Obscenity and Pornography
Group Exercise

1. Review the fact pattern of the assigned Supreme Court or federal court case and apply the three-pronged test for obscenity developed in *Miller v. California* (1971):

A. *Paris Adult Theater v. Slaton* (1973): Lewis Slaton, the District Attorney for the Atlanta area, and others brought suit under a Georgia civil statute to prevent operators of a movie house from showing two allegedly obscene films, Magic Mirror and It All Comes Out in the End. The judge dismissed the complaint at the bench trial on grounds that consenting adults paid to see the movies in a commercial theater. The Georgia Supreme Court reversed on grounds that the movies constituted "hard core pornography."

B. *New York v. Ferber* (1982): A New York child pornography law prohibited persons from knowingly promoting sexual performances by children under the age of sixteen by distributing material which depicts such performances.

C. *American Booksellers Association, Inc. v. Hudnut* (1985): An Indianapolis city ordinance banned and punished "pornography" as a practice that discriminates against women. The city addressed "pornography" administratively on parallel track with sex discrimination. "Pornography" was defined as the "graphically sexual subordination of women, whether on pictures or words," that portray women as "sexual objects" who enjoy "pain or humiliation; "experience sexual pleasure in being raped"; or are "tied up," "cut up," "mutilated," "bruised or physically hurt..." The ordinance punished any of the above depictions regardless of their relationship to the entire work and did not consider literary, scientific, or artistic value. Plaintiffs included distributors and retailers of books, magazines, and films.

D. *Pope v. Illinois* (1987): Pope was an attendant at an adult bookstore, where he sold certain magazines to the police. He was charged with the offense of obscenity under Illinois law. At Pope's trial, the judge instructed the jury that, to convict, they must determine whether an ordinary member of the state of Illinois would find serious literary, artistic, political, or scientific value in the material.

E. *National Endowment for the Arts v. Finley* (1998): The National Foundation on the Arts and Humanities Act entrusts the National Endowment for the Arts (NEA) with discretion to award financial grants to the arts. The NEA's broad decision guidelines are: "artistic and cultural significance," with emphasis on "creativity and cultural diversity professional excellence," and the encouragement of "public education and appreciation of the arts." In 1990, Congress amended the criteria by requiring the NEA to consider "artistic excellence and artistic merit taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public." After suffering a funding rejection, Karen Finely, along with three other performance artists and the National