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The Sweetheart of S. and M.

Barbara Nitke Shoots Whip-Me-'Til-I-Scream Bunch to Tie Up John Ashcroft

BY LIZZY RATNER

Never mind the welts, the burns, the bloody little gashes, photographer Barbara Nitke, there are perhaps few images more romantic than the expression on two lovers' faces after a good session with the whips and chains.

"The delight that you see!" she gushed on a recent Friday afternoon. "Those are often my favorite shots because there's this golden glow, and they have these beautiful looks on their faces. See, what these couples are really doing is expressing love. They just happen to be wired a little differently."

So is Ms. Nitke. The 54-year-old photographer was sitting at a Murray Hill Thai restaurant nibbling spare ribs, her neatly styled brown hair and blazer-

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NAUGHTY NITKE: S & M SHUTTERBUG HAS HER DAY IN COURT.

and-jeans get-up more Tipper Gore than Karen Finley - hardly the old Mapplethorpe-era shock artist type.

And yet, it appears that Ms. Nitke's own little chapter of the culture wars is taking shape. On Wednesday, October 27, at 9 a.m., she's taking Attorney General John Ashcroft to court, resurrecting the old debate over art and obscenity. Only this time the battleground isn't federal grants and public museums; it's the Internet.

Nitke v. Ashcroft is a case about the right to be raunchy in cyberspace-or, in legal parlance, about the right to freedom of speech on the Internet. Its target is a statute of the Communications Decency Act of 1996 that makes it a crime punishable by up to four years in prison to transmit "obscene" material by means of "interactive computer service." (In its original form, the law also banned "indecent" material from the Internet, but the Supreme Court struck this clause down in 1997.) Because of an unusual provision in the C.D.A., the case could be fast-tracked to the Supreme Court after this round of arguments.

Ms. Nitke first learned about the C.D.A. in 2001, when she began contemplating the idea of a Web site for her photographs. The old culture war had burned through most of the other outlets for alternative art-"The right-wing got its way," Ms. Nitke said flatly-and cyberspace seemed like one of the last outposts of photographic free love. Before posting any pictures, however, Ms. Nitke decided to play it safe and get some advice from lawyers to find out if she could be held liable for her work. They came back to her with the C.D.A.'s obscenity clause.

Obscenity is a slippery legal concept, defined, in part, under the 1973 *Miller v. California* Supreme Court decision as "work" that is "patently offensive" and "appeals to the prurient interest" under "contemporary community standards." At the time, this seemed like a sensible enough definition, since it recognized that different geographic regions had different mores, and that a place

like Biloxi, Miss., and vice versa. But in the Internet era, when information flows willy-nilly across thousands of miles of fiber-optic cable, the whole notion of community standards gets tricky.

Or so Ms. Nitke argued.

"You know, I'm sitting in Manhattan, which is very liberal, and I have my Web site, which I think is full of just brilliant artwork, but I don't know what somebody else in some other part of the country is going to think about it," said Ms. Nitke, whose photos feature the whole kinky caboodle of S&M tricks: from leather-men dangling from metal harnesses to corseted women thrashing naked lovers, to a man with a bit in his mouth prancing like a pony as his partner whips him silly. "So if you're going to follow the law, anything you put on the Internet would have to be completely G-rated or better, because someone somewhere could find it obscene. And that's not free speech."

Ms. Nitke punctuated this thought by pounding the table lightly with her right hand. Her voice was sing-song, and while she wasn't exactly agitated, she was stirred. When I suggested that perhaps the C.D.A. wasn't quite as frightening as she claimed-after all, the Internet still has plenty of X-rated Web sites-she offered up an anxious story about cyber-sexuality in the age of Ashcroft.

"I think it's a bad law, period," she said. "But I'm particularly disturbed because I think someone like Ashcroft is more likely to use the law. It's a known fact that he's announced they're going after pornography and sexual expression. And that makes me feel vulnerable."

"In fact," she added, "a lot of images from my new body of work aren't on my Web site because they show people doing extreme S&M scenes, and I know they're going to incite people." (Instead, some of these images - including your standard husband-choking-wife-during-sex and couples at "blood play" will be on display at the Art @ Large Gallery in mid-November.)

The Department of Justice refused to comment on Ms. Nitke's claims while her case is pending. But research suggests that Mr. Ashcroft is, in fact, ramping things up against online licentiousness. While the Clinton administration didn't meddle much with Internet smut, the Bush administration, under the prim hand of Mr. Ashcroft, has reportedly prosecuted some 25 cases in the last two years (26 cases if you count Mr. Ashcroft's successful crusade against the exposed breast of the Spirit of Justice). This past February, Mr. Ashcroft hired Bruce Taylor—the notorious anti-porn czar who prosecuted Larry Flynt—as senior counsel on obscenity issues for the Justice Department. And Mr. Bush's proposed 2005 budget adds an extra \$4 million to hire new prosecutors and F.B.I. agents to track down triple-X naughtiness.

These are the kind of developments that press Ms. Nitke's panic button. It's a Pavlovian thing, she said, that she traces back to 1972, when her then husband, Herb Nitke, was charged with obscenity for helping produce the cult sex-romp *The Devil in Miss Jones*. "All of a sudden, we had six F.B.I. come into our apartment very early one Sunday morning and arrest him, and I can't tell you what that's like," Ms. Nitke said. "He went through three obscenity trials, and in the end he didn't serve jail time, but in every other way he was tortured. So I really got to see what that is, and it became like my worst nightmare."

Looking for Transcendence

Long before she was an arty sex photographer, before she'd ever heard of S&M or become a free-speech gadfly, Barbara Nitke was a nice Southern girl from Jerry Falwell's hometown of Lynchburg, Va. Her mother was from a "typical conservative family," but her father, who was an air-traffic controller, "was kind of a rebel type," she said. It's from him that Ms. Nitke suspects she got her unconventional streak—an idea that was reinforced when she learned that the controversial sexologist, Shere Hite, was her half-sister. Growing up, Ms. Nitke had heard that her father had a child from a previous marriage, but she never met the girl because her proper Southern family considered the subject taboo. Then, one day in the late 1980's, she stumbled across her father's name in a magazine profile about Ms. Hite. It seemed the model-turned-feminist—whose first book, *The Hite Report on Female Sexuality* (1976), caused a frenzy with its ideas about women's desire—was in fact her mystery half-sister.

"I guess I really do take after my dad's side of the family," joked Ms. Nitke, who has had several phone conversations with Ms. Hite but is not close to her. "It must be something genetic."

Those genes seem to have kicked in around 1982, when Ms. Nitke got a job through one of her ex-husband's friends shooting stills on the set of *The Devil in Miss Jones II*. (Cue the *Boogie Nights* soundtrack, please.) All day long it was sex-exploitive? Sometimes. Seedy? Sure—but the subculture junkie in Ms. Nitke was fascinated by it.

"What I found most interesting was the behind-the-scenes moments where you'd be in the middle of an orgy scene and they'd call 'Cut!', and everybody would just yawn and pull out a cigarette," she said with a throaty chuckle. "Everyone's expression would drop, and they'd be like, 'Oh God, when is this going to be over?' Or, 'What are they making for lunch?' And I just loved it, because you had this supposedly exotic thing going on, and then it was just another day at the office. So a lot of times, that's what my pictures were about."

Ms. Nitke spent nearly 12 years snapping stills on porn sets, racking up some 300 hard-core credits. But by the early 1980's, AIDS had blasted its way through New York, and the porn industry was changing: getting cheaper, going corporate, moving West. That's when Ms. Nitke learned about S&M from her good friend Rick Savage. (Cue the appropriate Devo song.)

Mr. Savage, a porn star turned fetish film director whose credits include *A Day in the Dungeon* and *Big, Natural and Bound (I and II)*, had started going to meetings at the Eulenspiegel Society, an organization for S&M enthusiasts, and he began urging her to join him. He promised she'd love the people, and sure enough, the moment she arrived she discovered the truth of that old downtown cliché—the one about the burliest leather-guy being the first to save your place in the movie line—and her heart went pitter-patter.

"I literally walked in the door and fell in love with everybody. I feel like I kind of came into the light, because I was coming from the porn world, which is kind of cynical," said Ms. Nitke. "In the porn world, everyone's been around the block 400 times—you know, 'How much extra do you want to pay me for that anal, thank you'—but in the S&M world, people are just delighted."

Still, it took nearly six months for Ms. Nitke to persuade the first sets of couples to let her into their bedrooms (or dungeons or play-spaces or whatever) to photograph them in action. That's also about how long it took her to feel warm and fuzzy about S&M. "Initially, I was sure that people wouldn't do S&M unless they were playing out some childhood trauma or whatever," she said. "But I learned that people weren't saying they had this horrible trauma; this is just their way of making love. They're looking for a transcendent state."

Soon enough, Ms. Nitke was following these couples all over the city, snapping photos as they whipped, pierced, scratched and burned their way to transcendence. She became fast friends with the couples, eventually joining the Eulenspiegel Society as a kind of resident voyeur. In 2003, a German publishing house published her first book of photographs, *Kiss of Fire: A Romantic View of Sadomasochism*, after skittish U.S. publishers bucked at the explicit photos.

But even an old hand like Ms. Nitke has had her awkward moments. "I was photographing this one couple, and all of a sudden they started having sex!" she said, describing an early encounter. "I was like, 'Oh my God, they're having sex!' And I kind of jumped up, and one of my lenses fell off and banged the floor, and I stepped on the dog, and the dog started barking—but I got the shot! I am trained, you know."

"I Don't Actually Play"

It's been nearly three years since Ms. Nitke lodged her lawsuit to strike down the obscenity clause of the C.D.A. Working with her lawyer, John Wirenius—who is representing her pro bono, on his personal time—she has plunged hundreds of hours into the case, squeezing time for fund raisers and depositions between her work as president of the Camera Club of New York and a faculty member at the School of Visual Arts.

Ms. Nitke's first trip to court was back in 2002, when the Justice Department moved to have the case dismissed, and that round, by and large, was a Nitke victory: The three-judge panel refused to dismiss the case and found that, yes, the C.D.A. might be a violation of the First Amendment. But they also found that Ms. Nitke had some work to do to prove that her own speech had been chilled, among other things. The judges asked her to come back with more evidence and set a new court date for this Wednesday.

These days, the old culture war seems long over—a forgotten relic of the 80's and 90's. But with *Nitke v. Ashcroft*, Ms. Nitke seems to be telling people there's still one last front, one disputed territory.

"I don't actually 'play,'" she said, using the insider's argot for S&M, "because I guess, in a way, it's just not where I want to go."

"But, I have tried things," she added, "and I'm here to tell you that you haven't lived until you've held a big bullwhip in your hands and cracked it."