cated that obscenity is not be limited to pictures; books containing only descriptive language may be suppressed.[1337]

First Amendment values, the Court stressed in *Miller*, "are adequately protected by the ultimate power of appellate courts to conduct an independent review of constitutional claims when necessary." [1338] But the Court had conferred on juries as triers of fact the determination, based upon their understanding of community standards, whether material was "patently offensive." Did not this virtually immunize these questions from appellate review? In *Jenkins v. Georgia*,[1339] the Court, while adhering to the *Miller* standards, stated that "juries [do not] have unbridled discretion in determining what is 'patently offensive.'" *Miller* was intended to make clear that only "hard-core" materials could be suppressed and this concept and the Court's descriptive itemization of some types of hardcore materials were "intended to fix substantive constitutional limitations, deriving from the First Amendment, on the type of material subject to such a determination." The Court's own viewing of the motion picture in question convinced it that "[n]othing in the movie falls within either of the two examples given in *Miller* of material which may constitutionally be found to meet the 'patently offensive' element of those standards, nor is there anything sufficiently similar to such material to justify similar treatment." [1340] But, in a companion case, the Court found that a jury determination of obscenity "was supported by the evidence and consistent with" the standards.[1341]

The decisions from the *Paris Adult Theatre* and *Miller* era were rendered by narrow majorities,[1342] but nonetheless have guided the Court since. In addition, the Court's willingness to allow some regu-

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[1337] Kaplan v. California, 413 U.S. 115 (1973).

[1338] 413 U.S. at 25.

[1339] 418 U.S. 153 (1974).

[1340] 418 U.S. at 161. The film at issue was *Carnal Knowledge*.

[1341] Hamling v. United States, 418 U.S. 87 (1974). In Smith v. United States, 431 U.S. 291, 305–06 (1977), the Court explained that jury determinations in accordance with their own understanding of the tolerance of the average person in their community are not unreviewable. Judicial review would pass on (1) whether the jury was properly instructed to consider the entire community and not simply the members' own subjective reaction or the reactions of a sensitive or of a callous minority, (2) whether the conduct depicted fell within the examples specified in *Miller*, (3) whether the work lacked serious literary, artistic, political, or scientific value, and (4) whether the evidence was sufficient. The Court indicated that the value test of *Miller* "was particularly amenable to judicial review." The value test is not to be measured by community standards, the Court later held in Pope v. Illinois, 481 U.S. 497 (1987), but instead by a "reasonable person" standard. An erroneous instruction on this score, however, may be "harmless error." Id. at 503.

[1342] For other five-to-four decisions of the era, *see* Marks v. United States, 430 U.S. 188 (1977); Smith v. United States, 431 U.S. 291 (1977); Splawn v. California, 431 U.S. 595 (1977); and Ward v. Illinois, 431 U.S. 767 (1977).