



# **Pornography and the Justices : The Supreme Court and the Intractable Obscenity Problem**

*Richard F. Hixson*

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Discussing Supreme Court decisions regarding obscenity, Richard F. Hixson highlights the views of Justices William J. Brennan and John Paul Stevens, borrows from the pioneer decisions of Judge Learned Hand, and consults the work of contemporary First Amendment scholars; finally, though, he relies not on public debate or political machinations but on the justices' own published opinions, which are, as he says, "the most tantalizing documents of all."

Hixson proceeds chronologically through eleven chapters, with each chapter featuring a specific aspect of the constitutional problem and the approach or solution espoused by a particular justice. Through his case-by-case analysis of the many Supreme Court obscenity rulings, Hixson relates each decision to the temper of the times.

In this investigation of the Supreme Court's dealings with obscenity, Hixson asks—and answers in detail—a series of pertinent questions. Do Congressional politics and public opinion prejudice the Court's ability to interpret the Constitution fairly? Must adults be treated the same as children? What are the limits, if any, of "content restriction" on obscene materials? How much "expressive activity" is, or should be, protected by the First Amendment? Does pornography discriminate against women? How protective of the individual can the Supreme Court be and, at the same time, allow as many voices as possible to be heard?

Pornography and the Justices differs from other studies of pornography in its unique focus and its fresh conclusion, which is a composite of views garnered from the Supreme Court justices. As long as there is ample protection of minors and nonconsenting adults, Hixson argues, obscenity should be up to the individual. Separating himself from others who have discussed the issue, Hixson contends that the freedom to speak is as important as the freedom to be heard: it is essential to be able to speak whether or not anyone is listening.

For Hixson, the clear trajectory of Supreme Court opinions implies that the freedom to purchase obscene pornographic matter should be restricted only by time, place, and manner considerations. If a person wants pornography, he or she should be able to get it, albeit perhaps from a higher shelf, in a secluded room, or at a theater clearly marked for adults.

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