Permeable Boundaries:  
Rhetorical Delivery and the Negotiation of Obscenity

A dissertation presented

by

Steven S. Kapica

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ABSTRACT OF DISSERTATION 

Submitted in partial fulfillment of the requirements 
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ABSTRACT

Obscenity’s dependence on location and situation reveals its delivery as rhetorical and, understood as such, provides a valuable site for rethinking conversations about rhetorical delivery and communication technologies. As a project of theoretical speculation through selective historical recovery, the three ‘cases’ in American obscenity negotiation presented by “Permeable Boundaries” offer analysis of obscenity as a site for epistemological reconception of rhetorical delivery. In sum these case studies reveal and reconstitute the relationship between rhetorical delivery and kairos, demonstrating how technologies—as varied as the mail, the radio, and the internet—force us to reconsider not just the available means for delivery, but the local-epistemic nature of propriety and the appropriateness and timeliness of rhetorical space. Each case study tackles a precept of kairos (propriety, decorum, timeliness) and demonstrates how these concepts facilitate rhetorical delivery. These kairotic precepts, when considered separately (as they are in each case study) reveal delivery to be more than merely transactional and transitive. This project ultimately urges a theoretical refocusing of delivery that not only moves beyond what Colin Gifford Brooke sees as “our commonsense definition of the term,” but provides an alternative perspective to Brooke’s own conception of delivery as performance, as well as extends Ben McCorkle’s view of delivery as technological discourse.

This project’s ultimate contention is that even with recent field attention, delivery, like kairos, is often codified into static, systematic epistemologies. As Debra Hawhee aptly insists, “The orator who invents on the basis of kairos must in fact always go beyond the bounds of the ‘rational’” (78). This doesn’t mean that kairotic rhetoric is irrational; rather, as this dissertation asserts, we need to better account for the kairotic aspects of communication technologies used to circulate and distribute rhetoric. Rhetorical delivery is thus not simply a matter of knowing what means are available for distribution or circulation and using them transactionally, or as we
would use tools, but recognizing and accounting for how those means of delivery are complicated by propriety, decorum, timeliness, and communication technologies.
DEDICATION

To Stanley F. Kapica, 1944-2005

for not just lighting the fire, but
for teaching me how to carry it
ACKNOWLEDGEMENTS

In November of 2001, I defended my Master of Arts thesis, “The Girl Who Made Good Being Bad: Bettie Page and American Postwar Ideology.” Afterwards, I was sitting in my thesis director Craig Fischer’s office when he commented, “This is essentially half of a dissertation.” I’ve thought often about those words in the past fifteen years. At the time, I didn’t have plans to pursue my doctorate, though it was out there on the horizon somewhere. Craig’s comments convinced me, in that moment and in many moments since, that I could do this—and, to some extent, should do this. Thanks, Craig.

I would also like to extend my thanks and gratitude to Thomas McLaughlin, whose pedagogy and academic cool I’ve been filching for nearly two decades.

In the last three years I have been fortunate to place three articles. The peer review and revision process involved in publishing all three pieces made working on this dissertation a much more successful venture than it might otherwise have been. I might still be drafting if not for the practical lessons learned in executing targeted revisions prompted by honest and unmerciful peer review. I would like to thank: Austin Sarat and the anonymous reviewers at Law, Culture, and the Humanities, Chuck Kleinhans and Julia Lesage at Jump Cut, and Tim Peters, Ed Mussawir, and the anonymous reviewers at Griffith Law Review.

I will always be indebted to the input, influence, and guidance of my dissertation committee. Chris Gallagher, Beth Britt, and Ryan Cordell were generous with their time, realistic with their criticism, and wonderfully encouraging. The quality of this writing is due in no small part to their guidance.

In 2009, I was at a crossroads. With the love and support of my brilliant wife, Mandy D. Kapica, we quit our jobs, sold our house, and moved fourteen hours north to Boston so I could begin what ends with this dissertation. This writing would not exist without her.
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Introduction: Locating Delivery and Obscenity

In the history of obscenity, what we really witness is the history of social boundaries being firmed, tested, and shifted over time.

-- Whitney Strub, Obscenity Rules

1. Location, Location, Location

In the Overland Park Arboretum outside Kansas City stands an evocative sculpture by Chinese artist Yu Chang. The headless bronze sculpture of a partially nude female form, segmented and shifted slightly off-axis—an artistic manifestation in bronze of the cinematic cuts of the male gaze—stands with its arm raised holding a digital camera, aimed to snap a self portrait, a "selfie." The absence of a head suggests self-objectification, an emphasis on the body’s sexualized features instead of the person beneath the exposed flesh. It’s an arresting piece of statuary with a pointed vision; it offers a convincing message about the fracturing of self prompted by our media and image obsessed culture. It’s also a figure at the center of controversy, the object of contention in a heated debate that has prompted petitions and the calling of a grand jury to assess charges of obscenity promotion.

The question raised by this difference of perspective is one central to art’s relationship to the obscene. Art theorist and scholar Kerstin Mey notes, “When it comes down to an exacting definition of the obscene in relation to the aesthetic, the difficulties inherent in such endeavor become… obvious, because obscenity and art are birds of a feather in that both are concerned with representation” (13). The difficulty in differentiating art and obscenity, she adds, lies not so much with obscenity but with the concept of art, to which it is inextricably linked. In western thought of the modern period, notions of art have been more or less founded on a set of assumptions that concern the location of
the aesthetic and its understanding and function... In other words, only when one can assert what is art, can one assert what it is not, what counts as non-art and/or obscenity. (13)

Mey’s reference to location here is theoretical; however, if we concretize location in her observation then we can suggest that not only is the aesthetic a theoretical classification based on (personal or collective) understanding and function, but that understanding and function are tied to specific location. Where one stands—physically and ideologically— in relation to a work of art determines one’s perspective on its value and meaning.

I have not actually seen Yu Chang’s sculpture in person. I have only seen digital representations of it—images and videos attached to internet news sites, online petitions, professional and personal blogs. Despite the physical and spatial distances between the actual work of art and me, I am able to access remediations of it, process it and its message, along with the variety of conversations surrounding it, and come to my own, situated assessment of it. Though it has been labeled “obscene” by thousands of individuals in close, physical proximity to it, I can (and do) label it art from my position in front of my computer monitor several states removed. This difference of perspective—obscenity’s dependence on context and location, as well as the communication technologies through which works like Yu Chang’s “Accept or Reject” are delivered to multiple, diverse audiences—is the starting point from which this project explores rhetorical delivery and the negotiation of obscenity.

Obscenity’s dependence on location and situation reveals its delivery as rhetorical and, understood as such, provides a valuable site for rethinking conversations about rhetorical delivery and communication technologies. As a project of theoretical speculation through selective historical recovery, the three historical ‘cases’ in American obscenity negotiation presented here offer analysis of obscenity as a site for epistemological reconception of rhetorical delivery. In sum these case studies reveal and reconstitute the relationship between rhetorical delivery and kairos, demonstrating how technologies—as varied as the mail, the radio,
and the internet—force us to reconsider not just the available means for delivery, but the local-epistemic nature of propriety, and the appropriateness and timeliness of rhetorical space. These kairotic precepts, when considered separately (as they are in each case study) reveal delivery to be more than merely transactional and transitive. This project ultimately urges a theoretical refiguring of delivery that not only moves beyond what Colin Gifford Brooke sees as “our commonsense definition of the term,” but remediates delivery in terms of kairos and provides an alternative perspective to Brooke’s own conception of delivery as performance, as well as extends Ben McCorkle’s view of delivery as technological discourse.

Each case study tackles a precept of kairos (propriety, decorum, timeliness) and demonstrates how these concepts facilitate rhetorical delivery. In discussing the sophistic rhetoric of Gorgias, Debra Hawhee notes, “Enumerating ‘precepts’ of kairos would prove counter to Gorgias’ rhetoric, and to kairos itself” (83). Hawhee is concerned with the slippery nature of kairos, with the danger of thinking it teachable as a finite rhetorical concept. By its very nature, kairos “flees epistemology” and evades “systematic definition” (Hawhee 84). However, by focusing on three of the most referenced aspects of kairos, separating them out and exploring them individually through different cases, this dissertation demonstrates not only how each precept functions within a variety of conversations, but how each precept works in tandem to constitute kairos and necessarily bolsters (and is bolstered by) rhetorical delivery.

This project’s ultimate contention is that even with recent field attention, delivery, like kairos, is often codified into systematic epistemologies. As Hawhee aptly insists, “The orator who invents on the basis of kairos must in fact always go beyond the bounds of the ‘rational’” (78). This doesn’t mean that kairotic rhetoric is irrational; rather, as this dissertation asserts, we need to better account for the kairotic aspects of communication technologies used to circulate and distribute rhetoric. Rhetorical delivery is thus not simply a matter of knowing what means are available for distribution or circulation and using them transactionally, or as we would use
tools, but recognizing and accounting for how those means of delivery are complicated by propriety, *decorum*, timeliness, and communication technologies.

Obscenity operates as the common denominator in my rhetorical remediation of delivery. By tracing the movement of obscenity across a variety of technologies, we see past, present, and future texts, as Ridolfo notes, “in relationship to the changing rhetorical goals and particular objectives of cultural stakeholders” (137). I concentrate on obscenity, anchoring my observations in popular texts and obscenity discourse, because it is a particularly fruitful term for understanding the relationship between the tenets of *kairos* and rhetorical delivery, especially with regard to the movement (distribution, circulation, networking) of texts across cultural and legal borders. My investigation of communication technologies, both past and present (mail order catalogs, broadcast radio, internet), demonstrates how delivery functions differently across different media. This dissertation substantiates McCorkle’s claim that “an entire communications environment… contributes to the eventual shape and ultimate persuasiveness of [a] text” (161).

Rhetorical delivery, then, serves as the disciplinary umbrella under which my case studies operate. Furthermore, each case study articulates a specific aspect of *kairos* in relation to rhetorical delivery: propriety, *decorum*, timeliness. *Kairos* has been historically linked to the canon of delivery and Hesiod’s maxim, “observe due measure, and proportion [*kairos*] is best in all things,” neatly encapsulates the traditionally accepted precepts of *kairos*: Observation of due measure and proportion leads to effective rhetorical delivery. As will be discussed below, however, *kairos* necessarily resists neat encapsulation, anchored as it is by the relativistic roles of time and space framed by social-epistemic propriety and *decorum*. As my case studies show, rhetorical delivery, rearticulated across multiple communication technologies, is best understood as enabled by the main precepts of *kairos*. Furthermore, the evidence of my case studies and the collocation of delivery, *kairos*, and communication technologies serve this dissertation’s ultimate goal of theorizing delivery in terms of rhetorical space.
A survey of rhetorical scholarship reveals pervasive desires to remediate classical concepts for contemporary use in the fields of rhetoric, composition, and communications studies. In particular, much work has focused on how to revive the five canons for redeployment in composition classrooms and serve new theoretical paradigms. This recent scholarship attends to how the canons can (and should) be repurposed in response to new media, multimodality, and shifts in technologies. Collin Gifford Brooke suggests while “the five canons of classical rhetoric (invention, arrangement, style, memory, and delivery) are more like a disciplinary heirloom than they are part of our core intellectual inheritance from antiquity…. invention and style remain central concerns for scholars in rhetoric and composition” (29). James E. Porter notes, “In classical Greek and Roman rhetoric, delivery referred primarily to oral delivery: to making a public speech on political, juridical, or ceremonial occasions.” Brooke points out, however, “memory and delivery stand as nearly vestigial canons, little more than reminders of rhetoric in a different place and time” (29). Recent interest has sought to renew the “forgotten” canons of delivery and memory. Along with scholars like Ben McCorkle, Jim Ridolfo, and Dànielle Nicole DeVoss, Porter aims “to resuscitate and remediate the rhetorical canon of delivery, which, along with memory, is one of the two neglected canons of the art of rhetoric” (207).

Porter’s suggestion that delivery is in need of resuscitation seems a bit overstated given that an uptick in rhetorical delivery scholarship began nearly thirty years ago with the pioneering work of communications and rhetoric scholars such as Kathleen Welch and Kathleen Hall Jameison, both of whom called for a reconsideration of delivery. Brooke also notes, “if Welch and Trimbur could write 5 years ago [2004] of the neglect of delivery… such a claim would be more difficult to make in the present day,” pointing to recent work by Kathleen Blake Yancey
Current scholarship, like the earlier work of Welch, Robert Connors, and Richard Lanham, is right to point to developing technology as warranting a better understanding and deployment of rhetorical delivery. As Ben McCorkle notes, “Because of the recent explosion of new electronic and digital technologies of writing, delivery no longer means simply the physical and vocal characteristics of embodied speaking but also the formal, aesthetic, and logical elements of a given medium of communication” (32). McCorkle adds, however, that strategies like those of Welch and Connors, operate as rhetorical constructions that graft an ancient concept onto a new situation, which, though not entirely unproductive, makes it “appear as though the technology naturally created or uncovered the revision, or that it ‘allowed’ us to see such a connection” (154). What the case studies collected here reveal is that such connections have always already existed and that rethinking delivery requires more than simply attending to changes in communication technologies by adapting pre-existing strategies; instead, it requires a more nuanced understanding of delivery in its most elemental (and most kairotic) sense. “[Classical] rhetoric,” McCorkle concludes, “is... useful for us today, but only insofar as we acknowledge the extent to which the analogy stretches and where our world takes leave of theirs” (159). To an extent, the case studies in this project don’t stretch the analogy so much as reset it and pull it within the scope of kairos to better understand delivery in terms of rhetorical space.

Brooke suggests that delivery has been troubling to reconceive given “our tendency to view the canon through the lens of our commonsense definition of the term” (170). As Ridolfo and DeVoss note, “within the context of [radical changes to modes of production, delivery, and distribution], field conversations in rhetoric and composition have surfaced that specifically ask how classical rhetorical concepts such as delivery are impacted by changes to the means of distribution” (rhetcomp). Much of Ridolfo and DeVoss’s conversation about delivery focuses on
agented delivery—on rhetors’ use of technology to best deliver their messages—and not so much on what actually happens with distribution itself, or how technology mediates the message. It is this view of delivery that prompted Brooke to rename the canon “performance,” which he sees as allowing us to “articulate [delivery] in the context of new media” (170). Brooke claims that when it comes to new media, “we need to think in terms of an intransitive, constitutive performance, rather than transitive or transactional delivery” (170-171).

This focus by rhetoricians on how to deploy or, using Brooke’s term, perform as authors is a simple fix to theorizing delivery in light of new media’s current dominance. It is a fix that has preoccupied rhetoric scholars in recent years; by viewing new media as a site for technologically mediated performance scholars have, in a sense, returned delivery to its ancient roots, to its performative aspects. Delivery through new media is a performance where vocal modulation and gesture are delivered through keystrokes and video blogging, selfies and memes. However, viewing delivery as performance (through technological mediation) tends to reduce technology to a tool (mastered through skill-based instruction) used by a composer, a composer who rarely determines the best method for delivery but instead learns to use the system or new media platform through which he or she wishes to communicate, paying little or no attention for the affordances or constraints of the technology itself. Delivery viewed in this regard is, certainly, mindful of the challenges presented by composing in the midst of technological upheaval and is fruitful with regard to privileging composition as an agented rhetorical strategy; however, operationalizing technology as a tool minimizes, or, worse, neglects, the more robust theoretical implications for delivery lurking beneath commonsense definition—primarily delivery’s anfractuous relationship to circulation and distribution, to textual movement and not just simple matters of rhetors making performative decisions.

This response to the bedazzlement of new media has been somewhat hyperbolic. Or, rather, the explosion of new media and the field’s response to it has led to a hypersensitivity to digital technologies and their role in shaping rhetoric, in prompting re-theorization of the ancient
canons. McCorkle writes, “To assume that the arrival of digital technology has somehow
‘allowed’ us to make such a connection [between rhetorical delivery and technology] glosses
over the various ways in which delivery has functioned as a kind of discursive and institutional
validation of newly emerging technologies at various moments in Western culture” (3-4). The
case studies presented here further suggest that delivery has, in a sense, always been
mediated by technology; to understand delivery, then, requires consideration of technological
affordances and negotiation, be it consideration of how technology assists with vocal projection
beyond bodily range or how it facilitates the complex negotiation of extensive digital distribution
through internet protocols and algorithms.

For McCorkle, “theories of delivery have helped to foster the cultural reception of
emergent technologies of writing and communication by prescribing rules or by examining and
privileging tendencies that cause old and new media forms to resemble one another” (5). This is
the basis from which McCorkle argues that “the rhetorical canon of delivery functions as a
 technological discourse” (5). McCorkle notes,

[Rhetorical] theory helps to reconcile cultural misgivings or lack of familiarity with
a newly emerging technology by adapting in order to foster an emergent
technology’s cultural acceptance, familiarity, naturalization, and eventual
dominance. Such adaptive maneuvers… can be theorized as mechanisms of
remediation, the complex interplay of long-established and newly emerging
technologies of writing with rhetorical theories of delivery. (5)

McCorkle’s observations are particularly relevant to my work because in addition to recovering
delivery for contemporary rhetorical theory he traces the history of the fifth canon to reveal its
constant (if not always explicit) presence, which is to say that all technologies have shaped the
rhetoric of delivery and rhetorical delivery. This dissertation, then, explores three communication
technologies (mail, radio, internet) to make more explicit the implicit.
By casting a selective glance across multiple communication technologies, we can better understand rhetorical delivery as it operates in different technological contexts. The 1955 Senate Subcommittee on Juvenile Delinquency’s “Hearings on Obscene and Pornographic Materials” not only sought to redefine obscenity in light of a perceived rise in juvenile delinquency but, in ways which chapter one addresses, the hearings were more about mail order mediation of propriety through *distribution*. George Carlin’s stand-up comedy not only tested boundaries of taste for laughs; in truth, Carlin’s comedy demonstrates the rhetorical complexities of *decorum*. Furthermore, Carlin’s comedy delivered on public airwaves prompted questions regarding mass communication’s negotiation and regulation of *decorum*. As already demonstrated in my brief survey of current scholarship on delivery, rhetoric scholars have been at pains to accommodate the exponential growth of new communication technologies. However, as chapter three demonstrates, the internet’s facilitation of the complicated shuttling between place, space, standards, audience(s) and rhetorics points us to the spatiality and temporality of digital media and the internet.

Mining historical and contemporary “obscene”/popular texts serves my goal of expanding the usefulness of “rhetorical delivery” through the precepts of *kairos*, defining delivery as a technologically mediated (and mediating) concept. Recent developments in rhetorical delivery scholarship are often too quick to write off earlier instances of technologically mediated delivery. While the likes of Welch, Porter, Brooke, and Ridolfo are right to point out how new and emerging technologies complicate our notions of delivery, this dissertation demonstrates how earlier technologies did so as well. My ultimate goal is to suggest that rhetorical spaces are mediated, defined, and created by the communication technologies through which rhetoric is delivered.

Furthermore, by focusing on popular culture in different genres and modalities, my work attempts to expose the variety (and pervasiveness) of environments within which rhetoric and technology operate and how those environments mediate delivery differently. Chapter one’s
focus on the 1955 Senate Subcommittee hearings illuminates discussion of distribution and propriety by analyzing the Subcommittee’s crusade against obscenity. For chapter two, focusing on stand-up comedy and the delivery of George Carlin’s ‘message’ across multiple media allows me to parse rhetorical delivery in terms of decorum—and again illuminates the relationship between communication technologies and rhetorical delivery. Finally, chapter three comes closest to current discussions of rhetorical delivery in the field, as it focuses on a digital conversation that arose from an incident with public art in Kansas City. Much like chapters one and two use popular texts as touchstones for issues with propriety and decorum, chapter three uses a controversial work of art—one labeled obscene by some residents—to tease out issues regarding timeliness and rhetorical space.

By focusing on one kairotic precept per case study, each in conversation with a specific communication technology, we not only better understand how each principle contributes to kairos, but how kairos relates to rhetorical delivery. Through careful consideration of its key parts (propriety, decorum, and timeliness), this dissertation’s case studies demonstrate how we can better attend the complicated business of rhetorical delivery amidst a constantly changing landscape of communication technologies. Furthermore, focusing on obscenity allows us to see how propriety, appropriateness, and timeliness are always already socially contingent and are productive of permeable boundaries that demarcate rhetorical spaces.

3. Under the Umbrella: Precepts of Kairos

The Miller test for obscenity—a test decided in 1973 by Miller v. California, 413 U.S. 15, and still referenced in obscenity cases today—evokes kairos. Miller determined,

The basic guidelines for the trier of fact must be: (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest, Roth, supra, at 489, (b)
whether the work depicts or describes, in a patently offensive way, sexual
counter conducts specifically defined by the applicable state law, and (c) whether the
work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

The first stipulation of this tripartite test implicates both *timeliness* (contemporary) and *propriety*
(community standard). The second stipulation’s intonation of “patently offensive” is a direct
reference to appropriateness. The value judgment of the third stipulation invokes all three,
collected as they are in the arch concept of *kairos*. Furthermore, the implication is that the
‘average person’ would be in possession of qualifiable (appropriate) character. The insertion of
‘contemporary’ is an effort on the parts of the Supreme Court justices to account for time-based
changes to community standards. That the law appeals to *decorum* and recognizes the
*timeliness* of obscenity reveals the usefulness of considering obscenity in terms of *kairos*.

Below, I unpack *kairos* to better understand how it developed within the rhetorical tradition. I
then demonstrate how *kairos* operates in and through my consideration of rhetorical delivery
and obscenity; in particular, I parse how the rhetorical delivery of obscenity through
communication technologies is further negotiated through three precepts of *kairos*: propriety,
*decorum*, and timeliness.

Much like delivery, the ancient concept of *kairos* has received renewed interest in the
past couple decades. In January of 1996, a new electronic journal took *Kairos* as its name and
published its first issue. As founding editor Mick Doherty contends, “This new journal has a
great deal to do with *kairos*, particularly in terms of its appropriateness and timeliness in our
field at this time.” Not only does *Kairos* explore “the intersections of rhetoric, technology, and
pedagogy,” it lives in the moment, on the internet, webbed and networked in rhetorical
moments. Sheridan, Michel and Ridolfo argue that expanding the concept of *kairos* “to include
decisions about mode, media, and technology” allows “critical considerations for successful
rhetorical interventions” beyond traditional strategies of persuasion (“*Kairos* and New Media”).
Porter notes, “The rhetorical term *kairos* refers to timing, to the appropriate time to deliver a
discourse but also to the appropriateness of the discourse for its occasion (its audience, its immediate context, its historical and cultural context). It is a key concept for rhetoric in general, and for the canon of delivery in particular” (214).

As Michael Carter notes, kairos “is rich in connotations, including the opportune moment, the right measure, and the fitting or appropriate” (98). Carter’s tripartite definition of kairos serves as a starting point for this dissertation’s parceling out of propriety, appropriateness, and timeliness. As an indicator of not just time (chronos) but of a quality of time (opportune moment), timeliness is an essential component of kairos, especially with regard to kairos’s relativism. In his 1980 article “Kairos as ‘Due Measure,’” John R. Wilson makes much of the debate between due time and due measure with regard to kairos, noting kairos, as understood through Hesiod’s maxim, means “‘the right degree’ between too much and too little” (179). Wilson adds, “Kairos is the opposite of excess” (179). Carter’s use of “right measure,” then echoes Wilson’s insistence on “due measure” as essential to kairos. This dissertation’s understanding of propriety draws on this notion of due measure, in particular two denotative aspects of propriety: conformity to established standards and rightness.

That propriety operates as rightness (the right degree) and as conformity to established standards, it also invokes decorum, which Robert Hariman notes, “was identified in the classical texts as one of the four major virtues of style, and some writers featured it as the highest virtue.” Expressed in Greek as ‘to prepon,’ decorum initially denoted “conspicuousness” but became “a technical term referring to suitability and reflecting the society’s social organization” (“Decorum” 199). Cicero remarked, “In an oration, as in life, nothing is harder than to determine what is appropriate” (qtd. in Hariman, “Decorum” 199). While decorum encompasses both suitability and social organization, rightness and appropriateness, this dissertation separates propriety and appropriateness in an effort to demonstrate the usefulness of both terms and the subtle but necessary distinctions between the two. Put plainly, this dissertation uses propriety as the crystallization of decorum into standards and rightness; it views appropriateness as enacted, as
the application of rightness in a rhetorical situation. *Kairos* is the arch principle that effectively mediates *decorum*—along with *timeliness* (opportune moment) and propriety (right measure); successful rhetors seize the right moment to do the right or *appropriate* thing.

“Prior to Gorgias,” Bruce McComiskey notes, “the term *kairos* was applied to the weaver’s ability to thrust a thread through a momentary opening in the loom and the archer’s ability to exploit the minuscule opening in space that would guide an arrow to its target” (93). These opportunities are fleeting and require careful attention from the weaver or archer because their targets are always moving. The opening is never in the same place; as such, *kairos* resists a foundational epistemology because of the uniqueness of temporal moments. McComisky, referring to the rhetoric of Gorgias, claims the Sophist’s “rhetorical methodology works to seize the opportune moment (*kairos*) in which certain kinds of language can be used to unite subjective consciousnesses into a communal desire for action” (18).

Regarding *kairos*’s relationship to propriety and *decorum*, James Baumlin notes, “Through *kairos*… the writer or speaker recognizes the mutability of the world and the power that the word or logos plays in constituting reality; and *decorum*, united with *kairos*, becomes the principle of adapting all elements of discourse to a world of change” (177). *Kairotic* rhetoric, then, isn’t just about waiting for an opportune moment to emerge but recognizing how any moment in which action is necessary can be opportune if propriety is observed and *appropriate* language (rhetoric) is used. As a relativist principle of rhetoric, *kairos*, then, places the power of rhetoric in the appropriate mediation of conflict in the moment, with the right methods as determined by the rhetor. Furthermore, because “knowledge is not absolute,” as Carter points out, “it is contingent, a construct of a community, and is defined by the discourse of that community” (110). The right moment, then, is defined by its *locality* (physical and temporal), and the *appropriateness* of rhetorical action is dependent on the propriety of the community for which action is required.
Propriety and *decorum* serve to contingently define obscenity: Obscenity legislation is primarily marked by changes in cultural attitudes (propriety) and is locally mediated (*decorum*). What chapters one and two show is how propriety and *decorum* are negotiated through delivery, and in particular mediated by communication technologies. A *kairotic* rhetorical delivery is one that artfully balances the principles of propriety, *decorum*, and timeliness. In order to better understand rhetorical delivery and the operation of *kairos*, we need to better understand the operation of these three principles. This project’s attendant case studies demonstrate how communication technologies—specifically mail, radio, and new media—both afford and constrain propriety, *decorum*, and timeliness.

4. *Kairos* Marks the Spot: Three Case Studies

This project is unique in its focus on rhetorical delivery as witnessed through the popular and legal negotiation of obscenity. Legal scholar William MacNeil claims, “contemporary popular culture has something important to say to and about jurisprudence” (1). MacNeil aptly notes, popular texts “reach a much larger audience than standard legal texts” and “they help restore topics of jurisprudential import—justice, rights, ethics—to where they belong: not with the economists, not with the sociologists, not even with the philosophers, but rather with the community at large” (1-2). Holding the popular in conversation with the jurisprudential provides access not only to the rhetoric of popular texts as artifacts, or the rhetoric of legal doctrine, but to the communities through which popular and legal discourses circulate.

While MacNeil’s observations serve jurisprudence, my project is more intentionally and specifically focused on how legal mediation acts in tandem with popular texts to negotiate obscenity. Whitney Strub aptly notes, “obscenity law has satisfied no one, be it the conservatives distressed by the pornographic saturation that the law has seemingly done little to stop, or liberals aghast that in the twenty-first century people can still be incarcerated for selling
images of actions that are perfectly legal between consenting adults” (2). Strub’s observations speak to discord between legal and popular definitions of obscenity, between the law and cultural production. This project contends that problems with obscenity law are problems of rhetorical delivery and kairos.

Strub contends, “obscenity… is a technical legal term,” one that is certainly not “a stable label” (3). An implication here is that obscenity does not actually exist outside the law. As a legal term, obscenity serves as a placeholder for cultural attitudes towards sexuality and decency, and without the law, obscenity loses rhetorical agency. However, the law relies on cultural attitudes; in fact, common law necessarily operates through local ideologies. In many respects, this is analogous to Stanley Fish’s claim that the law’s “most saliently desirable properties” are “generality and stability” (142). The often inscrutable and contradictory language of the law speaks to its reliance on a socially epistemic rhetoric and, as Fish argues, it is this very reliance on intentionally vague language that allows the law to operate (on a foundation of generalities). Philosophically, “the inability of legal doctrine to generate logically consistent outcomes from rules and distinctions that have a clear formal basis means that the entire process is at once empty and insidious” (168). However, as Fish aptly points out, the law, as it operates, “is not philosophical (except when it borrows philosophy’s arguments for its own purposes) but pragmatic, and from the pragmatic standpoint, the inconsistency of doctrine is what enables law to work” (169).

Rhetorical engagement with obscenity, law, and “popular texts” raises a central question for this project: How might “popular texts” be labeled “obscene”? This simple question leads to my use of a case study methodology situated in a trans-genre approach. The slippery nature of obscenity makes tracing all of its facets far too large a task for one project. However, by selecting and exploring a few specific texts, I am able to a) more closely examine the rhetorical delivery of singular texts (cultural artifacts) and b) map the trajectories of those texts as they move across modes, media, and contexts.
Approaching this project through a case-study methodology allows me to examine a unique variety of materials. Each case focuses on a different medium (mail order catalog, stand-up comedy, publicly displayed art) and a different technological discourse (mail, radio, internet). Each case provides perspective and insight into rhetorical delivery and *kairos*. Following Thomas Newkirk, my cases are narratively *situated*. Newkirk writes,

> To write a case study that works, the writer needs to see the data in terms of one of a variety of culturally grounded narratives. The writer ‘author-izes’ the data, and in doing so faces the same problem that confronts the biographer or historian who... is looking for aesthetically satisfying patterns in the people or events he considers as potential subjects for his work’ (135).

By approaching cases through rhetorical delivery and *kairos*, I highlight and authorize useful patterns that reveal the rhetorical action occurring in the cultural and legal mediation of obscenity. As Newkirk adds, “The issue is not one primarily of methodology and objectivity, but of authoring and the cultural values embedded in various narrative plots” (133). With this in mind, I have selected three cases that provide us with a variety of materials and perspectives from which to draw some speculative conclusions. Each case tackles a different medium and text: mail order distribution of 1950’s pin-ups; radio broadcasting of 1970’s stand-up comedy; internet conversations regarding public art.

The case study at the center of chapter one focuses on the published proceedings from the 1955 Senate Subcommittee to Investigate Juvenile Delinquency’s hearings on “Obscene and Pornographic Materials.” In particular it interrogates the relationship between rhetorical delivery and propriety, demonstrating how postwar propriety rhetorically mediated and was mediated by the distribution of mail. The case study shows how the Senate Subcommittee’s juvenile delinquency discourse constituted postwar propriety and how distribution of bondage photos by the likes of Irving Klaw and Samuel Roth prompted redefinition of cultural and legal attitudes toward obscenity. This chapter suggests that rhetorical space is defined by how
rhetors establish contexts and demonstrates how the distribution of mail highlights both the power and permeability of contextually established rhetorical boundaries—boundaries established through rhetorical delivery and mediating communication technologies.

Chapter two’s case study centers on comedian George Carlin, the landmark case of FCC v. Pacifica, 438 U.S. 726, and decorum. Carlin was an effective social critic and rhetor who challenged decorum within the operational tenets of the concept. However, Carlin’s comedy was, through Pacifica, legally deemed indecent (indecorous) by way of the Miller test for obscenity. In addition to analyzing Pacifica’s distinctions between indecency and obscenity, chapter two explores Carlin’s comedy as demonstrative of appropriate inappropriateness, a distinction that necessarily changed as a result of its public broadcasting (remediation). The complexities of both decorum and rhetorical delivery in this case lead to the suggestion that what is appropriate is a matter of the multitude of rhetorical spaces drawn and redrawn by rhetors through communication technologies both within and outside their control.

Finally, chapter three sets its sites on an interesting case involving a piece of art on display at the Overland Park Arboretum outside Kansas City—a sculpture deemed obscene by local resident and mother Joanne Hughes. This case study employs Mary Queen’s rhetorical genealogy of digital texts to trace the propagation of Hughes’s story, as well as digital images of and conversations about the sculpture, and explores how the “community standards” established by Hughes’s rhetoric were disseminated, appropriated and remediated—and what that remediation reveals about timeliness, the establishment of permeable digital boundaries, and rhetorical delivery. Like chapters one and two, this case study focuses on one of the main precepts of kairos—timeliness—and examines its relationship to rhetorical delivery and digital communication.

This dissertation’s primary goal is to better understand the relationship between rhetorical delivery, kairos, and communication technologies, especially with regard to the creation and maintenance of rhetorical spaces demonstrated through obscenity discourses. This
collection of case studies cumulatively suggests that rhetorical spaces are mediated (and often defined) by the communication technologies through which rhetoric is delivered. Michel de Certeau claims, “A space exists when one takes into consideration vectors of direction, velocities, and time variables. Thus space is composed of intersections of mobile elements” (117). While de Certeau’s differentiations between place and space are and have been contested, his insistence here on direction, velocity, and time variables echoes this dissertation’s interest in kairos—in particular, its extended ruminations on timeliness, decorum, and propriety as socially-constituted and flexible concepts that point to the permeability of rhetorical spaces. In the conclusion, I collect the conclusions of each case study and suggest that rhetorical delivery is still a useful concept—but only if theorized kairotically. Furthermore, I suggest that rhetorical delivery be updated to include consideration of rhetorical space: The intersections of mobile elements, orchestrated by any given rhetor, create and maintain spaces that necessarily remain permeable as a result of kairotic elements. In this way, the rhetor not only effectively looses the arrow of rhetoric but draws/opens the space through which the arrow then travels to hit its mark.
Chapter 1: Dirty Pictures in the Mail: Bondage Photos, Propriety, and Rhetorical Distribution

The great bulk of mail-order filth is designed to appeal, of course, to the more or less normal male animal. If his appetite for filthy photographs and movies should pall, the mail-order merchants will sell him novelties, playing cards, peephole viewers, and jigsaw puzzles. They will sell him cartoon books, joke books, postcards, and filthy novels. They will sell him erotic recordings, suggestive statuettes, and lewd chinaware… Ordinarily this merchandise is offered “for adults only,” which is a sure-fire appeal to adolescents, and it is offered with such an array of gift certificates, bargain offers, short-time-only deals, extra-picture premiums, order forms, and return envelopes that the cash comes pouring in.

-- James Jackson Kilpatrick, The Smut Peddlers

1. Introduction

On May 31st, 1955, entrepreneur and Movie Star News founder Irving Klaw was brought before the Senate Subcommittee on Juvenile Delinquency to testify regarding his company’s distribution of “obscene” materials. He was not the only distributor singled out, though he was one of the biggest offenders in the eyes of the committee and its chairman, Senator Estes Kefauver. Movie Star News, which opened in 1938 as a second-hand bookstore in lower Manhattan, had blossomed into a lucrative pin-up business. By 1955 Klaw, dubbed the “king of pin-ups,” was churning out his own in a makeshift studio above his bookstore and distributing them nationally through a lucrative mail order catalog. In addition to selling the typical “cheesecake” of the era, Klaw was producing light bondage film loops and photographs: Scantily clad models were depicted bound and gagged, or shown disciplining other models in
states of mock duress. These bondage and discipline photos and film reels were best sellers; they also provoked the ire of the Senate Subcommittee. Along with Samuel Roth, who would later be convicted in the 1957 landmark obscenity case *Roth v. United States*, Klaw was considered a major ‘smut peddler’ coldly cashing in on postwar economic prosperity and a justice system ill-equipped to police interstate and international distribution of obscenity.

A confluence of events led to Irving Klaw’s testimony before the Senate Subcommittee. Prior to the 1950s, obscenity was not a national concern in need of intercession and reform; rare instances of obscenity were handled locally and on a case-by-case basis. The technological and economic affordances of the postwar era, however, weakened established boundaries of propriety and prompted reassessment of the basic functionality of the U.S. Postal Service as a government-sponsored distribution and content-mediating agency. Bolstered by the success of his organized crime hearings, and following 1954’s “Comic Books” hearings, Kefauver took over as chairman of the Senate Subcommittee on Juvenile Delinquency and orchestrated a media spectacle through which he could drive legislative change, pillory “trash” like Klaw and Roth, and stop the widespread distribution of their juvenile corrupting “smut.”

The published proceedings from the 1955 Senate Subcommittee to Investigate Juvenile Delinquency’s hearings on “Obscene and Pornographic Materials” serve as the primary object of analysis for the following case study that investigates the relationship between rhetorical delivery and propriety, one of the key precepts of the ancient concept of *kairos*, and demonstrates how postwar propriety rhetorically mediated and was mediated by the distribution of mail. This chapter operates from the assertion that the commonplace technology of mail distribution is not simply a neutral conduit through which messages are sent. As Kathleen Welch notes, “technology/delivery is not neutral in any sense; rather, the medium contains the… ideological issues of the people who devised the technologies as well as those of the people
who interact with them” (“Delivery” 219).\(^1\) Welch’s observation speaks to the interestedness of technology and delivery; her conflation of technology with delivery also points to an often overlooked complexity in their relationship. Given the seemingly limitless range of our current media landscape, from within which a multitude of technologies vies for cultural dominance, this chapter submits Welch’s observation as a prescient warning and a call to critically assess the communication technologies through which we operate—even and especially for such commonplace technologies as mail distribution.

Delivery has been a notably perplexing concept in rhetorical studies. Or, as Ben McCorkle notes, “Delivery… has suffered from a sort of disciplinary schizophrenia over the millennia,” occupying both a position of honor and disgrace amongst the five canons (2). Only in recent decades has delivery been seriously tackled by contemporary rhetorical theorists. And while it has been approached in ways that seek to account for the myriad methods through which rhetoric can be delivered (beyond vocal, gestural, bodily means), such considerations struggle with accommodating or theorizing delivery’s relationship to communication technologies.

This chapter seeks to better understand the relationship between delivery and technology by exploring how the kairotic precept of propriety facilitates delivery and technology.\(^2\) Like delivery, kairos has received significant attention in recent years (Hawhee; Baumlin; Sipiora); however, despite significant attention, theorists have struggled to reconcile the principle’s relativism with a systematic, practical application. In addition to resisting systematization, understanding how kairos operates requires fully understanding the principles

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\(^{1}\) Welch’s observation points specifically to the role of gender in rhetorical delivery. The participation of pin-up queen and sexual icon Bettie Page, the star of Klaw’s most successful pin-ups and film reels, raises questions about iconography and representations of female sexuality. The Senate Subcommittee

\(^{2}\) The complexity of kairos is due in part to the cluster of attendant terms associated with it: chronos, decorum, to prepon, propriety, appropriateness, due measure, and timeliness to name a few. For the purposes of this chapter, I operate from a position that sees propriety as a precept of kairos. I use propriety as a marker for rightness and conformity to established standards, as what Michael Carter terms “right measure.” The Latin decorum and the Greek to prepon are both used to indicate “right measure” and/or “due measure.” To prepon and decorum are also used to indicate appropriateness. This chapter focuses specifically on propriety; chapter two focuses on appropriateness.
that operate in tandem to produce kairotic rhetoric, specifically propriety and timeliness. By focusing on propriety and a specific communication technology this chapter demonstrates how kairos enables delivery by and through technological discourse.

The first section of this chapter develops a framework for understanding propriety as a rhetorical concept and draws necessary boundaries for the case study that follows. In turn, through analysis of the published proceedings from the 1955 Senate Subcommittee on Juvenile Delinquency’s Hearings on “Obscene and Pornographic Materials,” the case study shows how the Subcommittee’s juvenile delinquency discourse constituted postwar propriety and how distribution of “bondage photos” provoked remediation of cultural and legal attitudes toward obscenity. It also demonstrates how the United States Postal Service was challenged in ways it was not prepared to address and how the Senate Subcommittee’s crusade exposes mail as a communication technology mediated by postwar propriety (and vice versa). Finally, the conclusion of the chapter discusses the larger implications of this case study for rhetorical delivery and opens a developing conversation about how kairos, through communication technologies, creates and maintains rhetorical spaces. This case study ultimately demonstrates how the distribution of mail highlights both the power and permeability of contextually established rhetorical boundaries.

2. Locating Kairos and Propriety

Kairos is both a simple and maddeningly complex concept. When used in rhetorical theory, kairos most often refers to the right time for the right rhetorical action. Janet Atwill notes, “‘knowing how’ and ‘knowing when’ are at the heart of kairos, distinguishing techne from rule-governed activities that are less constrained by temporal conditions” (qtd. in Hawhee 70). Cicero remarked, “In an oration, as in life, nothing is harder than to determine what is appropriate” (qtd. in Hariman, “Decorum” 199). Kairos, then, is the arch principle that effectively
mediates *decorum*—along with *timeliness* (opportune moment) and *propriety* (right measure); successful rhetors seize the right moment to do the right or appropriate thing. The case study that follows looks at the published proceedings of the 1955 Senate Subcommittee hearings specifically in terms of *propriety* as an isolated precept of *kairos*.

John Poulakos delineates the relationship between *kairos* and propriety (*to prepon*) as such:

A complement to the notion of *kairos*, *to prepon* points out that situations have formal characteristics, and demands that speaking as a response to a situation be suitable to those very characteristics. Both notions are concerned with the rhetor’s response; but while the former is interested in the when, the latter is concerned with the what of speaking. *To prepon* requires that speech must take into account and be guided by the formal structure of the situation it addresses. Like *kairos*, *to prepon* constitutes not only a guide to what must be said but also a standard of the value of speech. In distinction to *kairos*, which focuses on man’s sense of time, *to prepon* emphasizes his sense of propriety. (41)

By equating *kairos* with “when” and *to prepon* with “what,” Poulakos connects *kairos* to time and *to prepon* to standards of speech and behavior. However, since observing propriety depends on navigating the values of specific locations, on recognizing the flexibility of community standards, it follows that propriety is necessarily *temporal*, which reveals it to be governed by *kairos*.

*Kairos* places the power of rhetoric in the appropriate mediation of the moment, with the right *method/medium* for delivery determined by the rhetor and the rhetor’s sense of *decorum*. The right moment, temporally bound by the rhetor’s location, is dependent on the propriety of the community from which or for which action is required. In this sense, what is appropriate is defined (*kairotically*) by propriety, which is necessarily community-contingent. As Robert Hariman notes, “The basic idea of *decorum* is that speech will not be effective unless it fits in with the characteristic features of the speaker, subject, audience, occasion, or medium”
("Decorum" 199). While Hariman notes “the characteristic features of the… medium,” his consideration of medium here appears ancillary to decorum, which is to say that propriety operates as the arch consideration that constitutes the (chosen) medium through which the appropriate message passes ("Decorum" 199). The case study at the center of this chapter tests this notion and concludes that decorum both constitutes and is constituted by the mediums through which messages are delivered.

Propriety is necessarily socially contingent; identifying propriety in a given historical moment is necessary for determining rhetorical action and for the effective delivery of rhetoric. Furthermore, effective delivery is both constrained and assisted by communication technologies. As Hariman notes (interpreting Aristotle), “We persuade when our discourse conforms most closely to the already existing configuration of social types and intelligible emotions—the more natural and vivid the imitation, the better” ("Decorum" 203). However, observation of decorum is not just about conforming to preexisting social structures. Following Cicero, Baumlin clarifies, “the observance of decorum is thus ‘universal,’ and yet its specific expression continually changes, since “propriety’ is what is fitting and agreeable to an occasion or person [decrequeaptesesseconsentaneumquetemporisetpersonael]’ (Orator 22.74)” ("Ciceronian" 142). Kairos, then, operates from a universal observance of a decorum that is locally situated.

This universal need for observed local decorum prompts the following question: What happens when a locality’s sense of decorum doesn’t align with another’s? In general, this question is answered (mediated) by the effective rhetor and/or communication technology: The rhetor from one locale aligns his rhetoric to the new locale, much like a politician adapts his speech patterns and phrasing dependent on the cultural location of his audience. However, when a communication technology detaches the rhetor’s message from the rhetor, and that technology delivers the message—unchanged—to a new locality, then differences in decorum remain unaccounted for (or simply unobserved, transgressed). In the case of the Senate
Subcommittee’s objections to Irving Klaw’s distribution of bondage photos through the mail, we see how Klaw’s use of the mail facilitates and complicates the delivery of his message: What is acceptable in the one-to-one relationship between patrons visiting and purchasing materials from Klaw’s store in Manhattan is no longer the case when Klaw distributes materials (specifically his mail order catalog) through the mail, which effectively changes the ratio from one-to-one, where seller and buyer engage in a physical transaction, to one-to-many, where the many are faceless, ageless names on a distribution list.

Chairman Kefauver and the Senate Subcommittee deployed a rhetoric grounded in postwar anxiety about juvenile delinquency and deviant sexualities; their goal was to contain and censure “obscenity”—to dampen the market for “smut” and censure the rhetoric of “smut peddlers” like Irving Klaw and Samuel Roth. On the other hand, Klaw’s success reflects changes to the social mores to which he catered. Understanding and locating propriety for the following case study, then, requires understanding the complex and often contradictory social organization that gave rise to the obscenity conflict at the center of the Senate Subcommittee hearings. The following case study highlights the operation of postwar propriety in cultural and legal attitudes toward pin-ups, obscenity, and juvenile delinquency, and explores how Irving Klaw’s and Samuel Roth’s sale and circulation of bondage photos implicated the mail through the technological limitations of distribution and the rhetorical constraints and affordances of the U.S. Postal Service.

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3 “Smut” is an inclusive, pejorative term used by the Senate Subcommittee, and some key, expert witnesses, to refer to a wide range of objectionable materials, from racy literature to pornography to bondage photos. “Smut peddlers,” in addition to being the title of James Kilpatrick’s 1960 exposé on the subject, is a catchall phrase used to refer to dealers of these questionable materials. My use of “smut peddlers” throughout this case study is meant to draw attention to the complexities of propriety-based accusation, definition, and labeling. Irving Klaw and Samuel Roth would not have referred to themselves as smut peddlers; labeling them as such, then, points to the precarious roles they filled, and to the larger issues at stake in this study.
In the published proceedings of the 1955 Senate Subcommittee on Juvenile Delinquency hearings on “Obscene and Pornographic Materials,” chairman Senator Estes Kefauver plainly states the goal of the hearings in his opening remarks: “The problem of juvenile delinquency which brings us here at this time deserves and requires the best attention and the best effort of every American citizen. The future of this country is irrevocably tied with our young people” (1). Kefauver’s noble proclamation casts a wide net and betrays the hope of finding answers to problems the committee, and a large portion of the U.S., considered systemic. In his exploration of juvenile delinquency in the 1950s, *A Cycle of Outrage*, James Burkhart Gilbert notes how a large portion of the American postwar population blamed “mass media” for an exponential rise in juvenile crime and delinquency. Gilbert notes, “in the 1950s, the dispute over mass culture expressed public fear of a central phenomenon of our modern age, which is the greatly increased social and cultural power of the mass media and the marketplace over ourselves and our children” (25). With the substantial influx of “mass media” into the postwar American marketplace, it was easy to point fingers at all of the media objects—film, television, radio, magazines, comic books, pin-ups—suddenly overpopulating American lives.

This influx certainly contributed to the American public’s finger pointing at “mass media,” a nebulous phrase that, like fear itself, encompassed an undiscerning range of popular consumables; however, the genesis of postwar juvenile delinquency anxiety was sparked by the social upheaval of WWII and the powerful rhetoric of Federal Bureau of Investigation head, J. Edgar Hoover who, in national broadcasts, espoused shocking statistics about exponential increases in juvenile crime and delinquency. This mounting concern led, in 1944, to the formation of the first investigative Senate Subcommittee, chaired by Claude Pepper (Gilbert 26). By 1953 the debate around juvenile delinquency had intensified to a widespread fear and furor,
especially regarding the role of mass media in exacerbating delinquency.

This fervor was answered by a significant change in leadership of the Senate Subcommittee, from Robert C. Hendrickson to Senator Estes Kefauver, who was appointed chairman in 1955 (Gilbert 143). While the committee was charged with exploring a variety of causes for juvenile delinquency, under Kefauver's leadership the role of mass media “held center stage from 1954 through 1956” (Gilbert 143). The “Obscene and Pornographic Materials” hearings, occurring as they did in the summer of 1955, were at the center of that center stage. Kefauver’s perspective was clearly shaped by Hoover; he even cites the F.B.I. head in his opening remarks, remarks that unabashedly divulge his moral and ethical underpinnings, and his charge to the Subcommittee is to address juvenile delinquency by confronting such notoriously slippery terms as pornography and obscenity.

Kefauver exhibited a markedly different approach from his predecessor: He openly challenged Hendrickson's earlier insistence that the committee is not composed of “blue-nosed censors.” Kefauver remarked, “Since assuming the chairmanship of the Senate Subcommittee To Investigate Juvenile Delinquency in February of this year I have become increasingly concerned during each passing week with the effect pornographic material has on American adolescents and juveniles, and with the widespread distribution of this insidious filth” (emphasis mine; 40). Kefauver points an accusatory finger directly at “pornographic material.” By labeling these materials “insidious filth” the chairman clearly invokes a sense of propriety driven by a conservative-minded decency, one not necessarily “blue-nosed” but certainly not morally neutral.

While many of the issues regarding juvenile delinquency at the core of the 1955 hearings had been circulating in the popular zeitgeist for more than ten years, the “Obscene and Pornographic Materials” hearings zeroed in on this “insidious filth,” the seemingly indefensible “smut” that so clearly (in terms of postwar propriety) was damaging “our young people.” Unlike the comic book, film, and television industries, “smut peddling” had no unified front from which
to argue its case; in fact, “smut peddling,” as typified by the actions of Irving Klaw and Samuel Roth, necessarily defied consolidation. Their indefensible materials had no professional organizations, no industry to defend them. Furthermore, the distribution methods themselves became implicated in the rhetorical delivery of obscenity, marked as they often were by shady dealings, questionable advertising tactics, and third party interpolation.

The reverse was true as well: While propriety marked the wares of Klaw and Roth as “unmailable,” the distribution methods they used proved surprisingly effective (if legally contestable). What the case study shows is that while mail-order-as-communication-technology was ultimately constrained by propriety (shaped and mediated by the Post Office, U.S. Government, the influence of the Senate Subcommittee), the distribution methods Klaw and Roth used afforded them a unique, exploitable method of rhetorical delivery. In this respect, the technology enabled delivery of materials deemed by propriety as “obscene.” Kairos, as demonstrated by the case study’s specific focus on propriety, both constrained and afforded delivery by way of communication technology.

A. Samuel Roth and Distribution on Trial

Kefauver’s crusade against “smut” hinges on the observation that “insidious filth” is not, contrary to popular opinion, “produced primarily for stag parties and men’s smokers” (40). The hearings, he insists, will show “that a large portion of the market for this material is with the inquisitive and impressionable teenagers” and that “the influence is to lead them to embrace the abnormal and thus mar youthful lives” (40-41). Kefauver’s assumptions stem from his (and the committee’s) assertion that “traffic in pornography has been growing by hundreds of thousands of dollars annually since the war” (41). To some extent, however, this assertion is dubious due to the definitional flexibility of the term “pornography,” especially with respect to postwar
propriety. Early in the 1955 hearings, associate counsel to the Subcommittee Peter N. Chumbris outlines the work already conducted by the committee (over the course of several years) and its representatives. Chumbris, referencing his discussion with the district attorney and district judge in a Michigan grand jury case, notes

> In many areas, civic and religious organizations united to conduct cleanup campaigns, to clean up this pornographic mess that has been sweeping throughout the country, not only the dirty, lewd pornography that we are talking about today, but they are also attacking the borderline pornography, and some of the pinup magazines that are found on the newsstands, especially those around the schools and the churches. (67)

By directly linking “pinup magazines” to “borderline pornography,” Chumbris pulls pin-ups into the middle space of the Subcommittee’s argument regarding pornography and obscenity. His comments speak to growing concern (“sweeping throughout the country”) with how the pin-up genre, in the postwar years, stretched outward to meet the dangerous edges of “pornography,” and thus challenged postwar propriety. This is particularly important given the fact that none of the materials Irving Klaw distributed were legally triable as “pornography” or “obscene.” In fact, much of what the Subcommittee hearings demonstrate is that Klaw’s and Roth’s bondage materials confounded definition—and, most importantly to this study, challenged the Postal Code and postwar propriety.

The semantic distention of the pin-up genre in the 1950s placed pin-ups and their producers in conflicting positions regarding propriety. This was the result of collapsing

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4 It is worth noting that contemporary definitions of pornography differ substantially from those to which Kefauver and the Subcommittee referred.

5 The legality of Klaw’s images, to some extent, was at stake in these hearings. Klaw was very careful to abide by the Postal Service’s restrictions. However, his bondage materials were extremely controversial, even though they hadn’t been determined legally “obscene.” Testimony from Robert R. Bair, an attorney from the district of Maryland, speaks of a case in that state where bondage photos were not found to be pornographic; however, they were determined to be obscene based on “tests of obscenity which had been laid down in prior Federal court decisions” (“Obscene and Pornographic Materials” 146). The responsible individuals in that case were convicted.
boundaries between the brand of conservative femininity cultivated by 1940s pin-up artists and the transgressive sexuality increasingly presented in mass media, sold in men’s magazines, and typified by the bondage photos sold by distributors through mail order catalogs (Kakoudaki 336). As analysis of the “Obscene and Pornographic Materials” hearings demonstrates, a cluster of terms were definitionally orchestrated to drive a social and legal agenda—one that sought to legally redefine obscenity in order to pursue answers to the “juvenile delinquency” problem, itself a “special sort of social knowledge” cultivated over several decades (Schiappa 3). To make good on this agenda, Kefauver placed two of the largest distributors of “insidious filth” in his Subcommittee’s crosshairs: Samuel Roth and Irving Klaw.

Samuel Roth and Irving Klaw became emblems, scapegoats for eradicating the sickness of delinquency, and the Subcommittee exposed their business practices in an effort to prompt major reform. Testimony of both individuals reveals interesting parallels between how the popular pin-up shifted register into obscenity and pornography. We also see how the Subcommittee was able to drive its agenda through castigation of the business and distribution practices of these “filth merchants.” What this ultimately shows is how the Subcommittee’s constitution of juvenile delinquency discourse—indicative of postwar propriety as it was—mediated legal attitudes toward obscenity and constrained mail distribution.

The Subcommittee was introduced to Samuel Roth on Tuesday, May 31, 1955, the third day of the hearings on “Obscene and Pornographic Materials.” At this point in the hearings, a tremendous amount of groundwork had been established regarding obscenity and pornography and their connections to juvenile delinquency. The committee had entered into its records a

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6 Current conversations about ‘viral culture’ come to mind here. When we speak of cultural “infection,” we mean to identify a cultural object’s virality. In the case study at the center of this chapter, several sources refer to the rise of “smut” in the postwar era as a sign of “infection” in need of containment. In “Virality 2.0,” however, Robert Payne points out that “the viral object is not only a source of risk and threat but a necessary component” (547). Payne here invokes the notion that cultural virality is a matter of perspective: the virus is a product of the culture that produces it. In this way, transgression of decorum is less about overt challenge to it than it is a product of decorum’s semantic flexibility and mutability. This will be explored further in chapter two where challenges to “appropriateness” will be discussed in terms of necessary rupture.
lengthy report produced by New York Deputy Mayor Henry Epstein, entitled “Perspectives on Delinquency Prevention,” a report that outlines priorities for instituting programs for children, families, and communities affected by delinquency (“Obscene and Pornographic Materials” 2-40). The Subcommittee had heard testimony from associate counsel Chumbris, who presented “a statement there outlining the investigation… showing the data that has been gathered by the Subcommittee” (46). The Subcommittee had also been presented with a series of “expert” opinions regarding obscenity, pornography, and juvenile delinquency. These expert testimonies came from priests, school officials, psychotherapists, and lawyers, as well as police officers and law enforcement administrators. An interesting anomaly amongst this parade of official testimony came in the form of statements from a seemingly “average” mother and father who found pornographic materials in the pants’ pocket of their 13 year old son (“Obscene and Pornographic Materials” 40-149).

Not until after this parade of expert testimony does the Subcommittee begin questioning smut peddlers, and given the impassioned, detailed earlier testimonies, the smut peddlers’ statements play as a jumble of confusion and misdirection, wherein many refuse to answer a long succession of questions, or the simple tracing of their practices reveals concerted efforts to avoid potential legal troubles. What is clear leading into Roth’s testimony is that the earlier expert testimony had already stacked the deck against most of these smut peddlers. Roth’s appearance serves as a surprising anomaly amongst them. Roth is the only witness to unabashedly answer all the Subcommittee’s questions; furthermore, he openly combats the heavy rhetoric of accusation directed at him from the cumulative effects of the entire proceedings. At the very beginning of his testimony, Roth interrupts counsel Chumbris to ask

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7 Earlier, I referenced the lack of organization by smut peddlers against the Subcommittee’s crusade. The comic book, television, and motion picture industries emerged from their hearings relatively unscathed because they were able to successfully organize, lobby and propose systemic self-censoring. Kefauver was in favor of such regulation and commented to the effect that this was the best strategy to combat growing instances of obscenity, counting the systems implemented by these industries as a grand success. However, in the case of smut there was no organized movement, defense, or attempt to self-censor.
the Subcommittee if he can read two statements that he believes “may save [the committee] a great deal of trouble and time” (187). The Subcommittee allows him to read his statements, the first of which addresses his earlier testimony in the 1954 “Comic Books” hearings and stands as a clarification regarding his invocation at that time of the Fifth Amendment.\(^8\)

It is with his second statement that Roth challenges the Subcommittee’s agenda. Roth boldly states,

If this committee is limited to an inquiry into the causes of juvenile delinquency in our midst, it is going far off its course in questioning me... I have never published or advertised a book an adolescent would bother to read. I have never offered books to juveniles, and refused to serve them whenever they were so identified in my mails... I don't think this committee has reached the heart of the problem of juvenile delinquency. Father Egan only suggested it when he testified before this committee on its first hearings that there is no more smut in circulation today than in previous periods; it is just that the juveniles of our time have no respect for the religion of their elders. This goes to high office as well as to the home. (187-188)

This is the first and only counterargument offered in the “Obscene and Pornographic Materials” hearings; the prevailing belief from all of the earlier testimony is that exposure to pornographic materials directly results in juvenile delinquency. While much of the earlier expert testimony suggests pornography is one of many causes of delinquency and crime, it does resoundingly speak to pornography being an observable (and stoppable) cause. As Dr. Benjamin Karpman, chief psychotherapist at St. Elizabeths Hospital, Washington, D.C., succinctly asserts, echoing the fundamental attitude of the Subcommittee, “You can take a perfectly healthy boy or girl and by exposing them to abnormalities you can virtually crystallize and settle their lives for the rest of their lives” (81). Roth’s confident counterstatement contradicts this notion.

\(^8\) Roth was subpoenaed to testify at the 1954 “Comic Book” hearings; however, because he was, at the time, in the midst of a suit filed against him in New York County, he was advised by his lawyer not to answer any questions that might then be used against him in that case.
When counsel Chumbris asks Roth about his occupation, Roth responds, “I both write and publish books” (187). This tells us that Roth saw himself as primarily a seller of books. Roth believed the pin-ups and nude photographs he sold, many of which were printed in art books Roth purchased from European sources, are “very beautiful nudes” (189). Roth also repeatedly notes that nothing he sells or distributes is of any interest to adolescents; his continual refrain is best summed in his claim that “I don’t think that any kind of book written in adult fashion can possibly appeal to children” (190). When asked if the pictures he uses to advertise his wares interest children, Roth cheekily responds, “They might. But they are always very beautiful pictures and within the law—entirely within the law” (192).

Despite his rakish charm, the Subcommittee is diametrically opposed to his outlook regarding children, delinquency, and the effects of his materials on youth. Roth’s description of how his materials moved through their various channels, however, introduces a conversation that has less to do with juvenile delinquency than it does with the rhetoricity of mail order distribution. Two interesting threads emerge: one has to do with the problems inherent in mail order distribution; the other has to do with how those problems were addressed (and complicated) by governmental agencies.

Mail order of smut in the 1950s was far from an exact science. It typically involved the following process: Materials were sensationaly advertised in men’s magazines, or “circulars” were mailed to individuals based on “name lists” that were either purchased or rented by distributors like Samuel Roth and Irving Klaw. Initial advertising and circulars asked for age verification on order forms. In Roth’s case, he notes, “In the first circular that we send people we ask them for their age, and that is how our list is made up” (190). He is also careful to point out, “I can’t be appealing to children because we advertise only in the most adult magazines” (190). This method of distribution represents obvious problems regarding verification of who gets what materials through the mail, and Roth admits, “There is no way in which I can help it if a child would grab his father’s mail and put down on it that he is 80 years old. How would I know?”
Roth insists, however, that his circular wouldn’t be of “the faintest interest to a juvenile, because the words won’t mean anything to him; they are not written in his language” (192).

Despite this insistence, the Subcommittee presents instances where Roth’s adult materials did, in fact, end up in the hands of teenagers. Roth concedes that such accidents are bound to happen. More relevant to this case study’s interest in distribution, however, is counsel Chumbris’s question regarding Roth’s use of name lists. Chumbris asks, “Mr. Roth, do you have name lists?” to which Roth responds that he does and that his lists contain roughly 400,000 names. When Chumbris asks where he gets the names on his list, Roth responds, “Mainly from publications” (192). This reveals a larger issue regarding both the accuracy of lists and the complicity of other publishers in the selling and renting of their lists of names. Counsel Chumbris later asks, “when you buy or rent those name lists you do not have the slightest idea whether the person from whom you purchased that name list has a list of minors or adults, do you?” (196). Roth responds, “I have the assurance that they are only adults; because I do not like to spend postage on addressing children” (196). Assurance is not actual verification. Roth’s comments do counter one of Kefauver’s constant complaints against smut peddlers—that they willingly and intentionally sell to children. If Roth is to be believed, then he has little interest in selling to juveniles, a point he addresses this earlier in his testimony: Not only does he believe children have no real interest in his wares but they also don’t have the money to buy them.

When Chumbris asks Roth if he “buys” name lists, Roth is quick to point out “No; I don’t buy them; I rent them. I am not there when they are addressed” (196). Later, Roth also comments, “I have rented lists from a regular list house called Book Buyers Lists… They are a very legitimate and fine enterprise” (200). When Chairman Kefauver argues that on one of these lists there might be an address for, say, a high school, and that this would be a clear indicator that the recipient would be a juvenile, Roth responds:

We would know that. I would mention this, although I do not hold it against these people, because they have a very heavy business, but I do not mail out, they
mail out for me. I pay for the postage—no, no, forgive me. I do mail that out, but it is very difficult to—if I make a mailing, say, of 10,000, it is very difficult to go through and try to catch that. (200)

While Roth immediately recants his comment “they mail out for me,” the implication is that a third party handles distribution of his materials. This evinces mail order as a delivery method requiring a variety of processes, each of which raises its own problems and introduces intermediaries. To successfully distribute on a large scale (10,000 catalogs) a number of factors must be coordinated and accounted for to determine if appropriate materials reach appropriate audiences: Where do the materials originate, who produces and/or copies the materials, who physically addresses them, who affixes postage, and finally, how are the materials delivered to and handled by the deliverer (Post Office)? Roth’s observations promulgate distribution as neither exact nor wholly verifiable, nor ever completely within a distributor’s control; the spaces into which these materials enter and move, then, are manifestly rhetorical.

Samuel Roth’s testimony implicates distribution technologies in the faulty (inexact) delivery of his materials, a point that complicates, muddles, even invalidates his message: Mail distribution requires institutional validation because the Post Office mediates the delivery of circulars and catalogs. By censoring, potentially censoring, or simply regulating what types of mail may be sent through its channels and grades (first class mail vs. second class mail, which also bears capital and monetary consideration), the Post Office intercedes between sender and receiver, thereby functioning rhetorically (and institutionally) to validate or invalidate distributed messages.

James E. Porter notes, “we do not typically use the term ‘delivery’ in connection with the history of print publishing. Delivery as a term was associated almost exclusively with speech, not with print” (210). This is despite the fact that “the emergence of the printing press in the 15th century represents a key historical shift in the canon of delivery” (209). Porter’s point here is to demonstrate the 18th century’s reduction of rhetorical delivery to “excessive… focus on correct
pronunciation and usage.” He adds,

The technological shift from scribal to print culture was not a mere technical or instrumental shift from one form of delivering knowledge to another. The new form of delivery changed knowledge itself; it changed the parameters, procedures, and locus for what constituted religious truth and scientific knowledge; it changed who had the right to create, promote, and distribute knowledge, giving power to a wider range of voices (including voices of religious protest). (210)

Porter’s assertions speak to the technological role of print in relation to (constituting; shaping) rhetorical delivery. Surprisingly, however, a vital point is glossed over here and elsewhere in rhetorical delivery scholarship: While print clearly helped “establish a fixed archive of scientific knowledge” and provided for that knowledge to be distributed widely, it also allowed for that knowledge to be technologically separated from its authors (rhetors) and distributed without intention or input from its authors (Porter 210). This recalls Michel Foucault’s assertions in “What is an Author?”, where he notes “today’s writing has freed itself from the dimension of expression… writing is identified with its own unfolded exteriority” (102). However, the point here is a different one: The technology through which artifacts (printed writing, the fixed archive of scientific knowledge, bondage photos) travel are themselves rhetorically implicated in delivery.

Samuel Roth points out to the Senate Subcommittee, “Most of my business is buying regular publishers’ books that the publishers themselves—if publishers publish 5,000 books and sold only 4,000, he sells the remainder of the 1,000 to me as a remainder, and that makes it possible for me to make almost a publisher's profit” (189). This remainder trolling is both illustrative of the typical practices of smut peddlers and the ways in which technology mediates rhetorical delivery. Roth’s insistence that he distributes “very beautiful pictures… entirely within the law,” considered in relation to how he typically acquired and resold those beautiful pictures,
exposes the shifts in audience and meaning afforded by the distribution channels through which the pictures are transported: An original work of art is reproduced in a European-produced “art book,” which is then sold as a remainder to an American distributor (Roth), who then resells it through a mail order catalog, or men’s magazine, where the book is suggestively (sensationally) advertised. The registers through which these artifacts shift and move allow for a variety of messages and interferences to remediate any and all meanings. Roth, at the starting point of distributing a visual artifact, identifies his wares as “beautiful,” a term in some contexts irreconcilable with “bad” and thus not classifiable as obscene; however, as that artifact is sent through the mail, its meaning changes, especially, argues the Subcommittee, when it is deposited in the hands of an impressionable teenager. Accounting for the change in meaning and audience requires invoking locally constituted propriety.

In a sense, this textual movement is echoed by Jim Ridolfo and Nicole DeVoss’s notion of rhetorical velocity: “As a set of practices rhetorical velocity is… a term that describes an understanding of how the speed at which information composed to be recomposed travels—that is, it refers to the understanding and rapidity at which information is crafted, delivered, distributed, recomposed, redelivered, redistributed, etc., across physical and virtual networks and spaces” (velocity). Ridolfo and DeVoss are primarily concerned with how a “rhetorician may strategically consider these temporal elements” (my emphasis; velocity). However, considering Roth, it is not how a rhetor operates, but how a text operates via rhetorical velocity that is important. The (re)distribution of questionable materials across multiple locales alters the

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9 In *What is Art?*, Leo Tolstoy notes, “In Russian, by the word krasota (beauty) we mean only that which pleases the sight. And though latterly people have begun to speak of "an ugly deed," or of "beautiful music," it is not good Russian” (15). Tolstoy’s point is simple: beautiful/ugly and good/bad are incongruous in the Russian language, and so to conflate “beautiful” with “good” and “ugly” with “bad” is to misunderstand the nature of the things so labeled. Samuel Roth was of Galician descent and may very well have operated from this perspective.

10 Kefauver specifically addresses one of the issues with which this chapter wrestles, noting, “We have come here with no intention of criticizing New York or any other one city or area; rather, we are here to show a nationwide picture” (40). Ascertaining a national picture requires erasing local differences. Despite Kefauver’s insistence, a nationwide picture was locally determined by the Subcommittee, which necessarily urged compliance.

11 It is not a coincidence that Ridolfo and DeVoss’s use of *temporal* echoes my consideration of *kairos*.
rhetorical signification of the materials, especially in terms of *propriety*. The relationship between distribution (technologically mediated rhetorical delivery) and *propriety* is highlighted by the change from how a text was originally intended to be viewed (used) and how it is viewed after redistribution (and *resale*).

Roth’s goal was to make money off the resale of European books in a multitude of American locales; any additional effects of his distribution (as the mail order catalog circulates) result in potential income. However, from the other side of the bench—from the Senate Subcommittee seeking to curtail distribution and squelch circulation, especially to ‘juveniles’—it is the very infection of distribution that is problematic. And this is where obscenity law and the United States Postal Code finally emerge as interlopers for this case study: The works were suitable (or at the very least, tolerated) if they didn’t circulate out of context—if they remained primarily as one-to-one transactions between seller and consenting/purchasing adult. However, when they were distributed beyond a specific location, like Irving Klaw’s Movie Star News storefront in Manhattan, they became (potentially) obscene.

As James Paul and Murray Schwartz note, obscenity definitions and legislation were compounded by an uneven distribution of censorial power and disagreement over who had the right to judge and/or censor materials: While local issues of obscenity could be handled legally by local officials and police officers, obscenity circulated through the mail in the postwar era was unevenly regulated by two federal bodies, the Post Office and the Customs Bureau. Paul and Schwartz note, “Since 1842 there have been federal statutes in this country authorizing federal officials to confiscate obscene matter” (215). The distribution of obscene materials became the province of the Post Office when the first postal statute on obscenity was enacted in 1865 (217). The Post Office acquired censor power from an 1876 statute that declared “obscenity was ‘nonmailable’ and was not to be ‘conveyed’ or ‘delivered’ by the Post Office (218).

While the Post Office monitored and censored interstate distribution of obscenity through the mail, the Customs Bureau monitored the importation of materials from abroad. However, as
Paul and Schwartz point out, foreign dealers could easily exploit American tastes because “exporters themselves [were] beyond the reach of our criminal law” (228). When Samuel Roth notes that his “beautiful nudes” are “entirely within the law” he is referring to the law as represented by the Customs Bureau, which allowed the importation of the foreign remainders that Roth then resold to an American audience. This very act of redistribution, however, placed Roth at the mercy of both agencies. Customs Bureau regulations allowed for Roth’s importation and purchase of European materials it deemed as legally decent. Once those materials entered the U.S. mail, however, their decency was no longer legislated by the Bureau; instead, they became defined as indecent (unmailable) by the Post Office.

For Roth, The Customs Bureau and the Post Office defined obscenity and unevenly mediated the distribution of his wares: one federal body allowed Roth to purchase; the other refused to let him sell. Recalling earlier discussion of propriety it becomes maddeningly difficult to properly locate a stable decorum—to determine a universal obscenity standard—when legal definitions are contradicted on two federal levels. When we further consider the role of the Subcommittee in determining the fitness of Roth’s materials, we have three competing discourses of “obscenity,” two of which were often in conflict (Customs and Post Office). It is easy, then, to imagine Roth confident when he claims, “I sell only fine books,” and why he is conversely labeled a peddler of smut by the Subcommittee (my emphasis; 199). Roth’s oscillation between competing obscenity standards speaks to a postwar decorum in conflict. Furthermore, Roth’s testimony highlights the specific point at which conflict occurs: distribution. The technologically mediated boundary crossing of Roth’s questionable materials validates/invalidates locally situated propriety.

Bernard Green notes, “In the case of the United States Post Office Department the person who decides [what is obscene] is, ultimately, the Postmaster General” (243). This reveals the operation of a singular and federally authorized obscenity standard with no basis in an actual community. Obscenity in the postwar era was asymmetrically defined by not three
entities but five: local communities (common law), the state, the federal, the Customs Bureau, and the Post Office. Of these entities, however, the Post Office wielded the most power, and this is directly tied to the belief that the distribution of obscenity posed the greatest threat to postwar propriety.

These definitional problems with the Post Office—of relying on judgment by postal workers (and the Postmaster General) instead of experts and/or actual community standards—point us back to the problem of locating propriety with regard to obscenity. Adherence to a codified principle of propriety (decorum) suggests a rhetorical appeal to the universal. Placing censorship power in the hands of the Post Office—in the singular hands of an appointed official like the Postmaster General—overwrites free access, which is to say that the Post Office’s preemptive censoring of materials privileged its definition of decency over those definitions (standards) operating in diverse localities. Samuel Roth’s business—along with that of other smut peddlers, including Irving Klaw—clearly spanned a multitude of locales. According to the Senate Subcommittee, Roth’s materials clearly breached its definition of obscenity, even though Roth’s customers might very well have disagreed with the Subcommittee’s sense of propriety.

As Baumlin points out, referencing Cicero, “the verisimilitude and harmonious functioning of the whole which decorum looks toward cannot be subject to norms that are in any way absolute, for the application of this universal rule ‘depends on the subject under discussion, and on the character of both the speaker and the audience’” (“Decorum” 176). This tracks with the evolution of the pin-up from its prewar iterations to the bondage photo. Both Samuel Roth and Irving Klaw were successful (financially) because they were cognizant of the market for pin-ups and consumable sex-oriented objects. Such catering speaks to the changing character of the audience(s) to which Klaw and Roth sold their wares. However, the challenge to propriety

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12 For the sake of ease, I fold the Senate Subcommittee into “the federal.” However, it’s worth noting that while the implication here is that each of these entities acts monolithically, this isn’t necessarily the case. For instance, under the federal, the Senate Subcommittee didn’t necessarily act as the sole voice but was one of many, including the Supreme Court.
inherent in their products fueled the social fear represented by the Senate Subcommittee. According to Cicero, “In an oration, as in life, nothing is harder than to determine what is appropriate” (quoted, Baumlin, “Decorum” 176). While Cicero is concerned with oratory, the actions of the Post Office regarding obscenity distribution can be seen as an attempt to apply a universal rule in absolute (all materials defined as obscene “must be stopped”). Such blanket applications of a universal definition of obscenity disregard the variance of place and time. In terms of Cicero’s observation, the difficult determination of the appropriate is done without any actual consideration from the audience. Samuel Roth and Irving Klaw were clearly capitalizing on a hungry (and wide-ranging) audience.

Samuel Roth’s “smut peddling,” and Irving Klaw’s distribution of bondage photos, shows how the shift away from wartime pin-up art to the cheap, photographic pin-up and bondage photo, as well as Roth’s “art books,” represented for some a perversion of American values in favor of profit, of capitalizing on base desires and prurient interests. The smut peddlers who distributed a wide variety of materials through the mails at high profit margins clearly pushed the boundaries of taste and acceptability, forcing state and federal municipalities to implement measures they were ill equipped to mediate. While Irving Klaw was initially praised for his entrepreneurial success, his move to bondage photo and film production opened the door to association with smut peddlers. Samuel Roth’s distribution of “art book” remainders and “obscene literature” brazenly challenged the definitional incongruities of the Customs Bureau and the U.S. Post Office. Klaw’s adherence to postal regulations kept him out of jail; however, by distributing bondage photos through the mails, Klaw challenged the obscenity definition propagated by the Post Office, which, in turn, prompted renewed interest in the Post Office’s role in regulating obscenity. Roth’s flaunting of legal and definitional contradictions eventually ended in his conviction for obscenity distribution. The business practices of both men—and the discourses they intersected—challenged and shaped the larger conversation regarding obscenity law and the postwar era’s crusade against juvenile delinquency. Their distribution
methods, surprisingly, become the primary point of contention: Thus, we can finally see how
distribution mediates propriety.

C. The Curious Case of Irving Klaw

The Senate Subcommittee’s subpoena of Irving Klaw commanded him to appear in
order to “testify what you may know relative to the subject matters under consideration by said
committee” (89). Given Klaw’s role in pin-up production and distribution, this appears to be a
clear and self-explanatory request. However, this commandment is followed by the following
slightly dubious request: “bring with you copies of your State and Federal income-tax returns for
the years 1950 to 1954, inclusive; records of your business, including bankbooks, bank
statements, checkbooks and check stubs, profit and loss statements, statements of assets and
liabilities, and all documents reflecting your interest in property, real, personal, or mixed” (89). It
is this latter request that frightened Klaw, who appeared before the committee with legal counsel
but without his financial records. In his first appearance before the Subcommittee, an
appearance for the sole purpose of scheduling a time and day for his full testimony, Kefauver
asks Klaw if he brought his financial records to be entered as evidence. Klaw issues the refrain
that characterizes his later testimony: “I decline to make them available under the fifth
amendment of the Constitution; that they may tend to degrade or incriminate me; and under the
fourth amendment of the Constitution, that the subpoena is vague and illegal” (89).

Klaw was right to be suspicious. What was, arguably, more at stake than what he might
have to say about the materials he distributed was how and where he distributed those
materials. In the eyes of the Subcommittee, Klaw’s crime as a smut peddler had less to do with
what he was producing/showing than it did with who ultimately had access to it and where it was
distributed. His subpoena demonstrates the problematic convergence of community standards on incommensurate state and federal jurisprudence. The Subcommittee pressed Klaw to reveal his financial records in an attempt to directly link the pin-up king to the sale of inappropriate materials to minors (through his mail order catalog). Because Klaw’s subpoena was by his and his counsel’s reckoning “vague and illegal,” he did not feel obligated (under the Fourth Amendment) to reveal his records (89). Kefauver’s intimidation tactics did not work because he had no actual legal recourse to require Klaw to reveal his books. There was no legal recourse because Klaw was protected under federal jurisdiction, a protection that trumped any community standards he may have actually violated; he was protected federally from state prosecution.

Where Samuel Roth’s testimony is colorful, provocative, and ultimately damning, Irving Klaw’s testimony is strikingly one note. Like several of the other witnesses called to testify, Klaw refused to answer any of the Subcommittee’s questions. He repeats a full-phrased invocation to the Fifth Amendment nearly forty times. Earlier in the hearings, Kefauver establishes as a point of efficiency (during Abraham Rubin’s testimony) that it is not necessary for witnesses to repeat an entire appeal to the Fifth Amendment. Kefauver notes, “to save time and with full understanding, if in answer to a question if [Mr. Rubin] wishes to plead the fifth amendment, it will be understood and we let the record make that clear, that if he says ‘I refuse to answer,’ we will understand that that is on the basis of the immunity provisions of the fifth amendment” (150).

It is telling that Klaw is not encouraged, like the other witnesses, to simply respond with “I refuse to answer.” The reason for this difference can be seen in both the Subcommittee’s subpoenaing of Klaw and in how Kefauver responds to Klaw’s refusal to answer questions.

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13 As transcripts of the hearings show, members of the Subcommittee clearly didn’t understand or know how to handle the bondage images. The discourse surrounding them betrays the naiveté of the era regarding psychology and sexuality. There was clear concern over what Klaw was selling, but because there was no real consensus, even amongst experts, regarding the nature and purpose of the images, the Subcommittee focused on the distribution of the materials and how they might be connected to juvenile delinquency.
Counsel Chumbris explains to the Subcommittee the reason for Klaw’s appearance, noting “We have a statement here which shows that 65 percent of the customers that Mr. Klaw has of movie stills are girls from 6 to 16, thereby creating a mailing list of a great many minors” (231). Chumbris and the Subcommittee attempt to link Klaw’s harmless pin-up mailing list to the other side of his business—primarily his bondage photo distribution. Where smut merchants operated through shady practices with no real indication that they specifically catered to youth, Irving Klaw’s legitimate Movie Star News operation clearly did cater to a wide audience that included teenagers. The potential overlap between a mailing list that catered to juveniles and a mailing list that catered to an adult audience was cause for alarm; or, more aptly, was a point from which the Subcommittee sought to directly link “smut” to juvenile delinquency.

Having established the reasons for which Klaw was summoned, Kefauver asks the court reporter to repeat the question (“Mr. Klaw, in what business are you engaged?”) and then entreats Klaw to respond. After consulting with his legal counsel, Klaw answers, “I decline to answer under the fifth amendment of the Constitution, that to answer may tend to incriminate me” (231). What ensues is a discernable, mounting irritation from Kefauver at Klaw’s refusal to answer. When Klaw appears for his testimony on May 31, he does so near the end of a long day of hearings. His testimony appears on the same day as Samuel Roth’s; it is also directly preceded by the testimony of Clarence Grimm, whose son was found dead in a bondage related scenario. All of these factors very likely contributed to Kefauver’s noticeable distaste for Klaw. Where earlier Kefauver simply left determination of how to respond to the committee, he responds to Klaw by warning, “Mr. Klaw, in fairness and in compliance with the requirements of the Supreme Court, I must warn you that this committee will cite you for contempt of the Senate if you decline to answer” (231).

Given the opportunity to respond differently, Klaw repeats his invocation of the Fifth, then follows his invocation with a suggestion similar Kefauver’s earlier comments (“Would that be sufficient to state, that I decline under the Fifth Amendment, or should I say it all the way
through, Mr. Kefauver?”)—to which Kefauver essentially refuses, noting (perhaps in frustration), “We are not asking any quarter and we are not giving any quarter, Mr. Klaw” (231).

Kefauver and Chumbris try changing tact, and ask questions regarding Klaw’s prior business as a furrier, questions to which Klaw responds. However, Chumbris soon returns to Klaw’s pin-up distribution, noting, “Our investigation reveals that since 1937 you have produced and distributed obscene, nude, and fetish photographs through the country by mail. I wish you would tell us about this.” Klaw again invokes the fifth—to which Kefauver interjects, warning Klaw again that he will be held in contempt if he doesn’t respond, even going so far as to threaten Klaw with a grand jury trial. This back and forth goes on for six pages in the published proceedings. Through all of the Subcommittee’s attempts to coerce Klaw into revealing information about his business, the producer/distributor sticks to his plea. The cumulative result of Klaw’s repetitive plea is striking, and suggests his strategy was driven by more than simple self-preservation.

It also stands in sharp contrast to Samuel Roth’s approach: When asked in the 1954 “Comic Books” hearings if he would like to invoke the Fifth Amendment, Roth responds, “I don’t like the sound of the fifth amendment” (195). At the time, Roth didn’t explain his comment; however, in his first statement to the “Obscene and Pornographic Materials” hearings, referenced earlier, Roth clarifies, “I believe in the fifth amendment, but I know that it will be at least 50 years before an honest man will be able to plead it without being misunderstood” (187). Given what followed the Subcommittee hearings—Roth’s trial and conviction in 1957’s Roth v. United States, 354 U.S. 476—it is possible he had already resigned himself to fighting an obscenity battle in the courts, one he may have believed he could (and should) win.

This was not the case for Irving Klaw who, unlike Roth and most, if not all, of the other smut merchants brought before the Subcommittee, had not been arrested or convicted of any charges stemming from the distribution of obscene or pornographic materials. While we can only speculate about Klaw’s reasons for rhetorically invoking the fifth amendment, we can infer
that his legal counsel’s suggestion was pitched toward keeping him out of jail, and that the Klaw camp was well informed regarding the protections of the fifth amendment. Irving Klaw’s association to these “smut peddlers,” according to his grandson Rick Klaw, garnered the FBI’s attention as early as 1942. Though, as Rick Klaw notes, of all the three complaints filed (in 1942, 1944, and 1945) “the bureau declared that the material, ‘though questionable is not definitely obscene.’”

Irving Klaw was being profiled-by-association. However, Klaw’s business was, from the general public’s viewpoint, praiseworthy and anchored in legitimate product sales through appropriate distribution channels. Articles appeared in New York and Boston newspapers praising Klaw’s entrepreneurial skill—labeling him lovingly as the “pin-up king.” It is likely that Movie Star News’s trade in Hollywood pin-ups both helped keep Klaw from being indicted on obscenity charges and prompted his subpoena to testify before the Senate Subcommittee and expose his financial records to their scrutiny.

In his opening remarks before the May 31 session, Kefauver comments, “In our hearings last week we saw that the pornography business operates partially, at least, because of loopholes in the Federal law to curtail distribution of these materials” (186). This speaks to Subcommittee’s attempt to trap Klaw and close these loopholes. Irving Klaw’s distribution of bondage photos outside the confines of his New York City storefront put him in the same category as Samuel Roth with regard to Federal law and Post Office censorship. Had Klaw only sold his materials in Manhattan he likely would not have been targeted by the F.B.I. or the Senate Subcommittee. Without the mail order catalog, Klaw’s infection could be quarantined; with it, his materials could end up in the hands of impressionable youth inclined to delinquency. This points directly to the conflict between community standards and distribution: If obscenity is defined and mediated locally, then the movement of a text labeled obscene out of its original location (New York City) and its distribution to multiple other localities—through the U.S. Postal Service, no less—necessarily calls its definition as obscene into question.
Klaw carefully and dutifully minded the postal statutes; the statutes, however, did not account for bondage. In fact, prior to the emergence of products from distributors like Klaw, bondage photos didn’t exist—or, if they did, they didn’t pose a threat worthy of writing into the statutes. For the likes of the Senate Subcommittee they represented a new, clear, and horrifying threat to propriety and the “youth of our country.” The Senate Subcommittee took this threat and exposed it on a national stage, which prompted rearticulation of obscenity standards. This shift in postwar understanding of obscenity exposes both the kairotic nature of propriety and decorum’s dual function as codifiable social code and rhetorical device for social criticism. Most surprising, however, is the role of the mail: When we consider the root cause for Irving Klaw’s presence at the Subcommittee hearings, looking beyond the shock of the materials to their distribution, we see how a long-established technology like the mail becomes rhetorically implicated in the mediation of obscenity. This, in turn, leads us to reconsider how communication technologies both constitute propriety and are constituted by propriety—and how, in turn, kairos facilitates rhetorical delivery.

4. Bondage, Rhetorical Delivery and The Negotiation of Obscenity

In the official transcripts of the Senate Subcommittee on Juvenile Delinquency's hearings on “Obscene and Pornographic Materials,” the word “bondage” appears thirty-five times. Its first appearance occurs on page seventy, in a question asked by Senator Langer: “Mr. Witness [committee legal counsel Mr. Chumbris], what is a bondage photo?” Mr. Chumbris responds, “A bondage photo are (sic) these photos where the girl wears very little clothing, practically nude, and usually their hands and their legs are bound together either by chain or by ropes, and they are known as bondage photos.” As the hearings progress, a focus on bondage emerges through expert testimony from psychiatrists and priests, and a key testimony from a concerned father whose son was found dead in a bondage-related scenario. Reading through
this often bizarre subnarrative of the hearings one thing becomes clear: The bondage photos produced by Irving Klaw were an anomaly amongst otherwise easily identifiable materials, and the collected officials and experts called to testify regarding their role in precipitating juvenile delinquency were equally baffled and terrified by their existence.

Cursory perusal reveals structural and thematic similarities between popular pre- and postwar art pin-ups and the bondage photos distributed by Movie Star News. Some of the more complicated bondage scenarios are, however, a bit shocking. In particular, some of Klaw’s photos bear striking similarities to news clippings presented at the Subcommittee hearings (included in the published proceedings). The clippings accompany a story intended to appeal to the nation’s fear and pathos, especially as it is couched in the testimony of an “expert” witness, one Dr. George W. Henry, Professor of Clinical Psychiatry, Cornell University College of Medicine. In his questioning of Dr. Henry, Vince Gaughan, special counsel to the Subcommittee, relates the following account of Kenneth Grimm, whose father’s testimony is later included in the hearings:

Doctor, I show you some clippings mounted on a board from the Miami Daily News, dated Tuesday, August 31, 1954; the contents of these articles, Doctor, specifically note the fact that one 17-year-old boy, Kenneth Grimm, was found hanging in an inverted position from a stick or board suspended between the forks of two trees, and trussed up in a fashion whereby his legs and arms are tied behind him, and a rope is thrown around his neck so that he strangles himself. He strangles himself by the position in which he has been forced. Doctor, I ask you is it your opinion, from perusing this article, from looking at this picture, would you say that this is the end result of a sex crime? Does this impress you as the type of thing that can happen as the result of bondage—this fetish we have been discussing this morning? (214)

Henry responds in the affirmative, and thus causally links the kinds of bondage photos
distributed by Irving Klaw to suicide, sex crimes, and, for the purpose of the hearings, juvenile delinquency.

Later in the hearings, Clarence Grimm, Kenneth’s father, testifies for the Subcommittee, noting that his son’s death was officially categorized as an unsolved murder. However, the Subcommittee leads him to directly link his son’s death to bondage photos like those distributed by Samuel Roth and Irving Klaw. After establishing the reported facts of his son’s murder, Gaughan asks, “Mr. Grimm, do you recognize, sir, this booklet which I hand you, entitled, “Cartoon and Model Parade,” published by Irving Klaw, “the Pin-Up King” (225)? Grimm claims to recognize the text and, after explaining how he came to know it, testifies,

I feel that there is some connection in some way. I don’t know just what the connection is, indirectly or directly... I do feel that this is the hottest thing that I have gotten onto since the boy died; I believe that, as far as this clue to the incident is concerned... In trying to solve the thing, in trying to arrive at some more definite reason for this, why, that is the closest thing I have gotten to it. The way that was tied, it wasn’t anything that any youngster like him, with his character—it wasn’t anything that he could concoct himself... It would have had to have been brought to his attention by either someone else showing him how, or he saw a picture of it... I feel there is a definite connection between this sort of thing and his death. (226)

Mr. Grimm’s testimony is clearly passionate and determined; however, given historical perspective, we can see how the cause/effect relationships established by the Subcommittee and its “expert” testimonies don’t necessarily match up. What they ultimately reveal is anxiety, bafflement, and a pervasive need to lay blame. For the reasons explored in my case study, blame was placed on Irving Klaw, his bondage photos, and his mail order catalogs.

The rhetorical power of the causal links established by the Subcommittee was hard to

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14 Klaw’s testimony immediately follows Clarence Grimm’s.
refute, especially since Gaughan appealed to pathos through compelling visual evidence. However, Kefauver was a firm believer that delinquency (and, by association, sex crimes and deviance) had no singular cause. It is curious, then, why the Subcommittee worked so hard to pillory bondage photos as a direct cause of delinquency. Part of the answer lies in the science and psychology of the era; part of the answer lies, too, in Kefauver’s (and Hoover’s) moral crusade. Upon assuming the chairmanship of the Senate Subcommittee, Kefauver observed, “I think of delinquency as the scum that rises to the top from the imperfections within our society” (qtd. in Gilbert 154). It is easy to see that despite the often playful quality of Klaw’s bondage images—a quality they shared with the pin-up tradition—the shamelessness of spanking, whipping, restraint and discipline were too much for the moral-minded Kefauver catering to a public in the throes of postwar anxiety over juvenile delinquency and the beginnings of “sexual revolution.”

What is most revealing is how the mediation between community standards and the obscene became a battle waged in the mails. Local concerns in the centers of American cultural life (New York, Los Angeles, Hollywood) were very real—and the law responded to these specific local issues. However, as the issue of delinquency swept up the nation, a negotiation between the local and the national proved that neither was particularly well equipped to determine obscenity standards. Kefauver addresses this shuffle between the local and the national in his comments at the 1955 hearings: “We have come here with no intention of criticizing New York or any other one city or area; rather, we are here to show a nationwide picture” (40). The local urged the national, and the national moved the issue back to the local. While this was fine for specific instances, specific cases involving a limited number of prosecutors and defendants, the sheer volume of mail traffic made confining obscenity decisions to specific localities a fool’s errand; or, rather, points us to the Post Office, which seemed better equipped to mediate distribution. However, as noted earlier, the Post Office’s preemptive censorship was problematic in that it infringed on both consumer and distributor
rights. Furthermore, as my analysis of Samuel Roth’s testimony suggests, distribution through the mail was always already impossible to mediate through standard practices as it involved multiple processes and intermediaries.

The contradictions inherent in legal definitions of obscenity that invoke an “average man” (universal) alongside a “community standard” (local), point to the rhetorical negotiation necessary for mediating obscenity. The law did not (or could not) solve the problem. Kefauver’s ultimate contribution to the issue was to show how the battle against the distribution of obscenity really was only effective in negotiations outside legal and federal realms. It was most effective in negotiations between specific communities—between watch groups urging media outlets to self-regulate and to continually update self-imposed codes, to provide preemptive self-censoring for the good of communities and those members of the community most at risk from exposure to the unseemly and obscene.

Irving Klaw was primarily concerned with making a sizable profit from the sale of his pin-ups and bondage photos; he was also careful to follow the law and adhere to the postal code that banned the mailing of certain materials. However, by distributing his bondage photos through the mail to multiple localities operating with different senses of propriety, he incurred the wrath of Kefauver’s Subcommittee and became part of a national conversation about obscenity standards and juvenile delinquency. Crucial to the argument of this chapter, however, is not whether Klaw’s bondage photos are, in fact, obscene, or “evil” as Clarence Grimm claimed, but that their distribution prompted rearticulation of both law and obscenity definition.

Hariman notes, “A code of decorum denotes specific but impersonal rules for correct behavior in familiar situations… Decorum also acts as a higher order rule, however: the rule that any code of conduct must be “fitted” to the specific situation” (“Decorum, Power” 164). As a “higher order rule,” decorum must fit the “specific situation.” This specific situation is, ultimately, a kairotic one, which is to say a specific situation defined by propriety, appropriateness, and timeliness. Marking the “situation” as “specific” leads to yet another term, one which will be
addressed more fully in chapters two and three: space. *Space* becomes relevant here, however, when we consider propriety and delivery in terms of this case study's discussion of mail order distribution and obscenity. The negotiation of obscenity is a negotiation of *rhetorical space*. This chapter's observations about the conflict between local and national standards speaks to the rhetorical boundaries drawn by government agencies and groups (Senate Subcommittee, Post Office, Federal and State laws) and how mail order distribution necessarily transgresses those boundaries, exposing them as permeable, rhetorical. Rhetorical delivery, then, as enabled by a *kairos* that constitutes and is constituted by communication technologies, is necessarily a consideration, creation, and mediation of space.

This case study ultimately suggests that rhetorical delivery is not simply the province of a singular rhetor directing his or her message through uncomplicated means to a stable audience; rather, rhetoric is always already mediated by the communication technologies through which it travels, making rhetorical delivery both epistemologically *kairotic* and necessarily context-bound. The *kairotic* flexibility of propriety requires that cultural attitudes be constantly attended to in determining the fitness of a message to its audience; however, because communication technologies, even those as seemingly basic, even transparent, as the mail disrupt the link between rhetor and rhetoric, rhetorical delivery is further enabled and constrained by *kairos*, which is to say that a) rhetorical delivery is never completely within the control of any rhetor, and b) communication technologies alter the fundamentals of audience reception because they penetrate and/or dissolve ideological boundaries. Obscenity discourse highlights the rhetoricity of technology: As an always already contested site with regard to community standards, the distribution of obscenity necessarily implicates rhetorical delivery in the transgression of ideological boundaries. As this case study shows, even careful attention to propriety can be negated by the distribution of a message to multiple intended and unintended audiences. By focusing on how mail is rhetorically implicated in the Senate Subcommittee Hearings on Obscene and Pornographic Materials, we can begin to see the relationship between rhetorical
delivery, *kairos*, and communication technologies as a matter of *space*. 
Chapter 2: Obscene or Fairly Indecent?: George Carlin, *Decorum*, and Rhetorical Delivery

"If people are sensitive about something, that makes it compelling. If your job is to talk about stuff, you’d be irresponsible to stay away from things that upset people… The whole point of comedy is to crash through those things."

-- Louis C.K., *Chewed Up*

1. Introduction

George Carlin’s 1972 Grammy winning album *FM & AM* opens with a comedic rumination on excrement. The number is titled “Shoot” on the album jacket, but Carlin quickly sets the tone for the entire set by noting, “I got fired last year in Las Vegas, from The Frontier Hotel, for saying ‘shit.’ In a town where the big game is called ‘crap.’ That’s some kind of double standard, you know?” The routine then moves on to riff on the various uses of the word “shit,” cleverly pointing out that “Shoot is shit with two ‘oo’s.” “Shoot” hinges on the humorous, sensorial shock that comes from reversing the figurative usage back to the literal:

No one ever uses the word shit, really, literally, you know? It’s always figurative speech… It’s always figurative. You never hear anyone say, look at the shit, Martha, wow. Little piles of shit in the street, wow. They don’t say that. They have other words for that: Do do, ka ka, poo poo. And good old number two.

This set opener signaled Carlin’s shift from his earlier, “tame” material (material which comprises the second side of *FM & AM*, aptly positioned as the AM side of the record) to the harder-hitting, language-centered social criticism that came to define his career. “Shoot” deals with the interplay between meaning and usage, intentionally crossing the subjective line between the appropriate and inappropriate for laughs. By opening his set with shit Carlin creates a rhetorical space from within which he can interrogate social standards and challenge convention. He can also elicit laughs.
“Shoot” is a fitting backdrop for the case study at the center of this chapter. First, it introduces us to Carlin and his career-long interest in questioning and challenging standards of decency, pushing the boundaries of what was expected and proper, and mining indecency for laughter and insight. Second, it forecasts the issues raised by FCC v. Pacifica, 438 U.S. 726, the landmark indecency case prompted by the public broadcasting of Carlin’s material. Carlin and Pacifica are the main objects of study for this chapter’s exploration of rhetorical delivery, decorum (appropriateness), and circulation. Carlin’s comedy not only draws attention to the subjectivity of decency standards, but to how boundaries of taste and decorum are negotiated and redrawn through rhetorical delivery. Furthermore, Pacifica demonstrates how the (re)circulation of Carlin’s comedy—across contexts and media, from live performance to purchasable recording to public broadcast—acted to redraw rhetorical space, revealing how rhetorical delivery functions differently across different media.

While there has been a recent spike of field interest in rhetorical delivery’s relationship to digital communication, new media, and multimodality (Brooke; Porter; Ridolfo; DeVoss), little work has been done to consider the rhetorical canon of delivery in terms of technological discourse or, as Ben McCorkle argues “as a technological discourse” (my emphasis). He explains,

[Theories] of delivery have historically helped to foster the cultural reception of emergent technologies of writing and communication by prescribing rules or by examining and privileging tendencies that cause old and new media forms to resemble one another. (5)

For McCorkle, delivery highlights rhetoric’s role as “relational support for... emergent technologies,” making it a prime site for further interrogation (McCorkle 5). While McCorkle focuses on “examining sites of rhetorical theory, practice, and pedagogy” (5), this chapter is interested in investigating a site wherein delivery’s relationship with technology is troubled by the appropriation and re-circulation of a text outside its original context. In particular, the
broadcasting of Carlin’s recorded material—meant primarily for home listening—complicates (multiplies) its delivery and its challenge to decorum.

While efforts have been devoted to recovering ancient concepts like kairos (Baumlin; Sipiora; McComiskey), more attention needs to be paid to decorum, specifically the implications of appropriateness with regard to rhetorical delivery and communication technologies. Interrogation of George Carlin’s comedy—as originally performed and as recorded and circulated through public radio broadcast—illuminates this chapter’s primary goal of better theorizing the relationship between rhetorical delivery and decorum, especially with regard to technology, circulation and the creation and maintenance of rhetorical spaces. This chapter ultimately suggests that decorum provides a flexible (permeable) set of social rules through which rhetoric is filtered and delivered, and that decorum and delivery are necessarily mediated by communication technologies. George Carlin, on the stage, in the comedy club, and on his comedy albums is a prime modern example of the complex operation of decorum—both as a system to be used and a system to be subverted. Carlin demonstrates the what and how of rhetorical decorousness. Furthermore, Pacifica, through the intersection of delivery and decorum, evinces how radio, as a communication technology, operates as a delivery system—one that is by no means disinterested. It does this by displacing and recirculating Carlin’s rhetoric, by redelivering it indecorously.

Robert Hariman notes, “The classical concept of decorum embodies many of the paradoxical features of the art of rhetoric: It is at once antique and universal, a general maxim of composition and a richly inflected aesthetic sensibility, a radical assertion of the social character of language and a recipe for conventionality” (“Decorum” 199). When decorum is codified into fixed, rigid rules, as a standard of decency, it opens itself up to challenge, or, as in the case of Carlin’s humor, open ridicule. Carlin’s exploration of the indecent, this case study suggests, is not as one might assume in opposition to decorum but is a necessary function of decorum as a robust rhetorical concept. When Carlin tests decorum’s boundaries, those boundaries prove...
necessarily permeable. This is most noticeable when movement of texts (like Carlin’s comedy albums) across local boundaries proves standards of appropriateness to be incompatible. Deeming Carlin’s material inappropriate for the public airwaves speaks directly to the situational nature of both appropriateness and indecency. It also suggests we must consider rhetorical delivery in terms of both space and circulation.

*Pacifica* establishes rhetorical delivery as always already mediated by localities and communication technologies. Ben McCorkle notes, “Technology is fundamentally a cultural phenomenon, a construction supported by certain types of discourses, institutions, and power relations between individuals that often go unexamined” (5). This case study extends McCorkle’s claim beyond the disciplinary boundaries of rhetoric by demonstrating that not only does interaction between delivery and communication technologies happen throughout the disciplinary history of rhetoric but throughout all manner of popular and legal discourses. In particular, *Pacifica* demonstrates how appropriation and circulation of recorded rhetoric (Carlin’s comedy) through public broadcast challenges classical rhetorical notions of delivery and decorum. It also compels us to (re)consider the role of decorum in our current media landscape, one populated by continually shifting (and permeable) boundaries of taste and convention.

This chapter’s discussion of delivery, decorum, and radio (communication technologies) arrives, ultimately, at a suggestion similar to Ridolfo and DeVoss’s concept of “rhetorical velocity.” Ridolfo and DeVoss note, “the term rhetorical velocity… means a conscious rhetorical concern for distance, travel, speed, and time, pertaining specifically to theorizing instances of strategic appropriation by a third party” (“Intro”). The key difference between Ridolfo and DeVoss’s rhetorical velocity and what this chapter suggests lies in the phrase “conscious rhetorical concern.” WBAI-FM’s broadcasting of Carlin’s material may or may not have been anticipated by Carlin (or his recording company). However, Ridolfo and DeVoss’s focus on time and space do come to bear on this case in that *Pacifica* demonstrates “third-party remixing” isn’t
a new concern, one witnessed only in digital environments, and that “appropriation by a third
day party” necessarily challenges (or must attend to) decorum.

Since the publication of “Composing for Recomposition: Rhetorical Velocity and
Delivery” (2009) Ridolfo has updated rhetorical velocity to account for the use this chapter
envisions:

Although the concept of rhetorical velocity is a framework for rhetoricians to
consider the possibilities of “composing [a text] for strategic recomposition,”
textual diaspora centers on how to strategically leverage texts that have been
already circulated or delivered (Ridolfo and DeVoss)... The concept of textual
diaspora situates the past, present, and future of texts in relationship to the
changing rhetorical goals and the particular objectives of cultural stakeholders.

*Theorizing the digital delivery of textual diaspora creates a double linkage
between how texts came to be where they are and how they will be used in the
future.* (emphasis mine; 137)

Like rhetorical velocity, the focus of textual diaspora is on digital. What this case study suggests
is that when we look back to the ways in which radio broadcasts remediated texts, we see
similar linkages between texts. In fact, while digital media may have alerted us to the ways texts
have been remixed, strategic recomposition is nothing new. What happened with “Filthy Words”
very much fits within the framework of textual diaspora in that its use demonstrates the
changing rhetorical goals of its users. The two primary uses of the text (Carlin’s and WBAI-
FM’s) are joined by the text’s message; observing this link allows us to better understand the
role of delivery. Ridolfo adds, “Making this connection explicit offers productive ways to
understand rhetorical historiography and delivery as interrelated aspects of a text’s movement in
time and across culture” (137).

The first section of the case study is devoted to understanding George Carlin’s comedy
in terms of *decorum* and rhetorical space, examining his rhetoric in terms of appropriateness
and exploring Carlin’s relationship to his audience(s). This discussion of Carlin helps establish the role of decorum in both creating and navigating rhetorical spaces; it also provides context for the remediation of Carlin’s material by WBAI-FM. The case study then discusses Pacifica’s parsing of indecency with regard to decorum and the recirculation of Carlin’s comedy on public radio. In particular, this chapter’s discussion of Pacifica exposes Carlin’s rhetoric to be functionally inappropriate with regard to public broadcast (universal decency standards) despite being appropriate in other rhetorical spaces (comedy club; LP), which suggests that decorum is mediated by and through delivery, including communication technologies. Finally, this chapter concludes with discussion of the larger implications for understanding rhetorical delivery in terms of appropriateness and technological discourse.

2. Case Study: George Carlin and FCC v. Pacifica, 438 U.S. 726

A. George Carlin: Prophet of the Vulgar Herd

George Carlin was not the first stand-up comedian to rail against cultural conventions and interrogate the absurdities of polite (and impolite) language. He was, to an extent, the heir-apparent of Lenny Bruce. In Comedy at the Edge: How Stand-Up in the 1970s Changed America, Richard Zoglin opens his chapter on George Carlin by noting “Lenny Bruce never played the Copacabana.” This brief observation illustrates two things: Stand-up comedy was never the same after Lenny Bruce, and George Carlin was the first comedian to benefit from Bruce’s groundbreaking approach to stand-up. Zoglin goes on to note that in 1969 Carlin, “appearing there under protest… [used the Copacabana] to kiss off old-time comedy” (17). This “kiss off” was almost a decade in the making.

The turn for Carlin came in 1967. Having established a clean comedic persona and a solid stage presence, one that landed him television spots and a measure of success, Carlin
began to feel the tension between his clean-cut act and his counterculture tendencies. Carlin says of this time,

> I started to see people singing protest songs. I hear that people are using their talent to express their point of view, and their point of view is political. And I have all these feelings too. And I'm doing all these superficial things, about media and disc jockeys and ladies on quiz shows. And I'm doing them for the enemy. (qtd. in Zoglin 28)

The time between this realization and his “kiss off” at the Copacabana marks a rhetorical metamorphosis in Carlin’s comedy—one that would define the rest of his career. And, despite the risk he took in turning his back on a respectable career of safe, television-friendly comedy, Carlin—like Bruce and Richard Pryor—benefited from trusting his unfiltered and more personal voice, gaining not only notoriety but fame as a sharp-witted comedian with an eye for the absurdities of popular language use. As Zoglin notes, concluding his chapter on Carlin, “He evolved from white-bread media parodist to counterculture provocateur to curmudgeonly uncle to apocalyptic pessimist; but what remained constant was his eye for the world’s inequities and absurdities, and the caustic eloquence with which he called them to our attention” (39).

*FM & AM* is the seminal proof of Carlin’s evolution—witnessed even in the inversion of the usual AM & FM sequence, with his newer, sharper material front loaded ahead of his more conservative earlier bits. His album also begins by referencing his “kiss off”: Carlin utters “shit” twelve seconds into the very first track. Arguably, however, Carlin’s breakthrough album was *FM & AM*’s follow-up *Class Clown*. Recorded roughly a year after *FM & AM*, *Class Clown* finds Carlin fully embracing his new persona—one that is at once more personal and more cutting. Where *FM & AM* begins as if the listener has stumbled into the middle of a set, *Class Clown*’s first bit starts at the very beginning: The first words out of Carlin’s mouth are “People always want to know how you get started.” Carlin establishes a very specific, autobiographical rhetorical space for his comedy. The *topos* he invokes for his audience is “beginning,” drawing immediate
attention to a common social ground (how one becomes) and to the comedian’s entrance into
an observed life of comedy.

Carlin’s goal, however, is not to actually tell us how he got started, to narrate his career
beginnings for us (though his tone is casual and his pace leisurely, creating a mood of
storytelling rather than one-liner comedy). Carlin’s goal is to interrogate the commonplace of
“how did you get started” for humor and to establish his comedic ethos; his goal is also to
establish a rhetorical space for his comedy. “Did you always want to be a comedian?” Carlin
continues, “Well, not in the womb, but right after that, yes.” From this simple joke, he moves into
the heart of the bit: his rumination on the role of “class clown.” It is here, he tells us, where
comedy and comedians are born:

But class clown is when you really do get a chance to kind of work out… ‘cause
the classroom is the best place… The classroom is best place because… well,
no one is allowed to laugh there. And suppressed laughter, you know, is the
easiest to get, the most fun. You know, like when you’re kneeling in front of a
casket.

While the punch line (at this point in the bit) is “kneeling in front of a casket,” the bigger idea at
play is the role of classroom in the formation and distribution of laughter. In particular, Carlin’s
insistence that a) the classroom is the best place, and b) suppressed laughter is the easiest to
get suggests that good comedy is born of moments when it is most inappropriate.

This bit, too, aligns with Carlin’s own observation about comedic distortion: “[Distortion]
is one of the most important things in comedy. You look at an ordinary event, an ordinary
tableau, and you say, what element can I distort in this? And suddenly you have at least the
potential for a joke” (quoted in Zoglin 28). Laughter is evoked by the distortion at the end: In the
“Class Clown” bit, it’s moving from classroom to casket. Carlin also points us to the disciplinary
function of the classroom, to the formation and mediation of laughter. Carlin disrupts the
carefully crafted, authoritarian silence with his rhetoric. The classroom erupts in uncontrollable,
inappropriate laughter. “Classroom” invokes discipline; the classroom is where we first learn to negotiate the rules of civil society. The classroom is where learning is applied and tested through the social. By putting children in desks in rows and asking them to perform, we teach structure and manners, we teach them discipline and how to abide by rules and authority—we teach them *decorum*.

Robert Hariman notes, “Broadly defined, *decorum* consists of: (a) the rules of conduct guiding the alignment of signs and situations, or texts and acts, or behavior and place; (b) embodied in practices of communication and display according to a symbolic system; and (c) providing social cohesion and distributing power” (“*Decorum, Power*” 156). As a classical rhetorical principle for directing appropriate and/or effective rhetoric, however, “*Decorum* provided both the major stylistic code for verbal composition and the social knowledge required for political success.” Furthermore, “By developing the ability to discriminate and imitate signs of status, the orator could exploit the social code governing a situation” (Hariman, “*Decorum, Power*” 152). *Decorum* thus primarily operates on two levels: One is a level of social cohesion, as a set of rules by which a group maintains an appropriate social order. This level of *decorum* essentially functions through identification between audience members, and allows for the creation and maintenance of coherent social groupings. The other level operates from the perspective of the rhetor, whose effectiveness is weighed against his or her mediation of an audience’s *decorum*. Accordingly, Hariman notes, “‘*Decorum*’ marks both a principle of social order and the complex communicative habits within which all principles of order are advanced, resisted, or accepted” (“*Decorum, Power*” 163).

In the case of George Carlin, *decorum* operates both to establish commonalities within his audience and as a principle to necessarily disrupt principles of order and appropriateness. First, *decorum* helps create and maintain the rhetorical space of both the comedy club and the sense of community established through Carlin’s ethos as comedian-social critic. Carlin is “class clown” in both his reflective narrative and for the audience in front of which he performs. By
recalling the classroom, Carlin connects his experience to the experiences of his audience members; by exploring his role as “class clown” he demonstrates his role in resisting established principles of order. Because of the peculiar nature of the comedy club and the relationship of comedian to audience, what is ultimately appropriate is often—or necessarily—inappropriate. As Hariman notes, “a code of decorum denotes specific but impersonal rules for correct behavior in familiar situations” (“Decorum, Power” 164). In the comedy club, the inappropriate falls into the category of the familiar. Recalling Carlin’s comments about comedic distortion, we can safely claim that the rhetorical space of the comedy club is one where distortion—often distortion with regard to matters of taste and appropriateness—is expected, even if such expectation is further transgressed by the comedian.

Considering rhetorical effectiveness with regard to specific rhetorical space is particularly salient with respect to Carlin’s comedy: Carlin is appropriately inappropriate in the comedy club; his effective delivery relies on appropriate disruption of decorum, which is measured by his audience’s laughter. The rhetorical space of the comedy club is one that both exists prior to and is mediated by Carlin. His audience is both (arguably) predisposed to his comedic sensibility and shaped by Carlin’s role as rhetor/performer. The space within which his comedy is delivered is fitting to his sense of / disruption of decorum. And, while Hariman rightly notes, “one must recognize that any action can be deemed appropriate either to a situation or to a persona,” it is important to note, “[decorum] also acts as a higher order rule… the rule that any code of conduct must be ‘fitted’ to the specific situation” (“Decorum, Power” 164). This point is especially important to the next section’s discussion of Pacifica, where rhetorical space shifts from comedy club to public airwaves.

Effective use of decorum requires a rhetor to draw from and speak to convention while requiring those conventions to change or adapt to new situations based on the rhetor’s needs. James S. Baumlín notes decorum’s normalizing function, or, rather, its reliance on context: Decorum “is the pleasure man derives from the harmonious interrelations of word and word, and
of word and world. And let us note that, in accordance with such a definition, there can be no absolute standards of style, voice, or form in writing” (“Decorum” 175-176). Baumlin’s view of decorum is spatially and temporally contingent; effective rhetors must determine what is appropriate based on time, place, and audience.

When we consider Carlin’s stand-up comedy in relation to this sense of decorum, moment and situation become paramount, and the effective delivery of his comedy hinges on his understanding and manipulation of decorum. This is readily apparent in Carlin’s most famous bit, “Seven Words You Can Never Say on Television,” in that it draws specific attention to and interrogates decorum. Carlin calls on convention before completely disrupting it: Unlike the first bit on FM/AM, where Carlin utters “shit” twelve seconds into the cut, “Seven Words,” which is just over seven minutes long, doesn’t actually intone a “bad word” until nearly a minute and a half in. “Seven Words” is the last piece of material on Class Clown, and it begins as an ending. Carlin starts by thanking the audience: “I love words. I thank you for hearing to my words.” The material quickly moves into Carlin’s thoughts about words and the division of bad words from good:

There are some people that aren’t into all the words. There are some people that would have you not use certain words. Yeah. There are 400,000 words in the English language and there are seven of them you can’t say on television. What a ratio that is: 399,993 to seven. They must really be bad. They’d have to be outrageous to be separated from a group that large. All of you over here. You seven… bad words. That’s what they told us they were, remember? ‘That’s a bad word.’ No bad words. Bad thoughts. Bad intentions… and words.

When the words you can’t say on television do come, however, they are an onslaught of profanity that provokes immediate and uproarious laughter from the audience:

You know the seven, don’t you, that you can’t say on television? Shit, piss, fuck, cunt, cocksucker, motherfucker, and tits, huh? (Applause) Those are the heavy
seven. Those are the ones that’ll infect your soul, curve your spine, and keep the country from winning the war. Shit, piss, fuck, cunt, cocksucker, motherfucker, and tits, wow.

Carlin clearly stokes the fire, building steadily toward the release that the seven words provide. It’s hard to listen to the material and not feel “the pleasure man derives from the harmonious interrelations of word and word, and of word and world.” The rhetorical force of the “heavy seven” thoroughly disrupt a rather astute but tame rumination on language conventions with a burst of “patently offensive” language.

The audience’s laughter is proof of the effectiveness of Carlin’s rupture of (and observance of) *decorum*; his inappropriate language is appropriate, primarily because of the rhetorical work he has done up until that point. If *decorum* has “no absolute standard,” then it is up to the rhetor to negotiate the terms of a situation’s need for appropriate rhetorical action (laughter). The good rhetor knows what is appropriate; in Carlin’s case, the good comedian knows how to disrupt convention for laughter. Baumlin cites not only Cicero’s point that “the universal rule, in oratory as in life, is to consider propriety,” but the Roman orator’s attendant remark: “In an oration, as in life, nothing is harder than to determine what is appropriate” ("Decorum" 176). Here again, Carlin’s role as anti-establishment comedian is both functionally inappropriate with regard to universal decency standards and situationally appropriate when deployed to specific, rhetorical spaces (comedy club or comedy LP).

Carlin’s effective resistance/critique of *decorum* (for the rhetorical affect of inappropriate laughter) evinces his ability as a rhetor to create/maintain an appropriate rhetorical space for his rhetoric, but it also speaks to the need for a more nuanced understanding of audience, especially with regard to rhetorical delivery. John Muckelbauer aptly notes, “in order to make rhetoric a truly practical art, we can no longer rely on some of the abstract common-sense gestures to which we have become accustomed… we can no longer refer to an audience, a situation, a discourse community, or a context as real things whose contours are self-evident”
This observation speaks to the core of this chapter’s discussion of Carlin, his comedy, his use of space, and his relationship to his audiences. In particular, the multiple iterations of Carlin’s comedy—original comedy club performance, LP recording of select comedy club performances, and, as we will see in the next section, public broadcasting of LP recording—fracture “audience” in ways not often accounted for in traditional understandings of rhetorical delivery. At the source—Carlin on one stage performing to one audience—we might be able to identify a simple relationship of audience, text, rhetorician (though, as already noted, this too is not so simple). However, when we further consider that Carlin performed before multiple audiences, and that his comedy albums represent selections across multiple performances, we see that audience and situation shift, however incrementally.

Audience, situation, and context are even further complicated when an intermediary opts to (re)circulate Carlin’s recorded material to multiple other audiences, as was the case with WBAI-FM’s broadcasting of “Filthy Words.” We not only need to be aware that all boundaries are rhetorical and permeable, but that part of what happens when we deliver our messages is that we push through boundaries and establish new ones. The very act of delivery is one of boundary drawing, even if and necessarily because those boundaries are not “real things” and are always already permeable. Muckelbauer’s point drives home the notion that in order for us to talk about delivery and boundaries, we need also to address how rhetorical space constitutes audience. The idea that messages might be delivered to the wrong audiences (as in Pacifica) shows how understanding decorum, appropriateness, and/or indecency requires understanding how rhetors engage multiple audiences, some intentionally, some unintentionally.

When we envision George Carlin on stage with mic in hand—when we hear him performing his material in front of an engaged and responsive audience of fans—we see and

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15 My focus here is on radio as it pertains to Pacifica, but we can also see how YouTube has further remediated Carlin’s performances. While working on this chapter, I came across a YouTube mix of some of Carlin’s bits about religion and invective from Westboro Baptist Church head Fred Phelps delivered shortly after Carlin died. This remixing of Carlin’s material falls within the general scope of my points here, but also suggests additional work that might be done.
hear an effective rhetor. The audience’s laughter is, we can safely assume, genuine rhetorical affect. When that performance is displaced through voice recording and broadcast, however, we must envision an uncoupling of decorum from situation. It is this uncoupling and redeployment on public radio that leads to this chapter’s discussion of *Pacifica*. Furthermore, if we consider not just the rhetor, the situation, and the discourse community, but the medium by which the rhetor’s message is delivered then we can begin to see how technology and mass media also serve meditational, rhetorical functions. It is for these reasons that *Pacifica* presents a unique rhetorical quandary: The rhetor—the original performer—becomes ancillary with regard to delivery. As the second part of this case study demonstrates, WBAI-FM’s circulation of Carlin’s recorded material displaces Carlin as rhetor, as prophet of the vulgar herd, and highlights the role of technological discourse in rhetorical delivery. Taken out of the context of the album and the audience recorded on the album, Carlin is no longer attuned—and it is this change of context that shifts his material across the register from appropriate to indecent.

B. *FCC v. Pacifica*. 438 U.S. 726

On October 30, 1973, radio station WBAI-FM in New York aired Carlin’s comedy piece “Filthy Words.” Appearing on his third album *Occupation Foole* (1973), “Filthy Words” is an extended, slightly revised version of his earlier “Seven Words You Can’t Say on Television” bit from *Class Clown* (1972). In both pieces, Carlin interrogates the absurdity and ideological motivations of designating certain words “dirty” and forbidding their use. WBAI-FM’s broadcasting of Carlin’s ruminations—at two o’clock in the afternoon—was part of a larger discussion about language. However, this twelve minute airing of “indecent” words resulted in FCC sanction and the landmark *Pacifica*, a case that still has repercussions for the regulation of language on radio and television.
Pacifica was the result of a complaint logged with the FCC by a man who heard WBAI-FM’s broadcast while in the car with his son. Legal scholars Maureen Harrison and Steve Gilbert note the complainant “stated that, although he could perhaps understand the ‘record’s being sold for private use, I certainly cannot understand the broadcast of same over the air that, supposedly, you control” (119). This complaint speaks to the power differential between airwave ‘control’ by the FCC and radio stations: While the FCC is charged with monitoring the airwaves, it does not have censor power, it doesn’t control the airwaves; instead, it retroactively fines offending radio and television stations. Harrison and Gilbert note,

The FCC, to which Congress had granted regulatory, but not censorship, power over the public airwaves, investigated the complaint and, in an Order dated February 21, 1975, called the language used in Carlin’s Filthy Words "offensive, indecent, vulgar, and shocking." The Order threatened sanctions against Pacifica, including fines or license revocation, if future complaints were received.

(emphasis mine; 117)

Pacifica appealed the FCC order, which the U.S. Court of Appeals struck down on March 16, 1977. This led to the FCC’s appeal to the Supreme Court for reversal. A vote of 5-4 in favor of the FCC was handed down and, as Justice John Paul Stevens held, “This case requires that we decide whether the Federal Communications Commission has any power to regulate a radio broadcast that is indecent but not obscene” (Harrison and Gilbert 119).

The role of the FCC is not to censor indecency, as maybe it would obscenity; rather its power effectively tempers broadcasts under the guise of regulation. Indecency infractions aren’t punishable by law necessarily; rather, they incur hefty fines and/or threats of license revocation. As a regulatory body, the FCC controls (regulates) the medium of broadcast, both radio and television. It determines levels of appropriateness, and, in fact, it determines the difference in definition between obscene and indecent. What is appropriate, then, is not solely the
responsibility of broadcasters or the audience; rather, decorum is mediated by the FCC, which acts ostensibly as arbiter of community standards.

In his opinion, Justice Stevens, referring to 18 U. S. C. § 1464, the code by which the FCC made its decision regarding action taken against Pacifica, notes, “The words ‘obscene, indecent, or profane’ are written in the disjunctive, implying that each has a separate meaning. Prurient appeal is an element of the obscene, but the normal definition of ‘indecent’ merely refers to noncomformance with accepted standards of morality” (emphasis mine). Justice Steven also notes in the main opinion, “The [FCC] characterized the language used in the Carlin monologue as ‘patently offensive,’ though not necessarily obscene.” This parsing of terms points to Edward Schiappa’s claim that definition constitutes “rhetorically induced social knowledge.” Schiappa notes, “Definitions put into practice a special sort of social knowledge—a shared understanding among people about themselves, the objects of their world, and how they ought to use language” (3). In Pacifica, Carlin’s comedy represents something ‘patently offensive’ in that it doesn’t conform to ‘accepted standards of morality’; however, it is ‘not necessarily obscene’ because it doesn’t appeal to prurient interests.

“Indecent,” then is not “obscene,” though the two words—two concepts as social/legal knowledge—are semantically connected. They are also legally connected. While landmark obscenity case Miller v. California, 413 U.S. 15 was directed at regulating the distribution of sexually explicit materials, its test for obscenity served as precedent in Pacifica. Pacifica’s decision hinged on one key question: Even if material like Carlin’s stand-up has social value, should children be shielded from it because the language is deemed “indecent”? Pacifica codified FCC regulation of radio and television broadcasts and effectively defined indecency for a national audience because the answer to this question was yes.

A quick review of American obscenity law allows us to observe that the trajectory of obscenity law, around the time of Anthony Comstock, shifted from political and/or religious origins to a focus on ‘prurient interests’ (Schauer; Gilbert). Pacifica’s legal effectiveness hinged
on linking indecency to obscenity law’s primary focus on sexuality and prurient interest. Obscenity and indecency were jurisprudentially linked in *Pacifica* through *Miller*. This bears on this case study as a whole in that *Pacifica* rests on the semantic linking of indecency to obscenity—not only are both inappropriate for public broadcast, but by grouping them together, “indecent” bears the negative connotations of “obscene.” Despite the court’s main opinion that § 1464 rests on the disjunction between the two, the fear of one links to the fear of the other with regard to community standards and the potential negative impacts of indecency on children.

*Pacifica* directly invokes the fear of broadcast media’s ability to corrupt unsuspecting, innocent children. The primary complaint of the FCC was that, due to the public accessibility of radio, and the hour of day that “Filthy Words” was broadcast, children were undoubtedly in the audience, and were potentially harmed by listening to Carlin’s monologue. “Broadcasting,” *Pacifica* notes, “is uniquely accessible to children,” and because of this indecent language is prohibited (through § 1464). This recalls the postwar fear of “mass media” discussed in chapter one. It is one thing for objectionable materials to end up in the hands of juveniles, or for kids to sneak into dirty movies; it is quite another thing for an unsuspecting radio listener—or television watcher—to suddenly be confronted with “inappropriate” material.

In the case of George Carlin’s “Filthy Words,” we can see that Carlin-as-rhetor appropriately delivered his message to his intended audience (comedy club; record purchasing home listener); once that message moved from private use to public airwaves, however, its status as appropriate changed. “Filthy Words” also reveals the medium’s role in mediating the message: Carlin’s comedy, delivered by radio station DJ, acts differently on public airwaves. This is because the message’s *appropriateness* is contingent, is reliant on context, and the change of context is a result of the medium. Even if both Carlin and the DJ share in the message’s rhetoric (Carlin’s rhetoric spoken for laughs and social critique; the DJ’s broadcasting of Carlin’s rhetoric for discussion of language use and social critique), the medium
affords and constrains the *actuation* of that message: The “free” space of the airwaves means that the audience is unknowable and theoretically unmanageable.

Ethan Stoneman notes, while the Greek *to prepon* operated mostly as a guide for adapting speech to situations, Cicero’s nuanced approach to *decorum* “expanded on the appropriate so as to include a second, higher-order function” (131-132). This higher order function has allowed rhetoricians, Stoneman observes, “to explicate the conditions of rhetorical performances of confrontation, nonadjustment, and resistance” (130). Stoneman, contends, however, that there is more value in considering the rhetorical potential of *indecorum*, claiming, “*indecorum* [can be] elevated from a negative constraint on rhetorical performance to a political standard” (131). George Carlin tested the boundaries of appropriateness with his material, though the boundaries he intentionally tested in the comedy club were not really tested; he primarily delivered his material to accepting audiences. The material was appropriate for the situation.

However, Carlin’s critique of appropriateness was dependent on place, revealing what Stoneman labels “appropriate *indecorum*” (142). As a standard, *decorum* can (and often does) systematize inequality. To be indecorous, then, might very well serve ethical and/or moral ends; the inappropriate can expose the unjust politics of *decorum*. The rupture of appropriateness prompted by the movement of Carlin’s material from private consumption to public broadcast exposes the arbitrariness of language standards. In “Seven Words,” Carlin explicitly contends that words are not bad; it is the use of certain words in certain contexts, as well as the sensitivities of certain listeners, that marks certain words as indecent or obscene. When a medium shift changes the appropriateness of the message, it did so without the initial rhetor’s control and thereby exposes both the arbitrariness of language standards and the political/ideological censure that *decorum* requires by its systematization: The medium redelivers the message by circulating it to audiences not prefigured by the rhetorician, *decorum* then becomes *indecorum*. 
Carlin’s message though *indecent* was *appropriate*. Carlin’s rhetoric challenged *decorum* within the operational tenets of the concept. However, because his message was dislocated through recording and then circulated outside its intended space, the very point Carlin was making actually backfired, and the legacy of his material was unfortunately tied to the restrictive tenets of *Pacifica*. In the opening routine on Carlin’s 1988 album *What Am I Doing In New Jersey?*, Carlin rails against the FCC and radio censorship:

The Federal Communications Commission decided all by itself that radio and television were the only two parts of American life not protected by the free speech provisions of the First Amendment to the Constitution. I’d like to repeat that because it sounds vaguely important. The FCC, an appointed body—not elected, answerable only to the President—decided on its own that radio and television were the only two parts of American life not protected by the First Amendment to the Constitution. Why did they decide that? Because they got a letter from a minister in Mississippi. A Reverend Donald Wildman in Mississippi heard something on the radio that he didn’t like. Well, Reverend, did anyone ever tell you there are two nobs on the radio? Two nobs on the radio… One of them turns the radio off, and the other one changes the station. Imagine that, Reverend, you can actually change the station! It’s called freedom of choice and it’s one of the principles this country was founded upon. Look it up in the library, Reverend, if you have any of them left when you’re finished burning all the books.

Carlin’s point, one that hinges on freedom of choice, is that if a listener doesn’t like what he or she hears, he or she can simply change the channel or turn the radio off. Such is the nature of radio (and television) as a communication medium. Furthermore, as this case study suggests, the turning on or off of the radio or television as a way to interrupt the delivery of an “indecent”
message points not to the role of the speaker but to the communication technology that circulates the message.

And yet, much like the previous section’s discussion of Carlin, the end result of looking at Pacifica reveals a similar point: Regardless of who determines what is or is not appropriate, the culprit is not the DJ/radio station nor is the listener; it is the air waves themselves. This is a point, interestingly enough, made clear by Justice Potter Stewart’s famous observation about pornography and obscenity:

I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description ["hard-core pornography"], and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that. (Jacobellis 197)

If we can’t know it until we see it, or know it until we hear it, then restricting/regulating “it” is a matter of access. Or in the case of Pacifica, it’s a matter of broadcasting, which ultimately implicates the message’s delivery system: broadcast media. Just as Carlin’s comment about turning the radio or television off shifts the power dynamic from the rhetor and the listener to the medium through which the message travels, Pacifica makes it clear that Carlin’s comedy isn’t the problem; rather, it’s the broadcasting of it outside its originally intended place (the rhetorical boundaries established by the comedy club and personal listening to LP) that remediates appropriate comedy into inappropriate indecency. As such, circulation through communication technologies is ultimately implicated: This, as the conclusion to this chapter suggests, points us to not just considering rhetorical delivery in relation to decorum, but to reconceptualizing rhetorical delivery in terms of technological discourse and circulation.
One of the primary claims of this chapter—and this dissertation—is that delivery functions differently across different media. Kathleen Welch said as much more than fifteen years ago in *Electric Rhetoric* (1999): “Human, in-person articulations of spoken texts involve one kind of memory and delivery; printed articulations have another kind; and digital versions yet another” (147). This seemingly obvious point is being unevenly explored by current field work on digital delivery and new media, though obvious certainly does not mean uncomplicated. However, a communication technology as ‘old’ and ubiquitous as radio—and one not typically theorized as rhetorically complex—is just as problematic for rhetorical delivery as newer communication technologies seem to be. In total this dissertation suggests (through consideration of a variety of technologies) that all communication technologies have particular constraints and affordances that require their own ways of delivery.

Delivery, then, is not—and never should have been—ancillary to, or dismissible from, the rhetorical canon (as it was in previous decades). Welch notes, “A standard explanation for the removal of memory and delivery from the five canons relies on the simplistic idea that the burgeoning power of writing made memory and delivery less relevant because those two canons are said to be more powerful in orally/aurally-dominant cultures” (*Electric Rhetoric* 146). This gross oversight (or trust in the power of the “written” word) seems shocking in retrospect (and within the context of this chapter’s consideration of *decorum* and radio). It conveniently overlooks the production and delivery of texts, the attendant technologies that both manufactured and distributed print. When we consider broadcast media, we can see as well that there is no such thing as simple aural delivery. Nowhere is this point more clear than with the transmission of discourses that fall within the scope of obscenity and indecency, especially, as this case study shows, with the remediation of recorded rhetoric in contexts dissimilar to those within which the recordings were made.
While much of this case study’s discussion of *Pacifica* focused on appropriateness with regard to indecency, one of its concluding suggestions is that radio, as a broadcast medium, is ultimately implicated in rhetorical delivery. At a general level, the classical concept of rhetorical delivery is extremely uncomplicated. Classical delivery was simply defined through the use of effective gestures and vocal modulation. In order to update this simple notion, gestures and vocal modulation must be replaced with the technological apparatus by which gesture and vocal modulation are amplified and dispersed, and perhaps obscured or distorted, through radio airwaves. This simple use is further layered when vocal modulation is recorded through yet more technological apparatus and then further displaced and dispersed through the airwaves. The simple point of this chapter is that all of this displacement, remediation, technological conversion and circulation, *does something* to the rhetoric being circulated and that that something is best theorized as delivery.

These vague notions of an updated delivery cognizant of technological mediation (a compounding of rhetorical elements) find some focus when we consider Jay David Bolter and Richard Grusin’s definition of “medium”:

[A] medium is that which remediates. It is that which appropriates the techniques, forms, and social significance of other media and attempts to rival or refashion them in the name of the real. A medium in our culture can never operate in isolation, because it must enter into relationships of respect and rivalry with other media. (65)

As a means or channel through which communication travels, a medium is obviously and necessarily a device for rhetorical delivery. If Bolter and Grusin are right, then media necessarily remediate that which travels through them. Furthermore, because a medium appropriates techniques, forms, and social significance it is necessarily ideologically invested, whether passively (as a means by which a technology emerges from that which precedes it, bearing the
ideographic marks of the former technology) or actively (as an invested process for any number of political, ideological, or monetary goals).

With regard to this case study, we can see how the medium or radio remediates Carlin’s comedy (itself a remediation through LP recording) and in so doing troubles it. The rhetorical space constructed by Carlin in a comedy club is not simply reproduced when his performance is recorded and then broadcast by a radio DJ. Even if I listen to the recording in the privacy of my own home (forty years removed) I occupy a different rhetorical space, one that Carlin has less control over. I can hear the audience laugh in response to his material but I can’t see them, or Carlin for that matter. The message is delivered but not in the same way, and so the message (ever so slightly to my ears) changes as a result of the technologies that intervene and remediate. Radio and recording as intervening mediums remediate the message into a new space—one that changes the message or, if it doesn’t change the message, redefines it in its new context. With regard to Pacifica, this remediation changed the message enough to merit new terms. Carlin’s appropriate comedy becomes inappropriate and indecent. The message is redefined as a result of the shift in rhetorical space (in the case of radio, a space monitored, maintained, and regulated by the FCC).

The epigraph if this chapter—and Carlin’s rant about the FCC quoted at the end of the Pacifica section—betrays a kind of truth about the changes at stake with regard to remediation (or rhetorical delivery through mediating communication technology): Carlin’s words didn’t cause any tangible harm, and his message remained/remains intact, powerful, and true to the rhetor’s intentions. The material we listen to, technologically and temporally removed as it is from its original context(s), is arguably just as effective as it was when Carlin first uttered it. The point of this chapter, then, has less to do with the actual change of Carlin’s message (from appropriate to inappropriate) than it does with recognizing the co-ordinating processes by which rhetoric is delivered and remediated (circulated and recirculated) and the ways in which those processes answer to and/or emerge from decorum.
Jenny Edbauer notes, “Rhetorical situations involve the amalgamation and mixture of many different events and happenings that are not properly segmented into audience, text, or rhetorician. We must therefore consider whether our popular models reflect the fullness of rhetoric’s operation in public” (20). This chapter agrees and extends this notion by suggesting that not only do we need to account for different events and happenings—not only do we need to find a better way to represent the relationships between agents in a rhetorical situation (beyond audience, text, rhetorician)—we also need to consider the meditational and ideological effects of communication technologies. In fact, McCorkle’s move to reframe rhetorical delivery as technological discourse is a step in the right direction, primarily because it recognizes the complex roles technologies play in remediating any and all communications delivered through media.

Because communication technologies are culturally situated, they further layer and complicate the delivery and circulation of messages. John Trimbur notes,

Public forums are diffuse, fragmented, and geographically separated. Speech is both literally and metaphorically broadcast through expanded means of communication. To my mind, delivery can no longer be thought of simply as a technical aspect of public discourse. It must be seen also as ethical and political—a democratic aspiration to devise delivery systems that circulate ideas, information, opinions, and knowledge and thereby expand the public forums in which people can deliberate on the issues of the day. (190)

For Trimbur, the move to reconsider delivery is ethically and politically motivated. When we account for the complexity of communication technologies—especially with regard to the social epistemic—we open ourselves up to technologies’ constraints and affordances. There are very clear consequences for not thinking about the ethical and political dimensions of technological delivery (uneven representation, access, silencing, etc.). This chapter’s discussion of Carlin suggests that there are also political and ethical implications with regard to technologically
mediated rhetorical delivery even when the rhetoric is not overtly political or ethical—even if its primary goal is laughter.

The twin interests of this chapter (decorum and delivery) find their strongest assertion here: Carlin’s message was effective, powerful, and indicative of a decorum that functions, as Hariman suggests “in a more critical sense, in which the rules, or attitude, of appropriateness itself becomes a means for the analysis of a social drama” (“Decorum, Power” 165). The proof of Carlin’s effectiveness lies in the very instance that prompted Pacifica: While Carlin’s comedy was singled out and pilloried by the FCC, the context from within which it was broadcast was prompted by comedy’s ultimate message. “Filth Words” was broadcast as part of a serious conversation in a public forum about language use and decorum. In fact, when Pacifica addressed the initial complaint, it responded by noting that Carlin’s routine “had been played during a program about contemporary society’s attitude toward language” (Harrison and Gilbert 119). However, the unfortunate outcome of WBAI-FM’s public broadcast of Carlin’s effective challenge to decorum was a conservative redrawing of the FCC’s regulatory power (one that continues to be driven by Pacifica’s ruling). This demonstrates how technological discourse can and does intervene in effective rhetorical delivery by transgressing and redrawing rhetorical boundaries.

What happens when the conduit through which messages are distributed is mediated by political or governmental bodies (FCC) or monetary forces (radio stations, advertisers)? In chapter one’s case this was a matter of negotiating the Postal Service’s censorship power and mail order catalogs. With regard to the broadcast of Carlin’s prerecorded comedy bit, this is a matter of negotiating the FCC’s jurisdictional power over radio stations who, in turn, present to the public (radio listeners) a product, an intentionally marketed product for consumption—and potential recirculation.

The point this chapter ultimately makes is that communication technologies necessarily intercede and complicate what might otherwise be seen as a simple fact of rhetoric—the
delivery of a message to an audience. As *Pacifica* demonstrates, a media-mediated message is never fully within the control of a specific rhetor. And as Edbauer and Mucklebauer suggest, the rhetorical situation is much more complex than an author, text, audience figuration typically assumes. Delivery, then, is always already dependent on either already established boundaries of time and space, or transgresses those always already permeable boundaries through media’s inherent modes of circulation. Furthermore, this chapter’s discussion of Carlin and *Pacifica* point to the role of *decorum* in constituting both rhetoric and communication technologies. What is appropriate is a matter of the multitude of rhetorical spaces drawn and redrawn by rhetors through communication technologies both within and outside their control. George Carlin said what he wanted to say and the rhetorical spaces he created and maintained through his comedy were critically decorous. However, the remediation of Carlin’s comedy through public broadcast dislocated his message and suffered the consequences of entering a new, even hostile rhetorical space (public airwaves). Rhetorical delivery, then, is by no means a simple matter of effective gestures and vocal modulation. In the next chapter, these ideas—exposed here through the failure of *Pacifica* (and the triumph of the FCC)—come to the fore as we move into a new media landscape that, though often described as “boundary-less,” requires us to reconsider rhetorical delivery not only with regard to technological discourse but within the necessary matrix of time and space.
Chapter 3: “Accept or Reject”: Obscene Art, Timeliness, and Rhetorical Space

No moment of time stands or speaks for itself; it is always a figure without meaning or place until fulfilled by a later moment, itself without its own meaning since the present is never present.

-- Hans Kellner, “Is History Ever Timely?”

1. Introduction

In November of 2011, the Overland Park Arboretum and Botanical Gardens in Kansas opened its China-U.S. Sculpture Park. The park includes eleven pieces by six Chinese Artists and was developed to unite American and Chinese culture and history, “allowing future generations to remember the past and continue to work together with people of all races and ethnicity in this prosperous land” (Spencer). The creation of a sculpture garden had been a goal of the city of Overland Park for years and with the support and guidance of internationally known sculptor and émigré Kwan Wu a partnership was established with the Chinese government to help cover costs and several prominent artists offered to donate their work. Teresa Stohs, former executive director of the Arts & Recreation Foundation of Overland Park, claims, “Kwan Wu made the China-U.S. Sculpture Garden a reality. It was a real team effort, but Wu is definitely the superstar” (qtd. in Melcher). With regard to the goals of the sculpture garden Stohs adds, “Our purpose is to provide visitors an opportunity to commune with nature, enjoy a cultural exchange, and be introduced to new arts experiences” (qtd. in Melcher).

According to an article on Kansas City Public Media’s website, six months after the park was dedicated, local resident Joanne Hughes posted a petition on change.org to have one of the pieces, “Accept or Reject” by sculptor Yu Chang, removed. Hughes explains,

The sculpture is of a headless naked woman with her breasts exposed, taking a picture of herself. The message this piece sends to the children and young adults
in our community has the potential to be destructive. With all the problems we are having with sexting in our youth culture, do we really want to be encouraging children and teenagers to take nude photos of themselves? (Spencer)

Hughes’ change.org petition collected 3,201 signatures and her efforts, when combined with the American Family Association (AFA) of Kansas and Missouri, succeeded in obtaining the 4,000 signatures required by the state of Kansas to empanel a grand jury (Rowland). The charge leveled against the park, prompted by “Accept or Reject,” was for violation of Kansas Statute 21-6401, promoting obscenity (“Grand Jury”).

Four years later, the statue still stands in the Overland Park Arboretum. The grand jury determined the statue does not break any state obscenity laws. Despite this initial failure, the AFA has continued the battle, though seemingly without Hughes’ assistance. In October of 2013, The Huffington Post reported that the association’s director, Phillip Cosby, was collecting signatures to once again convene a grand jury: “The hope, Crosby said, is that the Overland Park, Kan., statue, which depicts an ‘act of sexting,’ will be deemed ‘harmful to minors.’” The Huffington Post noted that the organization began collecting signatures as of October 1, 2013, and that it needed 3,800 signatures to move forward. Kansas City’s Fox News 4 updated its viewers on the AFA’s progress in February 2014, claiming that the organization was close to obtaining its needed signatures. However, as of early 2015, there has been no further reporting on this story or the status of the association’s petition.

After the initial grand jury made its decision, Hughes registered her disappointment in a personal blog post on October 31, 2012, noting, “The kids in this community are the ones that really lost.” Hughes’s observation, while steeped in commonplace, conservative rhetoric, alerts us to an interesting quandary regarding location, circulation, and the timeliness of obscenity. The internet traces of this story—from legitimate news outlets, to online petitions, personal blogs, and thousands of comments from nationally and internationally located internet users—reveal a convoluted debate that raises questions about the stability and viability of maintaining
local definitions of obscenity in the face of an international discourse community. The decision to keep “Accept or Reject” in the Overland Park Arboretum, arguably, was determined by voices outside the community Hughes championed, lending a very real credibility to her loss claim. Furthermore, Hughes’s use of the internet (through change.org) to deliver her message, while initially serving to bolster her crusade, ultimately defeated her message: By circulating specifically localized obscenity opinions (standards) beyond local boundaries they ceased to operate with the necessary rhetorical force with which they were initially invented.

This case study parses Hughes’s failure through the twin lenses of rhetorical delivery and kairos. Current rhetorical scholarship reveals a pervasive desire to remediate classical concepts for redeployment in the context of new media, multimodality, and shifting technologies (Brooke; Porter; Ridolfo; DeVoss). However, while efforts have been devoted to recovering delivery and kairos (Welch; Baumlın; Sipiora; McComiskey), further attention needs to be paid to the temporal (Smith) and spatial (Rickert) implications of kairos with regard to rhetorical delivery. Joanne Hughes’s use of social media and her 2012 change.org online petition against “Accept or Reject” not only exposes the incompatibility of myriad obscenity discourses but reveals rhetorical delivery to be mediated and disrupted by and through digital communication technologies. Hughes’s texts and the cluster of internet stories and artifacts that surround her calls to action serve as the objects of analysis for the following case study that employs a rhetorical genealogy of digital texts in order to explore kairotic timeliness in relationship to new media communication, demonstrating how the internet, often incorrectly construed as boundary-less, forces us to rearticulate rhetorical delivery in terms of time and space.

Rhetorical genealogy, Mary Queen claims, “is rhetorical analysis that examines multiple processes of structuring representations, rather than [seeking] to identify the original intentions or final effects of structured (and thus already stabilized) representations” (476). Because social media and internet-based communications operate from and through a complex—and not always transparent—system of networks, they require a more nuanced rhetorical approach, one
that Queen’s rhetorical genealogy provides by shifting analytical focus from a linear intent (message – receiver) to the myriad connections provided by hyperlinks and search engine algorithms. This chapter suggests that digital delivery functions by establishing rhetorical boundaries between local, national, and transnational communities, boundaries that are spatial, temporal, and necessarily permeable.

The first section of this chapter explains the methodological framework applied to the case study that follows. The case study itself performs Queen’s rhetorical genealogy of digital texts, tracing the propagation of Joanne Hughes’s story (as well as digital images of and conversations about Yu Chang’s sculpture), and explores how the “community standards” established by Hughes’s rhetoric were disseminated, appropriated and remediated—and what that remediation reveals about timeliness, the establishment of permeable digital boundaries (rhetorical/digital space), and rhetorical delivery. Like chapters one and two, this chapter focuses on one of the main precepts of kairos—in this case, timeliness—and examines its relationship to rhetorical delivery and digital communication. The chapter concludes with assertions, drawn from the evidence of the case study, for considering rhetorical delivery in terms of timeliness and, ultimately, suggests we consider the creation and mediation of rhetorical space in terms of delivery.

2. Rhetorical Genealogy: Methodology for a (Cyber)space Case Study

In “Transnational Feminist Rhetorics in a Digital World,” Mary Queen, citing Wendy Hesford, notes scholars in composition and rhetoric “have turned their attention to analyses of the rhetorical and political acts emerging from/at the intersections among local, regional, and global contexts” (471). Queen clarifies, however, that “despite the important work emerging from both the global and digital turn (and in some cases, the global/digital turn) in rhetoric and composition studies, one key area has yet to be examined: the central role that the circulation of
digital texts plays" (471-2). The focus on digital/global contexts is, arguably, a by-product of the boundary mediating properties of the internet and the social-epistemic nature of new media. The internet has expanded our access to information, exposing a multitude of conflicting conversations and opening avenues and crossroads into transnational discourse. However, as Queen points out, the ways in which the internet has necessarily reshaped our sense of digital circulation offer an important—and contestable—site for rhetorical analysis. For this case study rhetorical genealogy provides a methodology for looking at how the internet transmission of Joanne Hughes’s rhetoric is/was timely and, more importantly, exposes new media as not boundary collapsing so much as boundary making.

Methodologically rhetorical genealogy is “a process of examining digital texts not as artifacts of rhetorical productions, but, rather, as continually evolving rhetorical actions that are materially bound, actions whose transformation can be traced through the links embedded within multiple fields of circulation” (Queen 476). Essential to this case study is emphasis on linking and movement, both through time and space: Instead of focusing analytical attention on static texts, rhetorical genealogy examines connections between, circulation and networking of, texts. This is nowhere clearer than in how this case has mutated over the span of several years. While the initial incident that spurred Hughes to action was a static, finite occurrence—she witnessed a piece of (to her) objectionable statuary and instituted a petition for its removal—the cluster of stories that has emerged from her petition continues to grow, network, and cross ideological, permeable borders of taste and community standards. While Hughes herself has ostensibly “disappeared” from the internet conversation, her Change.org petition is still “open”—and despite its null value, it still continues to garner signatories.

It is in the unique aspect of linking that rhetorical genealogy proves most useful. By following and examining links between digital texts, we can observe the interplay between the local, the national, and the global. It is in the connections between internet traces Queen finds the ultimate value in rhetorical genealogy:
The fundamental promise of rhetorical genealogy as a methodology... is that it reconceptualizes and makes visible the multiple interactions between electronic texts and the material realities from which they emerge and through which they circulate to produce alternative fields for encountering each other in the moment of rhetorical action. (476)

Using such a methodology for this case study allows for interpretation of the material reality of Hughes’s experience alongside (linked to) the Internet conversation that emerged as a result of her desire to have “Accept or Reject” removed from the Overland Park Arboretum. We can then better understand how the Internet and new media require a reconceptualization of rhetorical delivery with regard to timeliness and spatiality.

While Queen’s rhetorical genealogy of RAWA serves as an example, and her methodology has a firm theoretical grounding, the following case study represents another approach, one that focuses on the digital delivery of Joanne Hughes’s rhetoric, specifically the rhetorical spaces Hughes inhabited and created, and the ways her rhetoric escaped its own rhetorical boundaries—spreading, mutating, and ultimately disintegrating in a new media torrent of opposition. The first part of the case study attends to material location, to the place where Hughes’s story is (was) physically located, briefly recounting the story’s initial emergence from Overland Park, Stilwell, and Kansas City. It assembles the events—from Hughes’s first encounter with “Accept or Reject” to the grand jury’s decision—and explores the material reality of Hughes’s rhetorical action. This exploration of place is followed by analysis of the myriad digital texts that have appeared either in support of or in opposition to Hughes’s position, to the texts that both create and mediate digital, rhetorical space. It starts by explaining the specifics of this case study’s genealogical approach and then parses the various aspects unique to the digital circulation of Joanne Hughes’s rhetoric and the story that continues to rhizomatically circulate.
3. Case Study: Joanne Hughes and Petition to “Remove the Inappropriate Sculpture at the Overland Park Arboretum,” Kansas City, KS

A. Place: Rejecting “Accept or Reject”

As Nedra Reynolds points out, “Geography is, literally or etymologically, writing the earth” (16). This observation highlights the social construction of place. Furthermore, Reynolds notes, “The perception that the earth is shrinking to the size of a ‘global village’—a perception that benefits the expansion of capitalism—is important to contemporary geography studies and to any examination of the spatial turn in postmodernism” (18). This case study is less interested in the economic repercussions of time-space compression than it is in the shuttling between material location and digital space. The simple fact that Joanne Hughes can stand in front of Yu Chang’s sculpture confirms a material relationship. Put another way, the statue’s existence in Overland Park is physical; its existence in the ‘global village’ of the internet is digital and only ever representational. When we consider the community standards invoked by Joanne Hughes, we must account for her physical proximity to “Accept or Reject” versus the digital space(s) it occupies on the amorphous internet.

The Overland Park Arboretum is located in Overland Park, KS, a suburb of Kansas City, MO. Overland Park is in Johnson County, which, as of the 2010 census has a population of over 500,000, making it the most populous county in Kansas. The city of Overland Park is also the most populous city in Johnson County, with a population of close to 175,000. According to news outlets and her profile on social media website Political Chips, Joanne Hughes is a resident of Stilwell, KS, a small, unincorporated community, also in Johnson County. Stilwell is a six-minute drive from the Overland Park Arboretum. Furthermore, if we map the route from Hughes’s listed home address to the Arboretum, her physical proximity to “Accept or Reject” is constituted by a four-minute drive and a distance of 2.2 miles.
In terms of cultural and political geography, even a short distance (or radius) of 2.2 miles presents difficulties in terms of determining consistent ideological configurations. The geographical and statistical facts collected above say little about community and cultural standards: While Hughes’s physical proximity counts for something with regard to community, that something is not easily demarcated; we have to consider the diversity of a population that coexists with Hughes in the geographical space of Johnson County. We have to consider social and political, economic, racial, and gender stratification. However, despite the diversity of community that mediates ideological attitudes in any area, we cannot a) lose sight of the physical place Hughes and “Accept or Reject” occupy, nor b) disregard the very real, material affects that such close proximity can (and did) produce in Hughes and the other signatories of her petition who also occupy (for the sake of this project’s scope) Johnson County. In fact, when we do pull together a few statistics, we can make a few rough generalizations that speak to the initial success of Hughes’s and the AFA of Kansas and Missouri’s grand jury petition. In New York Times piece from 2012, Micah Cohen notes “Almost a fourth of Republicans in Kansas live in Johnson County.” Furthermore, voter registration numbers in Johnson County put the ratio of Republican to Democrat at 2:1 (“Election Statistics”). And while political party affiliation is not necessarily an indicator of community ideology, when combined with 2013 census data that reveals Johnson County to be close to 88% white with an average median household income of 74,000 dollars, we can begin to see how the county as a whole potentially aligns with Hughes (“Johnson County”). We can also understand why Hughes chose to create a profile on the conservative social media website Political Chips.

At 1:30 p.m. on May 22, 2012, Joanne Hughes posted the first of seven blog posts on Political Chips. Hughes writes, “About two weeks ago, my husband, two daughters, and I visited the Overland Park Arboretum in Kansas. I was shocked at what I saw there... an inappropriate sculpture of a naked headless woman exposing her breasts in a vulgar fashion and taking a picture of herself.” Hughes’s post appeared five days after she started her Change.org petition,
“Remove the Inappropriate Sculpture at the Overland Park Arboretum,” and ten days after the first local news report, Fox 4 News’ “Bare Breasts On Statue Offend Some at Arboretum.” In her Political Chips post, Hughes notes that she herself contacted Fox 4 News; additionally, she contacted the Kansas City Star and submitted a short article for publication on the paper’s local news site 913. Eric Adler, in a June 1, 2012 piece for the Kansas City Star (“Sculpture incites debate: Is it art or obscenity?”), notes “since May 9 [Hughes] has been leading a campaign to have [‘Accept or Reject’] hauled off to a more ‘appropriate venue’ where children can’t be inadvertently exposed.” This places Hughes and her family in the physical presence of Yu Chang’s sculpture during the week of May 7, 2012. In Michelle Pekarsky’s May 11 Fox 4 report, she cites Hughes’s initial, primary complaint: The statue is inappropriately located. “I feel like this belongs at an adult venue,” Hughes claims. At the start, then, Hughes’s complaint is one of material location; her reaction to “Accept or Reject” was a material one. Furthermore, her primary goal was (simply) to have the statue removed—relocated to an appropriate place.

As the story evolved, however, two peculiar things happened: The first is a change in rhetorical tactic on the part of Hughes. In a KSHB 41 news report from June 5th, Lindsay Shively highlights the point that in an initial email sent to the Mayor of Overland Park, Hughes asked that the statue be removed, or at the minimum signs be posted to warn visitors. Signs were subsequently posted. However, after the signs were posted, Hughes changed her mind, claiming that not only were the signs an inadequate response, but that they were admission of wrong doing—that the signs incriminate the sculpture (and the City Council that approved its installation). The second point worth noting is that, after initial failures to be accommodated by
the City Council, Mayor, and Arboretum, “Accept or Reject” definitively moved from merely “inappropriate” to “obscene.” This shift in signification was due, primarily, to the involvement of the AFA. It was ultimately the decision of Phillip Cosby, director of the Kansas and Missouri chapter, to seek a grand jury hearing regarding the “Accept or Reject’s” “promotion of obscenity.”

In her May 22 post, Hughes claimed to have collected 900 signatures for her petition. By the time she was granted a meeting with the Mayor of Overland Park, Carl Gerlach, she had collected 2,700 signatures. Before taking her concerns to the Mayor’s office, Hughes approached the Overland Park City Council. According to her second post on Political Chips, the City of Overland Park denied Hughes and her petitioners “the right to present the petition before the City Council and has refused to take action” (“Overland Park’s War on Girls”). Hughes follows her outrage at being denied by noting, “The American Family Association of KS-MO is now involved and will be calling for a grand jury investigation.” Furthermore, it is here that Hughes makes to move from considering the statue as inappropriate to “promoting obscenity to minors.”

With the AFA’s involvement, Hughes’s initial online petition was essentially abandoned for an actual, legal petition to empanel a grand jury in Johnson County, Kansas. The official petition, sponsored by the AFA reads as follows:

The undersigned qualified electors of the County of Johnson and State of Kansas hereby request that the District Court of Johnson County, within 60 days after the filing of this petition, cause a grand jury to be summoned in the county to investigate alleged violations of law, Kansas Statute 21-6401 Promoting Obscenity; Promoting Obscenity to Minors and to perform such duties as may be authorized by law. The alleged violation being the “Accept or Reject” Sculpture by Yu Chang on display as "Choice" at the Overland Park Arboretum 8909 W. 179th St. Overland Park, KS. 66085.
Unlike Hughes’s Change.org petition, the juridical validity of this petition relies on location. Lindsay Shively notes in her June 5, 2012 report that the Arboretum received complaints about the statue from twenty different states. Furthermore, while Hughes’s “Remove the Inappropriate Sculpture at the Overland Park Arboretum” petition received a large number of signatures from the area, it also garnered signatures from a large swath of the country. The AFA’s petition, however, required signatures from residents of Johnson County—or, as the petition notes, “electors of the County of Johnson and State of Kansas”—in order to legally call for a grand jury.

To some extent, this explains the differences in signature collection time. Hughes’s petition amassed nearly 3,000 signatures in a matter of weeks; the AFA petition began collecting signatures at the beginning of June 2012 and filed its 4,700 signatures (1,000 more than required by law) on September 4, 2012.¹⁸

On October 26, 2012, KSHB 41 reported that the grand jury filed its decision: “Accept or Reject,” the grand jury determined, did not violate state obscenity laws. In a report on their findings, the grand jury noted, “We sat for one day and viewed the photographs of the statue. We reviewed the Kansas law and found that the sculpture in question did not meet the legal definition of obscenity” (qtd. “Grand jury: Overland Park”). Fox 4 News, KCTV 5 News, and KCUR all reported the decision on the 26th. Additionally, Hays Post out of Hays, KS reposted a short Associated Press piece on the decision. As the AP notes, the grand jury ruling was a “no true bill” decision, as no crime was committed (“Bare-Breasted Sculpture”). Dan Verbeck from KCUR further reported that the grand jury statement notes, “the sculpture in question did not meet the legal definition of obscenity set forth in K.S.A. 21-6401(f)(1)(B)(ii).” On November 5, 2012, KCUR posted a follow up piece (“Controversy IN A Sculpture Garden”) that offers little more than additional context regarding the issue of sexting. After November 5, news reporting of

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¹⁸ It’s also worth noting that in addition to collecting the signatures, the AFA had to verify the signatures before it submitted the petition. This accounts for some of the lag time. Interestingly, while the petition was submitted on September 4, the Grand Jury didn’t make its decision until October 26, even though several sources note that the Grand Jury only took one day to make its decision (“Grand jury: Overland Park”).
the story essentially disappears until almost a year later when the AFA reignited its battle following a change in Kansas legislation. As Brad Cooper of the *Kansas City Star* explains, “The latest petition drive, led by group leader Phillip Cosby, comes after the Kansas Legislature changed the state’s citizens’ grand jury law to ensure that aggrieved voters don’t surrender the pursuit of their claims to local prosecutors.” Cosby blamed the grand jury’s failure to indict “Accept or Reject” on Johnson County District Attorney Steve Howe. He feels that with the new law, he will be able to “not only explain the petition to the grand jury, but also provide a list of experts who might be called to testify” (qtd. in Cooper). Despite Cosby’s confidence, and sporadic reports of the AFA’s efforts to obtain petition signatures, a second grand jury has not been called. As of early 2015, “Accept or Reject” still stands in the Overland Park Arboretum.

Between the October 26 reports of the grand jury decision and the November 5 piece posted on KCUR.org, Joanne Hughes offered her final blog post on the issue: On October 31, 2012, Hughes posted “Innocence Lost—The Real Losers in the Sculpture Battle,” a lament full of defeat. And while there is an inkling of hope in the few comments to Hughes’s post, her online activity (at least with regard to her profile on *Political Chips*) ceased as of 2:44 p.m., October 31, 2012. After this time, all activity regarding additional grand jury petitions has been spearheaded by Cosby. Hughes has been silent and, one might assume, has moved on.

In the final KCUR piece from November 5, Cosby is quoted pointing out that the AFA’s issue with the statue: “Our concern is not about nudity,” Cosby said. “It’s what’s being done by the act of sexting” (qtd. Spencer and Denesha). This speaks to the AFA’s petition resting on a semantic issue, from considering the statue not as (just) inappropriate, but as promoting obscenity. I would argue that this was the flaw in the AFA’s tactic. That is, “Accept or Reject” clearly isn’t obscene, nor does it promote obscenity based on the Miller test to which the Grand Jury drew precedent. Had the issue remained a matter of local action to simply have the statue removed, it might very well have succeeded. What’s fascinating about this entire case, however, is the challenge of obscenity, with the rhetorical difficulty of determining a community standard
by which to assess a work as obscene. In this particular case, while 4,700 signatures is substantial, represents a significant portion of the local population of Johnson County, it is not, ultimately representative enough to determine “Accept or Reject” obscene. In fact, as Jake Peterson reported on June 5, 2012, the issues was more or less split 50/50 in the county as to whether or not the statue should stay or go. Johnson County has over 500,000 residents. 4,700 signatures is a blip, and certainly doesn’t represent enough for a ‘community standard’ large enough for the action sought by the petitions. Case in point, of course is that uptick in visitors to the Arboretum as this story escalated. As Adler notes, the park “gets about 130,000 visitors a year,” but that “the place has been far busier than normal.”

Reynolds claims, “The social production of spaces takes place in all discourse arenas, wherever rhetors are ‘inventing’ the boundaries of inquiry, the agendas of research, or the languages of arguments” (14). While Reynolds is primarily interested in the composition classroom, this resonates with the rhetorical space-making of Hughes’s and the AFA’s crusade against “Accept or Reject.” In the case of the AFA’s petition, the space is not necessarily imaginary in that it required petitioners to be registered voters in Johnson County. However, as the petition and the grand jury reveal neither is unilaterally representative of the space of Johnson County. In terms of “Accept or Reject’s” material existence in the Overland Park Arboretum, it occupies a contested rhetorical space—it is both provocative but acceptable art and inappropriate, suggestive, even obscene art. The petition represents both the success and failure of community process. For some—those who side with Hughes and the AFA—the process failed. Elected officials of Johnson County do not, according to them, accurately reflect their interests, their standards of taste. However, as is necessarily the case in representative government, those who opposed Hughes (or occupied a noncommittal, unfazed, or liberal position) were adequately and accurately represented.

That both positions (allowing, as well, for other positions) occupy the same place speaks to the social production of space through rhetorical mediation. This ultimately comes to bear on
the goals of this case study because it speaks to the production of rhetorical space as timely—*kairotic*—and operationally situated in the canon of delivery. While we are quick to assign rhetorical action to Hughes’s invention (her decision to act; her choice of media outlets and partners in crime), it is through delivery that we see both the effectiveness and affectedness of her rhetoric. As the next section shows, Hughes’s decision to deliver her message through specific traditional and nontraditional media outlets speaks to timelines and delivery.

**B. Space: It’s Not About Failure**

Collection of materials for this case study began in late 2012, and since that time, the “story” has spread and networked rhizomatically. Even the term ‘collection’ seems inappropriate for how this project works. First, I identified the story: I entered a couple of search terms (obscenity, public art) into a basic Google search window. This led to Eric Adler’s story (“Sculpture incites debate: Is it art or obscenity?”) on the *Kansas City Star* website. From that story, research progressed haphazardly: free associated search terms led to more Google results to sift through. I searched for more information about the story, about Hughes, about “Accept or Reject,” observing as I clicked through posts how the story spread. More Google queries followed—for “Joanne Hughes,” “Accept or Reject,” and “Yu Chang”—as well as clicking through hyperlinks included on the various pages collected by Google. As I discovered more, I bookmarked pages in my browser. In the early stages I paid little attention to methodology, letting my own inquisitiveness drive my process. The handful of bookmarks in my web browser came to resemble the pulling at a small thread to unravel a rather large sweater that turns out to not to be a sweater at all but a blanket still being knit at the other end. This initial undirected searching has been partially reconstructed retrospectively, though the process of searching certainly helped me refine and develop a strategy, a system for tracking and tracing digital texts and images.
One of the most difficult aspects of this rhetorical genealogy of digital texts was trying not to get lost in the details, in the events themselves. The story of place for this project is one of failure, where Joanne Hughes’s finds innocence lost and Phillip Cosby soldiers on. This is not the story of the digital circulation. As Queen points out, “though many rhetorical scholars have turned their analytic gaze to electronic texts, most still focus primarily on the information contained within the nodes of digital texts” (475). What Queen does—and this section of my case study does—is explore “how digital circulation is a mode of rhetorical action” (475). This requires turning the hermeneutic gaze away from the story to the connections between the stories. Queen notes,

Electronic texts change through the very linking of multiple fields. The historical, cultural, geopolitical, and ideological forces within these fields reshape the meaning of texts as they circulate. The methodological implication of this reshaping is that any rich rhetorical analysis of digital texts must account for both their ephemeral and historical nature by examining them as a series of evolving rhetorical actions emerging from and circulating through multiple temporal and spatial contexts. (475)

While part one of this case study focused on the historical nature of the ‘story’ that emerged out of Kansas, this section looks at the over seventy posts related to Hughes’s petition and story and examines the relationships between the posts, comments, and links. Where a traditional rhetorical analysis might focus on obscenity and art, or on the (failed) rhetorical action of Hughes’ petition, rhetorical genealogy focuses instead on how the stories link together. Furthermore, for the ultimate conclusions of this project, I am concerned with how those linking elements establish and mediate rhetorical (cyber)space.

But what does this look like? My extensive collection of artifacts, bookmarks, links, etc. required cataloging and curation. Many of my initial bookmarks were for stories reported by local news affiliates (some continue to update their pieces periodically). As the events unfolded and
evolved, inching toward a grand jury, the story was picked up not only by independent bloggers but by national media outlets like *Huffington Post* and *Slate*. The story even garnered attention from the ACLU. I began compiling bookmarked pages and indexing their dates, locations, and comments, as well as a handful of other criteria discussed below. I cataloged my search terms and kept track of my hyperlink jumps between stories and sites. As my data grew, so too did the elements I tracked across each post.

At first, I simply attempted to keep track of all these digital texts and artifacts, relying on bookmarks to return to posts later for analysis. While most of the links I collected remained stable (by which I mean links I’ve collected since 2012 still work), their anchors only slightly altered (shifting from server to server, etc.), a fair number of them have disappeared or broken (with attempts to rediscover them ultimately failing). In preparing for the final version of this chapter, I discovered (shockingly) that some of the posts and videos I relied on most for my genealogy have vanished. Videos initially accessed on News channel 41 KSHB are no longer available, and as of 30 June 2015, Politicalchips.org no longer exists. Attempting to open one of Joanne Hughes’s blog entries results in being redirected (oddly enough) to www.elvis.com. Much as this project champions non-print rhetorical analysis tactics, I am grateful for deciding amidst my collecting to print out and/or save as PDF files key texts discussed here, a decision that has proven invaluable. The sudden disappearance of *Political Chips*, providentially, highlights this chapter’s interest in timeliness.

Cataloging texts included categorizing by date, marking elements and similarities. As one might suspect, the initial elements I tracked mirrored those common to print text indexing—author, title, date, publisher. As the collection grew, I began to track other things: image use, linking, search terms, comments, updates, text type, etc. Additionally, the traditional avenues of information collection allowed me to notice patterns of information dispersal. For instance, October 26 saw the posting of five news articles. This mirrors traditional news reporting, where multiple newspapers or television stations report on the same story—with only local flavor
and/or subtle political leanings distinguishing an otherwise commonplace storyline. The significance of the date simply comes from the fact that the grand jury announced its decision on that date. News follows action. In this instance, noting that five stories emerged on the October 26 is not all that significant.

However, when we look at the dates for personal blog entries about the story, different patterns emerge. Case in point, the first personal blog post related to the story occurred one day after Hughes posted her first *Political Chips* piece, six days after she posted her change.org petition went live, and twelve days after Fox 4 News ran its first segment on the story. The lag time between the first news report and the first personal blog post (that was not by Hughes) is likely the result of the internet’s timeliness: The “Kansas Citian” may have spotted the story on a news site, or viewed it in his news feed; he may very well have seen Hughes’s *Political Chips* post (or reference to it on an internet conservative news board). As news coverage of the story picked up (and cycled outward from local to national coverage) so did personal blog responses. It is also quite possible that local bloggers first learned of the story from national coverage generated from local news outlets. One of the most interesting anomalies comes from a conservative Alaskan politician who reposted a story from a UK news outlet.

I cataloged digital texts by three basic types: news, petition, and personal blog. News is further distinguished by local, national, and international. For each post, I tracked authors, dates, host site, and collected stable URLs for each piece. I additionally tracked author and host locations. In most cases, authors and hosts reside in the same location; however, because the internet doesn’t require authors and hosts to be centrally located, many of the texts operate with authors in one locale and general host/audience in another. Of the information I collected, one of the least useful turned out to be tracking the differences between initial publication date and updates. The differences are, for the most part, only evidenced in news outlets where fact checking and updating are a matter of ‘proper’ reporting. Personal blogs rarely post updates (if posts are updated, readers aren’t privy to the information). With regard to authors, one of the
key differences between news outlets and personal blogs is author anonymity. News outlets typically have authors identified—including pictures, locations, and links to additional stories by the reporters. With personal blogs, authors can be and often are essentially anonymous. While bloggers are free to divulge as much personal information as a news outlet, rarely is such information provided. In some cases (like the Kansas Citian) a username is all that is provided.

As my collection grew, I found the need to track additional aspects—eighteen criteria in all were tracked. As I noted in the first section of the case study, “Accept or Reject” lives on the internet by representation only. As such, images are the primary way it is observed digitally. News outlets like Fox 4 News attached video segments to their posts, wherein a variety of angles reveal the sculpture in three dimensions. Personal bloggers, however, rely on static photographic images. In most cases, the images used by bloggers are recycled from images used in news stories, ‘borrowed’ from Google image searches, and are often unattributed. Joanne Hughes used images she herself took of the sculpture; Hughes’s images are, it’s worth noting, ones that have been repeatedly co-opted by personal bloggers.

In most cases, only one image is provided of “Accept or Reject,” and it is typically a full frontal image of varying quality. In a few instances, the image is altered. The exposed breasts are covered by black or red bars, or blurred out, various parts of the sculpture are highlighted or cropped out. In one image from Fox 4 News, Phillip Cosby is shown standing next to the sculpture holding what we might assume is the AFA’s petition. A few posts that support Hughes refer to images of the statue that include children posing next to the piece in a similar manner. While these may exists, I have not found any of them in my general searching.

Comments are another aspect of digital texts that reveal interesting trends and affects. Most of the digital texts collected allow user comments. A majority of the pieces that allow comments, however, have no comments. This suggests that while personal bloggers and news outlets may be visited by varying numbers of internet users, those visitors rarely choose to personally interact. Of course, while these stories are accessible by millions of internet users,
users are not necessarily accessing them. For example, a professionally managed website like Huffingtonpost.com registers over 44 million backlinks, while two randomly selected personal blogs from my collection registered only 330 and 51 backlinks respectively.19

What comments (or lack of comments) reveal is exactly what Queen means when she claims “The sociotechnical production of cyberspace—the knowledge-power processes that inscribe and materialize the world in some forms rather than others—is the very embodiment of globalization and, thus, shot through with material and structural relations of force” (472). The stories with the most comments are the stories that are most visible and have the most cultural currency. For instance, the digital text with far and away the most comments (2,250) is The Huffington Post piece from September 2012. The second most commented on piece is also from The Huffington Post (it’s follow up piece to Cosby’s renewed efforts; posted on 10/3/13). This piece collected 224 comments.20 Local news articles and personal blog posts with comments typically have less than fifty comments.

In terms of knowledge-power processes and structural relations of force, if we compare Huffington Post’s 2,250 (plus 224) comments to the 42 comments Hughes’s first Political Chips post garnered, we can see how internet spaces are populated and distributed much in the same ways as print media spaces: The Huffington Post is a liberal-minded news outlet, representing the kinds of journalism often derided by political conservatives. As a ubiquitous internet presence and news outlet, then, The Huffington Post provides a large, rhetorical space for internet conversation that is far from boundary-less. Furthermore, sifting through comments and quickly assessing whether or not commenters are for or against Hughes, the overwhelming

19 A “backlink” is any link received by a web node (web page, directory, website, or top level domain) from another web node. Viewing backlink data is one way to test a website’s web traffic. I used Semrush.com to access backlink data for both thekansascitian.blogspot.com and viewfromthemidwest.com. Worth noting is that the data I cite is for the entire blog sites and not the specific posts I used for this case study.

20 Both Huffington Post pieces have closed commenting, which also means that these comments are no longer accessible to readers. When I accessed Hunter Stuart’s article on 19 Jan. 2015, comments were closed but still accessible. I was able to capture a handful of the oldest comment threads by opting to “Print” the article and then save it as a PDF. Unfortunately, this was not the case with the earlier story.
majority come out against Hughes, often referring to her in negative, sarcastic (even vulgar) terms. “Thomas P. (OldUncleTom)” (a “Super User with 1,033 fans) for instance, noted (on 3 Oct. 2013), “I just want to thank the arts community for giving AFA something mindless and inane to occupy their time and energy. It keeps their phony religious views out of the political arena, where they can do some real mischief.” Another user, “Abelard S. (themightyabealrd),” questions, “So a group of (the wrong kind of) boobs wants to ban a statue featuring (the right kind of) boobs?” These comments are indicative of the general tone of anti-Hughes, anti-AFA sentiment promulgated by The Huffington Post website readers/commenters. Even those who register concern seem tentative in the onslaught of Hughes-bashing: “Trent Youngs (Trent_Youngs)” (who only has a mere 43 fans in comparison to the 1,033 fans of “Thomas P.”) simply states, “It is a bit over the top,” referring we can assume to “Accept or Reject.”

The 42 comments on Political Chips are all in favor of Hughes’s crusade due primarily to the fact that Political Chips is a self-professed politically and ideologically biased social media outlet—biased toward the kinds of rhetorical positions taken by Hughes and her petition supporters. Further scrutiny of those 42 comments reveals them to be written by only a handful of commenters who closely interact with the author, much like they would with friends and acquaintances in physical proximity. Indicative of this stance is “CHIPS VIP” Yvonne Starks who posted more than one comment on at least three of Hughes’s posts. While Starks professes her support of Hughes’s campaign (offering a “Good luck” in a 25 May 2012 comment), most of her commentary is directed at politicians involved (some marginally) in the obscenity debate. It is the politicians who are at fault, Starks complains, and should be pilloried for foisting such art on a constituency that clearly doesn’t want it.

A point of contention: I discuss the problematic interface of Change.org below in relation to web traffic time/date stamping, but in addition to being difficult to trace specific dates, the way Change.org works makes it impossible to discover a specific number of comments. We might assume that a fair amount of the petition’s signatories left comments (and/or that commenters
who didn’t sign the petition represent a significant number). A conservative estimate might be anywhere between 300 and 3000 comments. If we incline toward an average number, there could feasibly be around 1,500 comments, which is still significantly less than the most popular Huffington Post article. For the purposes of this project, it is not necessarily worth spending too much time parsing hypothetical comments, though doing so would join interesting conversations about the rhetorical action of internet commentary. What is worth noting is that the cyberspace into which all of these digital texts have been cast creates a variety of spaces both for and against Hughes, spaces that ultimately allow for a multitude of anonymous users to support or (more often) discount Hughes’s rhetoric. While her initial petition garnered over 3,000 signatures, nowhere else in cyberspace did Hughes find such support. Where Hughes was most vocal (outside her appearance in local news video coverage)—on Political Chips—she was also least visible. Furthermore, as the few comments that accompany her posts reveal, she was essentially preaching to the choir.

An interesting by-product of Hughes’s Political Chips posts: Only members are allowed to comment on posts but all of Hughes’s posts are accessible by non-members. In this way, given the overwhelming response against Hughes in all other internet venues, it is safe to speculate Political Chips not only did little to bolster her campaign but that it may actually have provided fodder for bloggers and vocal, retaliatory users. I have not found this to be the case; however, it is a possibility that cannot be discounted, especially when we consider the power dynamics represented by digital circulation. Furthermore, this issue of access (open access for viewing; limited access for commenting) speaks to this case study’s ultimate argument: digital rhetorical space is necessarily and always already permeable. Political Chips is a internet venue designed to produce and foster a community of like-minded individuals. Its members-only driven content establishes exclusive boundaries. And, for the most part, those boundaries are successfully maintained. However, open access for viewing allows for an open (inclusive) audience. While open viewing access creates an inclusive rhetorical space, the restricted
content producing aspect mediates the rhetorical force of that space; realistically, though, while audience access is open, non-members likely occupy a negligible portion of the actual audience. Furthermore, member status is contingent on profile creation. And while the site operates with a moderate amount of membership screening (new members are asked to agree or disagree with the site’s mission statement and membership requires administrative approval), the site isn’t impregnable by opposing views and/or users (or trolls).²¹

The first story I accessed was Adler’s; however, the first online news report appeared two days earlier on the Kansas City Fox 4 News website, accompanied by a video segment that aired during a Fox 4 News broadcast the night before.²² Between May 11, 2012 and February 27, 2014 Fox 4 ran six segments on the story, the most of any of the local television news outlets. Of the local newspaper sites, The Kansas City Star reported the most, with at least six stories posted online between May 24, 2012 and October 8, 2013. An interesting anomaly, however, is a specific video segment from KMBC-TV 9 which was linked and shared by at least five different internet media outlets, including Yahoo! News and Bing News. Additionally, the story was referenced on four separate “Kansas City Week in Review” segments broadcast on PBS station KCPT. These segments used video footage from television station KSHB 41, which ran five video segments linked through three online story posts.

News coverage of this story, for the most part, followed the developments as they emerged. Fox 4 News reported first, at the request of Hughes, followed up when Hughes sought

²¹ In April of 2015, I attempted to gain access to Political Chips as a user. I submitted my name and email to their new member form and was told that I would be contacted after my credentials were reviewed. I never heard back from the site’s administrators. Up until recently, I assumed this was because my credentials were not satisfactory (I have a visible, academic web presence that is clearly liberal-minded if not overtly political). However, given my recent discovery of Political Chips’s demise, it is very likely that my membership request simply went unnoticed.

²² While the video included on the website does not have a time/date stamp, the thumbnail image for the video reveals a 10:16 beneath the Fox 4 News logo, along with a temperature. This would seem to indicate that the story was initially broadcast at 10:16 p.m. during the Fox 4 News at 10 p.m. broadcast. This is corroborated by Hughes’s Political Chips post that indicates that she contacted Fox 4 News and provides comments that place the original air date of the story. Interestingly enough, this first news segment includes video of the statue in graphic detail, with several close up images of the statue’s various parts. These statue details were blurred out in later broadcasts.
audience with the City Council (and was denied), when Hughes and Phillip Cosby met with the Mayor of Overland Park, when Hughes and Cosby collected all the necessary signatures, when the grand jury petition was submitted and, finally, when the grand jury verdict was revealed. Notably, the busiest news month was June 2012, with June 5 and 6 witnessing the largest number of posts to date. I was able to collect 26 internet “hits” for June. Of these 26 posts, 13 are classifiable as primarily news related. Seven of the 26 posts are from personal bloggers. Another spike in news coverage occurred in September 2012. Four news stories were posted; however, three news-related “opinion” pieces were also published in September. September was also the month during which the story witnessed the most medium to large media outlets posting news-related opinion pieces. It was during September that the Huffington Post first reported on the story (“Joanne Hughes, Kansas City Mother, Petitions To Get ‘Sexting’ Statue Removed From Park”). The story was also reported internationally in September, appearing on the UK’s Daily Mail website on the 6th.

Earlier I referenced Hughes’s blog posts on Political Chips, a site that claims to be “an organization of American citizens who believe solutions for improving this great nation should be based upon conservative principles and Christian values.” The audience for Political Chips is notable because while Hughes opted to use Change.org to host her petition, her decision to use Political Chips to deliver her most extensive ruminations on the issue speaks to her recognition of audience needs/expectations. Political Chips is clearly a digital space where her target audience might congregate, and it likely proved useful for amassing signatures for her petition and the AFA’s. Political Chips is clearly a place marked by ideological boundaries, and a decision to become a member and post rhetoric within its boundaries speaks to the ways in which the internet does have boundaries, even if they are necessarily permeable (as Political Chips’ boundaries are). Access is one thing; interaction is another. Much like we can travel to Mexico with valid passports but we can’t vote in Mexico, the internet operates by and through the establishment of ideological and capital boundaries. We congregate on the internet in places
where we might very well congregate in material locales, and we pay for access to internet spaces in the same ways we would pay for access to physical venues that appeal to us. In this sense, then, digital delivery is most certainly not simply a matter of using access but recognizing how access is constrained and afforded by political and ideological forces.

Because of the way Change.org “dates” its materials for both visitors and registered users, we can’t know for certain access and signature dates over one month old. Hughes’s petition, the website tells us, was deployed “three years ago.” However, on April 23, 2015, the latest comment left under “Reasons for Signing,” from Lisa Griffin of Reidsville, NC, was posted “13 days ago.” Looking through the comments sorted by “latest” reveals that every few months someone signs or comments on the petition. Furthermore, while a majority of the commenters are from Missouri and Kansas, a significant portion of supporters are from other parts of the country. It is safe to assume that Lisa Griffin stumbled onto the debate through any number of digital outlets—through the intersections of ongoing obscenity conversations, through hyperlinks that hide or deemphasize date (time), from social media-based memes or story recirculation. What is telling about her access and engagement with Hughes’s petition is how her comment appears and is (logically speaking) out of date. While the potential to resurrect the petition remains, the initial rhetorical force of the petition has long since past. And yet, she still chose to sign the petition, a fact that raises interesting questions about the internet’s timeliness.

Lisa Griffin’s decision to sign an outdated online petition is a product of how social media typically operates, essentially bolsters my main arguments about timeliness, and aligns with Queen’s insistence that the fundamental promise of rhetorical genealogy is that it makes visible “the material realities from which [digital texts] emerge and through which they circulate to produce alternative fields for encountering each other in the moment of rhetorical action” (476). In this case, “the moment of rhetorical action” for Joanne Hughes has essentially passed; however, it has not necessarily passed for Lisa Griffin. There is still something valuable to end-users like Griffin seeking validation and support for their opinions in the rhetorical spaces of the
internet. As a digital text, Hughes’s petition continues to exist and act, even if its actions are simply a matter of identification and solidarity of viewpoint. In this way, Hughes’s petition is both of a time (timely) and timeless. The temporal difference—the space between timely and timeless—is a space filled by the conundrum of digital delivery and its ability to mediate for, against, and outside the intentions of a specific rhetor. In this way, simply put, anything set loose on the internet can be—and often is—relayed or repurposed both with and without an original author’s assistance, knowledge, or intent.

What emerges from this genealogy is a sense of the story’s digital unwieldiness. If we start and stop with Hughes’s petition, her first Political Chips post, and the first Fox 4 News report posted online, we might have a relatively discrete and finite story. However, this simple case of a concerned mother seeking to have a shocking sculpture removed from a local park prompted more than seventy individual news/opinion internet posts with thousands of comments from local, national, and international internet users. Furthermore, three years after the original incident occurred, the story still manages to garner attention and produce linkable texts.

Returning again to Queen, Hughes’s story typifies the notion that “the sociotechnical production of cyberspace—the knowledge-power processes that inscribe and materialize the world in some forms rather than others—is the very embodiment of globalization and, thus, shot through with material and structural relations of force” (475). At the local level, the story is simple. Thousands of individual voters in Johnson County collectively voiced their displeasure regarding a controversial sculpture. The scope of this community of voters can be finitely located within the boundaries of one affected county. That these voices failed is beside the point. Or, rather, their failure is a failure of jurisprudence (or, success, depending on your viewpoint of due process) not of rhetoric alone. Instead, what is notable is that the community standard at stake was confined within the material boundaries of Johnson County. When the debate hit the internet, the “sociotechnical production of cyberspace” remediated the “material
and structural relations of force” in ways Joanne Hughes was both unable to anticipate and control. The result was a wave of antipathy.

Put another way, the very boundaries Hughes sought to bolster by redrawing in cyberspace—through her petition and her Political Chips posts—proved just as ineffective as they did in the material space of Johnson County. While Hughes did garner significant support from online—global—sources, she also garnered significant opposition. Queen aptly notes, “Although advocates of Internet technology imagine an unbounded, infinite space in which to enact postmodern concepts of fragmented, multiple, liberated identities through disconnection and disembodiment, the material reality of the (re)production—both process and product—of cyberspace is neither disconnected nor disembodied” (472). Queen here imagines something very different with regard to internet technology than, I imagine, Hughes did. But the results are the same, which is to say that just as the internet’s false promise of infinite space for postmodern fragmentation—for freedom from political and ideological shackles—betrays liberal humanists, so too does it betray the likes of Joanne Hughes who hoped for solidarity that not only does not exist in greater Johnson County but cannot exist in cyberspace. This is evidenced particularly in the permeability of Political Chips and the sheer amount of oppositional web content that has emerged in the wake of her petition—and which continues to emerge even as a defeated Hughes ostensibly conceded defeat.

This has very real implications for this study’s interest in rhetorical delivery and timeliness. Both of which are further demonstrated/exposed by Queen’s feminism: Queen notes, Internet technology is often perceived, paradoxically, as a technology that connects us to others while it simultaneously remains disconnected from material reality. Many women’s rights groups and feminists embrace Internet technology as a way to break down spatial and temporal distances and to open possibilities for global connection. When we embrace Internet technology in this way, we
make the medium itself transparent, as if digital technology functioned outside
the temporal and spatial contexts of geopolitical relations” (473).

Queen’s point here is that medium transparency is a fallacy: Digital technology does not
function outside the temporal and spatial contexts of geopolitical relations. If anything, both
Queen’s rhetorical genealogy of digital texts and this one demonstrate the reification of temporal
and spatial contexts. The ways in which Hughes’s story and rhetoric have been structured and
restructured through cyberspace demonstrate both the duplication of material boundaries and
ideological boundaries.

Time and place, despite general attitudes toward the contrary, are not inconsequential to
cyberspace. In fact, it seems that both are essential to digital discourse. Joanne Hughes’s
Political Chips posts reveal the spatial and temporal qualities of digital texts to be rhetorical.

Digital delivery is ultimately about identifying and/or opening up rhetorical space, in creating
and/or navigating digital boundaries. This case study’s focus on rhetorical delivery highlights the
permeable borders that rhetorical actions seek to establish. Digital objects travel across
networks, altering them in subtle and not so subtle ways as the move. However, as the focus of
my rhetorical genealogy suggests, the boundaries that rhetorical actions seek to establish do so
with regard to timeliness and the creation and maintenance of rhetorical space.

Rhetorical action seeks to affect/create space even as it acts/moves through various
(cyber)fields. This can be explained through the function of Joanne Hughes’s rhetoric—with the
mismatched rhetorical actions between place and space. In Kansas—in Overland Park—and
the place as so defined (by zip code?), Hughes’s rhetoric might very well act a predictable ways.

Her call for a petition was successful, especially when bolstered by the AFA. The direct action of
amassing signatures for civil action worked through traditional channels. While the grand jury
decision did not support Hughes’s and the AFA’s ultimate goal, the very act of empaneling the
jury can be seen as successful rhetoric delivered in place. In establishing a cyberspace,
however, Hughes was unable to account for the operation of her rhetoric through rhetorical,
digital fields. Where Hughes imagined space, there was a field. While Queen even notes that we needn’t abandon space as a rhetorical metaphor, I would argue that we can’t abandon it because ontologically, rhetoric requires space—its creation and its negotiation.

4. Conclusion: Adventures in Time and Rhetorical Space

The case study at the center of this chapter operates from the theoretical assumption that timeliness is intrinsic to internet-based communication technologies, which makes these technological discourses essentially kairotic. Kairos, John E. Smith notes, “points to a qualitative character of time, to the special position an event or action occupies in a series, to a season when something appropriately happens that cannot happen just at ‘any time,’ but only at that time” (47). For Smith, “[kairos] is peculiarly relevant to the interpretation of historical events, because it points to their significance and purpose and to the idea that there are constellations of events pregnant with a possibility (or possibilities) not to be met with at other times and under different circumstances” (47). The actual physical, material emergence of Joanne Hughes’s story demonstrates how a “constellation of events pregnant with a possibility” emerged when she first witnessed Yu Chang’s provocative sculpture at the Overland Park Arboretum (47).

However, this case points towards much more than a simple retrospective observance of a seemingly failed deployment of a timely, kairotic rhetoric. What it ultimately demonstrates is something much more noteworthy to rhetorical studies: It suggests that digital delivery is operationally kairotic, primarily because of the timeliness of a rhetorical situation and rhetoric’s movement from one place to another via communication technologies. A rhetorical situation is (1) a place (material and/or metaphorical), and (2) a space delineated by a rhetor’s action, indicated by movement either within predetermined place or from a predetermined place to another place. If we consider the simple notion that audiences are physically located at variable distances from rhetors, then rhetoric moves through the spaces between rhetor and audience,
from place to place (through space). When we consider this notion with regard to cyberspace—as
mediated by communication technologies with varying degrees of interference—through
what Brooke calls the “interface”—it becomes not just an interested (invested) process but a
multilayered process. By delineating a situation rhetorical, we set up rhetorical boundaries and
establish a place for rhetorical movement and/or kairotic rhetorical action.

*Kairos* operates from the identification of a timely situation wherein successful (or
unsuccessful) rhetoric is invented and deployed. Place becomes rhetorical when a moment
emerges for the deployment of a rhetoric. Jenny Edbauer suggests the rhetorical situation can
be (should be) “conceptualized as a mixture of processes and encounters.” Edbauer adds, “The
intensity, force, and circulatory range of a rhetoric are always expanding through the mutations
and new exposures attached to that given rhetoric, much like a virus" (13). Joanne Hughes’s
crusade clearly employs the viral (even if Hughes was not cognizant of this fact). While Hughes
did pursue a hard copy petition and solicited signatures in public forums, her turn to change.org
and *Political Chips* represents her rhetoric’s entrance into not only her own demarcated
cyberspace but the viral as well.

What I am suggesting—under the theoretical umbrella of *kairos* and timeliness—is that
while most (if not all) rhetorical situations are always already *kairotic*, in the case of digital media
and delivery, rhetorical situations are always already viral. This virality—wherein digital media
spread and network with or without the action of a specific rhetor—is necessarily *timely*. Both
the identification of an opportunity and the creation of an opportunity require careful
consideration of rhetoric’s timely delivery through mediating technologies. In this sense, the
rhetorical situation is a permeable *place* to be negotiated; it is also a *space* created by the rhetor
(in and through mediating technologies like the internet) in the opportune moment.

Thomas Rickert reminds us, “the older meaning of *kairos*” is “‘mark’ or ‘target’ with the
implication of specific emplacement” (78), and notes “the opening through which the shot must
pass is quite clearly a *place*” (79). “Thinking place *kairotically* and *kairos* spatially,” Rickert
concludes, “moves us from a subjectivity of semiautonomous, willing agents to something like subjectivity as condensations of probabilities realized in movement, materialized in space, and invented in place” (97). Movement, space, and place, I suggest, invoke delivery. Place: Hughes’s material experience of “Accept or Reject” and the instantiation of her obscenity claims. Space: the digital proliferation and manifestations of her crusade. Movement: the rhizomatic rhetoric of Hughes’s viral campaign. The oldest meaning of kairos is evoked by the arrow of delivery. Time and place are the mark, the target, that must be hit by the delivery of the arrow to the appropriate spot. When we imagine the arrow as technological discourse, especially digital media and digital delivery, we must recognize that the arrow itself is not wholly in the control of the marksman, nor does it ever really hit one mark and simply stop.

This case’s complicated shuttling between place, space, standards, audience(s) and rhetorics point us to 1) the myriad problems with navigating contemporary social movements in cyberspace, and 2) the even more problematic locatedness of digital media and the internet. Both of these points find answers (hopefully) in reconceiving rhetorical delivery as kairotic. I keep thinking about Hughes standing in front of “Accept or Reject” with her children. She clearly rejected it. As a member of her community, she should (and does) have the right to reject it, and to mount community forces to do something about that rejection. Which she did. I also keep thinking of a video clip of Phillip Cosby slapping down physical copies of signatures at the courthouse. A community of signatures. That the grand jury decided against those signatures says something about not just the power of community mobilization, but the potential disconnect between the community and its governing agencies. Whether or not social media impacted the grand jury is unknowable. What is known, however, is that social media pilloried Joanne Hughes and her message. By appealing to a national audience, she unglued localized obscenity values (from their place) and floated them into the muddled currents of cyberspace, which handily sank her definitions of art and obscenity.
Conclusion: Navigating Permeable Boundaries

*Da Mayor: Doctor...*

*Mookie: C'mon, what. What?*

*Da Mayor: Always do the right thing.*

*Mookie: That's it?*

*Da Mayor: That's it.*

*Mookie: I got it, I'm gone.*

-- Spike Lee, *Do the Right Thing*

1. Reassembling *Kairos*: (Always) Do the Right Thing

The pivotal scene of Spike Lee’s *Do The Right Thing* (1989) is easy to misinterpret. When all the tension that builds throughout the hottest day in Bed-Stuy Brooklyn finally boils over—when Italian American pizzeria owner Sal (Danny Aiello) smashes the young, black Radio Raheem’s (Bill Nunn) boom box and precipitates a fight that ends with Police strangling Radio Raheem to death—something unexpected happens: Pizza delivery man Mookie (Spike Lee), quietly and unobserved, empties a nearby trashcan onto the street then runs toward Sal’s *Famous Pizzeria* yelling “Hate!” and throws the trashcan through the window. This simple, destructive act epitomizes *kairos*: It is an appropriate and timely rhetorical act fit to this (and only this) particular situation; it is an act that starts a riot and ends with the burning down of Sal’s *Famous*.

To determine Mookie’s act as appropriate is to understand the tension between the two quotes presented at the end of the film. One is from Reverend Martin Luther King, Jr. wherein King advocates for nonviolence in the face of racial injustice. The other quote comes from Malcolm X and counters King’s stance with a realistic though problematic statement: “I am not
against using violence in self-defense. I don’t even call it violence when it’s self-defense. I call it intelligence.” These two observations hang heavily in the air around the burnt wreckage of Sal’s Famous. Violence could have been avoided; the argument that stoked the fire was, arguably, a stupid one. It had little to do with race, though Buggin’ Out’s (Giancarlo Esposito) insistence that Sal put pictures of famous black people on his pizzeria’s wall certainly instigates race-based agonism. However trivial the initial argument, a young black man is killed and a longstanding neighborhood pizzeria is thoroughly destroyed.

The film intentionally courts the question, why? Why does Mookie throw the trashcan through the window and effectively start a riot? The film carefully establishes a familial relationship between Mookie and Sal. Whether or not Mookie feels this way, Sal clearly sees himself as a father figure. So why would Mookie intentionally destroy his surrogate father’s business? The answer to the question is complicated and gets at both the heart of the film’s stance on race relations and its intentionally polarizing nature. To view Mookie’s act as a form of racial justice is, to an extent, to agree with Malcolm X: In a retaliatory act of self-preservation, self-defense, Mookie responds by destroying an institution that represents racism.

The first time I saw Do The Right Thing, I didn’t “side” with Mookie. I didn’t understand why he threw the trashcan. Like Sal, I felt betrayed by Mookie’s action. This, of course, was me reacting as a young white male who (unknowingly) identified with the most sympathetic white character in the film. It wasn’t until I viewed the film for a second time that I changed my position, that I began to understand why Mookie does what he does. And while I was still a white male who could not truly empathize or identify with Mookie, I did better understand his motivation and his action. On a third viewing, I came to the conclusion that Mookie’s action is the only “right thing” for the moment—and is therefore an act of kairos. Mookie assesses the situation, in the moment, and the trashcan becomes the arrow hitting its target, the needle entering the hole. Radio Raheem’s “property” is destroyed by Sal and in his absence, in retaliation, Mookie destroys Sal’s property. Within the context of racism and American race
relations, property is never simply disinterested, quantifiable capital. Raheem’s boom box is a statement and embodiment of self—it is a signifier by which he operates. His boom box along with his “Love” and “Hate” rings—one on each hand to represent the dualism of his personal philosophy—is more than affectation, it’s a necessary extension of his contested black body.

That Mookie yells “Hate” signifies his affiliation with Raheem, but the destruction of property goes beyond a simple eye for an eye (or a radio for a pizzeria). It acts, in part, as a rhetorical deflection. The Police are not justified in their killing of Raheem; theirs is an act of racial violence that cannot be effectively returned or countered in measure. No. Mookie cannot “repay” the killing of Raheem by killing Sal. Instead, the only avenue of retaliation (one of necessary violence as self-defense ala Malcolm X) is one against property, against institutionalized whiteness represented by the business of Sal’s Famous. By throwing the trashcan through the window, Mookie diverts the violence away from racialized “murder” in response to Raheem’s killing to violence against property, against institutional violence. He thus does the “right thing,” a side effect (or, possibly the main effect depending on your reading of Mookie’s motivation) is the saving of Sal’s life from the retributive violence of the angry mob. Mookie destroys Sal’s Famous—Sal’s property—and saves Sal.

This is kairos.

What does this explication of Do The Right Thing have to do with this dissertation? First, it demonstrates one last time the complexity of kairos. Propriety, appropriateness, and timeliness all coordinate in Mookie’s rhetorical action—an action that is not a simple, indecorous reaction but a thoroughly right action for the moment. It also serves as an update to the classic arrow and weaving metaphors. If we are to understand what kairos offers us in a contemporary context, we can envision Mookie’s trashcan instead of the arrow. In this way we can better understand Rickert’s observation that kairos is “a theoretical vector at odds with any emphasis on rational or technical planning,” that “kairos resists formalization and mastery” (74). Mookie’s throwing of the trashcan is not rational; it is not the end result of technical planning. It is,
however, doing “the right thing” based on the vectors of the situation. The shattering glass is also a useful metaphor for the permeability of rhetorical boundaries. Mookie’s action is right, even though it is wrong. It is a crossing of borders that redraws the rhetorical, agonistic boundaries of the argument started by Sal and his smashing of Radio Raheem’s boom box.

This example also speaks to Aristotle’s oft-cited notion of rhetoric’s use of “available means.” Mookie’s message is delivered, not just with an intonation of “Hate!”, but with the rhetorical force of a trashcan breaking glass. To think of delivery in this way is to open the classical concept up to the considerations this dissertation has presented with regard to communication technologies. Mookie’s message (“Hate!”) is delivered through the force of trashcan breaking glass; when we consider the constraints and affordances of the trashcan itself as communication technology, we better understand the rhetorical force of the message as it’s delivered. We also must recognize the operation of *kairos*: In any other moment, Mookie’s action would be vandalism; in this moment, the destructive force of the trashcan becomes appropriate, timely, and the “right thing.”

Beyond the simple equation of trashcan with communication technology, we have the act of breaking glass as representative of border crossing (shattering): In essence, the pane of glass is a racial boundary—it is all that stands between the black neighborhood of Bed-Stuy and the white (Italian-American) space inside *Sal’s Famous*. In general practice, it is an impermeable boundary. It is enough of a boundary to allow Sal to establish his own rhetorical space—one where famous Italian-Americans are awarded privileged spots on his business’s wall. What Mookie’s action demonstrates, however, is the ultimate permeability of the boundary

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23 Like many city businesses, *Sal’s Famous* also has security doors that are typically in place after business hours. Because the riot occurs at closing time, these have not yet been rolled down to secure the store. While these security doors serve a very real, practical purpose, they also serve the metaphor extended here in that time (of day) and context (open/closed) requires additional boundary mediation.
and its ability to be easily transgressed. Sal’s glass boundary is an apt metaphor for the kinds of boundaries established, mediated, and transgressed by rhetorical delivery via communication technologies. Its appearance is seemingly stable, socially impenetrable; however, it is easily broken (collapsed) by a bold rhetor seeking to re-establish rhetorical space.

If we dial back from Mookie’s action to Spike Lee’s we recognize that Mookie’s message is ultimately Spike Lee’s as writer and director of the motion picture—a point that further substantiates the creation of rhetorical space as a matter of delivery and communication technologies. Do The Right Thing’s Bed-Stuy neighborhood is a filmic space, one which models the real Bed-Stuy but is ultimately a rhetorical creation of Spike Lee, and from within the boundaries of the filmic space, Lee delivers his message. But here, too, it is not simply a matter of one writer/director delivering a message to one stable audience. The film operates as a collective creation of actors and agents, of technical mediators and distributors, a grand machinery orchestrated toward delivery and distribution to myriad audiences and film viewing spaces, one that is ultimately not the sole act of a singular rhetor.

From trashcan, to film, to mail order, radio, and internet, technology acts as a pervasive mediator of rhetorical delivery, often (and even) providing constraints and affordances in the same breath. One of the points not made explicitly in the case studies, but one that underlies everything in this dissertation, is the multivalency of delivery, its movement through layers of interestedness by means of communication technologies—through all technologies for that matter. When we search between the actors of the simple rhetorical equation rhetor-text-audience, we discover a multitude of forces at work on messages being delivered across any and all technological platforms. In this din of forces, what finally becomes not teachable, not rational even, is the need to better understand and act from a position critical of propriety and appropriateness, to understand the mediational forces of decorum—and, of course, to recognize

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24 The permeability of Sal’s boundary is also witnessed in the constant stream, in and out, of his customers through his business’s screen door. Furthermore, Sal’s relationship with Mookie’s sister, Jade, is both fatherly and romantically inflected, suggesting slippage between socially assigned roles.
the power and possibility of timeliness. The power of Cicero’s observation is clear: “In an oration, as in life, nothing is harder than to determine what is appropriate” (176). Mookie clearly didn’t set out to destroy Sal’s Famous (he only wanted to get paid); however, his particular attunement to the situation, his understanding of his neighborhood’s sense of propriety and appropriateness, allowed him to negotiate the rhetorical situation and act accordingly.

2. Hitting the Target: Rhetorical Delivery and Emplacement

In “Composition’s Imagined Geographies,” Nedra Reynolds explores what she terms “the politics of space” (13), echoing postmodern geography’s claim that spaces and places are “socially produced through discourse,” that “these constructed spaces can then deny their connections to material reality or mask material conditions” (13). While Reynolds’s interest is in how such masking affects compositional spaces, especially with regard to gender, race, and class politics, when considered in conjunction with the assembled case studies of this dissertation, this masking of material conditions can be labeled a product of rhetorical delivery: Socially constructed spaces are effectively rhetorical, produced as they are through social discourse. When we consider the role of the rhetor as effective observer of propriety, delivering appropriate and timely rhetoric, we can imagine not necessarily the intentional masking of material reality so much as a redrawing of rhetorical boundaries to establish a space within which his or her rhetoric functions. We might, like Cicero, point to the ethos of the rhetor, or his or her inventiveness. However, the rhetor’s understanding of propriety and decorum, his observance of timeliness, isn’t enough (or the whole picture). It is through technical delivery that space is drawn, created, maintained, even redrawn, remediated, and transgressed.

Recalling one of the oldest meanings of kairos as weaving, which appears in Homer, Hesychius, Aeschylus, and Pindar, Rickert notes, while “the sense of critical time is clear... the opening through which the shot must pass is quite clearly a place” (79). This leads Rickert to
theorize an ambient rhetoric as an accordance with place (environment), where “kairos is not about mastery but instead concerns attunement to a situation, with attunement understood not as a subjective state of mind or willed comportment but as an ambient catalyst within what is most material and concrete, a gathering that springs forward” (98). What this dissertation suggests is something slightly different. While environment is certainly a factor—and Rickert’s explication of attunement troubles (and rightly so) the myth of the autonomous rhetor—when we shift focus away from place to the act of emplacement, we shift focus away from invention (or environment) to the role of delivery. In terms of the ancient kairos metaphor, this is a matter of looking to the needle and its movement rather than the hand holding the needle or the hole through which the needle is thrust. It is a matter of looking at the rhetorical force of a trashcan.

Switching the metaphor from needle to the arrow (as kairos is also spoken of in ancient texts), we can emphasize movement and the creation of space rather than focusing on the entering into already existing places. In order to make sense of this shift of metaphors, we need to lock down (once and for all) two slippery terms: space and place. In The Practice of Everyday Life, Michel de Certeau differentiates between space and place, noting place “is the order (of whatever kind) in accord with which elements are distributed in relationships of coexistence” (117). “A space exists,” he continues, “when one takes into consideration vectors of direction, velocities, and time variables. Thus space is composed of intersections of mobile elements” (117). For de Certeau, place is fixed and space is “a practiced place,” and it “occurs as the effect produced by the operations that orient it, situate it, temporalize it” (117). He adds, space is like the word when it is spoken, that is, when it is caught in the ambiguity of an actualization, transformed into a term dependent upon many different conventions, situated as the act of a present (or of a time), and modified by the transformations caused by successive contexts. (117)

Space as spoken word, as transformation dependent on conventions and reiteration, is, following de Certeau, rhetorical. And (like language) it moves.
Human geographer and historian Tim Cresswell interestingly notes that de Certeau’s view of space and place, for geographers, is flipped: “[The] idea of social space,” Cresswell writes, “or socially produced space... plays the same role as place” in geography, where place is space imbued by the social (think space = house; place = home) (17). Cresswell adds that “to Certeau, place is the empty grid over which practice occurs while space is what is created by practice” (70). Despite reversing the terms, de Certeau provides useful insight with regard to understanding socially constructed space/place: “The work of Seamon, Pred, Thrift, Certeau, and others shows us how place is constituted through reiterative social practice, how place is made and remade on a daily basis” (70).

For Cresswell, place is the preferred term, in part because it is the already in use (in geography), but also because it allows for less abstraction. Cresswell writes, “space is a more abstract concept than place. When we speak of space we tend to think of outer-space or the spaces of geometry. Spaces have areas and volumes. Places have space between them” (15). Cresswell also notes “the central tension in Certeau’s work is between a systematic grammar of space—an order that we inhabit and is not constructed by us—and our ability to use this grammar in ways which are not predetermined” (70). Cresswell’s observations prompt two comments: First, Cresswell’s noting of areas and volumes, of the space between places evokes emptiness, or a buffer between the constructions of places. This emptiness, however, provides opportunity for filling, or for delineating new places, which is to say that space can redraw place. Space is not only the more abstract term, it is the more flexible term. Spatial flexibility (and, by extension, rhetorical space) at first runs counter to Cresswell’s identification of tension in de Certeau: Space, it would seem, is inhabited though not constructed by us and is useable in undetermined ways. This is a tension of, we might claim, predetermined indeterminacy, which is essentially the postmodern dilemma. Cresswell identifies the struggle in de Certeau’s understanding of practice. However, a way out of this aporia may well lie in Judith Butler’s
theorization of gender performativity, where gender practice (we might say) is both fixed and flexible.

We might best be served by noting that the practice of spatial construction is rhetorical—and thereby affords us certain ways of moving/creating socially imbued rhetorical boundaries. De Certeau’s insistence on direction, velocity, and time variables echoes this dissertation’s understanding of kairos. In particular, my case studies’ ruminations on timeliness, decorum, and propriety as socially-constituted and flexible concepts point to the permeability of rhetorical spaces created, mediated, and reconstituted by delivery through communication technologies. The intersections of mobile elements, orchestrated by any given rhetor (however attuned to imbedded practices of space/place), create and maintain spaces that necessarily remain permeable as a result of kairotic elements. In this way, the rhetor not only effectively looses the arrow of rhetoric but draws/opens the space through which the arrow then travels to hit its mark.

Reynolds’s consideration of cyberspace also aligns with the outcomes of this dissertation, specifically those presented in chapter three. Reynolds breaks down the more or less false claim that “cyberspace offers more opportunities for voices to be heard, that ‘anyone’ can participate” (28). She adds, “Cyberspace is not transparent space, and dominant sexual-social politics are reproduced on the Net (Tannen, Bruckman): crimes have been committed in MUDs and MOOs, with rape and death in ‘the Bungle case’ on Lambdamoo (Dibbell)” (28). This reference to tragic crimes precipitated by/through a supposedly “free” cyberspace breaks down the “attractiveness of naming cyberspace a new frontier” (27). On a seemingly less dire level, chapter three’s case study bears similar marks in that Joanne Hughes’s failed rhetoric demonstrates both the permeability and impermeability of internet spaces. While her petition quickly mobilized thousands of individuals to call for “Accept or Reject’s” removal from the Overland Park Arboretum, the rhetorical space(s) Hughes’s drew through her rhetoric quickly collapsed under the liberal weight of a cynical (worldlier?) blogosphere. Though her rhetoric
pushed across state borders, its affect was limited by its appeal to the same kinds of individuals that occupy the spaces within which Hughes herself operated.

Interestingly enough, the spaces co-opted and remediated by the Senate Subcommittee (explored in chapter three) also bolster this notion, though from the another side (and through older technologies): Kefauver’s effective stoking of juvenile delinquency and mass media fears helped establish wide rhetorical boundaries that allowed for the creation and implementation of a nationally sanctioned obscenity standard, one carried out by the Post Office at the level of mail distribution. The lesson in both cases is one of propriety and timeliness. The Senate Subcommittee’s delivery of postwar propriety was a timely one that saw the effective implementation of industry-wide self-censorship of obscenity—a system that more or less operates the same way fifty years later. Conversely, Joanne Hughes’s crusade was indeed timely; however, her sense of propriety was diluted and dispelled by its delivery into the world wide web.

The collection of case studies presented by this dissertation cumulatively suggests that rhetorical space is mediated (and often defined) by the communication technologies through which rhetoric is delivered. However, because rhetoric is always on the move, it is necessarily intercepted, mediated, remediated in the moment, which suggests that all (effective) rhetoric is kairotic, is filtered through, enabled by time, space, and decorum. What the case studies of this dissertation suggest is that not only does a given situation mediate the message, but the conduits through which messages travel mediate the message. In some situations, the technology even dictates what can and can’t be delivered. Returning to the arrow metaphor, we can see, again, that not only must the rhetor loose the arrow of rhetoric in the appropriate space—determined both by the rhetor and the moment—but that the space is always moving, the boundaries always permeable. It is not, after all, a singular shot at a stable target, nor a shot in the dark at a moving target, but a nearby trashcan thrown at a plate glass window.
3. Orchestrating Rhetoric and Obscenity

What this dissertation ultimately suggests is that the precepts of kairos work on the technological discourses that mediate and/or constitute rhetoric. Delivery is timely, appropriate, or proprietary and not just the message itself, especially when that message is detached from and re-circulated by someone (something) other than the originating rhetor. As chapter two suggested, Carlin’s message itself didn’t really change—it was intentionally indecorous as a way to test and transgress social boundaries. In the comedy club, Carlin’s comedy acted as appropriately indecorous. When broadcast over public airwaves, however, his comedy’s appropriateness shifted registers. Again, it’s important to remember that the message was still valuable, still the same, still did rhetorical work. Otherwise, Carlin might have been tried and found guilty for obscenity. What changed was the context, the situation, the rhetorical space. This is why Pacifica was fined, and not Carlin; this is why Pacification became a landmark case for the regulation of public broadcast space. “Thus,” as Rickert concludes, “context or situation is crucial to the appearance of kairos, and this understanding of context must in turn be simultaneously entwined with and transcendent to the rhetor” (75).

Context is key. This is nothing new. What is new is the alignment of kairotic vectors under delivery in order to suggest that delivery—as always already bound by the communication technologies through which rhetoric travels—is ultimately about delimiting an appropriate, timely space through the negotiation and establishment of rhetorical boundaries. What is also new is considering how obscenity both highlights these very issues for rhetorical theory, and what such conversations about rhetoric reveal about obscenity as a site for rhetorical inquiry. Obscenity is never appropriate nor timely; obscenity is defined and marked by impropriety. Instances of obscenity most often result from incompatibility between localized moralities and externally produced cultural artifacts. As Kerstin May notes, “No object or event is obscene in itself. Obscenity is an argument about the qualities, public exposure and traffic of an object or event”
May, as an art historian and aesthetic theorist, interestingly enough, essentially echoes a similar point made by legal historian/theorist, Whitney Strub who, in his book about landmark obscenity case *Roth v. United States*, notes, “Obscenity… is a technical legal term” (3). Strub’s point, in essence, suggests that the term “obscenity” is primarily a legal marker, one that is by no means settled or stable. Obscenity, by both of these accounts, and as witnessed in the case studies collected here, is a rhetorical designation—a point that has, by and large, been overlooked by rhetorical studies.

Obscenity’s necessary transgression and/or rupture of location and situation reveals the obscene as a peculiar rhetorical construction—one that provides a valuable site for rethinking rhetorical delivery because it always defies appropriate delivery. Obscenity’s slipperiness, this dissertation suggests, is due in no small part to its rhetorical nature. While Justice Potter Stewart may “know it when he sees it,” what is open to argument and debate is how what he sees is not necessarily what others see. Such was the case with how obscenity played out in the Senate Subcommittee hearings; such was the case with how Carlin’s material was defined by its location; and such was the case with Joanne Hughes’s label for “Accept or Reject.” Hughes clearly thought she knew obscenity when she saw it; however, what she saw was not what countless others across ideological borders saw.

That obscenity is always a contestable site seems worth exploring further than this dissertation ultimately does; in particular, obscenity’s ability to so easily rupture *decorum* seems oddly powerful and provocative. Considering how a rhetoric of obscenity might be delineated, both for understanding political and ideological offense and for inciting polemic response, seems a worthwhile endeavor—one that this author is surprised has yet to be undertaken in rhetorical studies.

In chapter two, I primarily focused on Carlin’s material from the era of *Pacifica*. To better explain these final points about obscenity, I turn to some of Carlin’s later material. His 1996 album *Back in Town* opens with the sound of a solo saxophone and a few random fans clapping
and whistling. A rousing round of applause soars when Carlin appears on stage, which lasts for just over twenty seconds. When Carlin finally speaks into the microphone, it is to repeat the question “Why” several times before finishing his question: “Why is it that most of the people who are against abortion are people you wouldn’t want to fuck in the first place?” He then goes on to criticize “Pro Life Conservatives” for close to nine minutes. Reading through the remaining tracks on the album it may surprise someone unfamiliar with Carlin to discover that Back in Town is a comedy album: “Abortion,” “Sanctity of Life,” “Capital Punishment,” “State Prison Farms,” and “Free-Floating Hostility.” Only two of the cuts betray the comedian’s lineage—“Farting in Public” and “Familiar Expressions.”

The tenor of this material clearly marks a shift that began four years earlier with Jammin’ in New York’s first track, “Rockets and Penises in the Persian Gulf,” which extrapolates what Carlin calls the “bigger dick foreign policy.” This material, the first delivered in the set, is clearly political even if Carlin opts more for distortion and humor than for polemic rhetoric. The same can’t be said for Carlin’s follow up to Back in Town, 1999’s You Are All Diseased, which, like Back in Town, opens with an extended round of applause that isn’t broken by Carlin’s voice until thirty seconds in when he says “Thank you very much. Thank you all. Thank you. I appreciate that.” He then asks a simple question: “How’s everybody doin’ tonight, huh?” After waiting a few moments for more applause, Carlin adds, “Good. Well, fuck you!” This is met with more applause and laughter. Carlin then caps off his bait and switch with “Just trying to make you feel at home.”

There is a notable progression in Carlin’s work when it is viewed in total. In chapter two, I quoted Richard Zoglin who aptly notes, “He evolved from white-bread media parodist to counterculture provocateur to curmudgeonly uncle to apocalyptic pessimist” (39). In truth, Carlin had been working toward this shift in the tenor of his comedy for decades. The same comedian who, in the 1970s, stood passionately on his conviction that there are no such things as “bad words,” was, in the 1990s, suggesting we turn the middle states into prison farms and who, in
his second to last HBO special, 2005’s *Life is Worth Losing*, spends most of his time pontificating on suicide.

What this transition in tone suggests is something this dissertation also suggests: While space is, following de Certeau and Cresswell, created by practice and remade on a daily basis in social process, affording and constraining our own abilities to act on and in space, rhetorical acts do modify (however incrementally) space through the process of delivery. The applause that opens *Back in Town* is thunderous, which speaks to Carlin’s popularity, to his audience’s expectations with regard to his ability to make them laugh. The same is true of the applause that begins *You Are All Diseased*. Even when Carlin purposefully tells the audience “Well, fuck you!” the applause (now mixed with laughter) soars even higher. Carlin’s abuse of his audience in this instance is both unexpected and expected. It serves to bolster the rhetorical affect of his comedy.

Yet something curious happens on both of these albums. There is a tension in the laughter and applause. The laughter continues as Carlin descends further and further into social commentary that clearly begins to target larger and larger portions of his audience. The laughter is, however, mixed with small bits of unaddressed heckling and back talking, which is especially noticeable listening to the recordings through headphones. Despite Carlin’s established ethos as comedian, he constantly challenged his audience—almost as if he was daring us to stop listening, or worse, to attack him for his near brutal rebuking of us. What this ultimately suggests is that Carlin was conscious of his invocation of appropriate *indecorum*, that he took very seriously his role as provocateur, and that he both understood and challenged both existing rhetorical boundaries (those governing “comedy” and comedy clubs; those we already inhabit) and those created through his comedy’s delivery.

It also speaks to the power of obscenity’s rhetoricity. Carlin’s work, if we shift perspectives slightly, is not just appropriately indecorous for the sole purpose of eliciting laughter. Carlin was pushing the boundaries of taste—even crossing the line from fairly indecent
to obscene in his later material—not only to challenge social convention but to break social
convention. The final lesson of “Filthy Words” is that crashing through social convention—
shattering the glass with a trashcan, if you will—exposes the construction of obscenity to be
political, ideological. To use obscene or indecent language, then, is not just to flaunt convention;
it is a revolutionary rhetorical act. Furthermore, given the myriad communication technologies
through which Carlin’s rhetoric was delivered—and continues to be delivered—it seems that
obscenity can and does act with a tremendous amount of rhetorical force, especially since its
very nature ruptures and draws attention to the permeability of rhetorical spaces.

While Carlin serves as a final example here, all of the case studies presented in this
dissertation support these assertions. Obscenity is always already kairotic in that it is
fundamentally a challenge to the key principles from which kairos operates. If we were to solely
satisfy ourselves on observed decorum in rhetorical delivery, we might overlook or leave
unaccounted for its critical function and find ourselves stuck in, even co-opted by, a static, rule-
bound system. Such a world would never find the value or power in Mookie’s kairotic act of
boundary crossing. Instead, by looking not only to the ways in which technologies mediate
rhetorical delivery but to moments where social convention is necessarily ruptured by obscenity,
we can better understand the complexities of kairos and the power of a kairotic, even obscene
rhetoric.
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