Extended Controversial Issue Discussion Lesson Plan Template

Lesson Title: Obscenity How far is to Far (A look through the Supreme Courts eyes)

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Appropriate for Grade Level(s): 11-12

US History Standard(s)/Applicable CCSS(s): Nevada Standards (Social Studies Skills, H3.0, C13.1-4, C-14.4) **Common Core** (RI1-10, W1a-c, W2, SL1a-d, 4, L1, RH1,4

Discussion Question(s): a. The dominant theme of the material taken as a whole appeals to a prurient interest in sex? Explain. b.The material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters? Explain. c.The material is utterly without redeeming social value SLAPS (Serious literary, artistic, political, and scientific)? Explain. d.What makes this case easy or difficult to decide? Explain.

Engagement Strategy: Supreme Court Round Table

Student Readings (list): Roth v. United States, Miller V. California, and State Obscenity Statutes

Total Time Needed: One Block Day, and One Straight 6/ 3 Straight 6 days

Lesson Outline:

Time Frame (e.g. 15 minutes)	**What is the teacher doing?**	**What are students doing?**
15 min	Ask the question what is obscenity, how do you decide what is appropriate for different audiences?	Answering the questions, as well as, sharing out with the class what they believe.
20 min	Distributing Roth v. United States and circulate around the room	Read and annotate, abbreviated Roth v. United States
15 min	Discuss with class the president set by Roth	Participate, take note, or re-annotate the president set by Roth
20 min	Repeat with Miller v. California	Repeat with Miller v. California
15 min	Ditto	Ditto
20 min	Repeat with State Statutes	Repeat with State Statutes
15 min	Ditto	Ditto
10 min	Present the directions of the Discussion Protocol, model with a group of students	
Next or final day	Review discussion Protocol/Create groups with an Odd Number	
5 min		Circle up in their group (odd Number)
35-40 min	Circulate/ distribute cases and discussion questions	Students Answer the questions, one at a time with each student answering before the next question, Then deciding if the case meets the standards set by the Supreme Court.

The pages that follow the Lesson Plan Template include a detailed background paper on the topic for teachers, student readings and reading strategy/questions, source(s), handouts, assignment sheet, self-assessment/reflection and a rubric related to this lesson.

10-15 min	Present the essay question to the class/ At least 3 paragraphs answering the following question about one of the cases discussed. What is the background of the case, what was the decision your group (Supreme Court) decided and how it fits with the Test set forth by Roth and Miller, Finally why was it so hard to decide the case.	

Description of Lesson Assessment: First the participation during the discussion, second their ability to use and justify their opinion using the tests set up by Miller and Roth

How will students reflect on the process and their learning? The Students will be able to reflect in the second and third question of their essay.

The pages that follow the Lesson Plan Template include a detailed background paper on the topic for teachers, student readings and reading strategy/questions, source(s), handouts, assignment sheet, self-assessment/reflection and a rubric related to this lesson.

You Be The Judge: Free Speech or Obscenity

For each court case below, use the three-question "Roth/Miller" to determine whether or not the government action was constitutional.

1. **In 1989, the group released their album, As Nasty As They Wanna Be, which also became the group's most successful album. A large part of its success was due to the single "Me So Horny", which was popular despite little radio rotation. The American Family Association (AFA) did not think the presence of a "Parental Advisory" sticker was enough to adequately warn listeners of what was inside the case. Jack Thompson, a lawyer affiliated with the AFA, met with Florida Governor Bob Martinez and convinced him to look into the album to see if it met the legal classification of obscene.** ***(2 Live Crew v. Florida)***

   a. **The dominant theme of the material taken as a whole appeals to a prurient interest in sex? Explain.**

   b. **The material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters? Explain.**

   c. **The material is utterly without redeeming social value SLAPS (Serious literary, artistic, political, scientific)? Explain.**

   d. **What makes this case easy or difficult to decide? Explain.**

2. **Paul Ferber and Tim Quinn owned an adult bookstore in Manhattan. Ferber came to the attention of the police when he sold to an undercover police officer two films depicting boys masturbating. He was charged with violating a New York law that forbade the sale of any performance depicting sexual conduct of children under the age of 16. *(New York v. Ferber*)**

   a. **The dominant theme of the material taken as whole appeals to a prurient interest in sex? ? Explain.**

   b. **The material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters? Explain.**

   c. **The material is utterly without redeeming social value (Slaps)? Explain.**

   d. **What makes this case easy or difficult to decide? Explain.**

3. **Petitioners were both attendants at adult bookstores. After police detectives purchased certain magazines from petitioners, the attendants were subsequently charged, separately, with the offense of selling materials of "obscenity" under Illinois Law.**

   a. **The dominant theme of the material taken as a whole appeals to a prurient interest in sex? Explain.**

   b. **The material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters? Explain.**

   c. **The material is utterly without redeeming social value (SLAPS)? Explain.**

   d. **What makes this case easy or difficult to decide? Explain.**

4. **Fletcher recently began posting short stories on the Internet that describe, in graphic detail, the sexual abuse and torture of young children – in order, she says, to cope with her own history of abuse.. (*Fletcher v. New York*)**

   a. **The dominant theme of the material taken as a whole appeals to a prurient interest in sex. Explain.**

   b. **The material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters? Explain.**

   c. **The material is utterly without redeeming social value (SLAPS)? (The answer must be no, or the law is unconstitutional.) Explain.**

   d. **What makes this case easy or difficult to decide? Explain.**

ROTH v. UNITED STATES, 354 U.S. 476 (1957)

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The constitutionality of a criminal obscenity statute is the question in each of these cases. In Roth, the primary constitutional question is whether the federal obscenity statute 1 violates the provision of the First Amendment that "Congress shall make no law . . . abridging the freedom of speech, or of the press . . . ." In Alberts, the primary constitutional question is whether the obscenity provisions of the California Penal Code 2 invade the freedoms of speech and press as they may be incorporated in [354 U.S. 476, 480] the liberty protected from state action by the Due Process Clause of the Fourteenth Amendment.

Other constitutional questions are: whether these statutes violate due process, 3 because too vague to support conviction for crime; whether power to punish speech and press offensive to decency and morality is in the States alone, so that the federal obscenity statute violates the Ninth and Tenth Amendments (raised in Roth); and whether Congress, by enacting the federal obscenity statute, under the power delegated by Art. I, 8, cl. 7, to establish post offices and post roads, pre-empted the regulation of the subject matter (raised in Alberts).

Roth conducted a business in New York in the publication and sale of books, photographs and magazines. He used circulars and advertising matter to solicit sales. He was convicted by a jury in the District Court for the Southern District of New York upon 4 counts of a 26-count indictment charging him with mailing obscene circulars and advertising, and an obscene book, in violation of the federal obscenity statute. His conviction was affirmed by the Court of Appeals for the Second Circuit. 4 We granted certiorari. 5 [354 U.S. 476, 481]

Alberts conducted a mail-order business from Los Angeles. He was convicted by the Judge of the Municipal Court of the Beverly Hills Judicial District (having waived a jury trial) under a misdemeanor complaint which charged him with lewdly keeping for sale obscene and indecent books, and with writing, composing and publishing an obscene advertisement of them, in violation of the California Penal Code. The conviction was affirmed by the Appellate Department of the Superior Court of the State of California in and for the County of Los Angeles. 6 We noted probable jurisdiction. 7

The dispositive question is whether obscenity is utterance within the area of protected speech and press. 8 Although this is the first time the question has been squarely presented to this Court, either under the First Amendment or under the Fourteenth Amendment, expressions found in numerous opinions indicate that this Court has always assumed that obscenity is not protected by the freedoms of speech and press

The guaranties of freedom of expression 10 in effect in 10 of the 14 States which by 1792 had ratified the Constitution, gave no absolute protection for every utterance. Thirteen of the 14 States proviThe protection given speech and press was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.

All ideas having even the slightest redeeming social importance - unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion - have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests. But implicit in the history of the First Amendment

is the rejection of obscenity as utterly without redeeming social importance. This rejection for that reason is mirrored in the universal judgment that obscenity should be restrained, reflected in the international agreement of over 50 nations, in the obscenity laws of all of the 48 States, and in the 20 obscenity laws enacted by the Congress from 1842 to 1956.

". . . There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene . . . . It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. . . ." (Emphasis added.)

We hold that obscenity is not within the area of constitutionally protected speech or press.

It is strenuously urged that these obscenity statutes offend the constitutional guaranties because they punish incitation to impure sexual thoughts, not shown to be related to any overt antisocial conduct which is or may be incited in the persons stimulated to such thoughts. In Roth, the trial judge instructed the jury: "The words `obscene, lewd and lascivious' as used in the law, signify that form of immorality which has relation to sexual impurity and has a tendency to excite lustful thoughts." (Emphasis added.) In Alberts, the trial judge applied the test laid down in People v. Wepplo, namely, whether the material has "a substantial tendency to deprave or corrupt its readers by inciting lascivious thoughts or arousing lustful desires." (Emphasis added.) It is insisted that the constitutional guaranties are violated because convictions may be had without proof either that obscene material will perceptibly create a clear and present danger of antisocial conduct, 18 or will probably induce its recipients to such conduct. 19 But, in light of our holding that obscenity is not protected speech, the complete answer to this argument is in the holding of this Court in Beauharnais v. Illinois, supra, at 266:

"Libelous utterances not being within the area of constitutionally protected speech, it is unnecessary, either for us or for the State courts, to consider the issues behind the phrase `clear and present danger.' Certainly no one would contend that obscene speech, for example, may be punished only upon a showing of such circumstances. Libel, as we have seen, is in the same class."

However, sex and obscenity are not synonymous. Obscene material is material which deals with sex in a manner appealing to prurient interest. 20 The portrayal of sex, e. g., in art, literature and scientific works, 21 is not itself sufficient reason to deny material the constitutional protection of freedom of speech and press. Sex, a great and mysterious motive force in human life, has indisputably been a subject of absorbing interest to mankind through the ages; it is one of the vital problems of human interest and public concern. As to all such problems this Court said in Thornhill v. Alabama

"The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. The exigencies of the colonial period and the efforts to secure freedom from oppressive administration developed a broadened conception of these liberties as adequate to supply the public need for information and education with respect to the significant issues of the times. . . . Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." (Emphasis added.)

The fundamental freedoms of speech and press have contributed greatly to the development and well-being of our free society and are indispensable to its continued growth. Ceaseless vigilance is the watchword to prevent their erosion by Congress or by the States. The door barring federal and state intrusion into this area cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests. 23 It is therefore vital that the standards for judging obscenity safeguard the protection of freedom of speech and press for material which does not treat sex in a manner appealing to prurient interest.

The early leading standard of obscenity allowed material to be judged merely by the effect of an isolated excerpt upon particularly susceptible persons. Some American courts adopted this standard but later decisions have rejected it and substituted this test: whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest. The Hicklin test, judging obscenity by the effect of isolated passages upon the most susceptible persons, might well encompass material legitimately treating with sex, and so it must be rejected as unconstitutionally restrictive of the freedoms of speech and press. On the other hand, the substituted standard provides safeguards adequate to withstand the charge of constitutional infirmity.

Both trial courts below sufficiently followed the proper standard. Both courts used the proper definition of obscenity. In addition, in the Alberts case, in ruling on a motion to dismiss, the trial judge indicated that, as the trier of facts, he was judging each item as a whole as it would affect the normal person, 27 and in Roth, the trial judge instructed the jury as follows:

". . . The test is not whether it would arouse sexual desires or sexual impure thoughts in those comprising a particular segment of the community, the young, the immature or the highly prudish or would leave another segment, the scientific or highly educated or the so-called worldly-wise and sophisticated indifferent and unmoved. . . .

"The test in each case is the effect of the book, picture or publication considered as a whole, not upon any particular class, but upon all those whom it is likely to reach. In other words, you determine its impact upon the average person in the community. The books, pictures and circulars must be judged as a whole, in their entire context, and you are not to consider detached or separate portions in reaching a conclusion. You judge the circulars, pictures and publications which have been put in evidence by present-day standards of the community. You may ask yourselves does it offend the common conscience of the community by present-day standards.

MILLER v. CALIFORNIA

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

This is one of a group of "obscenity-pornography" cases being reviewed by the Court in a re-examination of standards enunciated in earlier cases involving what Mr. Justice Harlan called "the intractable obscenity problem." Interstate Circuit, Inc. v. Dallas, (1968) (concurring and dissenting).

Appellant conducted a mass mailing campaign to advertise the sale of illustrated books, euphemistically called "adult" material. After a jury trial, he was convicted of violating California Penal Code 311.2 (a), a misdemeanor, by knowingly distributing obscene matter, and the Appellate Department, Superior Court of California, County of Orange, summarily affirmed the judgment without opinion. Appellant's conviction was specifically based on his conduct in causing five unsolicited advertising brochures to be sent through the mail in an envelope addressed to a restaurant in Newport Beach, California. The envelope was opened by the manager of the restaurant and his mother. They had not requested the brochures; they complained to the police.

The brochures advertise four books entitled "Intercourse," "Man-Woman," "Sex Orgies Illustrated," and "An Illustrated History of Pornography," and a film entitled "Marital Intercourse." While the brochures contain some descriptive printed material, primarily they consist of pictures and drawings very explicitly depicting men and women in groups of two or more engaging in a variety of sexual activities, with genitals often prominently displayed.

This much has been categorically settled by the Court, that obscene material is unprotected by the First Amendment. "The First and Fourteenth Amendments have never been treated as absolutes. We acknowledge, however, the inherent dangers of undertaking to regulate any form of expression. State statutes designed to regulate obscene materials must be carefully limited. A state offense must also be limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value.

The basic guidelines for the trier of fact must be: (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest, (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. We do not adopt as a constitutional standard the "utterly without redeeming social value" test of Memoirs v. Massachusetts, that concept has never commanded the adherence of more than three Justices at one time. If a state law that regulates obscene material is thus limited, as written or construed, the First Amendment values applicable to the States through the Fourteenth Amendment are adequately protected by the ultimate power of appellate courts to conduct an independent review of constitutional claims when necessary. We emphasize that it is not our function to propose regulatory schemes for the States. That must await their concrete legislative efforts. It is possible, however, to give a few plain examples of what a state statute could define for regulation under part (b) of the standard announced in this opinion, supra:

(a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.

(b) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals.

Sex and nudity may not be exploited without limit by films or pictures exhibited or sold in places of public accommodation any more than live sex and nudity can be exhibited or sold without limit in such public places. 8 At a minimum, prurient, patently offensive depiction or description of sexual conduct must have serious literary, artistic, political, or scientific value to merit First Amendment protection. For example, medical books for the education of physicians and related personnel necessarily use graphic illustrations and descriptions of human anatomy. In resolving the inevitably sensitive questions of fact and law, we must continue to rely on the jury system, accompanied by the safeguards that judges, rules of evidence, presumption of innocence, and other protective features provide, as we do with rape, murder, and a host of other offenses against society and its individual members.

, MR. JUSTICE BRENNAN indicates that suppression of unprotected obscene material is permissible to avoid exposure to unconsenting adults, as in this case, and to juveniles, although he gives no indication of how the division between protected and nonprotected materials may be drawn with greater precision for these purposes than for regulation of commercial exposure to consenting adults only. Nor does he indicate where in the Constitution he finds the authority to distinguish between a willing "adult" one month past the state law age of majority and a willing "juvenile" one month younger.

Under the holdings announced today, no one will be subject to prosecution for the sale or exposure of obscene materials unless these materials depict or describe patently offensive "hard core" sexual conduct specifically defined by the regulating state law, as written or construed. We are satisfied that these specific prerequisites will provide fair notice to a dealer in such materials that his public and commercial activities may bring prosecution. the inability to define regulated materials with ultimate, god-like precision altogether removes the power of the States or the Congress to regulate, then "hard core" pornography may be exposed without limit to the juvenile, the passerby, and the consenting adult alike, as, indeed, MR. It is certainly true that the absence, since Roth, of a single majority view of this Court as to proper standards for testing obscenity has placed a strain on both state and federal courts. But today, for the first time since Roth was decided in 1957, a majority of this Court has agreed on concrete guidelines to isolate "hard core" pornography from expression protected by the First Amendment.

This may not be an easy road, free from difficulty. But no amount of "fatigue" should lead us to adopt a convenient "institutional" rationale - an absolutist, "anything goes" view of the First Amendment - because it will lighten our burdens. 11 "Such an abnegation of judicial supervision in this field would be inconsistent with our duty to uphold the constitutional guarantees. Nor should we remedy "tension between state and federal courts" by arbitrarily depriving the States of a power reserved to them under the Constitution, a power which they have enjoyed and exercised continuously from before the adoption of the First Amendment to this day. See Roth v. United States, supra, at 482-485. "Our duty admits of no `substitute for facing up to the tough individual problems of constitutional judgment involved in every obscenity case.'

III

Under a National Constitution, fundamental First Amendment limitations on the powers of the States do not vary from community to community, but this does not mean that there are, or should or can be, fixed, uniform national standards of precisely what appeals to the "prurient interest" or is "patently offensive." These are essentially questions of fact, and our Nation is simply too big and too diverse for this Court to reasonably expect that such standards could be articulated for all 50 States in a single formulation, even assuming the prerequisite consensus

exists. When triers of fact are asked to decide whether "the average person, applying contemporary community standards" would consider certain materials "prurient," it would be unrealistic to require that the answer be based on some abstract formulation. The adversary system, with lay jurors as the usual ultimate fact finders in criminal prosecutions, has historically permitted triers of fact to draw on the standards of their community, guided always by limiting instructions on the law. To require a State to structure obscenity proceedings around evidence of a national "community standard" would be an exercise in futility.

OBSCENITY

NRS 201.235 Definitions. In NRS 201.235 to 201.254, inclusive, unless the context otherwise requires:

1. "Community" means the area from which a jury is or would be selected for the court in which the action is tried.

2. "Item" includes any book, leaflet, pamphlet, magazine, booklet, picture, drawing, photograph, film, negative, slide, motion picture, figure, object, article, novelty device, recording, transcription, phonograph record or tape recording, videotape or videodisc, with or without music, or other similar items.

3. "Material" means anything tangible which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.

4. "Obscene" means any item, material or performance which:

(a) An average person applying contemporary community standards would find, taken as a whole, appeals to prurient interest;

(b) Taken as a whole lacks serious literary, artistic, political or scientific value; and

(c) Does one of the following:

(1) Depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated.

(2) Depicts or describes in a patently offensive way masturbation, excretory functions, sadism or masochism.

(3) Lewdly exhibits the genitals.

Appeal shall be judged with reference to ordinary adults, unless it appears, from the character of the material or the circumstances of its dissemination, to be designed for children or a clearly defined deviant group.

5. "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

[1911 C&P § 196; A 1955, 907]—(NRS A 1963, 1171; 1965, 584; 1971, 205, 493; 1979, 364)—(Substituted in revision for NRS 201.250)

NRS 201.237 Exemptions. The provisions of NRS 201.235 to 201.254, inclusive, do not apply to those universities, schools, museums or libraries which are operated by or are under the direct control of the State, or any political subdivision of the State, or to persons while acting as employees of such organizations.

(Added to NRS by 1979, 363)

NRS 201.239 Power of county, city or town to regulate obscenity. The provisions of NRS 201.235 to 201.254, inclusive, do not preclude any county, city or town from adopting an ordinance further regulating obscenity if its provisions do not conflict with these statutes.

(Added to NRS by 1979, 364)

NRS 201.241 Action to declare item or material obscene and obtain injunction.

1. The district attorney or city attorney of any county or city, respectively, in which there is an item or material which the district attorney or city attorney believes to be obscene, may file a complaint in the district court seeking to have the item or material declared obscene and to enjoin the possessor and the owner from selling, renting, exhibiting, reproducing, manufacturing or distributing it and from possessing it for any purpose other than personal use.

2. In such an action, no temporary restraining order may be issued.

3. A trial on the merits must be held not earlier than 5 days after the answer is filed nor later than 35 days after the complaint is filed. The court shall render a decision within 2 days after the conclusion of the trial.

(Added to NRS by 1979, 363; A 1981, 1688)

NRS 201.243 Evidence probative of obscenity of material or item. In prosecutions under NRS 201.235 to 201.254, inclusive, evidence of circumstances of production, dissemination, sale or publicity of the material or item, which indicates it is being commercially exploited by the defendant for its prurient appeal, is probative of the obscenity of the material or item and can justify the conclusion that it is, taken as a whole, without serious literary, artistic, political or scientific value.

(Added to NRS by 1979, 364)

NRS 201.245 Surrender, seizure and destruction of obscene item or material; undertaking not required for injunction; defendant chargeable with knowledge of contents after service of summons and complaint.

1. If a final judgment declaring an item or material obscene is entered against its owner or possessor, the judgment shall contain a provision directing the owner or possessor to surrender to the sheriff of the county in which the action was brought the item or material declared obscene and a direction to the sheriff to seize and destroy it.

2. In any action brought to declare an item or material obscene, the district attorney or city attorney bringing the action is not required to file an undertaking before an injunction is issued.

3. A sheriff directed to seize an obscene item or material is not liable for damages sustained by reason of the injunction in cases where judgment ultimately is rendered in favor of the person, firm, association or corporation sought to be enjoined.

4. Every person, firm, association or corporation who sells, distributes, or acquires possession with intent to sell or distribute any allegedly obscene item or material, after service upon the person, firm, association or corporation of a summons and complaint in an action brought to declare an item or material obscene is chargeable with knowledge of the contents of the item or material.

(Added to NRS by 1979, 363)

NRS 201.247 Payment to city or county of value received from sale of obscene materials after judgment or injunction. If a district court enters a judgment that an item or material is obscene and that item or material, or one substantially identical thereto, is sold after that judgment or injunction, the court shall order an accounting to determine the value of all money and other consideration received by the defendant which was derived from the

obscene item or material after the court judged it to be obscene. The defendant shall pay a sum equivalent to that value into the general fund of the city or county which prosecuted the action.

(Added to NRS by 1979, 364)

NRS 201.249 Production, sale, distribution, exhibition and possession of obscene items or materials; penalty. Except as otherwise provided in NRS 201.237 and except under the circumstances described in NRS 200.720 or 200.725, a person is guilty of a misdemeanor who knowingly:

1. Prints, produces or reproduces any obscene item or material for sale or commercial distribution.

2. Publishes, sells, rents, transports in intrastate commerce, or commercially distributes or exhibits any obscene item or material, or offers to do any such things.

3. Has in his or her possession with intent to sell, rent, transport or commercially distribute any obscene item or material.

(Added to NRS by 1979, 364; A 1995, 951)

NRS 201.251 Coercing acceptance of obscene articles or publications; penalty.

1. A person, firm, association or corporation shall not, as a condition to any sale, allocation, consignment or delivery for resale of any item or material, require that the purchaser or consignee receive for resale any other item or material which is obscene. A person, firm, association or corporation shall not deny or threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, for the failure or refusal of any person to accept any obscene item or material or for the return thereof.

2. A person, firm, association or corporation who violates any provision of this section is guilty of a misdemeanor.

(Added to NRS by 1979, 364)

NRS 201.253 Obscene, indecent or immoral shows, acts or performances; penalty. Except under the circumstances described in NRS 200.710, every person who knowingly causes to be performed or exhibited, or engages in the performance or exhibition of, any obscene, indecent or immoral show, act or performance is guilty of a misdemeanor.

(Added to NRS by 1967, 482; A 1995, 952)

NRS 201.254 Exemption of stagehands and movie projectionists from criminal liability when possessing or exhibiting obscene material directly related to their work. A motion picture machine operator or a stagehand is not criminally liable for exhibiting or possessing with the intent to exhibit any obscene material if:

1. Such exhibition or possession is a part of the motion picture he or she is projecting or part of the stage show for which he or she is employed as a stagehand; and

2. The operator or stagehand has no financial interest, except wages, and no managerial responsibility in his or her place of employment.

(Added to NRS by 1969, 352)

OBSCENE, THREATENING OR ANNOYING TELEPHONE CALLS

NRS 201.255 Penalties.

1. Any person who willfully makes a telephone call and addresses any obscene language, representation or suggestion to or about any person receiving such call or addresses to such other person any threat to inflict injury to the person or property of the person addressed or any member of the person's family is guilty of a misdemeanor.

2. Every person who makes a telephone call with intent to annoy another is, whether or not conversation ensues from making the telephone call, guilty of a misdemeanor.

3. Any violation of subsections 1 and 2 is committed at the place at which the telephone call or calls were made and at the place where the telephone call or calls were received, and may be prosecuted at either place.

(Added to NRS by 1967, 98; A 1971, 855)

EXHIBITION AND SALE OF OBSCENE MATERIAL TO MINORS

NRS 201.256 Definitions. As used in NRS 201.256 to 201.2655, inclusive, unless the context otherwise requires, the words and terms defined in NRS 201.257 to 201.264, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1969, 513; A 1997, 1314, 2662)

NRS 201.2565 "Distribute" defined. "Distribute" means to transfer possession with or without consideration.

(Added to NRS by 1997, 2662)

NRS 201.257 "Harmful to minors" defined. "Harmful to minors" means that quality of any description or representation, whether constituting all or a part of the material considered, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominantly appeals to the prurient, shameful or morbid interest of minors, is patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors, and is without serious literary, artistic, political or scientific value.

(Added to NRS by 1969, 513; A 1981, 1689)

NRS 201.2581 "Material" defined. "Material" means:

1. A book, pamphlet, magazine, newspaper, printed advertising or other printed or written material;

2. A motion picture, photograph, picture, drawing, statue, sculpture or other visual representation or image; or

3. A transcription, recording or live or recorded telephone message.

(Added to NRS by 1997, 2662)

NRS 201.259 "Minor" defined. "Minor" means any person under the age of 18 years, but as applied to the showing of a motion picture excludes any person employed on the premises where the motion picture is shown.

(Added to NRS by 1969, 513)

NRS 201.2595 "Motion picture" defined. "Motion picture" means a film or a video recording, whether or not it has been rated appropriate for a particular audience, that is:

1. Placed on a videodisc or videotape; or

2. To be shown in a theater or on television,

and includes, without limitation, a cartoon or an animated film.

(Added to NRS by 1997, 1314; A 1997, 2663)

NRS 201.261 "Nudity" defined. "Nudity" means:

1. The showing of the human female breast with less than a fully opaque covering of any portion of the areola and nipple;

2. The showing of the human male or female genitals or pubic area with less than a fully opaque covering of any portion thereof; or

3. The depiction of the human male genitals in a discernible turgid state whether or not covered.

(Added to NRS by 1969, 513; A 1999, 1360)

NRS 201.262 "Sado-masochistic abuse" defined. "Sado-masochistic abuse" means:

1. Flagellation or torture practiced by or upon a person whether or not clad in undergarments, a mask or bizarre costume; or

2. The condition of being fettered, bound or otherwise physically restrained.

(Added to NRS by 1969, 513; A 1981, 1689)

NRS 201.263 "Sexual conduct" defined. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's unclothed genitals or pubic area.

(Added to NRS by 1969, 513)

NRS 201.264 "Sexual excitement" defined. "Sexual excitement" means the condition of human male or female genitals in a state of sexual stimulation or arousal.

(Added to NRS by 1969, 513)

NRS 201.265 Unlawful acts; penalty. Except as otherwise provided in NRS 200.720 and 201.2655, and unless a greater penalty is provided pursuant to NRS 201.560, a person is guilty of a misdemeanor if the person knowingly:

1. Distributes or causes to be distributed to a minor material that is harmful to minors, unless the person is the parent, guardian or spouse of the minor.

2. Exhibits for distribution to an adult in such a manner or location as to allow a minor to view or to have access to examine material that is harmful to minors, unless the person is the parent, guardian or spouse of the minor.

3. Sells to a minor an admission ticket or pass for or otherwise admits a minor for monetary consideration to any presentation of material that is harmful to minors, unless the minor is accompanied by his or her parent, guardian or spouse.

4. Misrepresents that he or she is the parent, guardian or spouse of a minor for the purpose of:

(a) Distributing to the minor material that is harmful to minors; or

(b) Obtaining admission of the minor to any presentation of material that is harmful to minors.

5. Misrepresents his or her age as 18 or over for the purpose of obtaining:

(a) Material that is harmful to minors; or

(b) Admission to any presentation of material that is harmful to minors.

6. Sells or rents motion pictures which contain material that is harmful to minors on the premises of a business establishment open to minors, unless the person creates an area within the establishment for the placement of the motion pictures and any material that advertises the sale or rental of the motion pictures which:

(a) Prevents minors from observing the motion pictures or any material that advertises the sale or rental of the motion pictures; and

(b) Is labeled, in a prominent and conspicuous location, "Adults Only."

(Added to NRS by 1969, 513; A 1971, 161, 495; 1981, 1689; 1995, 952; 1997, 1314, 2662; 2003, 430, 1375)

NRS 201.2655 Exemptions. The provisions of NRS 201.256 to 201.2655, inclusive, do not apply to:

1. A university, community college, school, museum or library which is operated by or which is under the direct control of this state or a political subdivision of this state; or

2. An employee or independent contractor of an institution listed in subsection 1, if the employee or independent contractor is acting within the scope of his or her employment or contractual relationship.

(Added to NRS by 1997, 2662)

What is obscenity, how is it defined and who gets to make the judgment on when the first amendment goes too far? When this topic is brought up the first thing to come to my mind is the movie People Vs. Larry Flint, he is just released from prison and holds a rally for himself. While he is giving a speech about what obscenity behind him are slides of pictures depicting, both violence and nudity (sometimes in erotic ways). And the question is repeated what is obscene, the human breast or scenes of children covered in napalm. Other representation comes to mind as well, the time magazine with women in uniform breastfeeding on the cover or any primetime police (FBI) show where murder is the case. One last point of reference, there has been a shift in public perception which according to the Supreme Court president, in what exactly is too far, In the 70's a breast or buttocks was not a rational for an "R (restricted)" rating, violence was the key to that rating, since then shift has been toward violence is "PG (Parental Guidance suggested) while an exposed buttocks or areola is considered obscene and given an "R" rating. That being said the history of obscenity in the United States has gone through the shift in three major shifts with some bumps in the road, from the beginning of the Union there was no protection from the first amendment for obscenity siting an English president set forth in Hicklin v. Regina, that lasted until 1957 with the decision on Roth v. United States (and one of the greatest lines from a Supreme court case Jacobellis v. Ohio where the justice defines obscenity), and today where we as a country use the court's ruling in Miller v. California to determine what is obscene and what is not.

The Hicklin case was used because of the absence of president set in our courts as well as the idea that "Implicit in the history of the First amendment is the rejection of obscenity as utterly without redeeming social importance." The Hicklin case explicitly states that with people viewing obscenity there are those that would be susceptible and it would deprave and corrupt those whose minds are open to such immoral influences, this would cause harm to them as well as the masses they came in contact with. This case was the president in the United States and hence all courts followed the ideas set forth. The vagueness of the statement as well as the restrictive manner allowed there to be challenges in the future, besides the fact it was not a case decided in the United States where the community standards are different (not always in a good way and defiantly not as easily changed as in Europe).

Roth v. United States is the next in the line of presidents set in the United States, this one by the Supreme Court. The background of the Roth case is, Roth mailed out an advertisement for a quarterly catalogue that had depictions of nude women and items that could be used by the "Fancy Free", he was convicted in California for mailing pictures of nude or scantily clad women. The decision was split with the decision being given by Justice Brennan. In the decision there is a test that needs to be used to determine if the material is Obscene, obscenity is not protected by the first amendment, if the material is determined to be obscene then they are not protected and can be convicted by the state statute. The test consists is any material in which "dominant theme taken as a whole appeals to the prurient interest" to the "average person, applying contemporary community standards." This test is much less vague and easier to implement in any locality, the concurring opinion by Chief Justice Warren is where a large hole is created, in his opinion the test was broad language would cause the Arts and sciences to be targeted and impacted by the Roth test. This broad language the reason for one of the best lines in any Supreme Court case, Jacobellis v. Ohio, Justice Stewart's concurring opinion he was discussing how hard core porn was the only type of obscenity not protected by the First Amendment. His comments "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that" reveal the need for an updated test that defines more specifically what obscenity really is.

The standards for defining obscenity was settled in 1973 with the decision in Miller v. California, Marvin Miller was distributing by mass mail advertisings about his pornographic books and materials. While the history of the case

is not very important the addition to the test is. The addition to Roth is the SLAPS value test (Serious Literary, artistic, political, or scientific) used to determine if obscenity is present. If in connection the material taken as a whole appeal to the prurient interests, meets the community standards, or using the new SLAPS test then the item is obscene is not protected by the First amendment. The new test increases the definition but also creates strict guidelines which can be taken to far by interpreter, leading to problems.

The defining of obscenity is defined with the idea of nudity and pornography, when it is not the only obscene material present in today's environment. The United States has some issues when it comes to violence and violence against women. Perhaps if we as a country worried less about areolas and more about areal assaults this problem could be reduced. In the words of Larry Flint "What is more obscene" it may be the glorification of Violence which is not natural in its occurrence or if I am wrong it's the mother feeding her infant and her heaven forbid her areola becomes visible which is a natural and healthy occurrence.

Eian Gilbert

Reflection of VHT

When I would use discussion in the past it had its moments, I had some success when it came to mock court cases, sometime there would be actual discussion but most of the time it was frustrating. I would try to have discussions based on current events, while giving the students very little background. Some students have very little knowledge, others had an opinion with little fact, if I was lucky there would be a student or two with some knowledge and some facts but then the discussion was between myself and the one or two students. Discussion was not something I was good at but wanted to be, I was not aware of how to make it worthwhile.

The PD was invaluable, even the little bit we had the year before, I took that bit of info about using consenseograms (sp) and giving them the background and primary sources before the discussion. It worked well with one of my classes but failed with the other. Throughout the following year we looked at different protocols' and formats for discussion, tried them in class, and then we were encouraged to use them in class. It was great, most worked. There was also the ideas line numbers, info boxes (which I still don't know how to use), and annotating which when incorporated worked great. Discussions will genuinely spark a better understanding of the topic while incorporating the common core and "21 century" skills.

I still have to work on creating a meaningful assessments, as well as, time management. When it comes to incorporating these skills into my lessons instead shoving them in is another issue I am facing. I also have to work on creating groups with a variety of skills so there is not a group that struggles more than the rest.

Discussion Rubric **Mr. Gilbert**

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Category	A	B	C	D	Grade
Quality of information x2	Postings clearly relate to the main topic and add new concepts, info. They include several supporting details and/or examples	Postings clearly relate to the main topic. They provide at least 1 supporting detail or example.	Postings clearly relate to the main topic. No details and/or examples are given.	Postings have little or nothing to do with the main topic or simply restate the main concept.	
Critical Thinking x2	Postings consistently enhance the critical thinking process through reflection about issues and difference questioning of self and others.	Postings show individual critical thinking, but do not apply reflection and questioning to others' statements.	Postings respond to questions from others but do not show reflection or questioning of ideas.	No response to questions from others.	
Reference material	Postings frequently refer to textbook material or other reliable sources (books, journal articles, websites).	Postings show evidence of having read textbook, include at least one reference to text or other sources.	Postings show evidence of having read textbook, no references to any sources.	Postings include opinions only, no evidence of reading any reliable sources.	

Participation **x2**	**Postings encourage and facilitate interaction among members of the online community.**	**Postings respond to other members of the online community.**	**Postings rarely interact with or respond to other members of the online community.**	**Postings respond to the main question of the discussion facilitator only.**
Language	**Postings consistently show appropriate vocabulary and writing style.**	**Postings usually show appropriate vocabulary and writing style.**	**Postings often include inappropriate vocabulary and writing style.**	**Postings consistently show inappropriate vocabulary and writing style.**

Final Discussion Grade:

The pages that follow the Lesson Plan Template include a detailed background paper on the topic for teachers, student readings and reading strategy/questions, source(s), handouts, assignment sheet, self-assessment/reflection and a rubric related to this lesson.