

**“I Know It When I See It”**

Marina Hendricks, presenter

What is obscenity?  
In legal terms, it has been  
difficult to define.

U.S. Supreme Court Justice Potter Stewart said in 1964 that obscenity “may be indefinable ... but I know it when I see it.”

# Defining Obscenity

Miller v. California (1973) established three elements:

- Whether a reasonable person, applying contemporary community standards, would find the work, taken as a whole, appeals to a prurient (lustful) interest;
- Whether the work depicts or describes in a patently offensive way sexual conduct specifically defined as obscene by the applicable state law;
- Whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

Read more about it (follow the links):

[http://www.firstamendmentcenter.org/faclibrary/case.aspx?case=Miller\\_v\\_CA](http://www.firstamendmentcenter.org/faclibrary/case.aspx?case=Miller_v_CA)

# Defining Obscenity

In cases involving minors, the definition from *Ginsberg v. New York* (1968) has been used. It defines obscenity as any description or representation of nudity or sexual

- Predominantly appeals to the prurient, shameful or morbid interest of minors;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors;
- Is utterly without redeeming social importance for minors.

Read more about it:

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=390&invol=629>

**Things to keep in mind ...**

# Tinker v. Des Moines Independent School District, 1969

- School officials may not punish or prohibit student speech unless they can clearly demonstrate that it will result in a material and substantial disruption of normal school activities or will invade the rights of others.

# Hazelwood School District v. Kuhlmeier, 1988

- A high school-sponsored newspaper produced as part of a class and without a “policy or practice” establishing it as a public forum for student expression can be censored where school officials demonstrate a reasonable educational justification and where their censorship is viewpoint-neutral.

# Bethel School District No. 403 v. Fraser, 1986

- It is appropriate for schools to prohibit the use of vulgar and offensive language. Chief Justice Warren E. Burger distinguished between political speech which the court previously had protected in *Tinker* ... and the supposed sexual content of Matthew Fraser's message at the assembly. Burger concluded the First Amendment did not prohibit schools from prohibiting vulgar and lewd speech since **such discourse was inconsistent with the "fundamental values of public school education."**

**When faced with obscene  
content, consider ...**

- Miller definitions
- Ginsberg definitions
- Tinker standard
- Hazelwood standard
- Fraser standard

**And some questions  
to ask ...**

- Is the language necessary to communicate the message of a story or to give a quote authenticity?
- Or, will it divert attention from the article's primary focus?
- Is the author simply using certain words for shock value without a journalistic or literary justification?
- Is there less offensive language that would communicate the same idea?

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