



Jeff Geiger Counters

Shedding the Briefs

By: Jeff Geiger. This was posted Thursday, April 8th, 2010

For many of us, Justice Potter Stewart's admonition that "I know it when I see it" in reference to obscenity is an insufficient way to regulate pornography or sexual expression. But defining what is or is not a proper expression based in large part upon the prevailing local community standards is equally frustrating. Are the community standards in Richmond really that different from those in Durham or in Christiansburg?

An example is in order. In a [story garnering national attention](#), a jury in Fairfax acquitted Erick Williamson of indecent exposure under *Virginia Code* § 18.2-387. The statute provides that:

Every person who intentionally makes an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor. No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present.

I love this law. **First**, what is an obscene display of one's person? My contender would be the really big hairy guy in the locker room that walks aimlessly around without a towel. **Second**, no one over the age of ten says "private parts" any more. Kidding aside, the statute highlights the difficulty in crafting laws to address sexual expression versus criminal obscenity.

Returning to the Fairfax case, Williamson was arrested and charged with indecent exposure. The witnesses may not have been Sunday school teachers but they came in a close second and third. The first was a librarian, who drove by Williamson's house and observed him naked in his house. The second was a mother walking her seven year old child to school, who saw Williamson naked through the screen door of his house and in his front window. Of course, he had a logical explanation—he was moving out of the house and wanted to pack and make breakfast in the buff.

Under the [Miller Test](#), obscenity is found where (a) it arouses prurient interest that does not conform to contemporary community standards, (b) it is patently offensive, and (c) it lacks serious artistic, scientific, literary or political value. Presumably, the jury determined that Williamson's display was "good naked" akin to

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the [Seinfeld television episode](#) in which Jerry's girlfriend is comfortably nude doing routine household chores in his apartment. While I know nothing about the artistic, scientific, literary or political value of walking around naked in one's house, it seems to me the jury got it right. Of course, if he was really big and hairy, perhaps a different story.

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