynamic and consequential force in American legal and political discourse. Understanding its current trajectory is essential for anticipating future developments and for informing broader conversations about the boundaries of lawful sexual expression.

In recent decades, obscenity law has shifted towards the protection of individual victims and away from the prosecution of adult entertainment. But this changing landscape has reinvigorated the perspective that obscenity and collective morality are intertwined. Thus, as the Article concludes, the obscenity doctrine retains ongoing legal, political, and social significance despite the myth of its demise.

Introduction

The last decade has witnessed a quiet but profound repurposing of obscenity law—from community morality to personal privacy enforcement. Despite this significant shift, legal academics tend to treat the obscenity doctrine as a relic of the past, assuming that it is rarely or never enforced. But as I discussed a decade ago in *The Myth of Obsolete Obscenity*, obscenity prosecutions of large-scale adult content producers occurred with some regularity in both state and federal courts through at least the mid-2010's.[1] This phenomenon

[1] *See generally* Jennifer M. Kinsley, *The Myth of Obsolete Obscenity*, 33 Cardozo Arts & Ent. L.J. 607 (2016).

was typified by cases like *United States v. Extreme Associates*[2]—in which the government alleged that Extreme Associates shipped a number of fetish films to an undercover postal inspector in Pittsburgh—and *United States v. Paul Little*[3]—in which Little and his company were alleged to have mailed obscene videos to postal inspectors in Tampa. As these examples demonstrate, federal obscenity prosecutions in the 2000s and 2010s tended to be brought in large metropolitan areas against large-scale, commercial producers of adult material.[4] Federal prosecutors in the early twenty-first century also tended to focus their efforts on online content, with undercover agents typically accessing material from producers' mail-order websites.[5] In contrast, state obscenity prosecutions during that time period targeted brick-and-mortar distribution outlets that had a physical presence in prosecutors' home communities.[6] Even at the state level, though, obscenity cases tended to charge commercial pornography sold by retail purveyors.[7]

As this Article explains, those patterns have changed over the last decade. At the federal level, obscenity prosecutions of online adult content, or what one might typically call pornography, have entirely vanished. While federal obscenity cases do still occur, those few cases in which federal obscenity charges have been filed since 2015 have all involved the presence of children rather than consenting adults. In these cases, obscenity charges merely duplicate child pornography charges.[8] Thus, over the past decade, obscenity enforcement at the federal level has become an alternative mechanism for addressing child pornography and child sexual abuse. This represents a

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[2] *See* 431 F.3d 150, 152 (3d Cir. 2005).

[3] *See* 365 Fed. Appx. 169 (11th Cir. 2010).

[4] Kinsley, *supra* note 1, at 639–40.

[5] *Id.* at 640 ("In terms of content, federal prosecutors have almost exclusively targeted online content or material that could be mail-ordered through the web, perhaps due to the federal focus on regulating interstate commerce. This aspect of the federal obscenity agenda has allowed prosecutors to forum-shop cases into virtually any federal district.").

[6] *Id.* at 641 ("Typically, state and local authorities levy obscenity charges against retail businesses and their owners and not the producers or online distributors of pornography.").

[7] *Id.*

[8] *See, e.g.*, United States v. Fraley, No. 22-5057, 2023 WL 409700, at *1, 3 n.3 (6th Cir. Jan. 26, 2023) (noting that Fraley was charged with obscenity under 18 U.S.C. § 1465 in addition to eleven counts of production, distribution, receipt, and possession of child pornography and that obscenity count was severed and later dismissed after Fraley was convicted of all child pornography counts).

departure from previous uses of the obscenity doctrine, which focused more heavily on material made by and for adults.[9]

But for a few notable exceptions, state obscenity prosecutions have also shifted away from targeting the commercial production of obscenity. Instead, over the past decade, state-level obscenity prosecutions have increasingly attacked what might be colloquially referred to as "revenge porn"—the creation or distribution of sexually-explicit content without a participant's consent.[10] Rather than being mass-produced and commercially distributed, this content tends to be circulated individually by cell phone, social media, or other personalized method of communication.[11] By focusing on cases of individual creation, obscenity law at the state level has therefore become a mechanism for remedying interpersonal—rather than perceived societal—harm.

These changes are significant for several reasons. First, they represent a shift in the governmental interests being advanced by the obscenity law enforcement, nationally and locally. Courts and scholars have long debated the underlying purposes of excluding obscenity from First Amendment protection.[12] While no

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[9] *See, e.g.*, Kinsley, *supra* note 1, at 646 app. (cataloging state obscenity charges from 2000 to 2015).

[10] *See, e.g.*, Alexandra Benisek, *What is Revenge Pornography?*, WebMD (Nov. 4, 2024), https://www.webmd.com/sex-relationships/revenge-porn/ [https://perma.cc/U6KR-DZH6] (last visited June 3, 2025) (defining revenge porn as "a type of digital abuse in which nude or sexually explicit photos or videos are shared without the consent of those pictured").

[11] *See infra* Appendix A: State Obscenity Prosecutions Since 2015 (Alphabetical by State) (cataloging obscenity cases brought at the state level and describing the method of distribution).

[12] In *Paris Adult Theater I v. Slaton*, 413 U.S. 49, 57–60 (1973), for example, the Supreme Court discussed with approval the idea that community-based interests support the government's criminalization of obscenity: "In particular, we hold that there are legitimate state interests at stake in stemming the tide of commercialized obscenity, even assuming it is feasible to enforce effective safeguards against exposure to juveniles and to passersby. Rights and interests 'other than those of the advocates are involved.' These include the interest of the public in the quality of life and the total community environment, the tone of commerce in the great city centers, and, possibly, the public safety itself. The Hill-Link Minority Report of the Commission on Obscenity and Pornography indicates that there is at least an arguable correlation between obscene material and crime. Quite apart from sex crimes, however, there remains one problem of large proportions aptly described by Professor Bickel:

> 'It concerns the tone of the society, the mode, or to use terms that have perhaps greater currency, the style and quality of life, now and in the future. A man may be entitled to read an obscene book in his room, or expose himself indecently there . . . . We should protect his privacy. But if he demands a right to obtain the books and pictures he wants in the market, and to foregather in public places—discreet, if you

one justification has emerged as the sole basis upon which the government may prosecute obscenity, the historic rationales for criminalizing obscene speech tend to focus on themes of decency, morality, and community preservation.[13] Obscenity prosecutions brought through the early 2010s reflected these values: by removing commercial pornography from the marketplace, government actors attempted to sanitize communities of allegedly indecent expression.[14] But current patterns of obscenity enforcement eschew these traditional rationales. Instead, modern obscenity prosecutions appear to reflect a desire to protect an individual victim from tangible sexual harm.[15]

Secondly, the manner in which the government currently enforces obscenity law secures its relevance to ongoing legal and political developments. As one example, members of Congress recently called for the renewed enforcement of the Comstock Act, an 1873 law that makes the distribution of obscene material a federal crime.[16] The Comstock Act weighs heavily in the

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> will, but accessible to all—with others who share his tastes, then to grant him his right is to affect the world about the rest of us, and to impinge on other privacies. Even supposing that each of us can, if he wishes, effectively avert the eye and stop the ear (which, in truth, we cannot), what is commonly read and seen and heard and done intrudes upon us all, want it or not.'
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> As Mr. Chief Justice Warren stated, there is a 'right of the Nation and of the States to maintain a decent society.'

(citations omitted). Picking up on these themes, Professor Andrew Koppelman argues that the obscenity doctrine exists to eliminate the potential moral harm caused by exposure to illicit sexual depictions, a goal he contends obscenity law is ill-equipped to accomplish. *See generally* Andrew Koppelman, *Does Obscenity Cause Moral Harm?*, 105 Colum. L. Rev. 1635 (2005).

[13] *See supra* note 12 and accompanying text; *see generally* Matthew Benjamin, *Possessing Pollution*, 31 NYU Rev. L. & Soc. Change 733 (2007) (tracing the morality justification in obscenity regulation and case law from the nineteenth century to late twentieth century).

[14] Kinsley, *supra* note 1, at 640 ("[V]iewed in concert with recent Congressional enactments, the prioritization of online obscenity appears to be part of a broader effort at the federal level to sanitize and censor the Internet.").

[15] *See, e.g.*, State v. Cranford, 279 N.C. App. 512, ¶¶ 2, 3, 32 (N.C. Ct. App. 2021) (upholding obscenity conviction where defendant circulated photographs of himself and his ex-girlfriend engaging in sexual acts to friends and acquaintances after their breakup); State v. Pollock, 78 N.E.3d 373, 376 (Ohio Ct. App. 2017) (upholding obscenity conviction where defendant emailed three female coworkers unsolicited images of him "pumping" his penis, some of which included visible semen or masturbation aids).

[16] *See* Letter from U.S. Sens. to Merrick B. Garland, Att'y Gen., Congress U.S. (Jan. 25, 2023), https://www.documentcloud.org/documents/24834197-20230123-letter-on-comstock-to-doj/ [https://perma.cc/4JPU-6R76].

current political and constitutional landscape, given that it simultaneously prohibits mailing both obscene material and abortion-related products.[17] Because this single piece of legislation links the suppression of obscenity and reproductive freedom, there is renewed interest from both scholars and the general public in understanding its history.[18] In that context, this Article helps trace how the Comstock Act and its state law counterparts are currently being used to target allegedly obscene material, a critical data point in the ongoing discourse about the Act's broader societal impacts.[19]

In addition, the eradication of pornography features prominently in Project 2025, a blueprint for legislative and administrative action by the federal government formally presented in the Heritage Foundation's "Mandate for Leadership: The Conservative Promise."[20] This document calls for the criminalization of all pornography and for serious consequences, including imprisonment and sex offender registration obligations, for those who distribute it.[21] Similar calls to action followed periods of heavy obscenity enforcement by the federal government in the past.[22] Thus, if history is any guide, the current political landscape may be a harbinger of forthcoming obscenity indictments.

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[17] 18 U.S.C. § 1461 (1873).

[18] *See, e.g.*, Reva B. Siegel & Mary Ziegler, *Abortion's New Criminalization—A History-and-Tradition Right to Health-Care Access After* Dobbs, 111 Va. L. Rev. 413 (2025); Luke Vander Ploeg & Pam Belluck, *What to Know About the Comstock Act*, N.Y. Times (May 16, 2023), https://www.nytimes.com/2023/05/16/us/comstock-act-1978-abortion-pill.html [https://perma.cc/K5R5-CVZC].

[19] *See infra* Section II.A (containing data on federal obscenity enforcement from 2015 to present); Appendix A: State Obscenity Prosecutions Since 2015 (Alphabetical by State) (cataloging state obscenity cases from 2015 to present).

[20] *See* Ryan T. Beckwith, *Project 2025's Plan to Criminalize Porn Has a Sinister Subplot*, MS NOW (July 12, 2024, 16:42 ET), https://www.msnbc.com/opinion/msnbc-opinion/project-2025-porn-ban-lgbtq-transgender-rcna161562 [https://perma.cc/423R-7EMQ] ("Pornography should be outlawed. The people who produce and distribute it should be imprisoned. Educators and public librarians who purvey it should be classed as registered sex offenders. And telecommunications and technology firms that facilitate its spread should be shuttered." (quoting Heritage Found., Mandate for Leadership: The Conservative Promise 5 (Paul Dans & Steven Groves eds., 2023)).

[21] *Id.*

[22] *See* Jacob Sullum, *Porn Pause*, Reason (Aug.–Sep. 2011), https://reason.com/2011/06/19/obscene-investigations/ https://perma.cc/DCM4-NG2D] (describing 2011 letter from Senator Orrin Hatch to then-Attorney General Eric Holder encouraging more aggressive obscenity enforcement).

Against this backdrop, this Article explores the application of the obscenity doctrine by state and federal authorities from 2015 to the present. It begins in Part I with an overview of the obscenity doctrine and obscenity enforcement patterns through 2015. Incorporating the seminal cases of *Roth v. United States*[23] and *Miller v. California*,[24] this Part traces the formation of the obscenity doctrine in the Supreme Court alongside the trend of aggressive obscenity law enforcement by federal and state prosecutors from the 1960s to the 1990s.[25] But, as this Part points out, obscenity enforcement continued even when the Supreme Court's involvement in the doctrine came to a halt. The development of obscenity jurisprudence concluded in 1987, when the Supreme Court heard its most recent obscenity case.[26] But the end of the doctrine's evolution did not signal the end of its enforcement. Despite the Supreme Court's silence, obscenity prosecutions actively continued in the lower courts in the ensuing decades, up to and including the year 2015, the last year tracked by *The Myth of Obsolete Obscenity*.[27] Part I summarizes this tradition. Further, it includes an overview of the scholarly literature on obscenity enforcement and its changing view of the relevance of obscenity doctrine.

Part II of the Article then discusses data, trends, and significant obscenity cases at the state and federal levels over the decade spanning the years 2015 to 2025.[28] The primary purpose of this Part is to catalog and describe the cases in which defendants have been prosecuted for obscenity offenses. Further, it contains statistical data points that track obscenity enforcement patterns as well. All of the state obscenity cases discussed in Part II are cataloged in Appendix A, which lays out key information—including the type of material, the nature of the charges, the case outcome, and the length of the defendant's sentence, if any—to enable comparison across state lines. This effort serves a descriptive function, one that enables researchers, policy-makers, and the general public to be better informed about the realities of obscenity law.

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[23] 354 U.S. 476 (1957).

[24] 413 U.S. 15 (1973).

[25] *See* P. Brooks Fuller, Kyla P.G. Wagner & Farnosh Mazandarani, *Porn Wars: Serious Value, Social Harm, and the Burdens of Modern Obscenity Doctrine*, 28 Am. U. J. Gender, Soc. Pol'y & L. 121, 123 (2020).

[26] *See* Kinsley, *supra* note 1, at 612 (identifying the Supreme Court's decision in *Pope v. Illinois*, 481 U.S. 497 (1987), as its final foray into obscenity law).

[27] Kinsley, *supra* note 1.

[28] *See also* Appendix A: State Obscenity Prosecutions Since 2015 (Alphabetical by State) (cataloging and summarizing state obscenity prosecutions during the same time period).

Part III then makes normative observations about obscenity enforcement patterns over the past decade. Comparing recent use of the obscenity doctrine to older enforcement trends, the article unearths new truths about how federal and state prosecutors view obscenity law in the fully digital age. As the consumption of pornography has migrated online, obscenity cases have become increasingly individualized and less commercialized. As a result, prosecutors today tend to focus less on large suppliers of adult content and more on cases with a perceived victim. Perhaps for this reason, obscenity prosecutions from 2015 to 2025 have defied traditional geographic and political expectations.[29]

Together, these shifts—in governmental interest, enforcement patterns, and the national political landscape—have resulted in an inextricable link between obscenity, privacy, and autonomy in the modern legal discourse. Examining the current status of the obscenity myth therefore exposes the obscenity doctrine's enduring relevance to the broader concept of free speech and the public's perception of freedom.

I. The Criminalization of Obscenity

A. The Supreme Court's Obscenity Jurisprudence

Obscene expression is not protected by the First Amendment, and, as a result, its production, distribution, and sale can be made a crime.[30] Today, the federal government and nearly all states criminalize obscenity in some form.[31] But defining what expression constitutes obscenity is not so easy. In fact, the Supreme Court wrestled with this question for three decades, and unresolved questions remain in the lower courts still today.[32]

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[29] Rather than occurring in rural or Southern communities, today's obscenity prosecutions more frequently occur in Northern states and cities. *See id.* (cataloging, for example, four obscenity cases since 2015 in Pennsylvania and four in Indiana, whereas only three occurred in North Carolina and none in Alabama, Mississippi, South Carolina, Arkansas, or Tennessee during the same time period).

[30] *See, e.g.*, 18 U.S.C. § 1461 (criminalizing the act of mailing obscene material); Ohio Rev. Code Ann. § 1907.32 (2024) (making it a felony to pander obscenity).

[31] Kinsley, *supra* note 1, at 612. Oregon separately protects obscenity under its state constitution; therefore, obscenity is not a crime in Oregon. *See* State v. Henry, 302 Or 510, 513, 732 P.2d 9, 10 (1987).

[32] *See, e.g.*, Tyler Breland Valeska, *Speech Balkanization*, 65 B.C. L. Rev. 903, 941 (2024) ("Despite a longstanding lower court split in interpreting [the community standards aspect of the obscenity test], the Court has not returned to the issue of

The Supreme Court predominantly developed its obscenity doctrine between 1957, when it definitively held in *Roth v. United States* that obscenity is unprotected by the First Amendment,[33] and 1987, when it last modified the legal standards for what constitutes obscenity.[34] Over time, the Court has struggled to define the universe of material so devoid of constitutional protection that it constitutes obscenity, with one Justice famously quipping "I know it when it see it."[35] Nonetheless, in 1973, the Court adopted the *Miller* test for obscenity.[36] This three-part standard queries: (1) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to a prurient interest in sex; (2) whether, applying contemporary community standards, the work depicts or describes sexual conduct, as defined by state law, in a patently offensive way; and (3) whether the work, taken as a whole, lacks serious literary, scientific, artistic, or political value.[37]

Over the next 15 years, subsequent Supreme Court decisions clarified components of the *Miller* test. In *Smith v. United States*, the Court held that the contemporary community standards used to judge whether work appeals to a prurient interest and depicts sexual conduct in a patently offensive way are determined by the jury and cannot be defined by state law.[38] And in *Pope v. Illinois*, the Court clarified that only the first two prongs of the *Miller* test—the prurient interest and patent offensiveness prongs—are to be judged using contemporary community standards.[39] The third prong—whether the works lacks serious value—is judged by a reasonable person standard.[40]

Nevertheless, the vagueness of the *Miller* test has been the subject of much criticism and consternation in the more than 50 years since its adoption.[41] Lower courts have struggled to apply the *Miller* test, particularly in

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whether a national standard is required to prevent online distributors from leveling down.").

[33] 354 U.S. 476, 492 (1957).

[34] *See* Pope v. Illinois, 481 U.S. 497, 500–01 (1987) (holding that *Miller* standard for whether a work taken as a whole lacks serious literary, scientific, artistic, or political value must be judged taking the material as a whole).

[35] Jacobellis v. State of Ohio, 378 U.S. 184, 197 (1973) (Stewart, J., concurring).

[36] *See generally* Miller v. California, 413 U.S. 15 (1973).

[37] *Id.* at 24.

[38] 431 U.S. 291, 305 (1977).

[39] 481 U.S. at 500–01 (1987).

[40] *Id.* at 501.

[41] *See generally* Alan D. Miller, *The Problem of Obscenity*, 16 Wash. U. Juris. Rev. 185 (2024) (arguing that community standards under *Miller* cannot and do not exist); John Tehranian, *Sanitizing Cyberspace: Obscenity, Miller, and the Future of Public*

light of the changing landscape by which allegedly obscene material is distributed. Despite these difficulties, the Supreme Court has not altered the *Miller* test, nor has it reviewed a case in which the test was at issue, since 1987.[42]

B. The Scholarly Approach to Obscenity

Scholars actively engaged with the obscenity doctrine during its early development by the Supreme Court.[43] But in more recent decades, obscenity has taken a back seat to other topics in the First Amendment literature.[44] Those few scholars who continued to write about obscenity law—prominent among them, Geoffrey Stone—tended to do so from a historical lens.[45] As a result, and for a time, the predominant view in the academy was that obscenity cases were rarely filed,[46] that the doctrine was ineffective and obsolete,[47] and that, in the words of Amy Adler, "[i]n the escalating war against pornography, pornography has already won."[48]

Discourse on the Internet, 11 J. Intel. Prop. L. 1, 4 (2003) (criticizing *Miller* for prioritizing criminalization of sexually explicit speech rather than sexually harmful action).

[42] *See Pope*, 481 U.S. at 497. In 2025, the Supreme Court decided *Free Speech Coalition, Inc. v. Paxton*, which upheld a Texas law requiring websites that publish certain sexually explicit content to verify the ages of their users. It did so on the basis that states have a separate and important interest in protecting minors from accessing obscenity. 606 U.S. 461, 495–99 (2025). While ostensibly discussing the obscenity doctrine, to the extent that protecting minors from viewing obscenity justified Texas's age-verification requirement, the *Paxton* decision left traditional obscenity principles unaltered. It is therefore not, in the literal sense, an obscenity case.

[43] *See generally* Frederick Schauer, *Speech and 'Speech'—Obscenity and 'Obscenity': An Exercise in the Interpretation of Constitutional Language*, 67 GEO. L.J. 899 (1979).

[44] A widely discussed topic in modern First Amendment literature is social media content moderation. *See, e.g.*, Evelyn Douek & Genevieve Lakier, *Lochner.com?*, 138 Harv. L. Rev. 100 (2024); Richard Ashby Wilson & Molly K. Land, *Hate Speech on Social Media: Content Moderation in Context*, 52 Conn. L. Rev. 1029 (2021).

[45] *See, e.g.*, Geoffrey Stone, *Sex and the First Amendment: The Long and Winding History of Obscenity Law*, 17 First Amend. L. Rev. 134 (2018).

[46] Brian L. Frye, *The Dialectic of Obscenity*, 35 Hamline L. Rev. 229, 235 (2012) ("After *Miller*, obscenity prosecutions gradually slowed to a trickle").

[47] *See, e.g.*, John Copeland Nagle, *Pornography as Pollution*, 70 Md. L. Rev. 939, 940 (2011) ("Legal scholars say the law has failed to control Internet pornography. It is hard to argue with them."); Amy Adler, *All Porn All the Time*, 31 N.Y.U. Rev. L. & Soc. Change 695, 703 (2007); Koppelman, *supra* note 12, at 1639 (describing the "inevitable clumsiness" of First Amendment jurisprudence related to pornography).

[48] Adler, *supra* note 47, at 695.

But the scholarly view of obscenity law is changing. One reason for obscenity law's resurgence is its close ties to the Comstock Act, a federal statute which simultaneously bans the mailing of obscenity and abortion-related products.[49] The Comstock Act was originally adopted in 1873 and has been on the books ever since.[50] Despite its criminalization of particular methods of abortion access, it largely went unnoticed outside of First Amendment circles until the Supreme Court decided *Dobbs v. Jackson Women's Health Organization*, reversing its precedent and holding that there is no constitutional right to an abortion.[51] Prior to *Dobbs*, the abortion products strand of the Comstock Act had not been enforced, given the then-existing constitutional protection for a pregnant person's right to abortion access.[52] But as that protection evaporated, and the possibility of Comstock Act enforcement against abortion providers became prescient, the historical enforcement of the Act against obscenity purveyors became all the more relevant. Understanding how the Comstock Act has been used to target sexually-oriented expression therefore helps sharpen the focus on how it might be used to target previously-protected reproductive autonomy.

Against this political and legal backdrop, scholars have recently begun highlighting the common history between the Comstock Act's two strands.[53] For example, leading reproductive freedom scholars Mary Ziegler and Riva Siegel argue that the extension of obscenity crimes to abortion products originated from a common governing interest: the desire to enforce sexual purity standards against women.[54] Other scholars' research gives credence to this hypothesis. For example, citing the early application of the Comstock Act against Victoria Woodhull, an advocate for women's sexual self-determination, at least one researcher has suggested that the Comstock Act actually inspired the creation of the women's rights movement.[55] These pieces are not about obscenity law *per se*. But they demonstrate the connectivity of the

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[49] *See* 18 U.S.C. § 1461.

[50] Reva Siegel & Mary Ziegler, *Comstockery: How Government Censorship Gave Birth to the Law of Sexual and Reproductive Freedom, and May Threaten It Again*, 134 Yale L.J. 1068, 1071 (2025).

[51] *Id.* at 1074–75.

[52] *Id.* at 1158.

[53] *See, e.g.*, *id.*; Lars Noah, *Medication Abortion and the Mails: The Ghost of Anthony Comstock Rides Again?*, 41 Ga. St. U. L. Rev. 913 (2025).

[54] Siegel & Ziegler, *supra* note 50, at 1085–86.

[55] *Id.* at 1089–90 (describing Woodhull indictment); Isabella Haslinger Johnson, *The Comstock Law: Retaliation and Liberation*, 21 Viewpoints 146, 152–53 (2025) (on file with author) (arguing that early use of the Comstock Act to silence women's voices contributed to evolution of reproductive freedom as a prominent political issue).

Comstock Act's obscenity and contraceptive regulations. The reemergence of the Comstock Act in modern scholarly discourse demonstrates the importance of tracking obscenity enforcement patterns, as obscenity law is borne out of the same regulatory foundation.[56]

The modern literature on the subject further supports renewed interest in obscenity law as divorced from its Comstock Act origins and implications. Even separated from its impact on reproductive decision-making, scholars today recognize the potential of the obscenity doctrine to incorrectly suppress expression at the margins. Far from declaring pornography the victor in the so-called "porn wars," the current literature takes a much apprehensive view about the reach and impact of obscenity law.[57] One such voice is John Felipe Acevedo, who speaks to the "capricious" nature of federal obscenity prosecutions.[58] Given its focus on the trier of fact's subjective beliefs about sex—or what Acevedo calls the object-gaze—the *Miller* test entirely ignores the perspective of the models and actors depicted in allegedly obscene materials.[59] Acevedo argues that the exclusive object-gaze of the obscenity standard unjustly silences those whose sexual practices and bodies are represented, thus improperly shifting the focus from the subject of the material to its viewers.[60]

Kendra Albert also highlights the unworkability of the *Miller* test for obscenity in today's online environment.[61] They point to ongoing confusion in defining the relevant community—be it a larger online one or the one geographically defined by the district of prosecution.[62] Given the potential of obscenity prosecutions to result in criminal sanctions, they argue that the risk of incorrectly determining the community has led content producers to self-censor.[63]

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[56] Siegel & Ziegler, *supra* note 50, at 1181 ("The postal obscenity law came to demonstrate the kind of government overreach – 'Comstockery' – that has taught Americans the meaning of liberty.").

[57] The term "porn wars" was coined to refer to intense feminist debates in the 1970s and 1980s about the role of sexually-oriented material vis-à-vis the standing of women in society. *See* Cheryl B. Preston, *Consuming Sexism: Pornography Suppression in the Larger Context of Commercial Images*, 33 Ga. L. Rev. 771, 771 n.1 (1997). At least one scholar writing actively in the early 2000s declared that pornography had won the "porn wars." Adler, *supra* note 47, at 695.

[58] John Felipe Acevedo, *Law's Gaze*, 25 J. Race & Gender Just. 45, 47–48 (2022).

[59] *Id.* at 54–55.

[60] *Id.* at 85–87.

[61] *See generally* Kendra Albert, *Imagine a Community: Obscenity's History and Moderating Speech Online*, 25 Yale J.L. & Tech. 59 (2023).

[62] *Id.* at 71–73.

[63] *Id.* at 73 ("Even beyond state level prosecutions, perceptions of what constitutes obscenity, often a far cry from the actual material that was held legally obscene in the 2010s, have come to shape the production of pornography and sexually explicit materials of all types.").

Albert therefore contends that obscenity is not dead, whether enforced or not, because it exerts ongoing force in the online marketplace.[64]

Even law students remain interested in the modern application of the obscenity doctrine. Zoey Miller, a law student at the time, wondered whether a film she watched as part of her college curriculum could be vulnerable to the obscenity doctrine.[65] It was a valid question, given that the only objective guardrail *Miller* places on the scope of material that can be considered to be obscene is whether it depicts sexual conduct as defined by state law.[66]

The obscenity doctrine is therefore just as relevant today as it was in 1973 when the Supreme Court decided *Miller*. Prosecutions still occur, and the obscenity statutes maintain ongoing power over expression. Tracking enforcement patterns at the federal and state levels is therefore a useful endeavor that informs ongoing discussions about reproductive autonomy, personal decision-making, and the government's role in policing sexual harm.

C. Historical Enforcement Patterns

Enforcement of the obscenity doctrine began almost immediately after its advent. In the wake of *Roth*, which eliminated the argument that the Constitution protects obscene expression,[67] the Supreme Court issued dozens of obscenity opinions. In each, the Court determined whether the material deemed obscene by the lower courts was in fact obscenity under its

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[64] *Id*. at 73–75. Potentially relevant to Albert's hypothesis is a fascinating empirical study undertaken by Carnegie Mellon researcher Marty Rimm in the early days of the internet. *See* Marty Rimm, *Marketing Pornography on the Information Superhighway: A Survey of 917,410 Images, Descriptions, Short Stories, and Animations Downloaded 8.5 Million Times by Consumers in Over 2000 Cities in Forty Countries, Provinces, and Territories*, 83 Geo. L.J. 1849 (1995). Rimm studied pornography exchanged on internet bulletin boards in the mid-1990s. He discovered that availability of sexual imagery depicting vaginal sex exceeded demand at the time, which was relatively small, and that the demand for paraphilic, or extreme, sexual content exceeded the supply. *Id.* at 1890–91. Although decades old, Rimm's empirical results support Albert's theory that obscenity law may drive content creators away from the edges and towards more mainstream content.

[65] Zoey Miller, Note, *Do You Know It When You See It: Cinema, Pornography, and the First Amendment,* 101 Tex. L. Rev. 509, 510–11 (2022) (querying whether Anne Severson's film *Near the Big Chakra*, which consists entirely of close-ups of thirty-eight vaginas, constitutes legitimate film to be studied in college film studies course or pornography that is eligible for obscenity treatment and how to define the difference).

[66] Miller v. California, 413 U.S. 15, 21 (1973).

[67] Roth v. United States, 354 U.S. 476, 485 (1957).

newly-fashioned test.[68] As final arbiters on the question of whether a particular work was obscene, the Justices and their clerks routinely gathered to view these sexually explicit films in their entirety.[69]

Obscenity enforcement reached a peak in the 1980s and early 1990s during the so-called "porn wars."[70] Buoyed by the feminist movement on the left and Christian conservatives on the right, federal and state prosecutors during this time period took aim against the commercial pornography industry by initiating obscenity cases in rural jurisdictions like Broken Arrow, Oklahoma.[71] These geographic choices were not an accident. The common conception at the time was that Southern Bible belt communities maintained more puritanical standards on matters of sex and were more likely to deem even bland adult material obscene under *Miller*'s flexible standards.[72]

The so-called "porn wars" resulted in some moderate degree of success for anti-obscenity advocates.[73] Congress expanded the scope of federal racketeering laws to include asset forfeiture provisions for the trafficking of obscene materials.[74] And in 1986 the Department of Justice commissioned a study,

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[68] Michael Kent Curtis, *Obscenity: The Justices' (Not So) New Robes*, 8 Campbell L. Rev. 387, 392 (1986) ("Between 1957 and 1968, thirteen Supreme Court obscenity decisions produced fifty-five separate opinions. . . . Between 1967 and 1973 the Court reversed thirty-one obscenity convictions without benefit of opinion.").

[69] Matt Ford, *The Hilariously Twisted History of the Supreme Court and Porn*, New Republic (Jan. 17, 2025), https://newrepublic.com/article/190355/supreme-court-pornhub-free-speech [https://perma.cc/DG2Q-MTVM].

[70] P. Brooks Fuller, Kyla P. Garrett Wagner & Farnosh Mazandarani, *Porn Wars: Serious Value, Social Harm, and the Burdens of Modern Obscenity Doctrine*, 28 Am. U. J. Gender Soc. Pol'y & L. 121, 123 (2020).

[71] Todd Lochner & Dorie Apollonio, *Karma Police: Prosecutorial Strategies in Obscenity Cases and the Broader Culture War*, 2 Syracuse J.L. & Civ. Engagement (2014), https://slace.syr.edu/issue-2-on-life-and-death/lochner-karma-police/# [https://perma.cc/7RSV-5ATV].

[72] *See, e.g.*, *id.* ("Interview respondents also argued that conservative communities were more likely to convict under the *Miller* standard, and that probability of success was a critical component to these prosecutions."). Advocates for more aggressive obscenity enforcement by prosecutors today are also in favor of pursuing cases in conservative jurisdictions on the theory that jury pools in these locations are more likely to convict. *See, e.g.*, *Combatting Obscenity on the Internet: A Legal and Legislative Path Forward*, Ctr. Renewing Am. (Dec. 15, 2022), https://americarenewing.com/issues/combating-obscenity-on-the-internet-a-legal-and-legislative-path-forward/ [https://perma.cc/DWC6-42RV] ("[T]he single most effective legal strategy to combat online obscenity is to promote and bring more obscenity cases in conservative parts of the country.").

[73] Fuller, Wagner & Mazandarani, *supra* note 70.

[74] *Id.* at 139 (citing 130 Cong. Rec. 5434 (1984) (statement of Senator Helms)).

known as the Meese Report, that purported to track the harmful social effects of pornography.[75]

Obscenity enforcement at the federal level waned during the Clinton Administration.[76] But by the early 2000s, the federal government once again aggressively enforced its obscenity statutes against commercial pornography producers and retailers, even creating and funding a special prosecutorial unit to pursue these cases.[77] Consistent with this effort, federal prosecutors acting under President George W. Bush initiated a number of prosecutions against large-scale commercial adult-content producers in large metropolitan areas.[78] Some of these prosecutions had success, while others were dismissed pretrial.[79] Upon taking office in 2009, President Obama dismantled the special obscenity unit.[80] His administration completed the obscenity cases that were pending at the time, but did not initiate more.[81]

From a numerical standpoint, there were 309 federal obscenity indictments from 1996 to 2006.[82] No state-level database exists to provide precise data on obscenity prosecutions over time. Nonetheless, researchers studying prosecutorial discretion in obscenity cases have used newspaper archives, attorney interviews, and other sources of public information to approximate the number of state obscenity cases.[83] They estimate that 108 state obscenity prosecutions occurred between 1990 and 2006.[84] Thus, historically speaking,

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[75] *Id.* at 140.

[76] *See* Robert D. Richards & Clay Calvert, *Obscenity Prosecutions and the Bush Administration: The Inside Perspective of the Adult Entertainment Industry & Defense Attorney Louis Sirkin*, 14 Vill. Sports & Ent. L. J. 233, 239, 275 (2007) (indicating that obscenity enforcement was largely abandoned during the Clinton presidency and quoting Larry Flynt stating "We didn't have any federal obscenity prosecutions when Clinton was president. Clinton was smart—he knew that it was an uphill battle, and there were other things that he should be spending his time on.").

[77] Kinsley, *supra* note 1 at 639 ("[T]he establishment of a centralized Department of Justice obscenity task force under Pres. George W. Bush's tenure has been well-documented.").

[78] *Id.* at 640 (indicating that federal obscenity prosecutions under the Bush Administration occurred in Washington, D.C., Phoenix, Pittsburgh, Tampa, and Los Angeles).

[79] *See id.* at app. A; *see also* United States v. Paul Little, 365 Fed. App'x 159 (11th Cir. 2010) (affirming Little's federal obscenity conviction); United States v. Stagliano, 693 F. Supp. 2d 25 (D.D.C. 2010) (acquitting defendants of federal obscenity charges).

[80] Kinsley, *supra* note 1 at 639.

[81] *Id.*

[82] Lochner & Apollonio, *supra* note 71.

[83] *Id.*

[84] *Id.*

the federal government has traditionally been more likely to enforce obscenity laws than the states.

II. Obscenity Prosecutions: 2015 to 2025

Moving from this historical context to the present, how have obscenity laws been enforced over the past decade? How have the Trump and Biden Administrations compared to their predecessors in terms of obscenity enforcement patterns? And have state prosecutors followed or broken with the enforcement decisions of their federal counterparts during that time period?

This Article seeks to answer these questions, at least to the extent that reliable data is available. At the federal level, the Bureau of Justice reports the number of indictments issued under each federal criminal statute each year, including those statutes that criminalize obscenity.[85] Subsection A below documents how the federal government has enforced each statute that criminalizes obscenity over the past decade, year by year.

At the state level, there is no singular source of information that reports obscenity enforcement activity by state and local prosecutors.[86] As a result, any effort to document each and every obscenity prosecution at the state level will undoubtedly be incomplete today. I therefore do not attempt to compare data at the federal and state levels, nor do I purport to document all state obscenity cases over the last decade. What follows is instead a snapshot from which no state obscenity case was purposely excluded.

Cataloged in Appendix A are state obscenity cases decided between 2015 and 2025, listed alphabetically state by state. The cases listed in the Appendix were discovered from a variety of sources. First, I searched the primary legal research databases (Westlaw and Lexis) for cases citing each state's obscenity statute, the term "obscenity," and relevant obscenity cases like *Miller* that were released during the relevant time period. I excluded from consideration any obscenity case that charged a defendant with distributing obscenity to a minor or possessing or creating obscene materials depicting minors, as the legal standards for obscenity involving minors are understandably different.[87] Second, because searching in legal databases would only yield results tied to written opinions, either published or unpublished, I also searched legal

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[85] *See Federal Criminal Case Processing Statistics Tool*, Bureau of Just. Stat. http://bjs.ojp.usdoj.gov/fjsrc/ [https://perma.cc/JKD9-AWLG] (last visited Aug. 9, 2025).

[86] Lochner & Apollonio, *supra* note 71.

[87] *See* New York v. Ferber, 458 U.S. 747, 764–65 (1982) (adjusting *Miller* test as to child pornography).

publications, including those targeting a mainstream audience, for articles discussing obscenity during the relevant time period. Third, I consulted with practitioners who routinely represent clients charged with obscenity offenses around the country to solicit their input and to determine whether there were any state obscenity cases my first two lines of inquiry had not revealed.[88] These are essentially the same steps taken by researchers in the past to uncover the number of state-level obscenity indictments in the 1990s and early 2000s.[89]

A. Federal Prosecutions

1. 18 U.S.C. § 1461

This provision of federal law contains the Comstock Act. Since 2015, there has been only a single federal prosecution under 18 U.S.C. 1461,[90] which prohibits mailing obscene articles.[91] On November 13, 2015, Zachary Foss was charged by information in the United States District Court for the Northern District of Ohio with a single count of mailing obscenity.[92] The information identifies the allegedly obscene material as "involving the lewd display of [Foss's] genitals."[93] In 2016, he promptly pleaded guilty without filing any motions or otherwise challenging the charge against him, and, as a result, the record of his case contains very little information about its facts.[94] Nonetheless, a sentencing memorandum filed by his attorney suggests that Foss mailed material from Ohio to Arizona to a teenage girl who represented herself to be of age.[95] Foss was sentenced to a year-and-a-day in federal prison for this offense.[96]

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[88] *See, e.g.*, In-Person Interview with H. Louis Sirkin, Att'y, Santen & Hughes (April 23, 2024).

[89] Lochner & Apollonio, *supra* note 71.

[90] *See Federal Criminal Case Processing Statistics Tool*, *supra* note 85. Statistical reporting by the Bureau of Justice cuts off at the year 2023. At the time of publication, no information is available for the years 2024 or 2025.

[91] *See* 18 U.S.C. § 1461 ("Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance . . . [i]s declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.").

[92] United States v. Foss, No. 3:15-CR-419 (N.D. Ohio filed Nov. 15, 2015).

[93] *Id.*

[94] *Id.* (docket sheet on file with author).

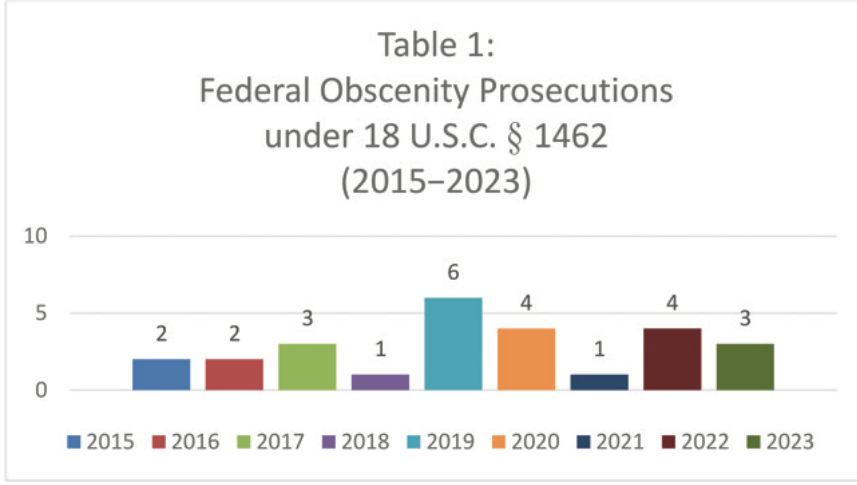
[95] *Id.* (sentencing memorandum on file with author).

[96] *Id.* (docket sheet on file with author).

2. 18 U.S.C. § 1462

Since 2015, the federal government has pursued a slightly higher number of cases under 18 U.S.C. § 1462, which prohibits the importation or transportation of obscenity, than it has under 18 U.S.C. § 1461.[97] From 2015 to 2023, federal prosecutors averaged 2.89 § 1462 cases per year, with a high of 6 cases brought in 2019.[98] Actual numbers of cases per year are represented in Table 1 below.

All § 1462 charges during the relevant time period involved children and were often paired with a child pornography charge.[99] For example, in *United States v. Christianson*, the defendant was charged with transporting an obscene children's book he authored and for transporting child pornography.[100]



3. 18 U.S.C. § 1465

Similarly low prosecution rates exist for charges brought under 18 U.S.C. § 1465, which criminalizes the production or transportation of

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[97] *See* 18 U.S.C. § 1462 ("Whoever brings into the United States . . . or knowingly uses any express company or other common carrier or interactive computer service . . . for carriage in interstate . . . commerce . . . any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character . . . [s]hall be fined under this title or imprisoned not more than five years, or both.").

[98] *See Federal Criminal Case Processing Statistics Tool*, *supra* note 85.

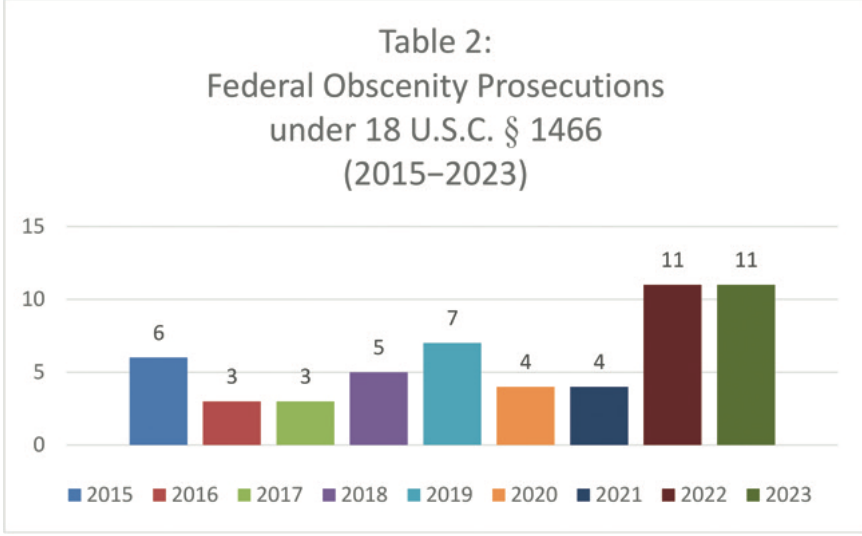
[99] *See, e.g.*, United States v. Christianson, 2020 WL 4226583, at *1 (N.D. Ind. July 23, 2020).

[100] *Id.*

obscene material for sale.[101] Only three total charges were brought under this statute during the relevant time period, all in 2016.[102]

4. 18 U.S.C. § 1466

Federal prosecutors were the most active from 2015 to 2023 in pursuing charges for engaging in the business or selling of obscenity under 18 U.S.C. § 1466. In total, 54 charges were pursued under this statute during the stated time period. Table 2 below reflects the distribution of the charges by year.



Similar to the other obscenity statutes, charges under 18 U.S.C § 1466 are often brought in child pornography cases where the defendant is alleged to have exchanged sexually explicit material of minors for money or other things of value.[103]

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[101] *See* 18 U.S.C. § 1465 ("Whoever knowingly produces with the intent to transport, distribute, or transmit in interstate or foreign commerce, or whoever knowingly transports or travels in . . . interstate or foreign commerce or an interactive computer service . . . for the purpose of sale or distribution of any obscene, lewd, lascivious, or filthy [material] shall be fined under this title or imprisoned not more than five years, or both.").

[102] *See Federal Criminal Case Processing Statistics Tool*, *supra* note 85.

[103] *See, e.g.*, United States v. Arthur, 2024 WL 747250, at *1 (5th Cir. Feb. 23, 2024) (indicating that Arthur was convicted of child pornography offenses and engaging in the business of selling obscenity under 18 U.S.C. § 1466 based on his operation of a website that depicted the graphic sexual abuse of children);

5. Obscenity-Adjacent Federal Law

While the federal government has essentially refrained from initiating new obscenity prosecutions over the past decade, the impact of prior obscenity convictions remains. One interesting case decided by the United States District Court for the Northern District of Ohio in 2018 highlights the point.[104] In 1962, Gerald Belfer was charged in federal court with two counts of obscenity in violation of 18 U.S.C. § 1461.[105] Belfer was alleged to have mailed an obscene advertisement, although the precise details of what he mailed and to whom were not in the record because he pleaded guilty rather than taking his case to trial.[106] He was sentenced to five years of probation and a $3,000 fine.[107] In 2018, nearly fifty-five years after he completed his probationary term, Belfer moved the federal court to expunge his conviction.[108] He argued that the material in his case would not meet today's contemporary community standards under *Miller* and that his conviction was therefore unconstitutional.[109]

The district court rejected Belfer's argument.[110] It held that *Miller* is time-bound by its application of *contemporary* community standards to the obscenity question.[111] And it noted the absence of evidence to suggest that the advertisement Belfer mailed would have been adjudicated not to be obscene under the relevant community views of 1962.[112] The court accordingly denied Belfer's expungement request and left his obscenity conviction intact.[113] As Belfer's case exemplifies, even an obscenity case brought over five decades ago can have enduring and life-altering consequences.

Another case demonstrates the federal government's willingness to utilize alternative approaches to obscenity prosecutions in addressing

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United States v. Guy, 2019 WL 1034191, at *1 (S.D. Ohio March 5, 2019) (combining 18 U.S.C. § 1466 charge with child pornography offenses).

[104] *See* United States v. Belfer, No. 1:62-CR-329, 2018 WL 3374069 (N.D. Ohio July 11, 2018).

[105] *Id.* at *1.

[106] *See id.* at *1, *3.

[107] *Id.* at *1.

[108] *Id.*

[109] *Id.*

[110] *Id.* at *3.

[111] *Id.* ("However, the *Miller* Court's test for determining if material is 'obscene' uses the contemporary community standards at the time the charge is made." (citing Miller v. California, 413 U.S. 15, 24 (1973))).

[112] *Id.*

[113] *Id.*

online exploitation. In *United States v. Three Hundred Three Virtual Currency Accounts*, a federal district court in Washington, D.C. granted default judgment in an in rem action seeking civil forfeiture of two domain names and 303 currency accounts.[114] The websites were alleged to depict obscene content, including sexual assault.[115] While the court ultimately ordered forfeiture based on the allegation that the websites contained child pornography rather than obscenity, the inclusion of an obscenity allegation in the complaint highlights the federal government's willingness to enforce obscenity law outside the bounds of a traditional criminal prosecution.[116]

B. State Obscenity Prosecutions

Unlike the federal landscape, obscenity prosecutions of adult-oriented material have continued at the state level over the past decade unmoored from child pornography. Appendix A catalogs relevant obscenity prosecutions alphabetically by state. As explained previously, Appendix A includes cases discovered from three sources: (1) searches of legal databases, (2) searches of legal publications, and (3) interviews of attorneys who defend obscenity cases.[117] The search results excluded cases involving obscenity depicting or displayed to minors, given the differing legal standards that distinguish obscenity as to children from obscenity depicting and viewed by adults.[118]

The appendix excludes cases that contain the term "obscenity" or "obscene" but that do not apply the *Miller* doctrine in reaching an obscenity determination. These included cases construing state laws that prohibit obscene gestures; disorderly conduct based on obscenities, cyberstalking, and harassment; and the display of sexually-oriented material to children, typically to entice them to engage in sexual activity with an adult.

A careful review of the number, location, and type of obscenity case filed by state prosecutors reveals changing patterns of enforcement at the state level.

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[114] No. 20-cv-712, 2021 WL 663190, at *1 (D.D.C. Feb. 19, 2021).

[115] *Id.* at *1, *4 n.3.

[116] *Id.* at *5, *4 n.3.

[117] *See supra* Section II.

[118] *Compare* Miller v. California, 413 U.S. 15 (1973), *with* Ferber v. New York, 458 U.S. 747, 761 (1982) ("The *Miller* standard, like all general definitions of what may be banned as obscene, does not reflect the State's particular and more compelling interest in prosecuting those who promote the sexual exploitation of children.").

1. Numerosity

While the precise number of state obscenity prosecutions is unknowable, given the lack of a unified national tracking system, the number of state obscenity cases appear to be on the decline as compared to the fifteen-year period tracked in *The Myth of Obsolete Obscenity*.[119] In that article, I reported a total of twenty-five state obscenity cases from 2000 to 2015.[120] In contrast, Appendix A contains sixteen state obscenity cases over the past decade.[121] But two of these are probation revocation proceedings in which the defendants were alleged to have possessed obscene material in violation of a probation term, rather than traditional obscenity prosecutions.[122] Thus, based on the cases I have collected, the overall number of state obscenity prosecutions appears to be slightly decreasing compared to the early 2000s.

2. Geographic Distribution

An additional change in the pattern of obscenity enforcement at the state level is its geographic distribution. In *The Myth of Obsolete Obscenity*, I observed the likelihood of Southern "Bible Belt" states to pursue outright obscenity charges more often, while Northern states tended to utilize obscenity offenses more sparingly as a means of brokering plea bargains in sex-related cases.[123] Data collected by political scientists studying obscenity prosecutions from 1990 to 2006 supports these conclusions.[124] According to that data, roughly ninety percent of state and local obscenity cases prior to 2004 occurred in red and purple state obscenity hot spots, with only eight percent of obscenity cases being filed in blue states like New York and Illinois.[125]

This is no longer the case. As Appendix A demonstrates, obscenity prosecutions have occurred with far more regularity over the past decade in

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[119] *See* Kinsley, *supra* note 1, at 610.

[120] *Id.* app. at 658–70.

[121] *See infra* Appendix A: State Obscenity Prosecutions Since 2015 (Alphabetical by State).

[122] *See generally* Dummich v. State, 251 N.E.3d 561 (Ind. Ct. App. 2024); Bennett v. State, 119 N.E.3d 1057 (Ind. 2019) (both probation revocation cases based on obscenity allegations).

[123] Kinsley, *supra* note 1, at 641. Data collected by political scientists studying obscenity prosecutions from 1990 to 2006 supports these conclusions. *See* Lochner & Apollonio, *supra* note 71.

[124] *See id.* at 10,27 (Table 1 including state-specific case numbers).

[125] *Id.*

Northern states like Ohio, Indiana, and Pennsylvania and are far less likely in Southern states.[126]

3. Case Type

With regard to case content, unlike the previous decade, where state obscenity tended to target brick-and-mortar distribution channels of pornographic material, obscenity prosecutions by state prosecutors from 2015 to 2025 focus much more heavily on the individual distribution of self-created material.[127] Some of the cases involve what might be called "revenge porn."[128]

This represents a change in objective. Historically, the obscenity doctrine was rooted in moralism and a desire to mandate sexual purity.[129] But over the past decade, state obscenity enforcement patterns have adopted a new form of moralism, one that focuses on interpersonal rather than community-based harm. Prosecutors in the modern era tend to label as obscene material that is either filmed or circulated without the consent of its participants or that is displayed to individuals who do not consent to its viewing. In this regard, the degree of autonomy and choice seem to be key factors in determining whether to pursue an obscenity prosecution. Moreover, obscenity cases of the past decade appear to have an identifiable "victim"—the person whose sexual conduct or body is shown without permission or the person who is exposed to sexual material against their wishes.[130] These characteristics distinguish modern obscenity cases from the more traditional prosecutions—for

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[126] *See, e.g.*, State v. Burks, No. 106639, 2018 WL 6271685 (Ohio Ct. App. Nov. 29, 2018); Commonwealth v. Alexander, 258 A.3d 474 (Pa. Super. Ct. 2021).

[127] *See* Kinsley, *supra* note 1 at 640–41.

[128] *See, e.g.*, State v. Southern, 268 N.C. App. 326 (N.C. Ct. App. 2019) (defendant convicted of state obscenity offense and sentenced to thirty six to fifty six months in prison for creating fake Facebook profile of his ex-girlfriend and publicly posting pictures of her exposed breast and genitalia); State v. Burks, No. 106639, 2018 WL 6271685 (Ohio Ct. App. Nov. 29, 2018) (defendants convicted of pandering obscenity and other felonies and sentenced to seven years in prison for recording themselves engaged in sexual intercourse with alleged rape victim and publishing the material on Facebook when the victim threatened to come forward to authorities about the alleged sexual assault).

[129] *See, e.g.*, Benjamin, *supra* note 13 (tracing the morality justification in obscenity regulation and case law from the nineteenth to late twentieth century).

[130] *See, e.g.*, Burks, 2018 WL 6271685, at *1–2 (identifying victim of obscenity offense a woman who was present at a birthday party with defendants and whom defendants subsequently videoed during nonconsensual sexual encounter).

example, where an undercover police officer secretly purchases material from a retail establishment and lacks any identifiable victim.[131]

Although not technically an obscenity prosecution, the North Dakota Supreme Court's opinion in *State v. Gunn* highlights the shifting use of obscenity doctrine to address interpersonal harm.[132] Gunn was found guilty by a jury of attempted gross sexual imposition, a Class A felony, based on electronic messages she sent to a man she met on a dating app.[133] The messages contained explicit instructions on how to groom and sexually assault identifiable children.[134] Gunn argued that the messages were protected by the First Amendment and therefore could not form the basis of her conviction.[135] But the trial court rejected this argument, finding her communication to constitute unprotected obscenity under the *Miller* test.[136] The North Dakota Supreme Court upheld this finding.[137]

In addition, some state prosecutors continue to use obscenity charges as a mechanism for securing guilty pleas in child pornography cases. For example, in *Commonwealth v. Foster*, a defendant who was originally charged with possessing child pornography entered a negotiated guilty to an obscenity offense instead.[138]

The patterns of obscenity enforcement have therefore dramatically changed in the past decade. Federal obscenity enforcement is virtually nonexistent, and state obscenity enforcement no longer targets commercial creators of sexually explicit expression.

III. Observations From The Past Decade: Obscenity Prosecutions 2015-2025

A. Current Obscenity Trends

What has driven these shifts? And where might obscenity law be headed in light of these changes? Even when obscenity statutes were being more

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[131] *See, e.g.*, Kinsley, *supra* note 1 at 629 (discussing the obscenity prosecution of Dan Sasha Birman who was alleged to have sold obscene videos to undercover officers at his video store in Ruston, Louisiana).

[132] State v. Gunn, 909 N.W.2d 701 (N.D. 2018).

[133] *Id.* at 703.

[134] *Id.*

[135] *Id.* at 705.

[136] *Id.* at 706–07.

[137] *Id.* at 707.

[138] Commonwealth v. Foster, No. 1811 WDA 2015, 2017 WL 1201526, at *1 (Pa. Super. Ct. Mar. 31, 2017).

vigorously enforced, scholars called attention to the question of resource prioritization, highlighting the increasing futility of obscenity cases as the availability of pornography became more widespread.[139] Because an obscenity prosecution only has the power to label specific, defined material as obscene, its utility in creating system-wide impact is inherently limited.[140] Enter the internet, and a legal action to criminalize a handful of videos seems essentially useless.[141] The perceived futility of the obscenity endeavor is a likely contributor to its decline, particularly at the federal level.

The reintroduction of private causes of action has also likely sidelined the prosecutorial role in traditional obscenity enforcement. In states like Virginia, for example, a private citizen can initiate an action to declare a specific piece of work obscene, rendering its future distribution a crime if successful.[142] In recent years, these mechanisms have grown in popularity with special interest groups who seek to remove identified materials from school libraries and other places of public access by having them declared obscene.[143] The participation of private actors in obscenity enforcement may disincentivize state prosecutors from using limited law enforcement resources on these cases.

B. The Future of Obscenity Prosecution

Where might obscenity law be headed next? In light of recent shifts, it is fair to question whether obscenity enforcement is truly a relic of the past or if prosecutors, particularly at the federal level, may target commercial pornography more aggressively in the future.

Two recent political developments have bearing on this question. One is Project 2025, a blueprint for reshaping the federal government spearheaded

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[139] *See* Stone, *supra* note 45 at 142 (observing that, with changing distribution patterns, "it became less sensible for government officials to expend scarce prosecutorial resources on what increasingly came to be seen as an essentially futile effort to suppress the market for such expression").

[140] *Id.*

[141] *Id.*

[142] VA. Code Ann. § 18.2-384 (2024).

[143] *See, e.g.*, Moms for Liberty of Wayne Cnty. v. State Educ. Dep't., 86 Misc. 3d 1185, 1192–93 (N.Y. Sup. Ct. 2025) (rejecting challenge to school board determination that certain books contained in school library were not obscene because, despite the fact they contained sexually explicit content that some readers might find "shocking," the books possessed serious scientific, literary, artistic, or political value under *Miller*).

by the Heritage Foundation.[144] Project 2025 proposes fully outlawing all forms of pornography, not just that which is obscene.[145] It also proposes harsh punishment for any individual engaged in the distribution of pornography, even of the noncommercial sort.[146] In service of that objective, its forward states:

> Pornography, manifested today in the omnipresent propagation of transgender ideology . . . is as addictive as any illicit drug and as psychologically destructive as any crime. Pornography should be outlawed. The people who produce and distribute it should be imprisoned. Educators and public librarians who purvey it should be classed as registered sex offenders. And telecommunications and technology firms that facilitate its spread should be shuttered.[147]

In June of 2025, the Southern Baptist Convention, the nation's largest protestant denomination, included a ban on all pornography as a key component of its annual agenda.[148] Similar calls to action against pornography coincided with aggressive federal obscenity enforcement during the George W. Bush Administration.[149] For example, in 2001, in comments to the House Judiciary Committee, then-Attorney General John Ashcroft foreshadowed more aggressive obscenity enforcement against online providers of sexually-explicit content.[150] And, outside pro-family organizations like the Family

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[144] Melissa Quinn & Jacob Rosen, *What is Project 2025? What to Know About the Conservative Blueprint for a Second Trump Administration*, CBS News (Nov. 8, 2024, 16:52 ET), https://www.cbsnews.com/news/what-is-project-2025-trump-conservative-blueprint-heritage-foundation/ [https://perma.cc/YP6A-JJQN].

[145] Arwa Madhawi, *The Far Right's Crusade Against Porn is a Red Herring – It's Actually a Crusade Against Progress*, Guardian (July 13, 2024, 09:00 ET), https://www.theguardian.com/commentisfree/article/2024/jul/13/project-2025-porn [https://perma.cc/9S7P-LSAY].

[146] *Id.*

[147] *Id.*

[148] Peter Smith, *Southern Baptists Target Porn, Sports Betting, Same-Sex Marriage and 'Willful Childlessness'*, AP News (June 9, 2024), https://apnews.com/article/southern-baptists-pornography-sports-betting-gay-marriage-aac48e558ea4b7f1c3b869b917e6eea2 [https://perma.cc/MBK9-NC75]

[149] *See* Kinsley, *supra* note 1, at 609 n.4 (citing Senator Orrin G. Hatch, *Fighting the Pornification of America by Enforcing Obscenity Laws*, 23 Stan. L. & Pol'y Rev. 1, 16 (2012)).

[150] Declan McCullagh, *Ashcroft's Hard Line on Hardcore*, Wired (June 9, 2001, 02:00), https://www.wired.com/2001/06/ashcrofts-hard-line-on-hardcore/ [https://perma.cc/BE4E-WMYB].

Research Council and Focus on the Family engaged in public campaigns to encourage Bush-era obscenity actions.[151]

Today, a potentially similar political and social pressure mounts on the federal government to take action. It remains to be seen whether the Department of Justice will elevate obscenity cases among its priorities. If the past decade is indicative of the future, the federal government is abandoning obscenity law as a means of policing commercial sexual expression between consenting adults on the internet.

The other political development that may have some bearing on future obscenity patterns is the suggestion post-*Dobbs* that the Comstock Act should be more frequently enforced. One hundred forty-five Republican members of Congress recently advocated for exactly that outcome in an *amicus* brief submitted to the Supreme Court.[152] But a vocal group of scholars disagrees.[153] They point to the Comstock Act's complicated history and its origins in repressing female voices in particular, as reasons for contemplation before action.[154]

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[151] Joe Mozingo, *Obscenity Task Force's Aim Disputed*, L.A. Times (Oct. 9, 2007, 00:00 PT), https://www.latimes.com/archives/la-xpm-2007-oct-09-me-obscene9-story.html [https://perma.cc/TZS7-YY5H] (describing letter sent by ninety-three politically conservative leaders to Bush Administration to advocate for greater enforcement of obscenity law).

[152] Benjamin Weiss, *Lock, Comstock and Barrel: In Effort to Strip Abortion Pill Approval, Republican Lawmakers Brush Off 150-Year-Old Anti-Vice Law*, Courthouse News Serv., (Mar. 22, 2024) https://www.courthousenews.com/lock-comstock-and-barrel-in-effort-to-strip-abortion-pill-approval-republican-lawmakers-brush-off-150-year-old-anti-vice-law/ [https://perma.cc/6WM4-GX82]; Brief of 145 Members of Congress as Amici Curiae in Support of Respondents and Affirmance at 19–21, FDA v. All. for Hippocratic Med., 602 U.S. 367 (2024) (Nos. 23-235, 23-236) (identifying Comstock Act as longstanding federal policy on the illegality of mailing abortion products).

[153] *See, e.g.*, Johnson, *supra* note 55, at 152–53; Siegel & Ziegler, *supra* note 50, at 1131; Lauren MacIvor Thompson, *Women Have Always Had Abortions*, N.Y. Times (Dec. 13, 2019), https://www.nytimes.com/interactive/2019/12/13/opinion/sunday/abortion-history-women.html [https://perma.cc/52G6-7GXT] (discussing the Comstock Act ban on mailing abortion products and ways women historically defied it to obtain abortion care).

[154] *See, e.g.*, Siegel & Ziegler, *supra* note 50 at 1080–81 (describing 1873 obscenity prosecution of "free love" advocate Victoria Woodhull); *id.* at 1120–24 (describing early twentieth century prosecutions of birth control advocate Margaret Sanger under Comstock-like state laws and federal Comstock Act); *id.* at 1124–32 (describing 1920s Comstock Act prosecution of Mary Ware Dennett).

If nothing else, this dialogue reinforces the continued relevance of the obscenity doctrine. Even as patterns of enforcement have shifted at the federal and state levels to prioritize perceived individual harm, the obscenity doctrine remains a centerpiece of national policy debate. Its shared history with reproductive regulation necessarily implicates concepts of privacy and autonomy. The Comstock Act's origins—as a mechanism for suppressing women's voices and means of self-determination—informs the shifting enforcement landscape now, as state obscenity law has become a tool primarily for reclaiming a person's bodily autonomy. Tracking how obscenity law is enforced over time is therefore critical to understanding its true historical significance.

Conclusion

Given important shifts in the legal and political landscape, obscenity law is anything but dead. While the Supreme Court completed its creation of the obscenity doctrine in 1987,[155] prosecutors at the federal, state, and local levels continue to enforce obscenity statutes today. They are doing so, however, in ways that the *Miller* Court may not have anticipated when it crafted a definition of obscene material in 1973.[156]

For decades, federal and state prosecutors used obscenity law to target the commercial distribution of sexually explicit material.[157] They did so initially and ostensibly as a means to protect community standards by preserving aesthetic life and enforcing moral norms.[158] With the advent of the internet, federal prosecutors focused more heavily on online methods of distribution, leaving state and local prosecutors to police retail distribution outlets in their communities.[159] But through 2015, the target of obscenity enforcement was largely those who profited from the sale of sexually explicit content.[160]

Over the last decade, however, enforcement patterns have shifted. Federal prosecutors no longer use obscenity statutes to charge the commercial distribution of sexual content to adults.[161] Instead, obscenity charges at the federal level now essentially function as companion charges to child

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[155] Pope v. Illinois, 481 U.S. 497 (1987).

[156] Miller v. California, 413 U.S. 15, 24 (1973).

[157] *See* Lochner & Apollonio, *supra* note 71.

[158] *See* Paris Adult Theater I v. Slaton, 413 U.S. 49, 57–60 (1973) (discussing community aesthetics justification for obscenity law); Koppelman, *supra* note 12 (arguing that obscenity law enforces moral code).

[159] *See* Kinsley, *supra* note 1, at 640–41.

[160] *Id.* at app. A.

[161] *See supra* Section II.A.

pornography offenses.[162] With few notable exceptions, state prosecutors too have abandoned their focus on commercial pornography, instead using obscenity law to prosecute "revenge porn" offenses with an identifiable victim.[163]

The result is a different obscenity landscape than that which existed ten years ago. Particularly at the state level, obscenity law has transformed into a tool for addressing interpersonal sexual victimization, rather than a means of policing a community's ideas about sexual expression. This shift is significant, in that it exposes the power of the obscenity doctrine to be reimagined over time. Because a prosecutor's rationale in pursuing a particular case is not a part of the test for obscenity, existing jurisprudence places no guardrails on how obscenity law might be repurposed to solve new societal problems.[164]

Changing prosecutorial priorities might also be indicative that community standards have changed. As the chief law enforcement officers of their communities, prosecutors may have determined that the dissemination of sexually explicit material to consenting adults no longer tests the bounds of *Miller*'s community standards. Thus, the abandonment of traditional, commercially-focused obscenity prosecutions in favor of reimagined, victim-focused ones may say as much about the acceptability of adult online content in today's society as it does about a desire to protect individual privacy.

This observation—and careful study of obscenity enforcement—is critical to the post-*Dobbs* discourse around the Comstock Act and the overlap between its obscenity and abortion strands. Only by studying the ongoing enforcement of obscenity law can we truly understand its enduring impacts.

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[162] *Id.*

[163] *See supra* Section State Obscenity *Prosecutions*.

[164] *See* Miller v. California, 413 U.S. 15, 24 (1973).

Appendix A: State Obscenity Prosecutions Since 2015 (Alphabetical by State)

Indiana

1. *Dummich v. State*, 251 N.E.3d 561 (Ind. Ct. App. 2024)

   Jurisdiction: Indiana Court of Appeals (appeal); Decatur Circuit Court (trial)

   Date: June 17, 2022, incident date

   Defendant(s): William Dummich

   Obscenity Charge(s): Probation Revocation for violation of sex offender probation condition that prohibited possession of obscenity

   Accompanying Charge(s): None

   Type of Material: YouTube video of naked woman lying face down on a table receiving a massage, other YouTube videos of a nonspecific sexual nature including naked yoga videos and videos of women's vaginas

   Method of Distribution: YouTube and cell phone

   Outcome: Probation revoked. Reversed on appeal based on insufficient evidence that the YouTube videos on defendant's phone depicted sexual conduct as required to constitute obscenity.

   Sentence: 900 days incarceration

2. *Prater v. State*, 65 N.E.2d 648 (Ind. Ct. App. 2016)[165]

   Jurisdiction: Indiana Carroll County Superior Court (trial) (no appeal)

   Date: May 18, 2015, incident date

   Defendant(s): Terik Prater

   Obscenity Charge(s): Misdemeanor distribution of obscenity in violation of I.C. 35-49-3-1(2)

   Accompanying Charge(s): Felony dissemination of matter harmful to minors

   Type of Material: Defendant sent photographs of his erect penis via the Facebook Messenger app to a minor child who was the daughter

[165] Additional information about this case originates from Defendant's appellate brief, 2016 WL 7509256.

of his friend. Defendant claimed he accidentally sent the message to the wrong person.

Method of Distribution: Facebook Messenger

Outcome: Convicted by jury. No appeal of misdemeanor obscenity conviction.

Sentence: Aggregate sentence of 2.5 years in prison

3. *Bennett v. State*, 119 N.E.3d 1057 (Ind. 2019)

Jurisdiction: Indiana Supreme Court (appeal); Indiana Superior Court, Marion County (trial)

Date: 2017 incident date

Defendant(s): Nathaniel Bennett

Obscenity Charge(s): Probation Revocation for violating term of probation that prohibited defendant from possessing obscene matter in violation of Ind. Code 35-49-2-1

Accompanying Charge(s): None

Type of Material: Pictures of defendant and a naked woman and videos of a man and a women engaged in sexual intercourse

Method of Distribution: Cell phone

Outcome: Trial court revoked defendant's probation based on his possession of obscene material and sentenced him to 4 years in prison. Probation revocation overturned on appeal.

Sentence: 4 years

4. *Macy v. State*, 87 N.E.3d 1165 (Ind. Ct. App. 2017)

Jurisdiction: Indiana Court of Appeals (appeal); Clinton Circuit Court (trial)

Date: Late May or early June 2016 incident date

Defendant(s): Maddox Macy

Obscenity Charge(s): One count of distribution of obscenity in violation of I.C. 35-49-3-1(2)

Accompanying Charge(s): Dissemination of matter harmful to minors

Type of Material: Defendant displayed pornographic images of unspecified content, which at the very least included male nudity and sexual activity, in a residential window that could be seen by her neighbor.

Method of Distribution: Window display in a residence

Outcome: Convicted by bench trial. Convictions affirmed on appeal.

Sentence: 365 days in prison, with all but two days suspended to a term of probation

Massachusetts

1. *Commonwealth v. Shimkoski*, 104 Mass.App.Ct. 1113 (2024)

Jurisdiction: Massachusetts Appeals Court (appeal); Worcester District Court (trial)

Date: late 2020 or early 2021

Defendant(s): Jeffrey Shimkoski

Obscenity Charge(s): One count of disseminating obscenity in violation of G.L. c. 272, sec. 29

Accompanying Charge(s): None

Type of Material: After his romantic advances were rebuffed, defendant presented a female barista at a coffee shop where he had ordered coffee with his cell phone, which was playing a video of a man touching his genitalia. Defendant had schizophrenia diagnosis and recent mental health interventions.

Method of Distribution: Cell phone

Outcome: Convicted by bench trial. Conviction upheld on appeal despite the fact the material alleged to be obscene was not admitted into evidence.

Sentence: One-year supervised probation

New Jersey

1. *State v. Lomato*, No. A-5273-16T4, 2019 WL 5168592 (N.J. Super. Ct. App. Div. Oct. 15, 2019)

Jurisdiction: New Jersey Superior Court, Appellate Division (appeal); Superior Court of New Jersey, Law Division, Ocean County (trial)

Date: April 22, 2014, incident date

Defendant(s): David Lomanto

Obscenity Charge(s): Public communication of obscenity in violation of N.J.S.A. 2C:343-4(b)

Accompanying Charge(s): Obstructing a criminal investigation, disorderly conduct

Type of Material: Defendant was watching an iPad-type device in his car while parked at a fast-food restaurant. A mother of a 12-year-old boy who went inside observed a woman giving a man a blow job on the iPad. When police arrived, an officer observed a screen that depicted a woman pulling a sheet over herself in what appeared to be a live interaction on the iPad.

Method of Distribution: iPad/tablet

Outcome: Convicted by jury of obscenity and obstruction. Convicted by trial court of disorderly conduct. Convictions affirmed on appeal.

Sentence: Five days in jail with credit for time served. Two concurrent terms of one year probation.

North Carolina

1. *State v. Stokes*, 289 N.C. App. 631 (N.C. Ct. App. 2023)

Jurisdiction: North Carolina Court of Appeals (appeal); Onslow County, NC Superior Court (trial)

Date: June 8 to 11, 2018 incident dates

Defendant(s): Derrick Brandon Stokes

Obscenity Charge(s): Three counts of disseminating obscenity

Accompanying Charge(s): Disclosing private images, obtaining habitual felon status

Type of Material: By consent, defendant recorded videos of victim engaging in sexual activity when they were dating. After their relationship ended, defendant, without consent, sent Facebook messages to victim's employer accusing her of "doing porn" and attaching the previously recorded videos.

Method of Distribution: Facebook

Outcome: Convicted by jury. Conviction upheld on appeal.

Sentence: Consolidated term of 38–58 months in prison

2. *State v. Cranford*, 279 N.C. App. 512 (2021)

Jurisdiction: North Carolina Court of Appeals (appeal); Lincoln County, NC Superior Court (trial)

Date: September 3, 2017, and May 21, 2018, incident dates

Defendant(s): Robert Bradley Cranford

Obscenity Charge(s): Two counts of disseminating obscenity

Accompanying Charge(s): None

Type of Material: On two different occasions, Defendant sent a total of 24 photographs of himself and an ex-girlfriend engaged in consensual sexual activity to a mutual friend after they terminated their relationship. The photographs depicted the ex-girlfriend's genitalia and the couple engaged in oral intercourse and masturbation.

Method of Distribution: Facebook Messenger

Outcome: Convicted by bench trial. Convictions upheld on appeal.

Sentence: 4 to 14 month suspended sentence, 24-month term of supervised probation

3. *State v. Southern*, 268 N.C.App. 326 (N.C. Ct. App. 2019)[166]

Jurisdiction: North Carolina Court of Appeals (appeal); Forsyth County, NC Superior Court (trial)

Date: January 11, 2015, incident date

Defendant(s): Shan Southern

Obscenity Charge(s): Disseminating obscenity in violation of N.C. Gen. Stat. 14-190.1(c)

Accompanying Charge(s): Obtaining habitual felon status

Type of Material: Defendant created fake Facebook profile of his ex-girlfriend and publicly posted pictures of her exposed breast and genitalia.

Method of Distribution: Facebook

Outcome: Convicted by jury of obscenity. Guilty plea to habitual felon status.

Sentence: Aggregate sentence of 36 to 56 months in prison

Ohio

1. *State v. Burks*, No. 106639, 2018 WL 6271685 (Ohio Ct. App. Nov. 29, 2018)

Jurisdiction: Ohio Court of Appeals for the Eighth District (appeal); Cuyahoga County, OH Court of Common Pleas (trial)

Date: October 29, 2016, incident date

[166] Additional information on this case originates from Defendant's appellate brief, 2018 WL 6984384.

Defendant(s): Daryl Burks and Raynard Rivers

Obscenity Charge(s): Pandering obscenity in violation of R.C. 2907.32(A)(2)

Accompanying Charge(s): Extortion, intimidation of a crime victim

Type of Material: Defendant and co-defendant recorded themselves engaged in sexual intercourse with alleged rape victim. They published the material on Facebook when the alleged rape victim threatened to come forward to authorities about the alleged sexual assault.

Method of Distribution: Facebook

Outcome: Convicted by jury. Convictions upheld on appeal.

Sentence: 7-year aggregate prison term, one year of which was imposed on the pandering obscenity count

2. *State v. Pollock*, 78 N.E.3d 373 (Ohio Ct. App. 8th Dist. 2017)

Jurisdiction: Ohio 8th Dist. Court of Appeals (appeal); Ohio Court of Common Pleas, Cuyahoga County (trial)

Date: March 2012 to December 2013 incident dates

Defendant(s): Walter Pollock

Obscenity Charge(s): 27 felony counts of pandering obscenity in violation of O.R.C. 2907.32(A)(2)

Accompanying Charge(s): Menacing by stalking, telecommunications harassment, public indecency

Type of Material: Defendant emailed three female coworkers unsolicited pictures of himself "pumping" his penis, some of which contained visible semen and others of which contained devices defendant used to aid in masturbation.

Method of Distribution: Email

Outcome: Convicted by jury. Conviction upheld on appeal.

Sentence: 6 months in jail followed by two years of probation. Defendant ordered to register as Tier I sex offender.

Pennsylvania

1. *Commonwealth v. Benson*, 296 A.3d 589 (Pa. Super. Ct. 2023)

Jurisdiction: Pennsylvania Superior Court (appeal); Pennsylvania Court of Common Pleas, Lycoming County (trial)

Date: June 23, 2020, incident date

Defendant(s): Wayne Franklin Benson

Obscenity Charge(s): One count of creating obscenity in violation of 18 Pa.C.S. 5903(a)(3)(ii)

Accompanying Charge(s): Photographing a minor performing a sexual act, possession of child pornography, criminal use of a communication facility, invasion of privacy

Type of Material: Defendant

Method of Distribution: Defendant surreptitiously photographed his minor stepdaughter using the bathroom by hiding his iPhone in the bathroom closet and using his iWatch to operate the phone's camera feature.

Outcome: Convicted on all counts by a jury. Obscenity count reversed on appeal because the photographs were deleted and could not be assessed under the *Miller* test. Remaining counts upheld. Case remanded for resentencing.

Sentence: Combined sentence of 16 to 32 months in prison followed by three years probation

2. *Commonwealth v. Alexander*, 258 A.3d 474 (Pa. Super. Ct. 2021)

Jurisdiction: Superior Court of Pennsylvania (appeal); Pennsylvania Court of Common Pleas for Lycoming County (trial)

Date: December 21, 2018, incident date

Defendant(s): Andrew Thomas Alexander

Obscenity Charge(s): One count of obscenity in violation of 18 Pa.C.S. 5903(a)(3)(i)

Accompanying Charge(s): None

Type of Material: Sexually explicit text messages, ostensibly sent by defendant to an adult he met on a dating website. The messages were sexual in nature ("I'm rubbing my cock right now," "Can I see that pretty pussy?") and intimated that both the sender and the recipient may be underage ("so you in high school?" followed by an emoji with heart eyes; "you at school now?," "I never talked to a young girl like you before," "sorry my mom came home. I am supposed to be in bed, LOL school."). Alexander claimed he was engaging in a fantasy-type role play.

Method of Distribution: Text message

Outcome: Convicted by bench trial. Overturned on appeal for lack of sufficient evidence of obscenity.

Sentence: 6 to 24 months in prison, followed by 3 years probation

3. *Commonwealth v. Brooks*, 240 A.3d 968 (Pa. Super. Ct. 2020)

   Jurisdiction: Pennsylvania Superior Court (appeal); Pennsylvania Court of Common Pleas, Alleghany County (trial)

   Date: August 8, 2018, incident date

   Defendant(s): Michael James Brooks

   Obscenity Charge(s): Displaying obscenity in violation of 18 Pa.C.S. 5903(a)(3)(i)

   Accompanying Charge(s): Harassment, terroristic threats, intimidating witnesses

   Type of Material: Defendant posted three pictures of victim engaged in sex acts with him on his Facebook page, along with sexually explicit and critical comments of her, following their breakup.

   Method of Distribution: Facebook

   Outcome: Convicted by bench trial. Convictions upheld on appeal.

   Sentence: Aggregate sentence of two to four years in prison, followed by four years of probation

4. *Commonwealth v. Winters*, No. 756 WDA 2018, 2019 WL 32477178 (Pa. Super. Ct. July 19, 2019)

   Jurisdiction: Pennsylvania Superior Court (appeal); Pennsylvania Court of Common Pleas, Erie County (trial)

   Date: August 8, 2017, incident date

   Defendant(s): Timothy Winters

   Obscenity Charge(s): One count of obscene materials

   Accompanying Charge(s): Simple assault, unlawful dissemination of an intimate image, criminal mischief

   Type of Material: Defendant broke into the home of his estranged wife while she was having sex with another man and livestreamed her naked from the waist down.

   Method of Distribution: Facebook Live

   Outcome: Convicted by jury trial. Convictions affirmed on appeal.

   Sentence: Aggregate sentence of 28 to 56 months in prison, 16 to 32 months of which was imposed on the obscene materials count, followed by 90 days probation

Virgin Islands

1. *People v. Roebuck*, No. ST-2020-CR-00289, 2021 WL 409157 (V.I. Super. Jan. 15, 2021)

   Jurisdiction: Superior Court of the Virgin Islands, Division of St. Thomas and St. John (trial)

   Date: October 23, 2020

   Defendants: Elmo D. Roebuck, Jr.

   Obscenity Charge(s): One count of obscenity in violation of 14 VIC 1022(a)(3)

   Accompanying Charge(s): None

   Type of Material: Defendant was alleged to have hid in a closet and recorded a person he was dating at the time engaged in the act of masturbation. When the relationship ended, the defendant allegedly circulated the video to other people.

   Method of Distribution: Cell phone

   Outcome: Motion to dismiss granted by trial court on the grounds that the material was not obscene as a matter of law

   Sentence: N/A