

DOUBLE GLAZED: REFLECTION, NARCISSISM, AND FREUDIAN IMPLICATIONS IN TWINCEST PORNOGRAPHY¹

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I. INTRODUCTION

A. Misha and Sasha

A brunette woman and her blonde mirror-image play on the grass in a public park.² They flirt and become sexually interested.³ They perform a series of daringly indecent acts.⁴ Another film depicts the same twins entertaining voyeurs, the film director, and a cameraman.⁵ The twins seem to be ten years younger in the first film.⁶ However, their

¹ This Article includes research first published in CARMEN M. CUSACK, *TWINS AND DEVIANCE: LAW, CRIME, SEX, SOCIETY, AND FAMILY* (2016). Many thanks to Bows, who was overlooked in Volume 9.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

interpersonal dynamic and professional demeanors were the same.⁷ In a third film, they appear to be older than in the first two films.⁸ Their portfolio of work is prolific.⁹ More than one dozen film reels are freely available on the internet, and an unknown number of films are for sale.¹⁰ These pornographers use pseudonyms, such as Olga, Alena, Misha, and Sasha.¹¹ Their work depicts years of incest (i.e., “twincest”), unprosecuted and uninterrupted by their families, society, or the government.¹²

B. Introduction

This Article analyzes sociolegal and psychological implications of incest between twins, known as “twincest.”¹³ Section II, Part A outlines the *Miller* test.¹⁴ Section II, Part B analyzes legal theory behind governmental regulation of morality and

⁷ CUSACK, TWINS AND DEVIANCE (2016).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ CUSACK (2016).

¹⁴ *Infra* Section II Part A. *Miller v. California*, 413 U.S. 15 (1973).

twincest pornography.¹⁵ Point One under Part A of Section III explores fantasies and fetishization of twins in media and culture.¹⁶ Point Two of Part A in Section III discusses details of incest pornography and the most extensive list of freely accessible twincest pornography, ranging from erotic nude photos to hardcore videos depicting same-sex and opposite-sex twins participating in sexual activities.¹⁷ Part B in Section III evaluates psychoanalytic perspectives on the incest taboo, including case studies, to determine the significance of laws that criminalize twincest in light of voluntariness, coercion, and other considerations.¹⁸ Finally, Part C analyzes whether twin pornography could be found to be legally obscene under *Miller*.¹⁹ Section IV concludes that incestuous pornography between twins could be held by courts to be legally

¹⁵ *Infra* Section II Part B.

¹⁶ *Infra* Section III(A)(1).

¹⁷ *Infra* Section III(A)(2).

¹⁸ *Infra* Section III(B).

¹⁹ *Infra* Section III(C).

obscene, but for unknown reasons, it is not routinely prosecuted like other fetish films.²⁰

II. OBSCENITY

A. Miller v. California

Marvin Miller, a bookstore owner, sent unsolicited advertisements through the mail to members of his community.²¹ The flyers explicitly depicted performers' genitals and group sex. His bookstore was raided by the local police, and Miller was charged by the state prosecutor with several counts of obscenity, including Count 21 for a book called *My Sexy Aunt*,²² describing adult incest between a father and his daughter, and between an adult brother and his adult sister; it also described lesbian sex and female and male sodomy.²³ The defendant and the state called expert witnesses to testify whether the prosecuted material: (1) appealed

²⁰ *Infra* Section IV.

²¹ U.S. v. Miller, 455 F.2d 899 (1972).

²² *Id.* at 902.

²³ *Id.*

to a prurient interest, (2) utterly possessed no redeeming social value, and (3) offended contemporary community standards.²⁴ One expert testifying for Miller said that *My Sexy Aunt* was not obscene, but also stipulated that she had never read a novel that met the legal definition of “obscenity” because they all possessed some redeeming social value.²⁵ Miller had pandered materials in the flyers, which were legally obscene, and the Ninth Circuit Court of Appeals held that the material was factually obscene.²⁶ Miller was sentenced to two years in prison and to pay a \$22,500 fine.²⁷

This Court did not intend to create morality laws for each state, but set forth suggestions for how states ought to evaluate obscene material.²⁸ Their guideposts are important to states’ citizens because obscene material online or delivered through the mail

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* Miller was convicted under 18 U.S.C.S. § 1461 now *in pari materia* with Miller v. California, 413 U.S. 15 (1973).

²⁷ Miller v. California, 413 U.S. 15, 25 (1973).

²⁸ *Id.*

may be subject to federal laws, which have adopted parameters suggested by the Court in *Miller*.²⁹

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.³⁰

“Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law.”³¹ Examples include the following:

- (a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; and
- (b) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals.³²

²⁹ *Id.*

³⁰ *Id.* (Internal citations omitted).

³¹ *Id.* at 39.

³² *Id.* at 25.

The Court also held that “[s]ex 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.”³³ The First Amendment may only protect prurient and patently offensive depictions of sex acts when they possessed more than *de minimis* serious social value, including literary, artistic, political, or scientific value.³⁴ The standard is used to find that material is obscene, which then may be used to convict defendants of producing, distributing, buying, or selling obscenity.³⁵ Material may be legally obscene and enjoined without defendants being convicted of obscenity, and defendants may be convicted under obscenity statutes without material being enjoined.³⁶

³³ *Id.* at 25-26.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See, e.g., Moore v. State*, 470 S.W.2d 391 (1971).

In passing upon appellants points of error, we have carefully examined and reviewed the entire record. Included in such record are some 491 exhibits, including some 170 magazines, a newspaper-type publication, some 307 paperback books, with suggestive titles, 10 reels of motion picture film, one deck of cards, and one simulated male penis. *The Blow Job; Swap Ass; Horny and Hung; Prissy Prune; Pink Pussette; Operation Poontang; Hot and Hard; Kiss My*

Therefore, depictions of incest may be enjoined and prosecuted under *Miller*.

Assets; Cherry Gash; Suck It to Me; Virgin Balls; Love Me, Fix Me; Men and Their Boy-Studs; Mass Orgasm; Top C.O.C.K. Comes Again; Free Pussey; Sounds from a Perverted Couch; The Sin-Teen Job; Two Way Bride; Use Me, Hurt Me; Broads Who Want To; Hot Rocks; Turn Down the Sheets; Cocktail; My Body, Your Bed; Oral Genital Relations; Derelict Whore; Hard Way In; From Oral to Anal; The Virgin Trapper; Sex Torture; To Make a Nympho Cry; Swap Meat; The Sister Lovers; Masturbation Fantasies; The Gay Girls; Sexy Spread; Cream Her Kitty; Young Hot Stuff; Licked but Never Beaten; Mouthful of Flesh; A Hot Place to Come; Come as You Are; Incest Confidential; Split Me Open; Come Gay; The Glorious Hole; Naked Place; Hot Flicks; Groovy Nudist; Pussycat; Phallic Development, Its Variations and Extremes; Nude Exploration; [and] Screw. Id. at 394.

We have carefully examined and reviewed the entire record, including the exhibits. The basic contents of the magazines are photographic depictions of nudity, including unclothed human male and female genitalia in close proximity, and acts of sexual perversion. The books consist of detailed verbal descriptions in coarse and vulgar language of acts of masturbation, homosexuality, sodomy, bestiality, sexual intercourse, sadism and masochism. The movie films contain similar matter. Pictures and descriptions run the gamut of sexual experiences such as lesbianism, female masturbation, homosexuality, the flagellation of male by female and vice versa, bizarre descriptions of different acts of sexual intercourse between male and female characters. We agree with the trial court's findings. The trial court did not abuse its discretion in granting that part of the temporary injunction. *Id.* at 395.

B. Legal Theory

In his dissenting opinion in *Lawrence v. Texas*,³⁷ Justice Antonin Scalia famously rejected the Court's opinion that the state lacked power inside a bedroom to control private, consensual sodomy between same-sex partners.³⁸ Justice Scalia suggested that decriminalizing sodomy would correlate with decriminalization of incest and obscenity.³⁹

State laws against bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity are likewise sustainable only in light of...laws based on moral choices. Every single one of these laws is called into question by today's decision; the Court makes no effort to cabin the scope of its decision to exclude them from its holding.⁴⁰

The Court made a similar assertion in *Bowers v. Hardwick* when it upheld the Constitutionality of an

³⁷ *Lawrence v. Texas*, 539 U.S. 558 (2003).

³⁸ *Id.*

³⁹ *Gaylord v. Tacoma School District No. 10*, 88 Wn.2d 286 (1977).

⁴⁰ *Id.* at 590.

anti-sodomy law in Georgia.⁴¹ “Plainly enough, otherwise illegal conduct is not always immunized whenever it occurs in the home. Victimless crimes, such as the” “possession in the home of drugs, firearms, or stolen goods.”⁴²

[I]f respondent's submission is limited to the voluntary sexual conduct between consenting adults, it would be difficult, except by fiat, to limit the claimed right to homosexual conduct while leaving exposed to prosecution adultery, incest, and other sexual crimes even though they are committed in the home. We are unwilling to start down that road.⁴³

The *Lawrence* Court circumscribed its decision when it stipulated that the United States Constitution did not protect sadomasochistic or harmful acts, such as those depicted in various genres of homosexual pornography and obscenity.⁴⁴ The Court found that it

⁴¹ Bowers v. Hardwick, 478 U.S. 186 (1986).

⁴² Bowers v. Hardwick, 478 U.S. 186, 195 (1986).

⁴³ Bowers v. Hardwick, 478 U.S. 186, 195-196 (1986).

⁴⁴ Carmen M. Cusack & Matthew E. Waranius, Nonconsensual Insemination and Pornography: The Relationship Between Sex Roles, Sex Crimes, and “STRT,” “Gay,” and “Shemale” Films on Youporn.com. 2 J RES GENDER STUD 15 (2012).

would be irrational to discriminate against homosexuals privately participating in non-harmful sexual activity.⁴⁵

When analyzing twincest pornography through a post-*Lawrence*⁴⁶ lens, “[g]enerally the fact that sodomy is not a crime no more relieves the conduct of its immoral status than would consent to the crime of incest.”⁴⁷ Yet, Justice Scalia’s dissent identified a trend among states to decriminalize some allegedly immoral acts (i.e., adultery, cohabitation, and fornication).⁴⁸ Justice Scalia’s inflammatory and indignant tone may have been exaggerated and conclusory because millions of Americans already participated in these activities without any legal

⁴⁵ *Id.*

⁴⁶ *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁴⁷ *Gaylord v. Tacoma School District No. 10*, 88 Wn.2d 286, 197 (1977).

⁴⁸ *State v. Sanders*, 37 N.C. App. 53 (1978). “Offenses against Public Morality and Decency” includes such offenses as crime against nature, incest, bigamy, fornication and adultery, obscene literature, indecent exposure, dissemination of sexually oriented materials to minors, use of profane, indecent or threatening language to any person over telephone and use of profane or indecent language on public highways. *Id.*

repercussions, even when evidence against them was readily available.⁴⁹

Pornography depicting incest, including adultery, fornication, masturbation, obscene language, and prostitution is accessible for free via the Internet.⁵⁰ The abundance and accessibility of depictions of adult twincest supports Justice Scalia's claim that incest and obscenity would become decriminalized.⁵¹ Lack of prosecution tacitly decriminalizes content.⁵² The broken windows theory of crime may explain how free Internet pornography is part of a degenerative effect.⁵³ Visible and evident disorder leads to greater crime perpetration because deviants observe a lack of deterrence, community buy-in, and repercussions.⁵⁴

⁴⁹ *Id.* CARMEN M. CUSACK, *ILLCIT SEX WITHIN THE JUSTICE SYSTEM: A CAUSE AND AN EFFECT OF WEAK POWER TO LEGISLATE, REGULATE, AND ENFORCE MORALITY* (2017).

⁵⁰ "In fact, **anything** and **everything** is a thing in porn." Tracy Clark-Flory, Your "weird" turn-ons aren't as strange as you think, Salon.com (Sept. 9, 2014), *available at* http://www.salon.com/2014/09/09/your_weird_turn_ons_arent_as_strange_as_you_think/.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ CUSACK, *ILLCIT SEX WITHIN THE JUSTICE SYSTEM* (2017).

Open production, distribution, and possession of twincest pornography challenge the government's belief that society has an interest in preventing twincest.⁵⁵ They also challenge relevant standards set forth in *Miller v. California* by making prosecution less standardized.⁵⁶ *Miller* indicates that a local community may include anyone in a state (i.e. state laws); however, some courts have found that using the internet in the privacy of one's home may violate federal and state laws and offend the local community even though viewing and possessing obscenity in the privacy of one's home is legal.⁵⁷ Online pornography may challenge how the Court determines whether the local community was offended; and yet, mainstream vendors, such as Amazon, make pornography available (e.g., depictions of incest).⁵⁸

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ CUSACK, PORNOGRAPHY AND THE CRIMINAL JUSTICE SYSTEM (2014). *Jenkins v. Georgia*, 418 U.S. 153 (1974). *Stanley v. Georgia*, 394 U.S. 557, 565 (1969).

⁵⁸ *Miller v. California*, 413 U.S. 15, 25 (1973). CARMEN M. CUSACK, PORNOGRAPHY AND THE CRIMINAL JUSTICE SYSTEM (2014). National Center on Sexual Exploitation (NCSE), *available at* <http://endsexualexploitation.org/dirtydozen-2016/>.

Explicit pornographic depictions of voluntary adult incest have infrequently been prosecuted by the government in comparison with other kinds of obscenity.⁵⁹ On occasion, purveyors and consumers have been prosecuted.⁶⁰ However, performers have been generally immune. Touring performers have openly promoted twincest in local communities.⁶¹ Because prosecution is discretionary, members of the government may not find that Internet pornography and promotional tours physically infiltrate the local community with offensive material.⁶² Public

⁵⁹ *Contra* Courtney Megan Cahill, *Same-Sex Marriage, Slippery Slope Rhetoric, and the Politics of Disgust: A Critical Perspective on Contemporary Family Discourse and the Incest Taboo*, 99 NW. U.L. REV. 1543 (2005).

The correlation between incest and same-sex relations is by no means a mere rhetorical flourish, although a perennial favorite of conservative commentators. Rather, some less biased commentators maintain that the slippery slope arguments that have been made with respect to incest and same-sex relations might not be entirely far-fetched. *Id.* at 1558.

Same-sex relations and marriage have agitated society more than voluntary adult incest, which has been tolerated and encouraged throughout the world and the United States for a much longer time period than it has been criminalized. *See* The Bible and CUSACK (2016). Yet, contemporary political support for same-sex marriage is vast whereas there is no public political support for decriminalization of incest.

⁶⁰ *Miller v. California*, 413 U.S. 15, 25 (1973).

⁶¹ *Id.*

⁶² CUSACK (2014).

appearances may not exhibit explicit material like the unsolicited flyers mailed in *Miller*.⁶³

Federal and state governments seem to be uninterested in prosecuting depictions of voluntary incest between adults.⁶⁴ Therefore, a pattern of ambivalence toward prosecution of pornography depicting twincest may be evident.⁶⁵ Prosecution of obscenity depicting incest typically involves other obscene material, which the government finds to be objectionable.⁶⁶ For example, incest-themed stories have been prosecuted.⁶⁷ Some stories have used obscene language to depict sex between parents and

⁶³ *Id.*

⁶⁴ “There are entire sites devoted to fantasies about everything from cannibalism to incest.” Clark-Flory, Salon.com (2015).

⁶⁵ *Id.*

⁶⁶ *Id.* “What defines ‘weird’ in the realm of sexual fantasy, anyway? Is it marginality? If so, the availability of “niche” porn suggests that even be-dentured titillation isn’t that weird. No, it may not be a top search term on YouPorn.com, but it has enough of an audience to exist as a sub-genre.” *Id.* CUSACK (2014).

⁶⁷ *Keefe v. Geanakos*, 418 F.2d 359 (1969).

children,⁶⁸ even including adult children.⁶⁹ In some cases, the government has prosecuted use of the term “motherfucker”⁷⁰ because it may describe conduct prohibited by law.⁷¹ However, several cases indicate that the government cannot place prior restraints on material depicting incest.⁷² Additionally, depictions of incest may be non-obscene even in jurisdictions where incest is prohibited conduct.⁷³ Films, including pornography, often depict characters

⁶⁸ See *Yorko v. State*, 699 S.W.2d 224 (1985).

This Court must view the evidence in the light most favorable to the court’s judgment. In this light the standard is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. This standard for review of the sufficiency of the evidence to sustain a conviction is now the same in both direct and circumstantial evidence cases....Applying this standard, it is clear that a rational trier of the facts could have found from the evidence beyond a reasonable doubt all the essential elements of the offense....The magazine in question was introduced into evidence without objection. The magazine contains a word-picture story of incest between a mother and her son and depicts acts of sexual intercourse and oral sodomy and other sexual activity. It further depicts the same acts between the mother and other sexual partners and the son and other sexual partners. There are other photographs of group sexual orgy. The cover, front and back, depicts some of the scenes from the magazine. *Id.* at 226-7 [Internal citations omitted].

⁶⁹ *U.S. v. French*, 31 M.J. 57, 60 (CMA 1990).

⁷⁰ *Id.*

⁷¹ *Id.* *Yorko v. State*, 699 S.W.2d 224 (1985).

⁷² *French*, 31 M.J. 57, 60 (CMA 1990). *Yorko* 699 S.W.2d 224 (1985).

⁷³ *Miller v. California*, 413 U.S. 15 (1973).

participating in illegal activity, including illegal sexual activity, such as public indecency.⁷⁴ Incest pornography may not be obscene if it is inoffensive or possesses redeeming value.⁷⁵ For example, works depicting twincest, when taken as a whole, may denounce immorality rather than promote it.⁷⁶

Certain hardcore twincest films depict masturbation; dildos; kissing; and anal, oral, and vaginal penetration.⁷⁷ Hardcore content combined with depictions of incest, arguably, may be prosecuted in almost any jurisdiction under the *Miller* test.⁷⁸ However, lack of enforcement against twincest pornography and possibly tolerant attitudes toward adult incest pornography suggest that the government does not care specifically to prosecute the films' actors.⁷⁹ Generally, states have been unaggressive toward consumers and purveyors, who

⁷⁴ *Lawrence* at 599. Carmen M. Cusack, *How the Content of Online Pornography Depicts Expressed Consent for Insemination*, 3 ONLINE J COMMUN & MEDIA TECHNOL 91 (2013).

⁷⁵ *Id.*

⁷⁶ *French*, 31 M.J. 57, 60.

⁷⁷ Section III, Part A, Point Two.

⁷⁸ 413 U.S. 15 (1973).

⁷⁹ Section III, Part A, Point Two.

do not exploit children.⁸⁰ Therefore, it appears to be unlikely that the government will prosecute twincest pornography, and this appearance may result in laws failing to deter production and transmission of pornography.⁸¹

III. SEXUAL INTEREST IN TWINS

A. Twincest

1. Fantasies and Fetishes

Twin fantasies and fetishes are common.⁸² Pornography fetishizes such twin fantasies.⁸³ Pornography may normalize aberrant fantasies by providing mundane imagery, making depictions easily accessible, and differentiating twincest from harmful forms of incest.⁸⁴ Exploration and

⁸⁰ *Id.*

⁸¹ CUSACK, *ILLICIT SEX WITHIN THE JUSTICE SYSTEM* (2017).

⁸² Clark-Flory, Salon.com (2014).

⁸³ CUSACK (2014). CUSACK (2016).

⁸⁴ *Id.* Spillers v. State, 145 Ga. App. 809, 809-810 (1978).

It is appropriate to point out that...it appears that the General Assembly has provided that a professor or faculty member within elementary, high school or college may utilize what otherwise might be proscribed pornography, if its use is in a course of study related to such material, or if a person needs what otherwise might be classified

normalization of twin fantasies may be useful for maintaining tradition in families and society.⁸⁵ Twin fantasies may correlate with inner conflict, and may be entertained by fantasizers to lessen discord within interpersonal relationships.⁸⁶ For example, using pornography may relieve tension.⁸⁷ Fetishizing twins may exfoliate suppressed feelings and singletons' unconscious view of personhood and identity in terms of duality, for example, self and other.⁸⁸ Adversarial and conflicted points of view and identities may result in interpersonal and social

as illegal pornography (sodomy, close up photography of group sex, photographs of incest, adultery and bestiality (e.g. male human-female baboon; female human-male dog) for medical, health or therapy purposes, then the person must procure written authorization from a medical practitioner or psychiatrist. With the latter permission, possession of pornotherapy then would become an affirmative defense....These are issues involving safety, health and community morals within the police power of the state posing questions for resolution by the General Assembly rather than by the courts. For us to rule otherwise would be a judicial usurpation of a legislative prerogative. *Id.* at 809-810.

⁸⁵ *Id.* "There is plenty to be said about the negative impact of pervasive online porn, but one positive effect is that it demystifies fantasy. Then again, demystifying fantasy can be a bad thing. What are our fantasies without taboo?" Clark-Flory, Salon.com (2014).

⁸⁶ *Id.* "Often, the degree to which we feel that our own fantasies are weird is relevant to our enjoyment of the fantasies.... Sexuality is full of these contradictions; it's one of its defining characteristics." *Id.*

⁸⁷ CUSACK (2016).

⁸⁸ *Id.*

difficulties.⁸⁹ Though pornography antagonists may argue that fetishization of twin fantasies demeans twins, depictions distinguish twins from singletons, which draws awareness to twins' specialness.⁹⁰ Some twins appreciate this distinction and the attention that it brings.⁹¹ Society may benefit when people, who view pornography, feel validated, self-aware, and expressive.

Twin fantasies may channel and express desires to have a twin.⁹² Fantasies of having sex with one's self or siblings may correlate with twin fantasies and interest in twin pornography.⁹³ Twins' incestuous and self-reflexive fantasies may also correlate with poor differentiation and repression.⁹⁴ Erotic twin

⁸⁹ *Id.* Carmen M. Cusack, *ADR and Yama, The First Limb of Yoga Sutra*, 23 ADRJ 131 (2012). Carmen M. Cusack, *Alternative Dispute Resolution and Niyama, The Second Limb of Yoga Sutra*, 6 IN FACTIS PAX 107 (2012).

⁹⁰ CUSACK (2014); CUSACK (2016).

⁹¹ CUSACK (2016).

⁹² *Id.*

⁹³ Dorothy T. Burlingham, *Twins: Observations of Environmental Influences on Their Development*, 2 THE PSYCHOANALYTIC STUDY OF THE CHILD 61 (1946).

⁹⁴ Thomas Rogers, "Gay porn's most shocking taboo," Salon.com, May 20, 2010, available at <http://www.salon.com/2010/05/21/twincest/>. "Of course, twins aren't a new fantasy by any means. For straight men, sex with twins has become a cliché But the appeal of gay twincest is a little more

fantasies generally may result when a particular paradigm is transferred from self to other (e.g., fantasies about having a twin) or from other to self (e.g., repressing homosexual desires);⁹⁵ for example, narcissistic mirror transference, which is discussed under point 2 in Section III, Part B.⁹⁶ Twincest pornography may serve as an object that embodies a singleton's projection of having a twin.⁹⁷ Thus, pornography may be like the viewer's twin.⁹⁸ The viewer is able to connect to and control the object.⁹⁹ The viewer may impersonate, self-idealize, and transmute.¹⁰⁰

complicated than the standard straight male twin fantasy . . . 'you could argue that twincest is this idealized version of gay sex' . . . 'These guys are basically having sex with themselves.' '[Clone] fantasies [a]re a way to rationalize . . . gay attraction . . . as a way to sublimate . . . [desires for] gay sex.'" *Id.*

⁹⁵ S. J. Coen & P. A. Bradlow (1982). Twin transference as a compromise formation. *J. AM. PSYCHOANALYTIC ASS'N*, 30(3), 599-620.

⁹⁶ CUSACK (2016).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

These concepts are relevant to obscenity law.¹⁰¹ They must be weighed in the balance described in *Miller*.¹⁰²

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone--the most comprehensive of rights and the right most valued by civilized man.¹⁰³

In *Georgia v. Stanley*, the Court held that the government could not regulate fantasies, but could ban certain depictions.¹⁰⁴ “If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what

¹⁰¹ *Miller*, 413 U.S. 15.

¹⁰² *Id.*

¹⁰³ *Olmstead v. United States*, 277 U.S. 438, 478 (1928).

¹⁰⁴ *Stanley v. Georgia*, 394 U.S. 557, 565 (1969).

books he may read or what films he may watch. Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds."¹⁰⁵ Viewing obscenity in one's home is legal under the First Amendment; however, this narrowly construed freedom does not include transmission (e.g. downloading); therefore, the federal government and state governments effectively may prosecute private possession despite *Stanley* by strictly construing the law in terms of how they apply the law.¹⁰⁶ However, within homes, society, and courts, "[i]t has been well observed that" obscene incestuous "utterances are no essential part of any exposition of ideas, and are of such slight social

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* CUSACK (2014). 18 U.S.C. § 1460 (2017).

Federal law prohibits the possession with intent to sell or distribute obscenity, to send, ship, or receive obscenity, to import obscenity, and to transport obscenity across state borders for purposes of distribution. Although the law does not criminalize the private possession of obscene matter, the act of receiving such matter could violate the statutes prohibiting the use of the U.S. Mails, common carriers, or interactive computer services for the purpose of transportation (See 18 U.S.C. § 1460; 18 U.S.C. § 1461; 18 U.S.C. § 1462; 18 U.S.C. § 1463).

U.S. Department of Justice (DOJ), Citizen's Guide to U.S. Federal Law on Obscenity, July 6, 2015. *available at* <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-obscenity>

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.”¹⁰⁷ Despite potential absence of constitutional protection, fetishization of twincest depicted in pornography is freely available online.

2. List of Twincest Acts

This Section discusses hundreds of twins whose photographs and videos allegedly depict incest.¹⁰⁸ These depictions are freely available on the Internet.¹⁰⁹ Twincest from the 1970s to the present is currently available on the Internet.¹¹⁰ Rumors online claim that some twins participate in every form of

¹⁰⁷ *Miller v. California*, 413 U.S. 15, 20-21 (1973) *citing* *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-572 (1942).

¹⁰⁸ *See, e.g.*, Jason Nunn, “10 hottest twins in porn,” Taringa.net, June 11, 2015, *available at*

<http://www.taringa.net/posts/info/17898944/Top-10-de-Pornstars-Gemelas.html>; Adult DVD Talk (last visited Jan. 15, 2016),

Available at

http://forum.adultdvdtalk.com/click.asp?dst=829881756&id=forum_1ink; Elite Daily (last visited Jan. 15, 2016), *Available at*

<http://elitedaily.com/envision/girls/timeline-twins/>; O/T Forum (last visited Jan. 15, 2016), *Available at*

http://www.egafd.com/forum/read.php?f=3&i=22635&t=22602&v=f_

¹⁰⁹ CUSACK (2016).

¹¹⁰ *Id.*

sexual depravity, including Satanic sex rituals and fetishization of excrement.¹¹¹ This research verified that some twins simultaneously masturbate, pose nude together, and copulate.¹¹²

Depictions of twincest are plentiful on the Internet.¹¹³ Some performances, such as the Bartok Twins, have been acknowledged by mainstream press and have received critical acclaim.¹¹⁴ For example, the Love Twins won an Adult Video News (the “AVN”) Award.^{115 116}

¹¹¹ Carmen M. Cusack, *Two Films, One Law*, 23 EASL J. 3 (2012).
CUSACK, ANIMALS, DEVIANCE, AND SEX (2016).

¹¹² CUSACK (2016).

¹¹³ Cusack, TWINS AND DEVIANCE (2016).

¹¹⁴ Love Twins, Awards, Available at <http://www.lovetwins.com/awards.php>.

¹¹⁵ *Id.*

¹¹⁶ In addition to hundreds or thousands of anonymous or uncredited twin scenes, triplets, unspecified siblings, and look-alikes claiming to be twins, acts rumored to depict twincest unsubstantiated by this research include: Fields Twins, Tre and Torian, Mirco and Mauro, Luke and Sam, Hans and Franz, The Twin City Twins, Cabral Twins Alex and Fernando, Ontami Twins, Frost Twins, Alex and Nick, Fernandez Twins, Tom and Steve, Boxer Twins, Benedikt and Fabian, Charlie and Phoebe Rallston, Filipe Twins, Luis and Nuno, Jacob and Joshua Miller, Twin Twinks, Brady and Brody Thompson, Lindsey and Lacey Strong, Barbarella and Ania, Olga and Oxana, Hartman Brothers, Maria and Sophie Fallwood, Mia and Ava Rose, Emma and Jane Peters, Taylor and Jodi (Skye), Abbey and Jayne Simmons, and Gemini Twins. O/T Forum (last visited Jan. 15, 2016), Available at http://www.egafd.com/forum/read.php?f=3&i=22635&t=22602&v=f_

Some doubt may be raised by observers and the government as to the veracity and accuracy of some substantiated credits.¹¹⁷ For example, some performers appear to be so physically dissimilar that it suggests to audiences that the performers may not be genetically related.¹¹⁸ If performances are not believed to be incestuous, then they may be less offensive or may not be the type of prurient content that the government seeks to criminalize.¹¹⁹ Another concern is use of pseudonyms and costumes, which may result in misidentification and duplications on the list.¹²⁰ In some cases, it may be difficult for audience members to determine whether two sets of twins have similar appearances or whether a one set of twins has used pseudonym.¹²¹ One limitation is that distributors may mislabel images.¹²² Another limitation is that twin acts could have been fabricated by performers, producers, internet-users, or bloggers

¹¹⁷ *Supra* note.

¹¹⁸ *Id.*

¹¹⁹ *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

¹²⁰ CUSACK (2016).

¹²¹ *Id.*

¹²² *Id.*

posting pornographic images online.¹²³ For example, faces or genitals may have been altered to pornographize innocent photos of twins.¹²⁴ Mary-Kate and Ashley Olsen have been victimized by this type of pornography.¹²⁵ The Olsen twins named on the list presented in *Twins and Deviance: Law, Crime, Sex, Society, and Family*¹²⁶ are not Mary-Kate and Ashley Olsen.¹²⁷ However, the listed performers likely capitalize on the confusion.¹²⁸

The list of twin acts available in *Twins and Deviance* is currently the most complete list of twin performances available on the Internet.¹²⁹ There were two inclusion criteria for the twincest pornography list, which not only aggregates all of the

¹²³ *Id.*

¹²⁴ Carmen M. Cusack, *Busting Patriarchal Booby Traps: Why Feminists Fear Minor Distinctions in Child Porn Cases, An Analysis of Social Deviance within Gender, Family, or the Home (Etudes 4)*, 39 S. U. L. REV. 43 (2011). CARMEN M. CUSACK, ANIMALS, DEVIANCE, AND SEX, 44 (2015).

¹²⁵ *Id.*

¹²⁶ CUSACK (2016).

¹²⁷ Numerous celebrities have been victimized by synthetic pornography. Those appearing as twins in films may be victimized and their names may be used as pseudonyms for pornography actors, thus raising confusion. For example, Bette Midler and Lily Tomlin starred in a film about twins swapped at birth. *Big Business* (1988).

¹²⁸ *Id.*

¹²⁹ *Id.*

online resources, it defines twincest:¹³⁰ 1) Twins appeared together while at least one twin exhibited nudity (i.e., genitals, breasts, pubic areas, or bare buttocks); and 2) Twins participated in sexual acts while clothed or unclothed (e.g., nude hugging).¹³¹ Twins appearing to be nude, but, who covered their buttocks, breasts, or genitals (e.g., under cowboy hats or bath suds) were not included; furthermore, fitness models wearing underwear were excluded even when their images were tagged online, for example as “gay pornography” or “twincest.”¹³²

The list in *Twins and Deviance* was compiled through hundreds of hours of research, and each act has been substantiated meaning that at least one depiction met an inclusion criterion.¹³³ Alleged acts, which may be viewed as free videos, photos, or tease

¹³⁰ Cusack, TWINS AND DEVIANCE (2016).

¹³¹ *Id.*

¹³² *Id.*

¹³³ Adult Male Twins, *Available at* <http://adultmaletwins.tumblr.com/tagged/>; FreeOnes, *Available at* <http://board.freeones.com/archive/index.php/t-152067.html>. [Attack of the Clones, Twins, Triplets, Doubles and Photoshopped](#) (2007-2015) board.freeones.com

reals by the general public include the following ten acts; all 171 acts are listed in *Twins and Deviance*:¹³⁴

1. Adam and Konrad Richter
2. Airi and Meiri
3. Alex (Jo) and Alan Fisher
4. Amanda and Sandy Bentley
5. Angelica and Veronica Bella
6. Anis and Nicole
7. Anna and Anne Sharp
8. Anna Michelle and Katja (Anja and Katja)
9. Aron and Artur
10. Ashley and Alicia.¹³⁵

Typically twins had matching appearances though they did not conform to any general stereotypes.¹³⁶ Some sets of twins were depilated, hirsute, small, heavy-set, augmented, unmodified, circumcised, verbal, silent, romantic, and other

¹³⁴ CUSACK, TWINS AND DEVIANCE, 16-20 (2016).

¹³⁵ CUSACK (2016).

¹³⁶ *Id.*

characteristics.¹³⁷ Various qualities distinguished twins' performances from other twincest acts, but twin siblings' attitudes and moods typically demonstrated parity.¹³⁸ Twins tended to demonstrate the same attitudes and skills.¹³⁹ No overriding themes were prevalent throughout the films.¹⁴⁰ Twin acts atypically were kinky, although a couple of twins participated in bondage and sadomasochism.¹⁴¹ Sex acts were usually gentle and "normal."¹⁴² Kink, such as anilingus and sex toys, was not violent or "bizarre," despite rumors of twins masturbating with Bibles and fornicating on pentagrams.¹⁴³ No videos depicted hardcore obscenity, such as excretory functions or

¹³⁷ *Id.* CARMEN M. CUSACK, HAIR AND JUSTICE: SOCIOLEGAL SIGNIFICANCE OF HAIR IN CRIMINAL JUSTICE, CONSTITUTIONAL LAW, AND PUBLIC POLICY (2015).

¹³⁸ CUSACK (2016).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ CUSACK, TWINS AND DEVIANCE (2016). CARMEN M. CUSACK, CRIMINAL JUSTICE HANDBOOK ON MASCULINITY, MALE AGGRESSION, AND SEXUALITY (2015).

¹⁴² *Id.*

¹⁴³ *Id.*

bestiality.¹⁴⁴ Commonly, twincest scenes were set inside homes, including bedrooms and living rooms.¹⁴⁵ Although this setting is normal throughout almost every genre of pornography, it is germane to twincest films.¹⁴⁶ Yet, twins also performed in public parks, gyms, sex dungeons, and other locations.¹⁴⁷

The pervasiveness of home settings may subtly give credence to the gravamen of Justice Scalia's denunciations against the majority in *Lawrence* because performances may suggest that twincest is acceptable when it occurs within the privacy of a home.¹⁴⁸ Residential locations may also imply that viewers and performers perceive twincest as being family-oriented.¹⁴⁹ Adding weight to Justice Scalia's fear, a few twins in their second and third trimesters of pregnancy appeared in scenes and photos

¹⁴⁴ *Id.* CARMEN M. CUSACK, LAWS, POLICIES, ATTITUDES AND PROCESSES THAT SHAPE THE LIVES OF PUPPIES IN AMERICA (2016).

¹⁴⁵ *Id.*

¹⁴⁶ CUSACK, CRIMINAL JUSTICE HANDBOOK ON MASCULINITY, MALE AGGRESSION, AND SEXUALITY (2015).

¹⁴⁷ CUSACK, TWINS AND DEVIANCE (2016).

¹⁴⁸ *Lawrence v. Texas* (2003).

¹⁴⁹ CUSACK, TWINS AND DEVIANCE (2016).

together.¹⁵⁰ Additionally, in a few images, both twins were pregnant.¹⁵¹ Depictions of performers carrying viable fetuses may raise new questions about meanings and boundaries of laws prohibiting sexual performance of a child.¹⁵² Philosophical questions about exponentiation of twincest and propagation and fetishization of twinhood are raised when performers are pregnant—particularly when performers are pregnant with twins.¹⁵³ Philosophical problems, such as this one, may be the basis for the type of offense and perceived interest in morbid or prurient material that trigger prosecution and result in conviction.¹⁵⁴

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² CUSACK, PORNOGRAPHY AND THE CRIMINAL JUSTICE SYSTEM (2014). CARMEN M. CUSACK, LAWS RELATING TO SEX, PREGNANCY, AND INFANCY: ISSUES IN CRIMINAL JUSTICE (2015).

¹⁵³ Indirectly, this interest is evident in Octomom Nadya Suleman's receipt of the Adult Video News (AVN) pornography award for best celebrity video in 2012 for her performance of self-stimulation with sex toys. Her fame is attributed her pregnancy and struggles to raise 14 children, several of whom were multiples born as octuplets. CUSACK, ANIMALS, DEVIANCE, AND SEX (2016). Squires-White, L. (2012, August 8). Conversation Lynn Squires-White. *Guardian ad litem*, Juneau CASA Program Coordinator. Office of Public Advocacy. Juneau, AK.

¹⁵⁴ *Id.* CUSACK, TWINS AND DEVIANCE (2016).

B. Twincest Taboo

Siblings may voluntarily participate in incest.¹⁵⁵ Voluntary participation may be due to particular psychological phenomenon that cannot be experienced by non-twins.¹⁵⁶ Therefore, in some regards twincest may be distinguishable from other forms of incest because twins, particularly identical twins, may share a unique bond.¹⁵⁷ Some early research suggested that homosexual incest is the result of narcissism within a family dynamic.¹⁵⁸ This theory that has been applied to twins and non-twins.¹⁵⁹ However, twinhood may cause twins—and acutely identical twins—to psychologically synergize into a singular entity lacking boundaries and discrete egos; they may share a state of being differing from what non-twin siblings, and possibly fraternal twins, are capable of experiencing.¹⁶⁰

¹⁵⁵ CUSACK, TWINS AND DEVIANCE (2016).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Infra* note.

¹⁵⁹ Lidz, *Ego differentiation and schizophrenic symptom formation in identical twins*, 10 J. AM. PSYCHOANALYTIC ASS'N 74 (1962).

¹⁶⁰ *Id.*

Twins' sense of judgment may correlate with their high opinions of each other and themselves.¹⁶¹ Thus, some twins may be unashamed of incestuous homoeroticism.¹⁶² By rivaling for dominance and their parents' attention, they may express narcissism and incomplete superegos.¹⁶³

Alternate courses of action are dismissed in favor of activities that complement twinhood.¹⁶⁴ For example, a case study of twin lovers documented therapeutic treatment of 27 year-old brothers living together.¹⁶⁵ The first twin presented for exhibitionism, but also began treatment for other manifestations of sexual dysfunction.¹⁶⁶ Prior to therapy, neither twin could achieve an erection with a partner other than the co-twin, but after therapy began, they were able to maintain sexual relationships with other people.¹⁶⁷ The twins had not

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ CUSACK, TWINS AND DEVIANCE (2016).

¹⁶⁴ *Id.*

¹⁶⁵ Michael F. Myers, *Homosexuality, sexual dysfunction, and incest in male identical twins*, THE CANADIAN J. PSYCHIATRY / LA REVUE CANADIENNE DE PSYCHIATRIE, 27(2), 144-147 (1982).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

fully individuated during childhood because they lacked object relations beyond twinhood.¹⁶⁸ Lack of individuation could correlate with voluntary or coerced incest because boundaries between the self and twin are blurred.¹⁶⁹ Same-sex and opposite-sex twins may experience confusion among self, parent, and co-twin; exaggerate sibling rivalry and love; and displace and project their ideas and emotions onto co-twins.¹⁷⁰ Heterosexual twins may be more likely to use psychological services to discuss sexual experimentation during gestation and suspicions that twins were divided unequally during gestation.¹⁷¹

Twincest remains taboo in the United States, and it is illegal in every state except Rhode Island.¹⁷²

¹⁶⁸ *Id.*

¹⁶⁹ CARMEN M. CUSACK, ANIMALS, DEVIANCE, AND SEX (2015).

¹⁷⁰ *Id.* *Infra* note.

¹⁷¹ Glenn, J. (1966). *Opposite-Sex Twins*. 14 J. AM.

PSYCHOANALYTIC ASS'N, 736.

¹⁷² § 568.020 R.S.Mo. (2015); § 568.020. (2017); 11 DEL. C. § 766 (2015); 17-A M.R.S. § 556 (2015); 18 PA.C.S. § 4302 (2015); 21 OKL. ST. § 885 (2015); 45-5-507, MCA (2015); 720 ILCS 5/11-11 (2015); 9 GCA § 31.15 (2014); A.C.A. § 5-26-202 (2015); ALASKA STAT. § 11.41.450 (2015); ALM GL ch. 272, § 17 (2015); ARIZONA A.R.S. § 13-3608 (2015); ARKANSAS A.C.A. § 9-11-106 (2015); CAL. PEN. CODE § 285 (2015); CODE OF ALA. § 13A-13-3 (2015); COLORADO C.R.S. 18-6-301 (2015); CONN. GEN. STAT. § 53a-191 (2015); D.C. CODE § 22-190 (2015); FLA. STAT. § 826.04 (2015); HRS § 707-741 (2015); IDAHO CODE § 18-6602 (2015); IND. CODE

Incest may be voluntary, but it is considered too be nonconsensual because it is prohibited by law.¹⁷³ This distinction is a legal fiction, which demonstrates the state's power to regulate morality and use the law to frame and enforce society's perspective about incest.¹⁷⁴ It also illustrates society's belief that incest can never be consensual because of societal norms.¹⁷⁵ Protecting children from adults may be the underlying reason for criminalizing all incest.¹⁷⁶

ANN. § 35-46-1-3 (2015); IOWA CODE § 726.2 (2014); K.S.A. § 21-5604 (2015); KRS § 530.020 (2015); LA. R.S. § 14:78 (2015); LA. ACT 177 (2014); LA. HB 530 (2014); MD. CRIM. CODE ANN. § 3-323 (2015); MINN. STAT. § 609.365 (2015); MISS. CODE ANN. § 97-29-5, 29 (2015); N.C. GEN. STAT. § 14-17 (2015); N.D. CENT. CODE § 12.1-20-11 (2015); N.M. STAT. ANN. § 30-10-3 (2015); NEV. REV. STAT. ANN. § 201.180 (2015); NY CLS DOM REL § 5 (2015); NY CLS PENAL § 255.25 (2015); O.C.G.A. § 16-6-22 (2015); ORS § 163.525 (2015); R.R.S. NEB. § 28-703 (2015); REV. CODE WASH. (ARCW) § 9A.64.020 (2015); RSA 639:2 (2015); S.C. CODE ANN. § 16-15-20 (2014); S.D. CODIFIED LAWS § 22-22A-2 (2015); TENN. CODE ANN. § 39-15-302 (2015); UTAH CODE ANN. § 76-7-102 (2015); VA. CODE ANN. § 18.2-366 (2015); W. VA. CODE § 61-8-12 (2015); WIS. STAT. § 944.06 (2015); WYO. STAT. § 6-4-402 (2015).

¹⁷³ *Supra* note.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* CUSACK, ILLICIT SEX WITHIN THE JUSTICE SYSTEM (2017).

¹⁷⁶ *Id.* Even when the government has alleged that incestuous stories depicting sexual abuse of twins demonstrates intent to commit sexual abuse of a child, defendants have argued that stories about incest are erotica unrelated to the crime of having sex with a minor family member, and that consenting adults may fantasize about and role play incestuous relationships. **Stanley v. Georgia**, 394 U.S. 557 (1969); *U.S. v. Curtin*, 489 F.3d 935 (9th Cir. Nev., 2007).

However, the government may seek to prevent all coercive intimacy, including between two minors in the same home.¹⁷⁷ Thus, the government's classification of incest as *per se* nonconsensual may likely be constitutional because of a longstanding taboo against incest and the government's compelling interest in protecting victims from sexual coercion.¹⁷⁸ Because twincest occurs in private, relatives may feel that they lack legal remedies, such as police intervention during domestic violence. Involving the law inherently exposes family members to scrutiny and possible prosecution.¹⁷⁹

Twincest may be coerced, mutually voluntary, or forcible.¹⁸⁰ Twinhood demands loyalty and symbiosis.¹⁸¹ Either twin may succumb to sexual pressure as a result of underlying problems or mental illness.¹⁸² Twins, who coerce co-twins into voluntary

¹⁷⁷ Graham Hopkins & Patrick Ayre, *Sexual Healing*, 1640 COMMUNITY CARE 42 (2006). Covington, 48 J. ANALYTICAL PSYCHOL. 255 (2003).

¹⁷⁸ Hopkins & Ayre (2006). U.S. Const. Am. 5, Am. 14.

¹⁷⁹ *Id.*

¹⁸⁰ CUSACK, ILLICIT SEX WITHIN THE JUSTICE SYSTEM (2017).

¹⁸¹ CUSACK (2016).

¹⁸² *Id.*

incest, may be selfish because they identify a co-twin's psychological needs or vulnerabilities, but they do not actually attempt to provide a remedy.¹⁸³ Older or larger twins may view a co-twin as a "little sister" or "little brother," and feel compelled to care for him or her, or may feel power to lead or control a co-twin.¹⁸⁴ Well-intended, dominant twins may encourage co-twins to participate in incest or twincest pornography.¹⁸⁵ Some of their motives may include risk-taking, bonding, and opportunities to make money.¹⁸⁶ Initiation of an incestuous relationship may seem "normal" to some twins.¹⁸⁷ Pornography performers may lack incest avoidance; and as a consequence, may exploit their relationship for money.¹⁸⁸ They may learn to moderate incestuous attraction following negative sexual experiences

¹⁸³ Coline Covington, *Incest in Jung's work: The Origins of the Epistemophilic Instinct*, 48 J. ANALYTICAL PSYCHOL. 255 (2003).

¹⁸⁴ Benjamin Karpman, *A Psychoanalytic Study of a Fraternal Twin*, 21 AM. J. ORTHOPSYCHIATRY 735 (1951).

¹⁸⁵ *Id.*

¹⁸⁶ CUSACK (2014).

¹⁸⁷ CUSACK (2016).

¹⁸⁸ Ray H. Bixler, *Homosexual Twin Incest Avoidance*, 19 J. SEX RESEARCH 296 (1983).

with others and non-incestuous stimulation.¹⁸⁹ However, twins may suppress incestuous desires when they fear exposure, trauma, shame, and prosecution.¹⁹⁰

Some twins in clandestine or open sexual relationships may initiate incest through coercion, which later may become normalized within their twinhood.¹⁹¹ Although twins may normalize incest, coercion during childhood may result in trauma similar to that experienced by non-twins.¹⁹² They may suffer increased likelihood for substance abuse, poor impulse control, mental illness, and prostitution.¹⁹³ Twins may persuade unwilling co-twins with money, favors, and presents; thus, in a sense, a form of courtship or prostitution could ensue between the twins, depending on the totality of the circumstances.¹⁹⁴ Thus, these relationships may be unclear and complicated.¹⁹⁵ For example, Rio and

¹⁸⁹ *Id.*

¹⁹⁰ CUSACK (2016).

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Infra* note.

Bradley, 15 year-old twins, had a sexual relationship for several months, which may have involved another male adolescent.¹⁹⁶ Bradley was larger and stronger.¹⁹⁷ However, he was manipulated, bribed, and pressured by Rio to have sexual contact.¹⁹⁸ Rio's behavior was recognized as being sexually aggressive and some sex acts seemed involuntary.¹⁹⁹ Rather than prosecution, local authorities and the boys' parents intervened by offering treatment.²⁰⁰ The twins received counseling as well as a family safety planning.²⁰¹ The family created a safe room so that the boys could sleep in separate bedrooms.²⁰² Rio learned about the legal consequences and the root of his actions; became openly homosexual; and stopped sexually abusing others, particularly his twin.²⁰³ Some of Rio's problems may have correlated with his father's unaccepting attitude toward

¹⁹⁶ Hopkins & Ayre (2006).

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Hopkins & Ayre (2006).

²⁰³ *Id.*

homosexuality, which diminished throughout therapy, even though his father continued to be uncomfortable with Rio's homosexuality.²⁰⁴

Twins may also use incest to overcome differences and dissimilarities.²⁰⁵ Twins are expected by society to be a complementary unit and discrete set.²⁰⁶ Twins sexually may experiment or become sexually intimate in order to bond.²⁰⁷ Internal and external controls may be missing while pressures are persistently experienced.²⁰⁸ They may fear separation, interference, or loss of identity.²⁰⁹ Disjointed feelings may result in mental or social illness.²¹⁰ For example, one twin, who felt incompatible with her brother, suffered from immaturity at age 31.²¹¹ Multiple fantasies helped

²⁰⁴ *Id.*

²⁰⁵ CUSACK (2016).

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ Richard Green & Robert J. Stoller, *Two Monozygotic (Identical) Twin Pairs Discordant for Gender Identity*, 1 ARCHIVES OF SEXUAL BEHAVIOR 321 (1971).

²¹¹ Hilda C. Abraham, *Twin Relationship and Womb Fantasies in a Case of Anxiety Hysteria*, 34 THE INT'L J. OF PSYCHOANALYSIS 219 (1953).

her explain her problem, including the idea that she should have been a singleton male at birth; she and her twin brother should have been “Siamese twins;” and she should have been a male twin, who was younger, weaker, and favored.²¹²

Another case study of a female fraternal twin arrived at a similar conclusion about correlations between identity and sexual repression.²¹³ At 15 years-old, the patient began bingeing on sex and alcohol.²¹⁴ She emotionally relied on her sister and craved her sexually. She repressed her sexual desires and dreamt about her sister.²¹⁵ She became hostile toward her sister in order to cope with her guilty feelings.²¹⁶ Rather than confronting repression, some twins may choose to express sexual attraction.²¹⁷

Twincest may have genetic and environmental etiologies.²¹⁸ Twin studies demonstrate that

²¹² *Id.* CUSACK (2016).

²¹³ Benjamin Karpman, *A Psychoanalytic Study of a Fraternal Twin*, 21 AM. J. ORTHOPSYCHIATRY, 735 (1951).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ CUSACK (2016).

homosexual and bisexual curiosity, fantasy, and activity may be inherited.²¹⁹ Incest between twins and twin fantasies may develop when incest avoidance is not learned or inherited, but homosexuality is inherited.²²⁰ Homosexual desires may surpass incest avoidance.²²¹ External controls may excessively attempt to suppress homosexual traits, which may cause twins to validate and sexually comfort each other.²²² A combination of several etiologies may identify why twincest transpired in particular cases.²²³

In addition, twincest may relate to fulfilment of oedipal complexes in which a twin fulfills the role of a parent.²²⁴ Fantasies may relate to dreams about dominance and independence, which motivate the

²¹⁹ K. M. Kirk, J. M. Bailey, & N. G. Martin, Etiology of male sexual orientation in an Australian twin sample, 2 *PSYCHOL., EVOLUTION & GENDER* 301 (2000).

²²⁰ *Id.*

²²¹ CUSACK (2016).

²²² *Id.*

²²³ *Id.*

²²⁴ Marie-Christine Sourzat., Le motif du jumeau, 23 *TOPIQUE: REVUE FREUDIENNE* 43 (1993).

twins to preform together in pornography.²²⁵ Though, externally, society and twins' parents may disapprove, the twins' daydreams may be validated when their fantasies of being with their parents also bring recognition and remuneration.²²⁶ Twins, who believe that their homosexuality correlates with their parents' desire for a baby of the opposite gender, may feel validated by procreative implications of owning their sexuality.²²⁷ Parents may attempt to bond with and identify twins by exaggerating their differences.²²⁸ Incestuous twins repair those exaggerations and reaffirm their genetic desirability.²²⁹ Pleasure derived from participation in incest and pornography performance may individuate and validate each twin.²³⁰

²²⁵ Lili Peller, Daydreams and children's favorite books: Psychoanalytic comments, 14 THE PSYCHOANALYTIC STUD. OF THE CHILD 414 (1959).

²²⁶ *Id.*

²²⁷ J. D. Rainer, A. Mesnikoff, L. C. Kolb, & A. Carr, *Homosexuality and heterosexuality in identical twins*, 22 PSYCHOSOMATIC MED. 251 (1960)..

²²⁸ CUSACK (2016).

²²⁹ Miguel Cherro, Quality of bonding and behavioral differences in twins, 13 INFANT MENTAL HEALTH J. 206 (1992).

²³⁰ Brendan P. Zietsch, Geoffrey F. Miller, J. Michael Bailey, & Nicholas G. Martin, *Female Orgasm Rates Are Largely Independent of Other Traits: Implications for "Female Orgasmic Disorder" and*

C. Application

Twincest may be obscene.²³¹ No statute directly or specifically prohibits production, distribution, or possession of twincest depictions.²³² Yet, case studies, a few obscenity prosecutions,²³³ and cultural

Evolutionary Theories of Orgasm, 8 J. SEXUAL MED. 2305 (2011). S. J. Coen & P. A. Bradlow, *Twin Transference as a Compromise Formation*, 30 J. AM. PSYCHOANALYTIC ASS'N 599 (1982).

²³¹ CUSACK (2016).

²³² See *supra* Section II. B.

²³³ See, e.g., *James Ira Hosey v. City of Jackson*, 309 F. Supp. 527 (1970) holding that a public showing of a film entitled *Candy* was obscene. *Id.*

Finally, the plaintiffs have requested this [c]ourt to issue a declaratory judgment that the motion picture “Candy” is not obscene or otherwise in violation of any law. While the guilt or innocence of the plaintiff must be determined in the state courts pursuant to appropriate legal proceedings, this [c]ourt, having viewed the motion picture “Candy” in its entirety in order to ascertain all that a full-scale trial of this case on its merits would entail, is of the opinion that the film is devoid of any literary or artistic merit and presents nothing more than a vivid portrayal of hard core pornography. This film has no discernible theme or plot and involves a disconnected series of scenes depicting sexual gratification in a shocking and shameful manner. The [c]ourt certainly concurs with the observations of defendants' witness...who testified: ‘The film is, in my opinion, a series of unrelated sequences in the life of this girl and each of the scenes builds up to the disrobing of the female and then the filming of various forms of sexual activity with her. In my opinion these scenes are clearly designed to arouse what we might consider normal, as well as abnormal, interest and emotions in sexual behavior.’...The defendants categorize the film as a satire or a spoof on various aspects of modern life. Such a categorization, however, does not bring this obscene film within the constitutional protection of the First Amendment. The graphic portrayal of illicit, unnatural and incestuous sexual relationships which dominate the entirety of this film leave little to the imagination and completely overpowers or

taboos indicate that twincest may be viewed as a perverted act within many communities.²³⁴ Even if twincest is tolerated or perceived as being “normal” by society, depictions of twincest may be offensive to members of the local community.²³⁵ Therefore, it may be determined to be obscene because it is offensive under the *Miller* test.²³⁶

Numerous cases of obscenity have been prosecuted, but published cases infrequently involve depictions of voluntary adult incest.²³⁷ Perhaps these defendants are particularly likely to plead.²³⁸ Published incest cases more typically involve child pornography and obscenity depicting children; adults using stories about incest to bait children; or incestuous adults in possession of obscenity

minimizes the presence of any elements of satire. The film depicts illicit sexual intercourse between Candy, an unmarried female, and a gardener, a photographer, a hunchback and a guru; unnatural sexual gratification between Candy and a doctor and between a drunken poet and a doll, mistaken for the girl; and the incestuous relationship of Candy with her father and uncle. [Internal citations omitted] *Id.* at 537-8.

²³⁴ *Miller v. California* (1973).

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ CUSACK (2014).

²³⁸ *Id.*

depicting themes other than incest.²³⁹ Furthermore, twincest depicted in pornography is technically nonconsensual, but exhibits voluntariness.²⁴⁰ Therefore, it is distinguishable from depictions of molestation, prosecution of which may be prioritized by the government.²⁴¹ Depictions of twincest are not outright banned.²⁴² One reason may be that a bar on incestuous depictions could be an unconstitutional prior restraint.²⁴³ The government has narrowly tailored laws that prohibit specific speech.²⁴⁴ For example, they have criminalized pornography depicting minors voluntarily participating in any explicit sexual activity, including twincest.²⁴⁵

²³⁹ CUSACK (2014). CUSACK (2016). *Lawrence* (2003) at 598. *Arizona v. Ramsey*, 2 CA-CR 2003-0367, Ariz. App. Unpub. LEXIS 351 (Ct. App. Ariz., 2005). For example, prosecution of numerous depictions of obscenity may occasionally include depictions of twins, such as one piece of evidence, “Hope Hathaway and Sheika Mosher depicted while nude in ‘The Boobsie Twins,’ among several pieces of evidence demonstrating in 1961 that advertisements were lewd.” *In Re: Movie Club Guild*, Docket No. 1/281, Post Office Department Decision (Cal. Feb. 8, 1961), Available at <http://about.usps.com/who-we-are/judicial/admin-decisions/1961/1-281.htm>.

²⁴⁰ CUSACK (2016).

²⁴¹ *Id.* CUSACK (2014).

²⁴² *Miller v. California* (1973).

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Turoso v. The Cleveland Municipal Court*, 674 F.2d 486 (1982). “Ohio Supreme Court explains that just one sex scene would make

Twincest may possibly be the kind of material that the government constitutionally may punish.²⁴⁶ However, under a *Miller* analysis, depictions of adult incest may be legal if they are inoffensive to the local community or possess redeeming value.²⁴⁷

If the government were to prevail, they would likely need to overcome substantive due process and equal protection arguments because adult twins could claim that they have a right to participate privately in consensual same-sex or opposite-sex sexual conduct, and that prosecuting their pornographic depiction of private activity does not substantially relate to an important or compelling governmental purpose.²⁴⁸ The government could respond that it has a longstanding and compelling

even ‘The Sound of Music’ obscene and subject to prior injunctive restraint. In *Miller*, the court said: ‘Under the holdings announced today, no one will be subject to prosecution for...obscene materials unless these materials depict or describe patently offensive ‘hard-core’ sexual conduct specifically defined.’” [Internal citations omitted]. *Id.* at 496-7.

²⁴⁶ *Miller v. California* (1973).

²⁴⁷ *Id.*

²⁴⁸ Carmen M. Cusack, *Obscene Squirting: If the Government Thinks it’s Urine, Then They’ve Got Another Thing Coming*, 22 TEX. J. WOMEN & L. 45 (2013). Carmen M. Cusack, *Two Films, One Law*, 23 NEW YORK BAR ASS’N EASL J. 3 (2012).

interest in preventing incest.²⁴⁹ Distributed pornographic performances are not protected under substantive due process because such performances are not private, and pornography production and distribution are not longstanding traditions.²⁵⁰ Prosecution of twincest performers is not only important, but necessary, in order to: 1) protect the community from offensive and deleterious material; 2) preserve Americans' tradition of outbreeding; and 3) uphold laws preventing adult incest.²⁵¹ The defense may suggest that incest laws are designed to protect society from family marriages and inbreeding.²⁵² However, most performers are same-sex twins, and therefore are incapable of breeding and prohibited by additional laws from marrying one another.²⁵³ However, incest may disgust and offend average community members because it is taboo and violates social and familial hierarchies and

²⁴⁹ CUSACK (2016).

²⁵⁰ Cusack, *Tex. J. Women & L.* 22, 45 (2013). Cusack, 23 *EASL J.* 3 (2012). CUSACK (2014). CUSACK (2015).

²⁵¹ CUSACK (2016).

²⁵² *Id.*

²⁵³ *Id.*

traditions.²⁵⁴ The elements of the *Miller* test are met when prohibited conduct, such as incest, is depicted in a patently offensive way.²⁵⁵ Therefore, the government would also argue that the issue is about obscenity, not privacy rights or equal protection.²⁵⁶ The applicable law ought to be the U.S. Supreme Court's *Miller* test.²⁵⁷ Obscenity laws, which have been used by the government to prosecute depictions of incest, have survived strict scrutiny under free speech analyses.²⁵⁸ The government would point to cultural taboos to argue that depictions of twincest only appeal to prurient interests that degrade sex.²⁵⁹

²⁵⁴ Cahill, 99 Nw. U.L. REV. 1543 (2005).

²⁵⁵ Rogers (2010).

The biggest part of twincest's appeal, however, probably has to do with the forbidden-ness of watching two brothers have sex. 'If it's porn, it's usually violating some cultural norm'...Both gay and straight porn are filled with storylines about breaking the conventions of class (sex with the pool boy or pizza boy), race (interracial porn), authority (sex with a teacher or a police officer) or age (younger men having sex with older men or women). Of course there are countless other porn genres (from fisting to water sports) built on traditionally unacceptable behavior—so why not incest, one of the least acceptable sexual behaviors there is? *Id.*

²⁵⁶ Cusack, 22 TEX. J. WOMEN & L. 45 (2013). Cusack, 23 EASL J. 3 (2012).

²⁵⁷ *Miller v. California* (1973).

²⁵⁸ Glucksberg, 521 U.S. at 721. *Montana v. Patterson*, 894 S.W.2d 812 (1994).

²⁵⁹ *The People v. Drolet*, 30 Cal. App. 3d 207 (1973).

The prosecution may argue, and the court may likely hold, that violation of the incest taboo is shameful; thus the performance satisfies the *Miller test*.²⁶⁰

The defense may also argue that laws prohibiting adult incest are a precaution against child-adult incest, which abuses power within the family.²⁶¹ Thus, adult twincest pornography would be harmless, and should be legalized under the harm principle followed by some courts.²⁶² Though the defense may argue the harm principle,²⁶³ courts are under no obligation jurisprudentially to consider it.²⁶⁴

The consenting-adult formula, of course, is a corollary to John Stuart Mill's celebrated 'harm principle,' which would allow the state to proscribe only conduct that causes

Appellants make the fantastic contention that oral copulation is merely a method of expression and is a form of speech protected by the First Amendment. Such contention would also apply to such crimes as sodomy, incest, rape, and crimes against nature, if committed during a stage performance. Appellants are not charged with 'a constitutionally protected demonstration' but with a criminal act. *Id* at 212.

²⁶⁰ See *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973).

²⁶¹ CUSACK (2016).

²⁶² *U.S. v. Williams*, 553 U.S. 285 (2008).

²⁶³ CUSACK (2016).

²⁶⁴ *Williams*, 553 U.S. 285 (2008).

identifiable harm to another.... Regardless of its force as a policy argument, however, it does not translate *ipse dixit* into a constitutionally cognizable standard....[F]or us to say that our Constitution incorporates the proposition that conduct involving consenting adults only is always beyond state regulation, is a step we are unable to take....If we were to accept the invitation to recognize a right to sexual intimacy, this right would theoretically encompass such activities as prostitution, obscenity, and adult incest—even if we were to limit the right to consenting adults. ‘The state statute books are replete with constitutionally unchallenged laws against prostitution, suicide, [and] voluntary self-mutilation... although these crimes may only directly involve ‘consenting adults.’’...This in turn would require us to subject all infringements on such activities to strict scrutiny. In short, by framing our inquiry so broadly as to look for a general right to sexual intimacy, we would be

answering many questions not before us on the present facts.²⁶⁵

Like laws prohibiting the use of harmless sex toys, prosecution of twincest pornography may be constitutional because the state can enforce morality.²⁶⁶ The United States District Court for the Northern District of Alabama addressed this argument, and its relationship to *Lawrence*, in *Williams II*.²⁶⁷ In that case, a civil rights group asserted a right to privacy to possess and use sex toys in private.²⁶⁸ Under *Glucksberg*,²⁶⁹ they claimed that individuals possessed a longstanding right to use sex toys.²⁷⁰ However, the court disagreed and explained that *Lawrence*²⁷¹ could not be used to challenge all morality based laws or invoke strict scrutiny because the *Lawrence* Court used rational review.²⁷²

²⁶⁵ *William v. Morgan*, 378 F.3d 1232, 1240 (2004) (internal citation omitted).

²⁶⁶ *Williams v. Pryor*, 240 F.3d 944 (11th Cir.2001) (*Williams II*).

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Washington v. Glucksberg*, 521 U.S. 702 (1997).

²⁷⁰ *Williams v. Pryor*, 240 F.3d 944 (11th Cir.2001) (*Williams II*).

²⁷¹ *Lawrence v. Texas* (2003).

²⁷² *Williams v. Pryor* (2001).

The [argument]...seizes on scattered dicta from *Lawrence* to argue that *Lawrence* recognized a substantive due process right of consenting adults to engage in private intimate sexual conduct, such that all infringements of this right must be subjected to strict scrutiny....[W]e are not prepared to infer a new fundamental right from an opinion that never employed the usual *Glucksberg* analysis for identifying such rights. Nor are we prepared to assume that *Glucksberg*—a precedent that *Lawrence* never once mentions-- is overruled by implication....In short, we decline to extrapolate from *Lawrence* and its dicta a right to sexual privacy triggering strict scrutiny. To do so would be to impose a fundamental-rights interpretation on a decision that rested on rational-basis grounds, that never engaged in *Glucksberg* analysis, and that never invoked strict scrutiny. Moreover, it would be answering questions that the *Lawrence* Court appears to have left for another day.....*Glucksberg* standard expressly requires a showing that the asserted right is ‘deeply rooted in this Nation’s history and tradition’ and ‘implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if [it]

were sacrificed.’ Not only does the record before us fail to evidence such a deeply rooted right, but it suggests that, to the extent that sex toys historically have attracted the attention of the law, it has been in the context of proscription, not protection. The chief example of this proscription is the...*Comstock* Laws,...federal and state legislation adopted in the late 1800s.²⁷³

Laws prohibiting adult devices have been upheld despite constitutional challenges, including those made on free speech and equal protection grounds, in other courts.²⁷⁴

Twincest and depictions of it are not longstanding traditions, but the government may have established a precedence of ignoring literature depicting incest when: 1) literature has depicted adults; 2) a depiction was not part of a collection of hardcore pornography; 3) a depiction was not

²⁷³ *Id.*

²⁷⁴ *Flanigan’s Enterprises v. City of Sandy Springs*, No. 1:13-CV-03573-HLM, 2014 U.S. Dist. LEXIS 180429 (N.D. Ga. 2014).

distributed to minors; and 4) it did not encourage incest.²⁷⁵

One court discussed the variability in obscenity laws and analyses, including those applying to material depicting incest.²⁷⁶

The irrationality...stems from the fact that it encompasses much of the world's finest literature, but does not extend to 'soft core' pornography such as *Playboy* magazine. The regulation forbids all 'explicit...descriptions of sexual acts.' This includes descriptions of 'actual sexual intercourse' as well as descriptions of 'sexual acts in violation of state or federal law.' But the number of highly regarded books which include a description of actual sexual intercourse is vast. Beyond *Ulysses* and *Lady*

²⁷⁵ U.S. v. Four (4) Books, 289 F. Supp. 972 (1968).

[M]aterial glorifying things which most people regard as indecent or obscene...the four books...under [18 U.S.C. § 1462](#) are obscene. Textually they advocate incest between all members of a family regardless of age; they advocate homosexuality and Lesbianism; they advocate and depict every form of sexual intercourse, including oral copulation. *Id.* at 973-975.

Michael L. Fleisher, *Twin Fantasies, Bisexuality and Creativity in the Works of Ernest Hemingway*, 17 INT'L REV. PSYCHO-ANALYSIS 287 (1990).

²⁷⁶ Couch v. John Jabe, 737 F. Supp. 2d 561 (2010). *But see* People v. Williamson, 207 Cal. App. 2d 839 (1962).

Chatterly's Lover, the Court could list dozens of the highly regarded works of literature which include an explicit description of a sexual act or intercourse. And although the prohibition on descriptions of sexual acts in violation of state or federal law appears to be more defensible at first blush, it suffers from the same fatal flaw of over inclusiveness. This clause of the regulation would ban any book describing rape, statutory rape, attempted rape, incest (Va. Code § 18.2-366), adultery (Va. Code § 18.2-365), polygamy (Va. Code § 18.2-362), sexual abuse, and prostitution. Perhaps an aggressive interpretation would include violations of the Mann Act (18 U.S.C. § 2421, a prohibition on 'knowingly transport[ing] any individual in interstate or foreign commerce...with the intent that such individual engage in...any sexual activity for which any person can be charged with a criminal offense')....Indeed...the books of the Old Testament contain explicit depictions of incest. Nonetheless, the Bible remains permitted reading material...contain[ing] 'a description of a sexual act that would be in violation of federal and state laws in our own time.'....[T]he Holy

Bible....tell[s] of such acts in the context of condemning and DISCOURAGING humanity from practicing such immoral acts.’...[T]he broad reach of the regulation merely provides an opportunity for arbitrary enforcement of this regulation...In fact, such a broad regulation may actually *encourage* an arbitrary and potentially discriminatory enforcement of the regulation on such nebulous rationales, [which]... raises the question of whether the regulation is connected to content-neutral objectives...because the arbitrary enforcement of it allows for non-content neutral objectives to be furthered....The Court need not dwell too long on the constitutional deficiencies of arbitrary and discriminatory enforcement, however, because the lack of a logical connection between the regulation and the legitimate goals is sufficiently exhibited by the regulations incongruity with the stated goals.²⁷⁷

²⁷⁷ *Id.* at 567-9. See also *Stewart v. Berge*, 05-C-293-C, 2005 U.S. Dist. LEXIS 12661 (Wisc. W. D., 2005).

Indecent or obscene language depicting incest includes the word “motherfucker.”²⁷⁸ Courts have addressed this word as an epithet describing an incestuous son.²⁷⁹ Yet, in prosecutions in which the word’s use has not been enjoined, courts have reasoned that the term disparaged incest and did not promote it.²⁸⁰ Therefore, the tone was distinguishable from obscene depictions of incest that appealed to prurient and shameful interests in sex.²⁸¹ *Keefe v. Geanakos* discussed use of “motherfucker.”²⁸²

²⁷⁸ Federal Communications Commission v. Pacifica Foundation, 438 U.S. 726 (1978); Carmen M. Cusack, *Context: Use of the Word “Fuck” in Pedagogy and Higher Learning*, 8 J. L. & SOC. DEVIANCE 133 (2014).

State v. Smith, 422 S.W.2d 50 (1967).

A jury could find that unadulterated smut, fornication, masturbation, flagellation, perversion, sodomy and incest, sprinkled throughout with obscene and profane gutter words, well-laced throughout with lust and shockingly frank word pictures of the private parts of men and women; vividly portrayed scenes of an obscene, repulsive, loathsome, grotesque and bizarre nature, wittily contrived for the obvious purpose of administering a shock to the reader, are ‘so offensive on their face as to affront current community standards of decency.’ *Id.* at 59 citing *Manual Enterprises v. Day*, 370 U.S. 478 (1962).

²⁷⁹ *Keefe v. Geanakos*, 418 F.2d 359 (1969).

²⁸⁰ *Id.*

²⁸¹ *Keefe*, 418 F.2d 359.

²⁸² *Id.*

The word [‘motherfucker’], admittedly highly offensive, is a vulgar term for an incestuous son. The single offending word, although repeated a number of times, is not artificially introduced, but, on the contrary, is important to the development of the thesis and the conclusions of the author. Indeed, we would find it difficult to disagree with plaintiff’s assertion that no proper study of the article could avoid consideration of this word. It is not possible to read the article, either in whole or in part, as an incitement to libidinous conduct, or even thoughts. If it raised the concept of incest, it was not to suggest it, but to condemn it; the word was used, by the persons described, as a superlative of opprobrium. We believe not only that the article negated any other concept, but that an understanding of it would reject, rather than suggest, the word’s use.²⁸³

Another example of courts holding that “motherfucker” was not obscene occurred in *Bazaar v. Porter Fortune* when a university objected to the

²⁸³ *Id.* at 361.

use of “motherfucker” in a campus publication.²⁸⁴ The court reasoned that although use of the word “literally referring to an incestuous son” was vulgar, *Playboy* magazine had been sold on campus without objection by the university.²⁸⁵ In light of the facts, “motherfucker” could not have been seen as appealing to prurient interests and offending the local community because *Playboy* magazine, which graphically depicted nudity, was not offensive to the campus.²⁸⁶ Thus, the court reasoned that an indirect reference to mother-son incest was not more offensive than graphic nudity.²⁸⁷

The United States Supreme Court seemed to have a similar view in *Hustler v. Falwell* when Reverend Jerry Falwell sued *Hustler* magazine and Larry Flynt for libel.²⁸⁸ *Hustler* magazine depicted a phony advertisement parodying a Falwell interview.²⁸⁹ The

²⁸⁴ *Bazaar v. Porter Fortune*, 476 F.2d 570, 577 (1973).

²⁸⁵ *Id.*

²⁸⁶ *State of Ohio ex rel. Keating v. “Vixen,”* 301 N.E.2d 880 (1973).
Bazaar, et al. v. Porter Fortune et al., 476 F.2d 570, 577 (1973).

²⁸⁷ *Bazaar, et al. v. Porter Fortune et al.*, 476 F.2d 570, 577 (1973).

²⁸⁸ *Hustler Magazine and Larry C. Flynt v. Jerry Falwell*, 485 U.S. 46 (1988).

²⁸⁹ *Id.*

magazine portrayed Falwell as discussing drunken incest with his mother.²⁹⁰ The legal issue was libel, not obscenity.²⁹¹ However, neither the government nor the court characterized the highly publicized publication as obscenity, even though the advertisement explicitly discussed incest in an outhouse, ejaculation, excrement, the presence of flies, and possibly implied bestiality with a goat and incest with his incapacitated mother.²⁹² The Court held that the outrageous material was not libelous because it could not reasonably be understood to describe facts; however, obscene material need not be actual, it may be fiction.²⁹³ Yet, courts may find that such material is obscene.²⁹⁴ The content, which depicts proscribed conduct, may also be offensive.²⁹⁵ However, the *Miller* test would be overbroad if it permitted courts to proscribe all depictions of sex crimes (e.g. public records).²⁹⁶ Only offensive

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Dworkin v. Hustler Magazine*, 867 F.2d 1188 (1989).

²⁹⁴ *Page v. State*, 657 P.2d 850 (1983).

²⁹⁵ *Miller v. California* (1973).

²⁹⁶ *Id.* CUSACK, ILLICIT SEX WITHIN THE JUSTICE SYSTEM (2017).

depictions appealing to prurient interest in sex may meet *Miller*'s standards.²⁹⁷ *People v. Kirkpatrick* analyzed relevant issues.²⁹⁸

The second set of cartoons, intended apparently to be organized in story form, numbers six pages, and is entitled 'Joe Blow.' It is drawn by Robert Crumb. One of the defendant's experts calls it an 'Oedipal fantasy,' while other of the experts declare the redeemable idea or theme to be a 'satire on sexual fantasies people entertain' or a 'parody on family life' or 'a satire in togetherness of family.' Of course, if the contents convey to 'ordinary adults' some meaningful and recognizable idea of social value, notwithstanding its general unacceptability or unpopularity, it may be rescued or redeemed from otherwise condemnable obscenity. But here, I cannot discern any genuine idea. It depicts incest between father and daughter, clearly showing the sexual act, as well as oral sodomy between them, also suggested incest between mother and son and sister and brother. The

²⁹⁷ *People v. Williamson*, 207 Cal. App. 2d 839, 846 (1962).

²⁹⁸ *People v. Kirkpatrick*, 64 Misc. 2d 1055 (1970).

father's penis is clearly shown and erect, as well as the mother's breasts....[This could be classified as] incestuous relations consummated with no sense of guilt and of parent figures who initiate and participate in the sexual activities of their children. It is this kind of material which is 'the attempt to insult sex, to do dirt on it.' The cartoon is ugly, cheap and degrading. Its purpose is to stimulate erotic responses, and it does not, as claimed, deal with basic realities of life. It is grossly shocking, demeaning the sexual experience by perverting it.²⁹⁹

State governments may share these sentiments about twincest pornography, but reason that prosecuting performers and producers would be more costly than prosecuting purveyors because many films are produced abroad and viewed online.³⁰⁰ Although some Americans perform twincest, many are French, Argentinian, Czech, and other nationals, who may not effectively be prosecuted because they live outside the United

²⁹⁹ Internal citations omitted. *People v. Kirkpatrick*, 64 Misc. 2d 1055, 1082-1083 (1970).

³⁰⁰ Carmen M. Cusack, *Two Films, One Law*, 23 EASL J. 3 (2012).

States.³⁰¹ American and foreign distributors can be subject to forfeiture; however, some foreign twincest stars have toured the United States to promote their films, but they were not known to have been arrested, prosecuted, or enjoined from promoting obscene material.³⁰² Even when police in New Jersey had a twincest pornography performer in custody, who had evaded and injured police, they were not alleged to have attempted to charge him with sex crimes, such as obscenity and incest.³⁰³ However, the twins' pornographic orgies were allegedly non-incestuous because they did not penetrate each other.³⁰⁴ Yet, it is possible that their performances were obscene.³⁰⁵ Therefore, applicability of the law to depictions of twincest and consequences for incestuous conduct are somewhat unpredictable.

³⁰¹ *Id.* Interview with the Peter Twins. Gay.nl, (May 6, 2013), Available at, <https://www.youtube.com/watch?v=NJrZQqJQI8E>

³⁰² *Id.*

³⁰³ CUSACK (2016).

³⁰⁴ *Id.*

³⁰⁵ Richard Rys, The curious case of gay-porn-star identical twins, DETAILS (2008), Available at, <http://www.details.com/story/gay-porn-star-identical-twins>

IV. CONCLUSION

Twincest is a damaging and deviant relation glamorized by the pornography industry.³⁰⁶ Pornographic depictions of twincest may manifest or exaggerate societies' interest in twins, yet possibly reflect distinctions between exploitive and voluntary acts of incest.³⁰⁷ The *Miller* test may consider the relevance of fantasies and fetishization of twins in media and culture to determine whether depictions offend the local community.³⁰⁸ Psychoanalysis suggests that although twin fantasies about non-relatives may be normal, twins' incestuous obsessions and activities may be harmful, and this harm may be an important reason to criminalize voluntary twincest.³⁰⁹ Criminalization of twincest may be the foundation for banning depictions of twincest.³¹⁰ This could benefit twins, who may feel ashamed of or confounded by the barrage of fantasies

³⁰⁶ *Supra* Sections I-IV.

³⁰⁷ *Id.*

³⁰⁸ *Supra* Sections II-III.

³⁰⁹ *Supra* Sections I-IV.

³¹⁰ *Supra* Sections V.

and fetishization normalized by and harbored in society.³¹¹ Pornographic depictions of incest have been held by courts to be obscene.³¹² Twincest depictions could be prosecuted, but for unknown reasons, they seem to be prevalent and openly transmitted by pornography producers and consumers.³¹³

³¹¹ Joanne Smalls, Email correspondence, February 28, 2017.

³¹² CUSACK (2016).

³¹³ *Id.*