

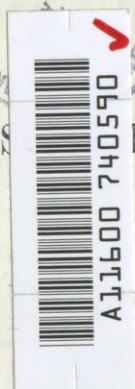
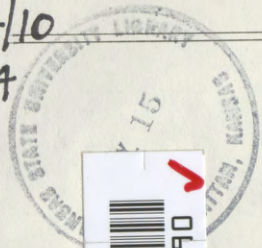
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PROTECTING POSTAL PATRONS FROM OBSCENE MAIL



HEARING BEFORE THE COMMITTEE ON POSTAL OPERATIONS OF THE COMMITTEE ON OFFICE AND CIVIL SERVICE HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 980 and related bills

BILLS TO PROVIDE FOR THE RETURN OF OBSCENE
MAIL MATTER

MARCH 30, 1965

Printed for the use of the
Committee on Post Office and Civil Service



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PROTECTING POSTAL PATRONS FROM OBSCENE MAIL

TUESDAY, MARCH 30, 1965

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTAL OPERATIONS OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 346, Cannon House Office Building, Hon. Thaddeus J. Dulski (chairman of the subcommittee) presiding.

Mr. DULSKI. The meeting will come to order. This hearing has been scheduled to update the hearings on the bills to protect postal patrons from obscene mail matter. H.R. 980 and H.R. 4241 were sponsored by Mr. Cunningham and Mr. Daniels, respectively, members of this subcommittee. In addition, H.R. 3402 was introduced by Mr. Pelly, H.R. 4794 was introduced by Mr. Reinecke, H.R. 4943 was introduced by Mr. Chamberlain, and H.R. 6394 by Mr. Duncan of Tennessee.

(The bill, H.R. 980, follows:)

[H.R. 980, 89th Cong., 1st sess.]

A BILL To provide for the return of obscene mail matter

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 51 of title 39, United States Code, is amended by adding at the end of such chapter the following new section:

"§ 4009. Return of obscene mail matter

"(a) Any person may return to the Postmaster General mail matter which, in the opinion of such person, is obscene, lewd, lascivious, indecent, filthy, or vile and which is addressed to and received by him or any child of his. On making such return such person may request the Postmaster General to notify the sender not to send additional such mail to him or any child of his, except mail which he has solicited. The request shall be signed by the person making it, and shall contain a statement that in his opinion the mail is obscene, lewd, lascivious, indecent, filthy, or vile; also the name and date of birth of each child to whom the request pertains; and the person's residence and/or business address to which further such mail should not be sent. The Postmaster General shall promptly notify the sender of such request and the information contained therein, and direct that, effective on the thirtieth day after the date of the notice, the sender, or anyone acting on his behalf with knowledge of such notice, shall not send mail in violation of its terms. The Postmaster General's notice shall apply to a sender under any name or designation.

"(b) Whenever the Postmaster General believes that the sender or anyone acting on his behalf has violated or is violating the notice given under subsection (a) of this section, he shall serve upon the sender by registered or certified mail a complaint stating the reasons for his belief and request that any response thereto be filed in writing with the Postmaster General within fifteen days after the date of such service. If the Postmaster General, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the notice given under subsection (a) has

been or is being violated, he is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a district court of the United States for an order directing compliance with such notice.

"(c) Any district court of the United States within the jurisdiction of which any mail matter shall have been sent or received in violation of the notice provided for by subsection (a) of this section shall have jurisdiction, upon application by the Attorney General, to issue an order commanding compliance with such notice. Failure to observe such order may be punished by the court as contempt thereof.

"(d) For the purposes of this section—

"(1) Mail addressed to a specific address without designation of a specific addressee shall be considered as addressed to the head of the household at that address.

"(2) The term 'child' means an unmarried child who has not attained his nineteenth birthday, including (A) a stepchild, (B) an adopted child, and (C) a child who is the ward of, or in the custody of, the person concerned, or who is living with such person in a regular parent-child relationship.

"(e) Receipt of mail matter thirty days or more after the effective date of a notice or of a court order provided for by this section shall create a rebuttable presumption that such mail was sent after such effective date.

"(f) The Administrative Procedure Act (5 U.S.C. 1001-1011) shall not apply to any provision of this section."

SEC. 2. The analysis of chapter 51 of title 39, United States Code, is amended by adding

"4009. Return of obscene mail matter."

immediately below

"4008. Communist political propaganda."

Mr. DULSKI. Our Subcommittee on Postal Operations held extensive and very thorough hearings during the 88th Congress on the proposals which were intended to give every person served by the Postal Establishment an effective and urgently needed means to prevent the forced entry into his home, or into the hands of his children, of offensive matter sent through the U.S. mails. The Post Office and Civil Service Committee reported H.R. 319, and the bill passed the House of Representatives by a vote of 325 to 19.

The bills pending before our subcommittee today are a refinement of last year's proposal. They provide additional safeguards by restricting the mail matter involved to matter which the postal patron believes to be obscene material. The new bills also permit the sender to have an appropriate hearing before the Postmaster General can refer a notice of violation to the Attorney General for appropriate action.

H.R. 980 was sponsored by Mr. Cunningham on the 1st day of the 89th Congress. Reports were requested from the Post Office Department and the Department of Justice on January 21, 1965. On March 16, our Subcommittee on Postal Operations announced that hearings would be scheduled on these bills as soon as a hearing date could be arranged. Then on March 23 we announced that the hearings would be scheduled for March 25. Witnesses who desired to be heard advised that they desired additional time, and so this hearing was rescheduled for today.

I merely recite these facts so that the record will show that from January 4 until today, March 30, seems to be an adequate period to allow for preparation to be made for any hearing.

We scheduled hearings in order that the record may be brought up to date. Any witness who cannot be here today may furnish a statement for the record.

The Post Office Department and the Department of Justice have furnished the subcommittee official reports on this legislation. Both were invited to appear and testify on these bills but have advised that they would have no information to offer other than that contained in the official reports. Without objection, their reports will be included in the record.

(The reports referred to follow:)

OFFICE OF THE POSTMASTER GENERAL,
Washington, D.C., March 24, 1965.

HON. TOM MURRAY,
Chairman, Committee on Post Office and Civil Service,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for reports on H.R. 980 and H.R. 4241, identical bills, to provide for the return of obscene mail matter.

The general purpose of this legislation is to provide a workable method whereby patrons utilizing the postal service can prevent undesirable mail from entering their homes.

It is understandable that such an objective should generate favorable reaction among those of us who are interested in stopping the transmission of offensive material through the mails. Its underlying principle is sound and meritorious, and deserving of consideration. On this point, we are in full accord.

The legislation, however, is similar to that introduced in the 88th Congress, the enactment of which we did not favor, and which for the same reasons we again cannot recommend enactment.

The following is a brief summary of the reasons for the Department's disapproval of the legislation:

1. We feel the proposed legislation is unnecessary, since we already have statutory prohibitions such as that proposed. Section 1461 of title 18, United States Code, makes the mailing of obscene, lewd, lascivious, indecent, filthy, or vile matter a felony, punishable by fine and imprisonment.

2. Existing law (Public Law 87-793), sec. 307, approved October 11, 1962), already affords the opportunity to keep any particular matter out of the homes of those who do not desire to receive it. The statute reads:

"Any person may file a written request with his local post office to detain obscene, lewd, lascivious, or indecent matter addressed to him, and the Postmaster General shall detain and dispose of such matter for such period as the request is in effect."

This quoted sentence applies to domestic as well as the international mails. It has been supplemented by postal regulation (sec. 154.11 of the Postal Manual) which substantially provides that addressees may control delivery of mail directed to them notwithstanding the class involved, or whether it is foreign or domestic matter. The addressee may even refuse to accept a piece of mail at the time it is offered for delivery. He may even request his postmaster in writing to withhold from delivery for a period not to exceed 2 years specifically described items, and where delivered, he is permitted additionally to mark a piece of mail "Refused" and return it unopened to the mails.

3. The proposed legislation raises grave constitutional questions in the area of freedom of speech. The Supreme Court of the United States and other Federal Courts have already laid down the tests of what constitutes obscenity in the mails under section 1461 of title 18, United States Code. The bills, in effect, disregard these decisions of the Federal courts and lodge the determination as to what constitutes obscenity within the subjective opinion of each person involved. They pose other constitutional questions such as the question of whether the Government may enforce a determination by a private citizen against another without due process of law. Private persons under these bills would also be empowered to set in motion a series of governmental actions which could seriously impede the dissemination of material to the general public despite the fact that the material itself may not be obscene by judicial standards. We, of course, are unable at this time to predict how the courts will decide the constitutional question voiced by these bills.

4. The bills, if enacted, would further impose a tremendous burden on the Post Office Department which it would be incapable of handling under currently restricted budgetary requirements.

As indicated, the subject bills are substantially the same as H.R. 319, of the 88th Congress. The only significant difference is that the bills under consideration afford the sender a hearing after being cited by the Post Office Department. This seems to conflict with another provision in the bills which provides that the Administrative Procedure Act is inapplicable. When a statute provides for a hearing, we feel that the hearing must be pursuant to the Administrative Procedure Act. Another change in the subject bills, when compared with legislation of the 88th Congress, is that the term "morally offensive" mail has been changed to read "obscene, lewd, lascivious, indecent, filthy, or vile matter."

The Bureau of the Budget has advised that from the standpoint of the administration's program there is no objection to the submission of this report to the committee.

Sincerely yours,

JOHN A. GRONOUSKI,
Postmaster General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., March 25, 1965.

Hon. TOM MURRAY,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your invitation, received on March 23 by telephone, for a witness from the Department of Justice to appear and testify on H.R. 980 before the Subcommittee on Postal Operations. As you know, Assistant Attorney General Miller testified before the subcommittee last Congress on H.R. 319, a bill of similar purpose. Since Mr. Miller is the Department official most familiar with the subject matter of this legislation but is unavailable to testify this morning, this report is submitted for the assistance of the committee.

H.R. 980 is similar to H.R. 319 of the 88th Congress as that bill passed the House, except in three significant respects. First, it characterizes the mail matter as "obscene, lewd, lascivious, indecent, filthy, or vile," rather than "morally offensive." This is the language of section 1461 of title 18, United States Code, which prescribes a criminal penalty for the mailing of obscene matter. Second, H.R. 980 makes provision for barring subsequent mailings of "additional such mail" to the objecting recipient rather than for barring all mail. Third, H.R. 980 affords an opportunity to a sender to have an appropriate hearing before request is made of the Attorney General to apply for a court order directing compliance with the Postmaster General's notice directing the sender to refrain from sending mail to the complainant.

Despite the proposed changes, the measure is subject to the same objections as those which were stated in our report to you of June 3, 1964, on a committee print dated May 26, 1964, the text of which is that of H.R. 319 as passed by the House (see pp. 8-11, H. Rept. 1506, 88th Cong.).

If the use of the language of section 1461 of title 18, United States Code, in place of the term "morally offensive" is intended as a means of approaching the judicial standard of obscenity, the criminal code of the United States presently makes it a felony, punishable by a \$5,000/5-year sentence for a first offense and a \$10,000/10-year sentence for subsequent offenses, to mail such matter.

The prohibition of H.R. 980 against the subsequent mailing of other obscene matter to a recipient who has requested that he not receive any more of such mail, is in effect a blanket prohibition against any further mailings of any kind, just as provided in H.R. 319 as it passed the House. Since the subsequent mailing, just as the original, will be judged subjectively by the recipient, a sender—though acting in good faith—could not be certain that he would be complying with the Postmaster General's notice. The recipient's determination that the subsequent mailing was obscene would trigger the proceedings directed to the obtaining of a court order, violation of which would constitute contempt. Even more, the same sequence of events resulting from a third mailing would constitute the contempt, irrespective of whether the recipient's determination as to what is obscene met judicial standards or was even made in good faith. The committee's attention is invited to recent cases indicating the constitutional need for more protective and reasonable procedures with respect to restraints

on allegedly obscene materials (see *Bantam Books v. Sullivan*, 372 U.S. 58 (1963) ; *A Quantity of Copies of Books v. Kansas*, 378 U.S. 205 (1964) ; Cf. *Manual Enterprises v. Day*, 370 U.S. 478, 495 (1961), discussion of procedural safeguards by Mr. Justice Brennan, joined by the Chief Justice and Mr. Justice Douglas).

On February 1, 1965, the Supreme Court granted certiorari in a case concerning the receipt of mail deemed by the Secretary of the Treasury to be "Communist political propaganda." In this case, *Heilberg v. Fiva* (U.S. D.C. N.D. Cal., Nov. 18, 1964, reported in 33 L.W. 2262) a three-judge court held section 305(a) of Public Law 87-793 unconstitutional as violative of the first amendment. A contrary result was reached in *Lamont v. Postmaster General* 229 F. Supp. 913 (S.D. N.Y., 1964). In view of these opposite holdings, it is likely that the Supreme Court will address itself to first amendment rights questions with respect to the receipt of mail which may be of assistance to the Congress in considering legislation such as H.R. 980.

Finally, the hearing procedure provided for in H.R. 980 is not that contemplated in the observation made on page 4 of our letter of June 3, 1964. Rather, it would seem that the hearing would be limited to the question of whether the sender had complied with the Postmaster General's directive. Whether the material mailed is obscene, other than in the subjective opinion of the recipient, would not be an issue at the hearing. Hence, although the hearing provision seems to provide some procedural due process, in effect it does not afford any substantial protection to the sender.

In view of the above, and despite our support of the objective of this legislation, the Department of Justice is unable to recommend its enactment.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

Mr. DULSKI. The first witness is the author of H.R. 4794, the Honorable Ed Reinecke. We are very happy to have you with us.

STATEMENT OF HON. ED REINECKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. REINECKE. I am happy to be here, and I would appreciate it if I could have this statement, brief as it is, printed in the record, and I will recap it to make it even briefer.

Mr. DULSKI. If there is no objection, it is so ordered.

Mr. REINECKE. My interest in this particular bill has been very significant to me. For the past several years, I have been fighting the whole pornography problem in the San Fernando Valley part of Los Angeles and was successful in closing up several printing firms and distribution firms. In the course of becoming pretty intimately acquainted with this thing, I recognized how much of this is distributed through the mails and, therefore, see the need for a bill to be passed such as the one last year introduced by Mr. Cunningham.

I have introduced a bill this year—H.R. 4794—very similar but with a few changes, which I would like to have considered if at all possible. Principally, the changes consist of changing the description to include mentally incompetent as well as minors, as is stated in the original bill.

I do this for the obvious reason that occasionally a person will not be a child, and yet, being incompetent, is subject to the influence of this type of literature. I feel that it would be a small but significant assist to the bill if this legal block were removed, and thus make it possible for the trustee of a mental incompetent to make the same judgment.

Secondly, having been involved in some of this mailing problem, I realize how fast these people move. A person distributing this type of information through the mail will frequently mail from two or three or sometimes even four addresses in a given month. Therefore, I have shortened up the period of time of compliance from 30 days to 15 days, so that the postmaster could become a little more effective.

Finally, I have offered the suggestion that it not be necessary for the child involved or the mentally incompetent person involved in defense of this bill to appear before courts. I know of cases in Los Angeles where people have kept their children away from attempting to do anything about this, simply because they do not want the continued exposure. They feel it is bad for the children. It think it is reasonable that if the case is well grounded the testimony of the minor or the incompetent is not absolutely necessary and that it would not in any way harm the prosecution of the particular case. I think this would be something that would be a protection to the injured person and would not certainly in any way detract from the effect of the bill.

I think the bill that passed the House last year is a fine bill, and I certainly hope that you will continue. This is a very significant problem, and I, unfortunately, come from a district that, as I understand it, prints almost half of all pornography that is printed in the United States. This is the reason I have taken it so much to heart and sincerely am attempting to do this and other things about it.

With that, I will conclude and submit myself to any questions the committee may have. I sincerely hope this bill is marked up and sped on its way.

Mr. DULSKI. Thank you very much. I know that you have been most interested, because other persons have approached me and told me of your great interest in this legislation. What effect will shortening the period have on the due processes of law?

Mr. REINECKE. Shortening the period of time simply will set up the violation or the nonviolation in a shorter period. I do not think it will affect due process of law, but it will put more teeth into the law, so that the person becomes in violation of the law in a shorter period of time. It was not in any way meant or the intent was not to be construed to affect due process at all. We must protect this under all circumstances.

Mr. DULSKI. I appreciate your contribution in the material that you have submitted to us here.

Many of the publishers are sending out material that is pornographic, and they have had the freedom of using the U.S. mails. I again say that I know you have played a major role in this legislation in your part of the country, and I am sure that your statement will be of great benefit to the committee.

Mr. REINECKE. Thank you kindly. I would like to add just one more bit of information that may not be extremely pertinent. A case involving slightly over a million books and magazines which I discovered in a warehouse 2 years ago, finally came to court just 2 months ago. A week ago Friday the verdict was that only five titles were considered obscene. They were found to be obscene in a jury trial. Unfortunately, the attempt of the district attorney was to get a conspiracy conviction, and the conspiracy was not found, so the men were released as not guilty. But some of the books were found to be obscene.

This, I think, is significant, because as you know it is difficult to get an obscene verdict these days because of the first amendment. I will do my best now to prevent the sale of the remainder of this material. It happens to be in a bankruptcy situation, and we are trying to stop the sale of the other books because there are over a million books involved. I am sure that if all five that were tested were found obscene there must be others that are obscene as well.

I am appealing to the referee in bankruptcy, although frankly he has the legal right at this point to sell all but those five. I am trying to stop the sale of the balance, or at least until such time as someone expert in this field can give a judgment.

I appreciate very much your interest and cooperation and will look forward to the action on the floor.

Mr. DULSKI. I want the record to show that we have notified those organizations who indicated a desire to appear and we postponed our meeting from Thursday until today, to give everybody an opportunity to be heard on these bills, but I see that there is no other witness here today.

First I would like to ask the sponsor of the bill H.R. 980, Mr. Cunningham, if he has any questions.

Mr. CUNNINGHAM. I want to congratulate Mr. Reinecke for his interest. This is a big problem. I have been a member of this subcommittee going on 9 years, and we have been studying this and have had hearings around the country. We have been in California for hearings. I agree with you that that is the major source of this material.

Of course, we have to bear in mind that this is a twofold problem, and our work here is concerned with that material that moves through the mail. What appears on the newsstands may be printed in California and sold in California. That is another problem, and that is up to the local people through their ordinances and through women's groups particularly to do something about that.

There is a great deal of confusion as to what is obscene and what is not obscene. Our major stumbling block all these years has been the fact that the courts have not been able to determine what is obscene and what is not obscene.

If a piece of obscene, lewd, lascivious material is purchased by one of my children in a drugstore or is received through the mail, and the Post Office Department feels that it is bad enough to bring a case before the courts, the problem is that these cases have been by the thousands dismissed because the jury that would hear this case under the law has to determine whether this obscene material is obscene in their adult minds, and it does not give latitude as to whether it is obscene and affects a minor. This is a very serious problem.

I have introduced legislation to make a differentiation between how it would affect the minor as against the adult, but it has gone over to another committee and has been buried, so we are just having an awful time meeting this problem, and it amounts to about a \$2 or \$3 billion racket.

The legislation before us today is a new approach based on the old English common law precept that a man's home is his castle. No one can come into my home unless I invite them or they have a search warrant. The mailbox is a part of my home. Therefore, I should

not have my home invaded by this material being dumped into my home through my mailbox without it being solicited. This is the problem we are trying to solve here in this legislation, and it allows the person who receives this mail, or if it is received by his minor child, to determine in his mind whether it is obscene, lascivious, or lewd. He makes the determination and not the courts. This is the only way I know of to get around the roadblock that the courts have put before us. If the individual makes that determination, then the rest is automatic.

If some of this goes to my minor child, I as a parent send a notice to the Postmaster General, saying that I do not want any more of this dumped into my home unsolicited. There are certain procedures, but in effect I say that this is a violation of my parental right to protect my children. From then on it is a procedural matter.

The Postmaster General is empowered to notify the sender to take my name off his mailing list. If I get another mailing, then he is in violation of the Postmaster General's order, and the Postmaster General is allowed then to contact the Department of Justice, who is empowered to take the matter before the U.S. district court for a cease and desist order. If I get a third piece after the sender has been asked to cease and desist, he is subject to contempt of court.

What I am trying to say is that this whole problem is growing by leaps and bounds, and we do have a roadblock as far as the courts are concerned.

This makes the adult, on behalf of his minor child—and most of this goes to minor children—the judge, and this as I say is a parental right. If my children are watching a bloody murder on television, my parental right is to tell them to turn to another channel where they will not be subjected to this. It is not censorship in any way, shape, or form. I have to protect my children, my family. We do it all the time. If there is a movie that is condemned by the various groups, Catholic groups and others, I have a right to tell my children not to see that movie.

The American Civil Liberties Union will contend that that is censorship. Well this is definitely not censorship, because as a parent I have the right to censor my children. I have a right to turn that TV channel. I have a right to tell my children not to see a certain movie. So they have no argument, no basis for any allegations that this is censorship. I do not like censorship any more than anybody else does. Their argument—and they are fighting this—holds no water. It is full of holes.

Now back to your bill, Congressman Reinecke. You have in here about the mental incompetent. Now, if I have in my family a mental incompetent, I wonder whether "mental incompetent" should be in the bill, because whether they are mentally incompetent or not the same procedure will follow. Now, if they are in an institution, I see some merit to your wordage.

MR. REINECKE. Will the gentleman yield? The thinking here was that perhaps a person mentally incompetent may not be legally a minor, and this would extend the parental jurisdiction, as in the case of the trustee or the guardian of the mentally incompetent person.

Mr. CUNNINGHAM. I understand. Then if I have a son that is 25 and a mental incompetent, this would apply.

Mr. REINECKE. That is right.

Mr. CUNNINGHAM. I am glad I asked that question.

Now, you understand that, being on the Postal Operations Subcommittee, we are, as I said in the beginning, concerned with what moves through the mail. In fact that is our jurisdiction. We are after in this bill that material that has not been solicited or asked for. We are after that material that comes into our home uninvited. We are after the purchase of mailing lists by dealers in smut. This is a tremendous business, a multimillion-dollar business.

The reason that I came upon this scheme was that when my boy was a Boy Scout, aged about 14, he took a Boy Scout magazine. In the magazine there were advertisements, and there was one which said, "Start a stamp collection. Send 25 cents for various types of stamps." He did this. He sent the 25 cents in and got his stamps, a legitimate transaction. No argument about that, and most children start stamp collections between the ages of 12 and 16.

About 2 years later he started getting this obscene type of advertising through the mail. There is only one reason why this happened. The stamp people, in order to make a little pocket change, pick up a few bucks, sold that list to a list broker. Maybe the price was \$4 thousand. These list brokers, knowing that these young people by and large are the one that start the stamp collections, wait 2 or 3 years until he is a little more mature. Then they start sending this filth, and this happened in my own home—and I have six children.

I am concerned about this type of thing. In fact, I have gone all over the country urging mothers and fathers not to allow their children to send in for anything—I do not care if it is a box top or what—because it is certain that when they send in for a legitimate article, that company, in order to pick up this pocket change, will sell that list to a list broker. And I might say the majority of list brokers are fine people, but there is that little group who use this for profit, and they are the ones that cause this problem.

I am very disappointed that we have not made more progress in this field, but as I explained we just keep getting beat over the head by the courts, and that is the reason for this new approach.

We have testimony from psychiatrists, doctors, mental health people, and others that this type of material largely contributes to juvenile delinquency and crime, and yet those people in authority in this Government cannot see what damage this is doing. You cannot send dope through the mail, and I wonder if the American Civil Liberties Union feels that is censorship. Dope wrecks the body. This type of material destroys the mind. Which is the more important?

This is a tremendous problem, and I think this approach is a real step in the right direction. As I said, this bill was passed by the House of Representatives overwhelmingly last year, with only 19 votes against it. But that was July. It got over to the Senate and Members of the Senate sometimes have 8 to 15 different subcommittees they serve on, and they never got around to acting on it. I talked to Senator Monroney, who is very sympathetic, and he said because it came over in July they just could not get to it. So I am hopeful that this

legislation will be promptly passed by the House and we can get it over to the other body and get some action this year.

In conclusion, I want to compliment you, sir, on your approach to this problem and your great knowledge in this field. I think you will agree with my statement that it is a tremendous problem so far as millions of parents are concerned. There was a meeting last week over in the Senate, and there were 300 people there representing 300 different organizations that are fighting this. There is the Citizens for Decent Literature organization in Cincinnati, where they have headquarters. They have chapters throughout the country, and they are fighting and doing a tremendous job. There is Operation Moral Upgrade, an interfaith group—Catholics, Protestants, and Jewish people—who have done a tremendous job in this field.

At this point, Mr. Chairman, I would ask unanimous consent to insert in the record a letter and two telegrams. The letter is from the Society for the Protection of Children's Mental and Moral Health, New York City, signed by Father Morton A. Hill, S.J., executive secretary. The sponsoring committee is Rev. Robert E. Wiltenburg, pastor, Immanuel Evangelical Lutheran Church; Rev. William T. Wood, S.J., pastor, St. Ignatius Loyola; Dr. Julius G. Neumann, rabbi, Congregation Zichron Moshe; and Rev. Morton A. Hill, S.J., secretary. On the executive committee are John E. Lawler, legal counsel; Charles F. A. Gallagher, public relations counsel; Oscar Diamond, M.D., psychiatric consultant; and Bernard Moran, chairman, lay advisers committee. The two telegrams just came in this morning, and I know others will be coming. I would like them inserted at this point. They heard of H.R. 980 at the meeting that I referred to over in the Senate last week, and they are very much for the bill. As a matter of fact, I believe all 300 of the representatives from various organizations that met over there support this legislation.

Mr. DULSKI. If there is no objection, we will place the letter and telegrams in the record.

(The material referred to follows:)

SOCIETY FOR THE PROTECTION OF CHILDREN'S
MENTAL AND MORAL HEALTH,
New York, N.Y., March 24, 1965.

HON. GLENN CUNNINGHAM,
Congress of the United States,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CUNNINGHAM: The children of America need immediate protection from the mounting flood of obscene filth being thrust at them through the U.S. mail.

Your bill, H.R. 980, provides that protection. We are behind it 100 percent and pray that it will pass both Houses of Congress without delay.

Sincerely,

MORTON A. HILL, S.J.,
Executive Secretary.

NEW YORK, N.Y., March 30, 1965.

Congressman GLENN CUNNINGHAM,
House of Representatives,
Washington, D.C.:

I pray your bill will become law to protect mental and moral health of America's children.

E. DUKOVIC.

BEVERLY HILLS, CALIF., March 30, 1965.

HON. GLENN CUNNINGHAM,
House of Representatives,
Washington, D.C.:

As founder-president of Operation Moral Upgrade and its 3,000 families we strongly endorse your bill H.R. 980 and advocate its passage in the Congress.

Mrs. VAN O. NEWKIRK.

Mr. CUNNINGHAM. I would conclude by again thanking our distinguished colleague, and hope that he will give this bill his wholehearted support. It has been carefully worked out over the past 3 years. We have worked with the Justice Department, with the legal minds of the Post Office Department, and with constitutional lawyers. It has been a real tough struggle. We think we have, may I say, a perfect bill. H.R. 980, which is the bill under discussion, is similar to H.R. 319, which passed the House last year. I referred it to a firm of constitutional lawyers, and working with the Justice Department we have made a few changes in the phraseology to give more protection to the people involved, primarily concerning the due process. With that, Mr. Chairman, I conclude my remarks.

Mr. DULSKI. I understand, Congressman, that you have another hearing.

Mr. REINECKE. Yes, I do.

(Mr. Reinecke's prepared statement follows:)

PREPARED STATEMENT OF REPRESENTATIVE ED REINECKE, 27TH DISTRICT,
CALIFORNIA

On February 10 of this year, I introduced H.R. 4794, a bill to protect postal patrons from morally offensive mail matter. H.R. 4794 differs only in certain technical aspects from a bill reported favorably from this committee and passed by the House of Representatives during the 88th Congress. The changes I would propose are as follows:

(1) The bill as passed by this House last year is applicable to mail received by a postal patron "or any child of his." To these classes of persons I would add "mental incompetents," defined in H.R. 4794 as persons "determined to be of unsound mind by judgment of a court of competent jurisdiction then currently in effect who is in the legal custody of the person concerned." This addition seems to me to be in the nature of a perfecting amendment, made on the presumption that a person adjudged "mentally incompetent" could not make the necessary notifications to the Postmaster General and that this function could best be performed by the person in whose legal custody he resides.

(2) As passed last year by this House, H.R. 319 provided that 30 days could elapse between notification to the sender of obscene matter by the Postmaster General and the date on which the sender could no longer send unsolicited mail to the aggrieved postal patron. It seems to me that 1 month is an unnecessarily long period of time in such a case. I would propose that 15 days be substituted, so that the affected clause would read: "The Postmaster General shall give the sender notice of such request and the information contained therein, directing that, effective on the 15th day after the date of the notice, the sender, and anyone acting on his behalf with knowledge of such notice, shall not send mail in violation of its terms."

(3) I would suggest that a provision be included in the bill to insure that no child or mental incompetent be required, under any circumstances, to make a personal appearance in court. I have done this because of some recent situations, here in the Washington area, where certain minor females found their names on undesirable mailing lists, but refused to take legal action because of the attendant notoriety. Such situations are unfortunate, but widespread, and I should hope that the Congress would take every means possible to protect the identity of minors who have been subject to undesired—and undesirable—obscurity.

One or two other changes appear in my bill, but they are not of substantive significance. Gentlemen, as you know, this body passed H.R. 319 last year,

although action was not forthcoming from the other body. I earnestly hope that both Houses this year can take prompt and effective action on this bill which is so urgently needed to protect American citizens from the filth which is so openly and frequently distributed by the smut peddlers in our society.

Mr. DULSKI. I have some other material that I would like to submit. I have a letter from our distinguished colleague from Massachusetts, Mr. Donohue, and he has a letter from Dr. Robert E. Baggs, minister, First Baptist Church of Holden, Mass., to place in the record at this point, if there is no objection.

(The letters referred to follow:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 27, 1965.

HON. THADDEUS J. DULSKI,
*Chairman, Subcommittee on Postal Operations,
House Post Office and Civil Service Committee, Washington, D.C.*

DEAR MR. CHAIRMAN: I understand that your distinguished committee is about to conduct hearings on H.R. 980 on or about March 30, next. As appropriate evidence within the scope of your hearings, may I respectfully offer the self-explanatory enclosures sent to me by Dr. Robert E. Baggs, minister of the First Baptist Church in Holden, Mass., and which I think may be of interest to you and your subcommittee members.

If you feel it is in order, I would like you to include Dr. Baggs' communication in your record and I shall be grateful if you will acknowledge the receipt of this letter with enclosures.

Many thanks for your courtesies and best personal wishes.

Sincerely,

HAROLD D. DONOHUE,
Member of Congress.

FIRST BAPTIST CHURCH,
Holden, Mass., March 15, 1965.

HON. HAROLD D. DONOHUE,
*House of Representatives,
Washington, D.C.*

MY DEAR MR. DONOHUE: I know that the law is such that my protest against the Postage Permit No. 6694 assigned to Bear Sales Co., 203 North Wabash Avenue, Chicago, Ill., can receive no drastic action. This demonstrates both the strength and the weakness of law. The law must protect the Bear Sales Co. as well as the innocent child. I desire to voice my protest anyway.

In many quarters, the materials under protest would not be considered obnoxious, but when placed in the hands of a child for promotion and sale, then I believe the time has come to say "Halt." A simple description of the material mailed to the child and given to me by the irate parent would be:

"A lottery card to take to their next teen party and sell chances on showgirl glasses 'With a 'Peek-a-Boo' keyhole design that lets you see the girls from both sides.' When you look through the keyhole on the glass you see a scantily clad, bare-breasted showgirl in suggestive and provocative poses."

I quote a paragraph of the covering letter mailed by the Bear Sales Co.

"Here's all you do to get your glasses. Just show the enclosed card to friends, relatives, neighbors and people you know at clubs or work. Explain that under each name on the card is a number. Whoever punches out No. 1 pays 1 cent. Whoever punches out No. 10 pays 10 cents. No. 17 pays 17 cents. No. 25 pays 25 cents. All others pay only 39 cents each—no one can pay more.

"When all the names have been punched, you remove the seal. The person who selected the name under the seal wins a complete five-piece set of the new showgirl glasses. And you have the money to pay for your own set."

I cannot help believing, that if technically it is not against the law, it does violate a parent's sense of decency he holds sacred for his child.

I therefore desire to register my protest against the Bear Sales Co. using the U.S. mails for selling such materials.

Sincerely,

ROBERT E. BAGGS.

MARCH 12, 1965.

BEAR SALES Co.,
203 North Wabash Avenue,
Chicago, Ill.

DEAR SIR: The parent of a 14-year-old girl brought me a packet of promotional materials with the so-called "clever," "unusual," "watch the showgirls through the keyhole," lottery card which your company had mailed to her. The parent had a right to be incensed. What gives you the right to circulate indiscriminately this obnoxious material among children?

To be sure, your argument, cleverly worded on the material, brings you within the law. But to any responsible, decent citizen or business establishment, it is clearly an abuse of the law. When you are allowed to mail to a discriminating adult is one thing, but when you try to press your market to embrace the young, innocent child, then I believe you go beyond the bounds of common decency.

I do not know what your other mailings are, where you purchase your mailing lists, or how far you go in the sale of "legitimate suggestive obscenities." The one mailing I hold in my hand now is cause enough for me to protest your "Bulk rate, U.S. Postage Paid—Permit No. 6694, Chicago, Ill."

I am sending a copy of this letter, plus a covering letter, to the Postmaster, Chicago, Ill., my U.S. Representative, and also the two Senators of my State.

Sincerely yours,

ROBERT E. BAGGS.

Mr. DULSKI. The Honorable Paul J. Krebs, our colleague on the full committee, and the Honorable Thomas M. Pelly, author of H.R. 3402, have their own statements to be inserted at this point in the record.

(The statements referred to follow:)

PREPARED STATEMENT OF REPRESENTATIVE PAUL J. KREBS, OF NEW JERSEY

Chairman Daniels, and colleagues of the Post Office and Civil Service Committee, I enter this statement on the record today in support of H.R. 4241 and any other legislation that will effectively curb the flood of unsolicited junk that is pouring through the postal facilities.

One need go no further than to look through some of the mail received in our own offices and our own neighborhoods to recognize that a need exists for some control over the mailing of pornographic and obscene matter. To those critics who might raise an eyebrow of suspicion at what they might call censorship, I say let parents exercise their own form of censorship to determine what is pornographic or obscene in their own homes.

Our heads of families need legislation that will recognize legitimate rights to the use of the mails, but that will also give coequal rights to parents who don't want to submit their children to shocking displays of questionable art or literature. This subcommittee should approve legislation such as H.R. 4241 that will give parents a means to combat adult delinquents engaged in a commerce of filth.

Only last week or so a personal friend of mine was shocked to see the contents of an unsolicited envelope that had been delivered to his home and opened by his 13-year-old daughter. We of the Post Office Committee and especially you members of the Subcommittee on Postal Operations have an obligation to these decent Americans.

I am convinced that American parents need, want, and will support this type of legislation.

PREPARED STATEMENT OF REPRESENTATIVE THOMAS M. PELLY, OF WASHINGTON

Mr. Chairman, I wish to thank the committee for this opportunity to appear in support of H.R. 3402 and similar legislation which will provide for the return of obscene mail matter to the sender.

I was moved to introduce this legislation at the behest of hundreds of letters over the past few years from my constituents in which they complained of obscene, lewd, indecent, filthy, or vile mail being addressed to them or to their children. Many of these constituents' letters pleaded that something be done

to prevent this unsolicited and unwanted mail matter from being sent into their homes.

I am a firm believer in the principle of the old English law that a man's home is his castle. A man has a right to protect his home against the invasion of his privacy by delivery through the postal system of morally offensive material.

H.R. 3402 provides that when a recipient determines that the mail matter he has received is objectional he may return it to the Postmaster General requesting that the sender be notified not to send additional mail to him or to his child. Further receipt of such mail after a period of 30 days after the sender has been notified by the Postmaster General would constitute a contempt of court.

I recently informed my constituents, through my newsletter, that I had introduced this legislation. And, of course, as is the case in any matter there are differences of opinion. I received a number of very indignant letters complaining that the recipient, and the recipient alone, had the right to decide for himself what is obscene and what is not obscene. I could not agree more with these persons and I want to emphasize that the purpose of this legislation is not to censor the mails of any individual, but rather it gives the right to every individual to decide for himself what he considers to be objectional and to give him some authority to have such a practice discontinued. I point out, Mr. Chairman, that no individual's constitutional rights are being infringed upon by this legislation.

I believe this legislation is particularly needed because immoral and suggestive matter which, under court decisions, is not per se "obscene" is particularly dangerous because it has the advantage of distribution under the mantle of safety from penal prosecution. This includes books, pamphlets, pictures, and paperbacks, that overly emphasize sex or deal with loose behavior but manage to avoid prosecution under the penal statutes.

The enactment of this legislation is necessary to close a gap in postal and penal statutes through which a tremendous volume of indecent mail is still pouring into American homes—and particularly into the hands of American youngsters.

Mr. Chairman, again let me express my appreciation for the opportunity to appear before this committee in support of this very important piece of legislation.

Mr. CUNNINGHAM. Mr. Chairman, I thought it was interesting to point out that you mentioned that statements would be placed in the record by the American Book Publishers Council. I think it is interesting to point out that I have copies of letters written earlier, one from the American Book Publishers Council, Inc., signed by Mr. Robert W. Frase, and a letter from the Direct Mail Advertising Association, Inc., signed by Mr. John Jay Daly. I do not know what sinister influence is behind these, but it is amazing that both of these letters are identical. The language and wording is identical. I thought that ought to be brought out. Mr. Chairman, I ask unanimous consent to place these two identical letters in the record at this point.

Mr. DULSKI. If there is no objection, it is so ordered.

(The letters referred to follow:)

AMERICAN BOOK PUBLISHERS COUNCIL, INC.,
Washington, D.C., January 28, 1965.

HON. TOM MURRAY,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is with reference to the bill, H.R. 980, introduced on January 5 by Congressman Cunningham and referred to your committee.

A bill of this general nature was reported out by your committee in the last session of the Congress and passed in the House. However, this year's bill, H.R. 980, seems to have changed and we would like the opportunity to present testimony on it before action is taken by your committee.

Sincerely yours,

ROBERT W. FRASE.

DIRECT MAIL ADVERTISING ASSOCIATION, INC.,
Washington, D.C., February 5, 1965.

Hon. TOM MURRAY,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is with reference to the bill, H.R. 980, introduced on January 5 by Congressman Cunningham and referred to your committee.

A bill of this general nature was reported out by your committee in the last session of the Congress and passed in the House.

However, this year's bill, H.R. 980, seems to have changed and we would like the opportunity to present testimony on it before action is taken by your committee.

Sincerely yours,

JOHN JAY DALY, Washington Representative.

Mr. DULSKI. We also have statements from Mr. Harry I. Maginnis, president, Associated Third Class Mail Users; Mr. Horace Manges, legal counsel, American Book Publishers Council, Inc.; Mr. Charles Ablard, Magazine Publishers Association; Mr. Robert F. DeLay, president, Direct Mail Advertising Association, Inc.; and Mr. Edwin Castagna, president, American Library Association. They have statements and, if there is no objection, would like to place them in the record.

PREPARED STATEMENT OF HARRY J. MAGINNIS, PRESIDENT, ASSOCIATED THIRD CLASS MAIL USERS

This association looks with favor on any legislation which has as its principal purpose the elimination from the U.S. mails of all pornographic material. Congressman Cunningham's bill, H.R. 980, seeks to attack this thorny problem in a novel way. The bill would permit the mail patron to inform the Postmaster General that he has received an "obscene, lewd, lascivious, indecent, filthy, or vile" piece of mail and request that his name be removed from the sender's mailing list. If the sender fails to comply with the request, the patron may file an affidavit with the Postmaster General noting the fact.

The bill provides a safeguard in the form of a hearing for the offender before the Postmaster General. If that Cabinet officer determines that the mailing piece involved comes within the terms of H.R. 980, the matter would then be referred to the Attorney General for further action.

Pornography has been the subject of congressional hearings over the years. The present bill is an improvement over the bill (H.R. 319) passed by the House in 1964 when the mail matter covered was referred to as that which is "morally offensive" to the recipient. This broad phrase would have included all kinds of literature, including campaign circulars and the like. The requirement of the present bill that the mail matter be "obscene, lewd, lascivious, indecent, filthy, or vile" confines complaints to mail matter already proscribed by existing statutes.

Moreover, last year's bill did not provide for a hearing before the Postmaster General. In addition, not only the initial mailing but all other mailings received by a complainant must be judged under the definition contained in H.R. 980. This would preclude a complaint against a mailer who has sent vile material on one day, but who, on the next, having learned the evil of his ways, is selling something as uplifting as bibles or scholarly textbooks.

While both the Postmaster General and the Attorney General contend that the legislation will not stand the test of court action, this association is not prepared to argue the constitutional merits of H.R. 980.

As President of a trade association having 800 members located in all parts of the United States, I have had occasion to discuss this legislation with its author, Congressman Cunningham. He has assured me time and time again that it poses no dangers for the legitimate business mailer who is engaged in the sales of goods and services having no pornographic taint. While the fear always exists that there will be some mischiefmakers attempting to use the law to discredit perfectly legitimate direct mail advertising, Congressman Cunn-

ham has made it perfectly clear that proper salesmanship will have his defense at all times.

Accordingly, I support the aims of H.R. 980 and will, as I have so often in the past, urge upon all the need to eliminate from the U.S. mails the lewd and the lascivious.

NEW YORK, N.Y., March 29, 1965.

Re H.R. 980.

HON. TOM MURRAY,

*Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: As attorneys for American Book Publishers Council, Inc., of 58 West 40th Street, New York City, we write to express its opposition to H.R. 980.

The council is a membership corporation, of which most of the leading publishers of books of general circulation and university presses are members. It is estimated that the 186 members of the council publish and distribute over 90 percent of all general books.

While the council is opposed to the dissemination of pornography, it is vitally concerned that any legislation which seeks to curb the publication and circulation of printed material should not violate constitutional provisions.

The council is of the opinion that H.R. 980 is unconstitutional on the ground that it abridges freedom of speech and of the press as guaranteed by the first amendment of the Constitution of the United States.

This bill does not concern itself with obscene mail matter. The mailing of obscene material is already proscribed and rendered criminal by section 1461 of title 18, United States Code. What is involved in H.R. 980 is mail matter which in the opinion of the addressee is obscene.

In this connection we must bear in mind the admonition of the Supreme Court of the United States that any legislation which tends to inhibit the dissemination of nonobscene published material violates the first amendment and further, that until published material has been judicially declared to be obscene its suppression violates the first amendment. Thus, in *Freedman v. State of Maryland*, decided this very month, the Supreme Court said:

"The teaching of our cases is that, because only a judicial determination in an adversary proceeding insures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose a valid final restraint. (See *Bantam Books, Inc. v. Sullivan*, *supra*; *A Quality of Books v. Kansas*, 378 U.S. 205; *Marcus v. Search Warrant*, *supra*; *Manual Enterprises, Inc. v. Day*, 370 U.S. 478, 518-519.)"

H.R. 980 is in complete violation of these principles. In the first place, the opinion of an addressee that mail matter received by him is obscene is based upon unknown standards which may not be the standards required by the decisions of the Supreme Court for such determination. Secondly, even though the opinion of the addressee is not a "judicial determination in an adversary proceeding," the Postmaster General, if requested by the addressee, must "notify the sender not to send additional such mail to him * * *." Inherent here is the additional vice that there is an official ban upon the dissemination of printed material which has not yet even been seen by anyone—a form of prior restraint which the Supreme Court condemned as in violation of the first amendment as long ago as 1931 in *Near v. Minnesota* (283 U.S. 697).

After the provision for the sending of such notice by the Postmaster General, H.R. 980 then provides that whenever the Postmaster General believes that the notice given by him has been violated, he shall serve upon the sender a complaint stating the reasons for his belief, and requesting that any response be filed in writing with the Postmaster General within 15 days. Thereafter, if the Postmaster General determines (with or without a hearing, if none is requested by the sender) that the notice has been violated, he is authorized to request the Attorney General to make application and the Attorney General is authorized to make application to a district court of the United States for an order directing compliance with the notice. Upon such application by the Attorney General, any such district court in which "any mail matter shall have been sent or received in violation of the notice" may issue an order commanding compliance with such notice. It is then provided that "Failure to observe such order may be punished by the court as contempt thereof."

It is significant with respect to this entire procedure that, at no time, is there provision made for the determination by any court as to whether the mail matter involved is obscene. As we have pointed out, the sending of the notice by the Postmaster General is predicated solely upon the opinion of the recipient of the mail matter that such matter is obscene. The notice sent by the Postmaster General to the sender is that he, (i.e., the sender) is "not to send additional such mail". If, therefore, the original mail which the recipient concluded to be obscene was in fact not obscene by legal standards then, if the "additional such mail" is of the same character as the original mail, the sender will have violated the Postmaster's notice and become subject to the procedure hereinabove outlined, including contempt of court, without a judicial determination that he has sent obscene matter through the mail.

We submit that the foregoing clearly demonstrates that H.R. 980 violates the constitutional guarantee of freedom of expression.

Respectfully submitted,

WEIL, GOTSHAL & MANGES,
By HORACE S. MANGES.

PREPARED STATEMENT OF ROBERT F. DELAY, PRESIDENT, DIRECT MAIL
ADVERTISING ASSOCIATION

My name is Robert F. DeLay. I am president of the Direct Mail Advertising Association, a trade association organized and incorporated in 1917. The more than 1,500 member-companies comprising our membership are located throughout the Nation. Our headquarters are in New York City.

All of our member firms and people are engaged in direct mail advertising—as users, creators, producers, or suppliers. Our industry accounts for more than \$29 billion in annual sales, according to estimates by the U.S. Department of Commerce.

The Direct Mail Advertising Association is wholly in sympathy with this subcommittee's earnest attempts to halt the misuse of the mail for immoral purposes.

We have repeatedly pointed this out, Mr. Chairman, but wish to make our position unmistakably clear once again.

We respect the sanctity of the postal system and the morality of our Nation, especially of our youth. Moreover, from an economic standpoint, "dirty mail" reflects discredit on, and therefore diminishes the effectiveness of, output of businessmen and others who use the mails to promote ideas, products, and services that are legitimate and morally unassailable.

We, therefore, admit to membership only companies which unreservedly subscribe to our highly ethical standards of practice, a copy of which is appended to this statement. We maintain the right to expel from membership those who mail pornographic or other morally offensive materials. We invite our members and the general public—via both advertising and publicity—to bring such materials to our attention. Our standards of practice committee meets regularly to consider such complaints.

Nevertheless, we are compelled to agree with the Justice and Post Office Departments that enactment of H.R. 980 and H.R. 4241 is clearly unnecessary and may well be unconstitutional.

It is already a felony, punishable by fine and imprisonment, to mail obscene, lewd, lascivious, indecent, filthy, or vile matter.

Every citizen has a statutory right today to file a written request with his local post office to detain obscene, lewd, lascivious, or indecent matter addressed to him.

So too, does every postal patron have a right to mark a piece of mail "refused" and to return it unopened to the mails.

As the Postmaster General stated in his letter of March 24, 1965, enactment of the bills now under consideration would "disregard * * * decisions of the Federal courts and lodge the determination as to what constitutes obscenity within the subjective opinion of each person involved."

The only determination to be made by the Post Office Department is whether the notice given to the mailer "not to send additional such mail to the complainant or any child of his (except mail which he has solicited) has been or is being violated." The bills now being considered make no provision for either the Justice Department, or the district court of the United States to which the

Department applies, to determine the merits of the complainant's interpretation that mail he has received is indeed "obscene, lewd, lascivious, indecent, filthy, or vile matter."

NO DUE PROCESS

If this legislation is enacted, the Government will be placed in the position of having to enforce a determination by one private citizen against another without due process of law, the very cornerstone of our political and economic system.

Advocates of this legislation undoubtedly believe they have "zeroed in" on those who dirty up the mails. Instead their "refinements" have made their bills just as dangerous as they were 2 years or more ago, if not more so.

Their original target was those who misused their bulk mailing privilege. This legislation would then have applied to a few hundred thousand bulk permit holders. Now it has been broadened to cover all classes of mail, and all users of the mail, whether in business or not. The risk is therefore greater than ever that such legislation will not achieve its intended purpose, and will conflict with the basic rights of many more citizens.

ALMOST LIMITLESS INTERPRETATIONS

We are appalled at the prospect that users of direct mail—commercial, industrial, and even private persons—will be forced to accommodate the almost limitless interpretations which individual postal recipients may place upon materials they receive in the mails. To some, even the commonplace undergarment sections of mail-order catalogs may be "obscene." To others, illustrated historical accounts of ancient civilizations—including acknowledged "classics"—could be assessed as "obscene."

If this legislation is passed, it is conceivable that a parent concerned about his child's personal hygiene curriculum in school could be foreclosed from sending a series of frank explanatory letters to his neighbors. He might bring the subject up on the floor of a meeting, or use newspaper space or broadcast time. Yet, under this legislation, he could be effectively denied the right to use the mails for a perfectly legitimate purpose and could run the risk of a contempt-of-court citation for inadvertently failing to exclude a complaining neighbor's name from his mailing list.

A public official might also run afoul of this legislation in taking a stand on, or merely presenting both sides of, a controversial issue like population planning. Even a cleric could be effectively "silenced"—at least in the mails—because his views did not coincide with those of dissident members of his congregation.

On the other hand, one notorious publisher (who resigned from DMAA under threat of expulsion for failure to adhere to DMAA's standards of practice) routinely sends mailings to religious leaders. By doing so he can count on generating a barrage of criticism and publicity which he can in turn capitalize upon in his future advertising.

The threat of contempt-of-court citations means nothing to unscrupulous operators like this. They thrive on being in the eye of controversial hurricanes they have stirred up themselves. Indeed, enactment of the constitutionally fragile legislation now under consideration might only serve their ends. Overturning of the current legislation in the courts might only impede the pace of wholly legal efforts to curb the flow of obscene materials in the mails.

OBSCENITY PROSECUTION SUCCESSES

We further believe this legislation is unnecessary, Mr. Chairman, in the light of successes scored by the Post Office Department in prosecuting, under current statutes, those who mail obscene matter. The following figures dramatize this point:

Year	Arrests	Convictions
1961.....	457	377
1962.....	605	503
1963.....	761	637
1964.....	805	627

BALANCING OF CONFLICTING INTERESTS

As the present Attorney General wrote to this committee on June 3, 1964:

"The question arises whether, and to what extent, the interest of society in protecting the privacy of the home warrants restrictions on the dissemination of the written word * * *.

"Neither the right to privacy nor the right to disseminate information is absolute and * * * the constitutionality of legislation affecting them will depend on a balancing of conflicting interests in the particular circumstances presented * * *.

"In each case (cited) the court looked to the practical effect of the ordinance, the alternative means available for protecting the interests of each party affected, and the extent to which the ordinance restricted noncommercial activities.

"The testimony before the House Committee on Post Office and Civil Service as to the way in which large mailings are carried out indicates that *the practical effect of an order, or a number of orders, issued under the bill, may be not only to prohibit mailings to the objecting addressee but to impede the dissemination of written matter to others who have not objected.*" [Emphasis supplied.]

The Direct Mail Advertising Association feels these points are no less valid today. We would, therefore, like to remind the subcommittee that the American economy could never have reached its current dimensions if all sales required the potential buyer to solicit information about products he might want or need.

Charles Kettering once observed: "It's much harder to improve selling techniques than production techniques * * * and the reason is, people change from morning to afternoon, but pieces of metal don't." He was talking, of course, about attitudes, interests, motivations, etc. So when you realize that people not only move around physically but also change from prospects to nonprospects and back again, you'll understand why eternal vigilance is the price of a good mailing list.

And because people change from morning to afternoon in their likes and dislikes, their wants and their needs, you'll understand why it is so important for businessmen to be able to reach them often, at times that are most propitious, and by methods they can afford.

The very cost of list compilation and maintenance makes it economically infeasible for most companies to maintain mailing lists of their own, except lists of customers and key prospects; e.g., persons called on by their salesmen, those who have asked for literature, et al. That is why they rent from, and exchange names with, other companies with similar but noncompetitive merchandise or services.

An advertiser may rent millions of names drawn from scores of different lists. Many such lists contain duplicated names, for an individual may subscribe several different publications in the same general interest area, or buy a variety of similar items by mail from different sources. (Actually, the more often the individual appears on such lists, the more certain the advertiser can be that a related product or service will also be of interest to him.)

It is costly to mail multiple offers to the same addressee. But it would be many times more costly to search each and every list for duplicated names, and prohibitively expensive to take all the steps necessary to insure absolute exclusion of those who object to the advertiser's product or service, or viewpoint.

Screening the use of lists and maintaining them in tiptop shape is a tedious, time-consuming, and costly job. But if, on top of all the so-called normal changes which are expected, mailers are required to deduce just what it is that a prospect or customer will consider morally objectionable, an almost impossible dimension will have been added to a sometimes unfathomable equation.

CONCLUSION

As we see it, despite some changes in wording, the legislation before you is not essentially different from what it was 20 months ago, when we said:

"These bills * * * would create untold administrative headaches because of their complexity. They would also produce a series of judicial nightmares because they impinge upon basic freedoms guaranteed by our Constitution. They would surely sap the strength of an important medium of advertising and sales promotion—one which has contributed so vitally and measurably to our

rising gross national product. In their well-meaning attempts to knock out the purveyor of filth, these bills would set up a mechanism which can grievously affect the well-being of thousands of blameless firms, large and small. To kill a few cockroaches in the cellar, these bills would set fire to the entire house of American business * * *.

"The fly-by-night operators these bills are intended to render powerless would more than likely continue in operation. The slippery sort of individual who engages in this reprehensible work thinks nothing of changing corporate names * * *. The bills would harm the innocent while missing the guilty."

Again, Mr. Chairman, we appreciate the opportunity you have afforded us to present our views to your subcommittee. We congratulate you on your objectives. If we can supply additional data or be of further help, please feel free to call upon us.

STANDARDS OF ETHICAL BUSINESS PRACTICE OF THE DIRECT MAIL ADVERTISING ASSOCIATION

D M
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PREAMBLE

We hold that a responsibility of direct mail users, producers and suppliers is to be a constructive and useful force in business and the economy in general.

We further hold that, to discharge this responsibility, direct mail users, producers and suppliers, must recognize their obligation not only to their clients, but also the public, the media they represent, and to each other.

Finally, we hold that this responsibility will best be discharged if all mail users, producers and suppliers observe a common set of standards of practice.

To this end, the DMAA has adopted the following STANDARDS OF ETHICAL BUSINESS PRACTICE as being in the best interest of the public mail users, producers and suppliers.

These standards are intended to serve as a guide and code to the kind of business conduct which experience has shown to be wise, foresighted, and constructive.

It is recognized that direct mail is a business and as such must operate within the framework of competition. It is further recognized that keen and vigorous competition, honestly conducted is necessary to the growth and health of American business generally, of which direct mail is a part. However, unfair business and unfair competitive practices in the direct mail business weaken public confidence, both in direct mail and the institution of advertising in general.

BUSINESS ETHICS

- (A) Acceptance of these business operative practices and standards is required of all individuals and firms who wish to become or continue to be members of the Direct Mail Advertising Association.
- (B) Conscientious adherence to the letter and spirit of these standards will strengthen direct mail advertising and its effective use as an important part of our business economy.
- (C) The principles of sound business standards shall be observed. As members, we will prepare and/or use direct mail that serves the best interests of the public, for true service is the surest road to profit and satisfaction. Our statements and promises will be clear and understandable; our performance will match our promises, our products will match our claims — for faith grows on good experience. We will be business-like in our handling of mailings and servicing of returns. We will hold to high principles of business. We will not take unfair advantage of the innocence, sympathy or conscience of others.
- (D) We will keep our mailings equal to or above the personal standard of decency as presently observed. Immoral, salacious or offensive mailings make enemies for our entire medium.
- (E) Clear and willful violation of these Standards shall be referred to the STANDARDS OF PRACTICE COMMITTEE of the DMAA for appropriate action as stipulated in the Constitution and Bylaws.

To further the interests of good business, whenever you receive or come across any item of direct mail that violates the principles of truthfulness, honesty, decency, integrity, and/or good taste, please submit such items immediately to the headquarters of DMAA so that proper action can be taken by its Standards of Practice Committee.

OPERATING STANDARDS OF PRACTICE

1. Members will make their offers clear and honest. They will avoid misrepresentation of a product, service or solicitation and will not use false, misleading, half-true or exaggerated statements. Members will operate in accordance with the Fair Practice Code of the Association of Better Business Bureaus and adhere to the Postal Laws and Regulations.
 2. If merchandise is offered on a satisfaction guaranteed or money back basis, refunds shall be made promptly on request. In an unqualified offer of refund or replacement, the customer's preference shall prevail.
 3. Members should be prepared to make prompt delivery of orders solicited in their copy. Unforeseen contingencies which prevent prompt delivery should be reported to the customer with the option of money refunded if the customer chooses.
 4. All orders will be acknowledged promptly when delivery is unavoidably delayed; all complaints, all inquiries, all correspondence will be answered as soon as possible.
 5. The terms and conditions of guarantee shall be clearly and specifically set forth in immediate conjunction with the guarantee offer. Guarantees of performance shall be limited to the reasonable performance capabilities of the product advertised.
 6. Members will not use exaggerated, fictitious price comparisons; non-existent discounts or savings; nor employ list prices known to be false or not current.
 7. An article which is offered without cost or obligation to the recipient may be unqualifiedly described as "free." "Free" can also be used conditionally where the offer requires the recipient to purchase some other item, provided all terms and conditions are accurately and conspicuously disclosed in immediate conjunction with the use of the term "free" and further provided that the article required to be purchased is not increased in price or decreased in quality or quantity.
- However, if the "free" item is always provided with the purchased item it becomes a combination offer, no part of which is free.
8. Members will not use fictitious testimonials; or testimonials originally given for products other than that offered by the advertiser; or testimonials making statements or conclusions the advertiser knows to be incorrect. If testimonials are used they shall be the testimony of a competent and impartial person containing no misstatement of facts or misleading implications and should reflect the current opinion of the author.
 9. If laboratory test data is used in advertising it shall be competent as to source and methodology. Members will not use excerpts of laboratory test material in support of claims which distort or fail to disclose the true test results.
 10. Photographs and art work will be faithful reproductions of the article offered.
 11. Mailings will not contain vulgar, immoral, profane or offensive matter nor will members use the mails to promote the sale of gambling devices, pornographic material or other matter not acceptable for mailing on moral grounds.
 12. Members will not mail unordered merchandise for which payment is requested; nor will they use the pro-forma invoice deceptively.
 13. Members shall not make offers which require the purchaser to return a notice that he does not wish further merchandise unless all the conditions are made clear in an initial offer. They will not initiate delivery of such merchandise without a bonafide order.
 14. Members will not use false or deceptive devices for collecting money owed by delinquent accounts.
 15. Members who sell instruction, catalogs, mailing lists or merchandise for re-sale will not use false or deceptive statements with respect to the earning possibilities, lack of risk, or ease of operation.

The specific provisions set forth above will be observed not only by advertisers but by all in our membership who service them.

Any question as to interpretation of the OPERATING STANDARDS OF PRACTICE will be referred to the President of DMAA. Any matter concerning these Standards which cannot be resolved by the President of DMAA and the member will be referred to the Standards of Practice Committee of DMAA.

FAIR PRACTICE CODE FOR ADVERTISING AND SELLING

1. Serve the public with honest values.
2. Tell the truth about what is offered.
3. Tell the truth in a forthright manner so its significance may be understood by the trusting as well as the analytical.
4. Tell customers what they want to know — what they have a right to know, and ought to know about what is offered so that they may buy wisely and obtain the maximum satisfaction from their purchase.
5. Be prepared and willing to make good as promised and without quibble on any guarantee offered.
6. Be sure that the normal use of merchandise or services offered will not be hazardous to public health or life.
7. Reveal material facts, the deceptive concealment of which might cause consumers to be misled.
8. Advertise and sell merchandise or service on its merits and refrain from attacking your competitors or reflecting unfairly upon their products, services, or methods of doing business.
9. If testimonials are used, use only those of competent witnesses who are sincere and honest in what they say about what you sell.
10. Avoid all tricky devices and schemes such as deceitful trade-in allowances, fictitious list prices, false and exaggerated comparative prices, bait advertising, misleading free offers, fake sales and similar practices which prey on human ignorance and gullibility.

(Association of Better Business Bureaus, Inc.)

PROCEDURE IN IMPLEMENTATION OF STANDARDS OF PRACTICE

DMAA believes most violations of the STANDARDS will be inadvertent and unintentional, and can be disposed of by the DMAA executive staff.

This will be accomplished by an informal exchange of views between the DMAA executive staff and the member who is believed to be in violation of the STANDARDS.

An initial letter will be sent outlining the reasons why the member is believed to be in violation, requesting it be corrected, and inviting rebuttal if the member does not agree he is in violation.

If the question involved cannot be adjusted by the DMAA executive staff, the case will be referred to the STANDARDS OF PRACTICE Committee for further action.

After the Committee has reached a determination, a formal letter will be mailed to the member, if adverse, requiring his answer as

to whether he will make correction, and what steps he will take to accomplish this. If he fails to cooperate, the Committee will recommend suspension or expulsion to the Board of Directors, with subsequent action according to provision of the bylaws.

No publicity will be given on any casework until final action, and then only if no correction is accomplished, with the member either being expelled, suspended, or resigning of his own volition.

A formal report will be made and published in such cases.

The above is the procedure as it applies to DMAA members. When a non-member is thought to be in violation of the STANDARDS, every effort will be made to apprise them of this, and they will be urged to discontinue the violation, in the interests of more effective Direct Mail.

AMERICAN LIBRARY ASSOCIATION,
Chicago, March 31, 1965.

HON. TOM MURRAY,
Chairman, Committee on Post Office and Civil Service, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Having learned on March 23 that testimony on H.R. 980 before the Subcommittee on Postal Operations was invited for March 30, and being unable on such short notice to appear personally or provide a witness, I am grateful for this opportunity to submit to you a statement for the record on behalf of the American Library Association.

The American Library Association is a nonprofit, professional association of some 29,000 members consisting of librarians, trustees, and friends of libraries. It is the oldest library association in the world. Our association, by action of its council in 1953, jointly with the American Book Publishers Council endorsed a statement on "the freedom to read," which is as timely now as it was then. I would like to quote briefly from that statement.

"The freedom to read is essential to our democracy. It is under attack. Private groups and public authorities in various parts of the country are working to remove books from sale, to censor textbooks, to label 'controversial' books, to distribute lists of 'objectionable' books or authors, and to purge libraries. These actions apparently rise from a view that our national tradition of free expression is no longer valid; that censorship and suppression are needed to avoid the subversion of politics and the corruption of morals. We, as citizens devoted to the use of books and as librarians and publishers responsible for disseminating them, wish to assert the public interest in the preservation of the freedom to read.

"We are deeply concerned about these attempts at suppression. Most such attempts rest on a denial of the fundamental premise of democracy; that the ordinary citizen, by exercising his critical judgment, will accept the good and reject the bad. The censors, public and private, assume that they should determine what is good and what is bad for their fellow citizens.

"We trust Americans to recognize propaganda, and to reject obscenity. We do not believe they need the help of censors to assist them in this task. We do not believe they are prepared to sacrifice their heritage of a free press in order to be 'protected' against what others think may be bad for them. We believe they still favor free enterprise in ideas and expression."

As recently as last January 1965, the association's intellectual freedom committee sponsored a conference on censorship and intellectual freedom in Washington, D.C., at which 65 representatives from church and law, press and publishing, education and libraries, participated. The many organizations represented included the American Civil Liberties Union, the National Education Association, the National Council of Teachers of English, and the American Book Publishers Council. The relationships between freedom to read and political problems, delinquency, racial problems, religious problems, and pressure groups were explored. The work of this conference would seem to have a bearing on the interest continually shown by the Congress and the House Committee on Post Office and Civil Service in regulation of material circulated in the U.S. mails and so, if the committee wishes, I would be glad to provide a copy of the papers presented at the January conference, as soon as they are published. An initial report of the conference may be found in the Library Journal for March 1, 1965.

H.R. 980, introduced by Mr. Cunningham on January 4, 1965, to deal with the question of offensive matter in the mail, apparently is similar to legislation introduced in, but not enacted by, the 88th Congress. This legislation was disapproved or unfavorably commented upon not only by witnesses for numerous private organizations interested in the preservation of freedom of speech and press, but also by the U.S. Post Office Department itself and the U.S. Attorney General. I am advised that both these arms of the executive branch have already gone on record with equally strong reservations concerning the wisdom and constitutionality of H.R. 980.

As I understand the legislation, as previously proposed, it would have authorized a person to return to the Postmaster General any mail which was "morally offensive," in his opinion, and which was addressed to and received by him or a child of his. The person would have been authorized, also, to request the Postmaster General to notify the sender to refrain from sending all unsolicited mail to him or his child. The Postmaster General would be required to give the sender notice of the request and to direct that, effective on the 30th

day after the date of the notice, the sender, and persons acting on his behalf, shall not send any mail to the person named in the notice. If the Postmaster General believed that a sender or anyone acting in his behalf violated the notice to refrain from sending mail, the Postmaster General would be required to serve upon the violators a complaint requiring that any response be filed in writing within 15 days. If the Postmaster General then considered that the notice had been violated, he would be authorized to request the Attorney General to apply to any district court within whose jurisdiction the mail has been sent or received, for an order directing compliance with the notice. Failure to obey the court's order would be punishable as contempt.

H.R. 980 differs from the legislation proposed, but not enacted in the 88th Congress in at least three main respects. First, it characterizes the objectionable mail matter as "obscene, lewd, lascivious, indecent, filthy, or vile" rather than "morally offensive." Although such a narrowing of the ambit of this law would be otherwise commendable, it seems only fair to observe that even the courts of the United States have encountered great difficulty in identifying "obscene" material as distinguished from other material, dealing with sex, which is not obscene and whose circulation is constitutionally protected by the first amendment, as interpreted by the U.S. Supreme Court in recent cases like *Manual Enterprises v. Day* (1961); *Bantam Books v. Sullivan* (1963); *A Quantity of Books v. Kansas* (1964); and most recently, *Freedman v. Maryland*, decided March 1, 1965. Yet H.R. 980 makes very little attempt to conform to the requirements and tests laid down by the U.S. Supreme Court in such case, for the legitimate regulation by government of so-called obscenity. In fact, H.R. 980, like its predecessor in the 88th Congress, and like some other bills introduced during the present session of this Congress, seems to aggravate the constitutional problems inherent in even the best motivated governmental attempts to regulate the circulation of so-called obscenity by its permitting the subjective opinions and tastes of individuals unconnected with the Government to determine whether some material may pass through the mails and the senders of such mail may be punished for thus using the mails. It would be difficult to improve upon the criticism directed at this aspect of H.R. 980 by Postmaster General Gronouski when he observed that it would empower persons "to set in motion a series of governmental actions which could seriously impede the dissemination of material to the general public despite the fact that the matter itself may not be obscene by judicial standards." We are all, today, very much aware that any legislation or other regulation exerting restraints upon the circulation of printed materials must strictly comply with judicial standards lest one precious freedom of expression and freedom to read be eroded. Yet the proposed legislation almost invites persons to take advantage of the opportunity afforded to translate his own subjective feelings about certain subjects into consecutive orders of the Post Office Department, the Department of Justice, and the Federal court system, designed to bring about the punishment of, or disruption of business of, some group, company, or concern using the mails to offer information or views on subjects which the recipient may personally dislike, including even religious and political views.

For almost anything can be called "obscene" or "indecent" by someone. Surely Congress would want to consider carefully before adding contempt proceedings. What is obscene to one may be the laughter of genius to another; it is to be hoped that the Congress will not require the Post Office Department to go back beyond the days when it considered Aristophanes "obscene" by "appointing" scores, perhaps hundreds or even thousands of amateur censors to exercise their subjective judgments on what is or is not obscene passing through the U.S. mails.

H.R. 980 embodies a provision barring subsequent mailings of additional "such" mail rather than all mail, but this change seems to present no cure for the original defects pointed out during the course of the hearings on the bills in the 88th Congress; it would seem merely to place upon the Postmaster General the truly impossible duty of deciding which additional mail originating with the same sender might be considered "obscene" in terms of the subjective meaning evidently placed upon that term by the individual objecting recipient. Must not a ludicrous result be foreseen whereby the Postmaster General would be duty bound to censor mail according not to his own official opinion of what constitutes obscenity, but according to the unarticulated, unformulated differing notions of scores, or hundreds, or thousands of persons. I am not surprised that Postmaster General Gronouski recently advised this committee that this bill, if enacted, would "impose a tremendous burden on the Post Office Department which it would be incapable of handling under currently restricted budgeting requirements."

The new bill would provide for an "appropriate hearing," if requested by the sender, to aid the Postmaster General's determination of whether a notice to the sender not to send additional "such" mail—mail which would be considered "obscene" by the objecting recipient—had been violated. This provision for a hearing seems designed to overcome the strong objections made to the failure of the legislation proposed during the last Congress to provide any hearing whatsoever to a person, group, or concern accused of having continued, despite notice, to send morally offensive material through the mail. On the other hand, it seems quite clear that the "appropriate" hearing now intended to be provided is not a "due process" hearing at all since it expressly need not conform to the requirements for hearings under the Administrative Procedure Act. I am advised that in failing to need so to conform, the procedure proposed would almost certainly be constitutionally defective.

The bill also appears to ignore the possibility that a "violator" might unknowingly or inadvertently have violated the notice not to send additional "such" mail to the objecting recipient. Such inadvertent or unknowing sending could be expected, it seems to me, to occur quite normally and in good faith whenever a sender is unable to appreciate fully exactly what kind of expression or material the objecting recipient considers "obscene, lewd, lascivious, indecent, filthy, or vile." In other words, the proposed legislation would seem to cast the burden of becoming mindreaders upon senders of mail. It is hard to believe this Congress would want deliberately to enact so troublesome a law for the attempted regulation of obscenity in the mails. This problem was present also in the legislation introduced in the 88th Congress, where Attorney General Katzenbach pointed out the inherent constitutional infirmity.

In summary, however meritorious the intention of the proponents of such legislation undoubtedly is, H.R. 980 threatens to violate constitutional standards for due process of law, freedom of speech, and freedom to read. Mindful as we all are of the quantity of uninvited, sometimes welcome and sometimes unwelcome, material received by us all almost daily through the mails, we are also mindful that each of us possesses the power for ourselves or our children, physical and legal, to return or discard any such material we many find personally unwelcome—whether on sexual, political, religious, or other grounds, including even good taste. It does not, however, seem any proper function of our Government to perform for us this job and I find it praiseworthy that those arms of our Government who would inevitably be charged with carrying out such a function also feel that to do so would be unwelcome, improper, and unconstitutional.

The sanctity and right of privacy of the home is indeed an important sanctity and right, one which the Congress ideally should work to uphold. But it does not seem to me that the right and sanctity is invaded by the delivery of mail which can be rejected and discarded, even left unopened. On the other hand, since the proposed legislation seems to threaten to restrain rights of free expression and due process for both senders and recipients of all kinds of mail, and perhaps to deny equal protection of the law to senders of certain kinds of mail matter, it should not be enacted by the Congress. I would like, therefore, on behalf of the American Library Association, to recommend against enactment of H.R. 980 and the similar bills on this subject introduced in this Congress, including H.R. 4302, H.R. 4794, and H.R. 4241.

Sincerely yours,

EDWIN CASTAGNA,

President, American Library Association.

PREPARED STATEMENT OF HON. CHARLES E. CHAMBERLAIN, OF MICHIGAN

Mr. Chairman, I am Congressman Charles Chamberlain, of the Sixth District of Michigan. For some time, I have been concerned over the problem of morally offensive mail, and I welcome the opportunity to submit my views to this subcommittee on H.R. 4943, legislation I have introduced to protect postal patrons from obscene mail matter.

As this subcommittee knows, postal, customs, and Justice Department officials began a program of intercepting and confiscating Communist propaganda—but this program was ended in March of 1961. The 1962 postal bill directed the Post Office to intercept Communist propaganda mail—but did nothing to halt the rapidly increasing traffic in obscene and immoral mail. Last year, the House passed H.R. 319, which would permit a person who received mail

which he considered morally offensive to take action which would prevent the sender from mailing more unsolicited material to him or to his children. Unfortunately, the Senate took no further action on this worthy and essential legislation.

A report of the House Committee on Post Office and Civil Service states in 1964 that "recognized authorities" had presented "overwhelming evidence that a multimillion-dollar traffic in obscene and immoral products is still growing, with much of it directed to debasement of the morals of the very young and impressionable," and that a new law with "teeth" was needed to "enable the public to effectively participate in achieving the needed protection of its own interests."

I concur in the conclusions reached by the committee last year and urge that this bill be enacted into law at the earliest possible time. For while some existing laws provide for the successful prosecution of hard-core obscenity and pornography mailers, the public is confronted by the possibility of equal or greater danger from the "gray areas" of indecent and off-color mailings.

The bill which I have introduced along with other Members would return morally offensive mail to the Postmaster General with a request that the sender be notified not to mail any more such unsolicited material. Once the Postmaster General notified the sender of this request, no additional material could be mailed to the complaining individual or to his children beginning 30 days after receipt of the notice, and violations could lead to contempt proceedings.

This bill seems to meet constitutional objections by leaving the definition of what constitutes obscenity to the discretion of the individuals concerned, and would seem to offer Americans the best possible method of putting a halt to mailings that shock the sensibilities. I respectfully request this subcommittee to act favorably upon this legislation and expedite its approval by the Congress so that the public may be protected from unscrupulous mailings in the future.

CITIZENS FOR DECENT LITERATURE, INC.,
Cincinnati, Ohio, March 29, 1965.

Hon. GLENN CUNNINGHAM,
Member of Congress,
House of Representatives,
Washington, D.C.

DEAR MR. CUNNINGHAM: This letter is in support of H.R. 980 to allow the recipient of obscene material to demand that his name be removed from the mailing list. I urge the Post Office Subcommittee on Postal Operations to vote this measure out of committee.

In actuality, this is a most serious problem for the average uninformed citizen. He gets on one salacious literature mailing list and before long is deluged with material that is obscene and which he cannot stop. This is especially serious if a child is assaulted through the mails and the parents and their home is violated with obscenity over which they have no control.

I personally can see no civil liberties or civil rights objections to this bill except by those lining their pockets with greenbacks or by those maliciously and clandestinely supporting the obscenity racket. Certainly a civil liberty and right should be freedom from obscenity and particularly any home should have the right to sanctity against obscenity if so desired. Let those lamenting in the name of civil liberties protect the individual instead of the purveyor of filth.

H.R. 980 has my personal support; the support of Citizens for Decent Literature and its affiliates throughout the 50 States. I am certain that 95 percent of American parents, as indicated by our surveys, are exasperated by obscenity and want tools provided to resist.

Cordially yours,

DON CORTUM, M.D., *National Cochairman.*

PREPARED STATEMENT OF DONALD G. CORTUM, M.D., NATIONAL COCHAIRMAN,
CITIZENS FOR DECENT LITERATURE

A CLEAR AND PRESENT DANGER

Obscenity to exploit the immature mind, whether youth or adult, is being foisted on our society by a closely knit group of unscrupulous publishers. These

"quack" publishes surround themselves with paid professionals in the field of psychology, literature, and the law. The "quacks" and their "hacks" flit across our Nation to support their perverted criminality before the courts. Even those among us who question under the guise of sexual freedom, freedom to read, constitutional rights, and those apathetic Americans slow to rise to action, are recognizing the problem of obscenity in our society.

How large is the dollar volume of obscenity? It is difficult to estimate, but, it appears from Federal testimony before many committees, that it approaches \$2 billion yearly. This figure includes printed materials, newsstand obscenity, mail order obscenity, records, and film.

Obscenity is worsening in volume, in content, and in traffic. Why? Paralysis of law enforcement through liberalizations of judicial decisions, by incompetency in law enforcement in a highly technical area of prosecution, because of apathy of the public and because of indifference of executive branches of the Government. Obscenity represents a "clear and present danger" to our society. It must be recognized as such.

Mail-order obscenity, purported nudist publications, men's adventure magazines, and paperbacks are flooding the market. All appear to be one gigantic network, seething to erupt—yes, clandestinely supporting the big operator. Nudists publications are so raw that nudists state they are pornographic. Paid models, and exhibitionists repeatedly photographed and repeatedly exhibited attempt to sublimate their psychosexual defects by posing. Lists of homo bars and cafes near army bases are distributed. Homosexuals are demanding their civil rights and are challenging exclusion from church groups. Sex-violence materials, fetish-type and bondage materials are openly available in tremendous quantities in large cities. Girlie-type publications, Playboy being the most notorious example, are engrossed in the breast fetish—degrading the American woman to the status of an animal. Paperbacks in England became so bad that Great Britain made a formal protest to the U.S. State Department. The principle publisher is still in business in Los Angeles County despite the fact that the U.S. State Department contacted Los Angeles County about this publisher. Some paperbacks upheld as obscene by the U.S. Supreme Court are still being sold—even sold through the mails. There is little question about the intent of the author or the publisher but to pander to abnormal sexual curiosity. We need briefly to examine the attitudes of the opponents to the control of obscenity. The opponents say, "If you want to read obscenity it is not right for the Government to intrude." The opponents say, "Children should not be restricted in any reading by their parents." The opponents falsely state, "Obscene books are not forced on anyone." The opponents, the American Civil Liberty Union, in a brief in 1964 asserted, "The Government should limit nothing in free speech—not even obscenity." The opponents say that one gets a charge out of lewdness and that this acts as an outlet. The opponents state that men raped before the printing press. The opponents state that no girl was ever seduced by a book. The opponents state no one can define obscenity and that no one knows where to draw the line. But, one wise man answered them in one simple statement, "Every evil act is preceded by an evil thought"; and if we plant evil thoughts in peoples minds we can expect evil acts.

It is amusing to read in the 1964 ACLU bulletin that "* * * they questioned the value of a sweeping antismut campaign launched with 'lurid displays of pornographic material' * * *" At least we have the ACLU admitting that obscenity exists. Does this material damage society? Yes. The unscrupulous publishers, distributors, and their hacks are not the only ones interested in the spread of pornography. It is a proven fact that a large majority of sex deviates known to police have large collections of pornographic materials. Sex perverts tend not only to distort their own lives but scar and distort the lives of their victims. They become a point of social contagion seeking continually to recruit others to their cult so they won't be so readily set apart from the normal. The more subtle effect is on our young people and their morals. Sociologically obscenity debases moral standards and provides an atmosphere in which evils fester and grow. The smut peddler is encouraging youth to express sex impulses in an unhealthy direction. This provides a basis for unstable marriages leading to broken homes, and thus provides more damaged personalities for the increasing vicious circle. The smut peddler not only aggravates the elements necessary for immorality but provides the elements for criminal activity by tying violence and sex together.

To deny the effect of pornography and obscenity is to deny the effect of books, the fundamental reason for freedom of the press. Entire civilizations have been built or destroyed by the effect of books.

Pornographic writers distort the truth, set up false standards, romanticize evil, thus destroying the standards of decency for which civilization has fought since the beginning of time. They foster a contempt for the dignity of man or woman and create a lack of responsibility in the mind of the reader. In making the degradations and perversities of human being socially acceptable these writers violate the unexpressed compact that exists between civilized men. These writers bombard children with sexual materials for which their immaturity ill fits them and the result has been an unnatural oversexualization of a new generation. In their adolescent way youth confound the discussion of sexual problems with encouragement to practice. This results in premature sexual involvement, rising teenage venereal disease, and illegitimacy. Children so involved with sexuality dissipate their energies when they should be applied to development of their physical and intellectual capacities to engage as citizens and workers in the community and as parents in the family. Chaotic relations between the sexes menace the vitality of the nation when a nation dissipates its energies on sensual sexuality. The whole matter of sex education has been unnaturally inflated producing an obsession among adolescents and immature adults for factual sexual information; yet, curiously, much of the obsession for information is filled by perverted newsstand garbage because sex education is not being done in the home. These newsstands spew forth distortions and emotionally charged sex-violence material. Americans should bristle with anger at the smut peddler who exploits youth and in turn deceives him for a fast dollar. A tremendous vacuum exists since parents are not fulfilling their obligations to give children moral sex education. Community, school, and church efforts to strengthen family efforts in sex education should be encouraged.

The argument is often put forth that there is no cause-effect relationship between obscenity and antisocial acts. It is proliferated by nonprofessional pseudo-medical persons and especially by those associated with publishing, writing, and distributing obscenity. Those defending the obscenity racketeer in court promulgate the big lie to line their own pockets with greenbacks. To deny the effect of the printed word only in the field of obscenity is a gross delusion. J. Edgar Hoover, Director of the Federal Bureau of Investigation, stated 10 years ago, "We can no longer wait for the scientific answer about cause and effect, but must enforce the law and suppress this material."

Americans are set apart from the rest of the world in this regard. A report of a recent United Nations conference on crime with 85 nations present found the U.S. delegation "pretty much alone on the issue of mass media." "It seems that the rest of the world is quite certain that the portrayal of crime, violence, brutality, and sadism has a bad effect on youth and is directly conducive to crime. The mention of lack of scientific proof by the U.S. delegation was met, by and large, with incredulity—perhaps one should say with utter amazement and a certain amount of hostility." The report states that the other nations felt that U.S. unwillingness as a nation to control crime and violence is explained through the greed of this country in trying to make big money and its products which are deliberately addressed to the base elements of human behavior.

Much of the confusion in sexual matters stem from confounding compassion and understanding with social approval. Christ recognized this problem and admonished us to "Love the sinner but hate his sins."

Psychiatrically clinical studies must go into the unconscious evaluation of the dynamic and the interaction of the child or adult. Who can say when abnormal sex activity may occur and what scientific investigator will be there to record it? Who can predict when a child exposed to sadomasochistic material will act antisocially? It may be next week and it may be 8 years later. Short-term studies are impossible. Planned experiments are impossible, for who would want their child submitted to pornography and followed psychiatrically? Therefore, we must work analytically with children that do develop psychosexual problems. We must realize that for every child seen by a physician there must be countless others with similar problems never seen.

We know that children from stable homes are much less likely to be affected than those where the foundation of personality development is already weakened. In obscenity, women are often portrayed as sexually seductive, deceitful, and the objects of sadistic attacks and for sexual gratification only. The connection of violence is potentially especially damaging because we find that it arouses sadomasochistic erotic fantasies in many children, some of whom remain fixed

on this type of pleasure in later years. We feel that the increase of salacious literature is one of the major social ills reflecting a breakdown in the home and community. We feel that obscene reading encourages a morbid preoccupation with sex and interferes with the development of a healthy attitude and respect for the opposite sex. Obscenity contributes to perversion and has an especially damaging effect on disturbed adolescents. Perusal of erotic literature has the potentiality of inciting some persons to enter into illicit sex relations and thus leads them into promiscuity, illegitimacy, perversion, and venereal disease. Reports of a study of a teenage sex club arrived on my desk last Thursday. This exhaustive study revealed that most of these children had received their sex education from pornography. Incidentally, these students were all from upper and middle class families—their parents were the civic and social leaders of the town, which emphasizes that fact that this problem is from top to bottom in our society. We know that violence reduces inhibitions against violence, especially in children—it becomes “old hat.” Violence teaches a form of aggression. A moralistic ending to the story does not erase the damage already created. We know that in one study 25 percent of delinquent girls stated they engaged in sexual intercourse following the arousal of sex impulses by a passionate motion picture. Thus, providing girls with passionate stories of sex and perversion provides a distorted lie to the child. Linking sexuality with crime and immorality cheats her of her noble position in life. We know from a recent study in Germany that boys usually were led into indecent assaults by the display of photographs and books—incidentally, many of which come from the United States.

We know that obscenity can be the trigger that sets off overt delinquency on the part of an already disturbed child. We also know that immature adults frequently sexually molest children after exposure to obscenity. Pornography supercharges abnormal impulses overstimulating his basic sexual mechanism. We know that giving obscenity to children in a very unstable period of life can distort and pervert. This is especially true in children age 5 or 6 when exposed to sadism, masochistic, and fetish material. Given obscenity during psychosexual maturation a potentially normal child can be perverted. Since the sole purpose of pornography is to stimulate the reader erotically in an abnormal way, and since the adolescent is most unlikely to have a legitimate opportunity for his sexual excitability, it drives him into compulsive acts of sex and violence. There is a brief relief of tension in acting out his sexual drive but the gratification is short lived. And so we see that the psychiatric origin of sex crimes and perversion is not only tolerated in our country but through the dissemination of salacious literature we actually encourage it. To counterchallenge that delinquents don't read is ridiculous. Children that can't read are more susceptible to the impact of pictures—those so readily available at your corner newsstand. We need to encourage the fullest possible respect for a man or a woman's integrity as a person in our society. Rules of society are designed to honor the dignity of a human being as something more than an animal. Women and men cannot be degraded to sex slaves.

We recognize that there are many other factors in the psychiatric and sociologic backgrounds of individuals affecting sexual behavior. We must find the middle ground between expressions of ideas about sex and expressions of sexuality directed toward base emotions. We must safeguard the freedom of men to create, publish, read, think, and talk about condition of life and procreation. But we must act for the common good. When the common good is threatened by the actions of evil men a society cannot wait for the educational and religious forces to complete intellectual and moral rehabilitation of those men.

Law and government have a defensive function; they must curb the evil men do, even though we know that the personal reform of these men is beyond the scope and competence of the law. Law can and must minimize the social consequences of personal vice. It can reduce the hardening institutionalization of vices into self-perpetuating social patterns injurious to the common good of a nation. Law cannot reform human behavior but it can regulate human behavior and thus regulating it can accomplish enduring social reform. Education, environment, parental and religious training play a significant part in the maturation of a citizen. None of these can ever replace government and law as instruments in the defense and promotion of the common good.

We demand arrest, prosecution, and conviction of the smut peddler. We must support law enforcement when it acts; we must have protection of the judiciary from the smut peddler.

A clear and present danger exists in our country. Unless the obscenity law is enforced and upheld in the courts, citizens will only have the tools of private censorship groups and vigilante groups. Anarchy and chaos will follow. Yes; a clear and present danger does exist. Let us leave this meeting with the knowledge and determination to clean up this mess.

AMERICAN CIVIL LIBERTIES UNION,
Washington, D.C., March 31, 1965.

HON. THADDEUS J. DULSKI,
Chairman, Subcommittee on Postal Operations,
Committee on Post Office and Civil Service,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. DULSKI: We were notified by a staff member of the House Subcommittee on Postal Operations on Tuesday afternoon, March 23, that hearings would be held on H.R. 980 on March 25. Unfortunately we were unable to provide a witness on such short notice. We were again notified that a new hearing was scheduled for yesterday. We are unable to understand the necessity for this precipitous haste on such an important bill, and, again, were unable to provide a witness on such short notice. Accordingly, we are submitting this letter to set forth the views of the American Civil Liberties Union for inclusion in the record of the hearings or the committee report.

H.R. 980 provides that any person may return to the Postmaster General mail matter which in that recipient's opinion is obscene, lewd, lascivious, indecent, filthy, or vile. The Postmaster General then notifies the sender not to send additional such mail to the recipient or any child of his, except mail which he has solicited. Violation of this notice would result in the Postmaster General serving a complaint, with the Postmaster General thereafter being authorized to request the Attorney General to apply to a Federal court for an order directing compliance with the notice. The Federal court is then given jurisdiction to issue an order commanding compliance with the notice—and failure to obey such an order may be punished by the court as a contempt.

This bill, H.R. 980, introduced by Congressman Cunningham, Republican, of Nebraska, is similar to H.R. 319 passed by the House of Representatives in the 88th Congress. However, there are three changes which have been made:

In place of the standard of "morally offensive" mail matter to the recipient, the new bill utilizes the standard "in the opinion of such person is obscene, lewd, lascivious, indecent, filthy, or vile." Second, it now covers "additional such mail" to the objecting recipient rather than barring all mail. Third, it provides an opportunity for the sender to have an "appropriate hearing," if requested, before the Attorney General makes an application to a district court of the United States for an order directing compliance with a notice not to send any more mail.

The committee report last year accompanying H.R. 319 (H. Rept. 1506) notes that "the bill is designed to stop repeated mailings of morally offensive material before they start, not to punish such mailings after they have occurred." Thus, the plain and admitted purpose of the proposed legislation is that of pre-censorship—to censor mail before it is even sent no matter what the alleged standard. Such a form of prior restraint on publications has always been condemned by the courts as an especially aggravating form of interference with freedom of the press.

The committee report last year also indicated that the legislation is aimed at the suppression of "immoral and suggestive" material which, under court decisions, is not per se "obscene." But the U.S. Supreme Court has told us under *Roth v. United States* (364 U.S. 476), and again in *Jacobellis v. Ohio* (378 U.S. 184), material which is not obscene enjoys the freedom of the press. It is clear that this legislation is aimed not at what is judicially determined to be obscene but what is obscene, lewd, lascivious, etc., in the subjective opinion of the potential recipient. Thus it is aimed at material which enjoys the constitutional protection of the freedom of the press.

It could have a paralyzing effect on the public dialog on the most important issues of our day. To a segregationist, literature of the NAACP or of CORE might, indeed, be obscene, lewd, lascivious, indecent, filthy, or vile, and such a person could effectively demand the stoppage of mailings to him by such organizations of materials which are clearly protected by the first amendment

to the U.S. Constitution. Conversely, mailings from White Citizens Councils or the Ku Klux Klan could likewise be deemed filthy or vile or one of the other adjectives, to those who sympathize with the NAACP. Mailings from the Democratic National Committee or the Republican National Committee or from his own Congressman might be deemed to be obscene, lewd, etc., to any particular recipient, since it is his opinion which is the final determinative judgment, and such senders might be put to the almost impossible task of screening their mailing lists at the risk of contempt convictions.

Another unique vice of this proposal is the complete vagueness inherent in the term "additional such mail." This has never been judicially determined. The sender would never know whether what he intends to send is "additional such mail" and, therefore, in order to avoid any possibility of running afoul of the penal sanctions of the law would not send any further mail. In fact, it is apparent that it is the recipient's subsequent "second" and "third" determinations that he had received "additional such mail" which controls, no matter how farfetched his judgment.

The so-called appropriate hearings is, of course, nothing but a farce. The only issue involved there would be whether the sender had complied with the Postmaster General's directives. Whether the material was obscene, etc., according to judicial standards would not be an issue since it is the subjective judgment of the recipient which would hold sway.

It is to be noted that the bill, under section 1(f) states that the Administrative Procedure Act (5 U.S.C. 1001-1011), shall not apply. There again, it is apparent that the bill violates the sender's basic due process rights established by Congress for administrative hearings. What the rights of the sender shall be in the "appropriate hearing" is not only unclear, but ephemeral.

As the committee is no doubt aware, both the Post Office and the Justice Department are opposed to the enactment of this legislation and have so informed the committee.

This bill is also completely unnecessary. There already exists under the present law (Public Law 87-793, sec. 307, approved Oct. 11, 1963), an opportunity for any recipient to keep any particular matter out of his home. The statute reads: "Any person may file a written request with his local post office to detain obscene, lewd, lascivious, or indecent matter addressed to him and the Postmaster General shall detain and dispose of such matter for such period as the request is in effect."

If one finds mail material morally offensive, he need do no more than tear it up and throw it in his trash basket. But to use the full force of the U.S. executive and judicial departments to stop a person from mailing further mail matter to a recipient who has found one piece of such sender's material to be vile, in his judgment, is to invite the Federal Government to traffic in the suppression of unpopular—but constitutionally protected—ideas and literature. Moreover, it would even permit a minority to help stop the circulation of ideas and reading materials which has met the acceptance of the majority.

We urge the committee not to report this bill.

Sincerely,

LAWRENCE SPEISER,
Director, Washington Office.

RICHMOND HILL, N.Y., March 1, 1965.

HON. GLENN CUNNINGHAM,
*Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.:*

As a pediatrician, qualified Army psychiatrist, and as a member of Mayor Wagner's Antipornograph Commission, I congratulate you on your uncompromising and inspiring position in the fight against the national and international menace of obscenity. Your bill H. 890 is a good one and deserves all support. It is a major contribution in this fight. The people of the United States are being serviced admirably by you.

WILLIAM P. RILEY, M.D.

NEW YORK, N.Y., March 29, 1965.

HON. THADDEUS J. DULSKI,
Chairman, Subcommittee on Postal Operations, Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.

DEAR MR. DULSKI: As counsel for the Magazine Publishers Association, we wish to take this opportunity to present our views on H.R. 980 and other iden-

tical bills pending before the Subcommittee on Postal Operations of the Committee on Post Office and Civil Service.

We applaud the efforts of the members of your committee who have, in past years, taken an interest in the subject of obscenity in the mails. We fully agree with the general purposes of this legislation to protect patrons of the postal service from the entry of obscene matter into their homes, but do not feel that these particular bills solve the problem. Also, they raise serious constitutional questions involving the first amendment to the Constitution.

H.R. 980 is the successor to H.R. 319 of the 88th Congress concerning which we wrote you on July 2, 1963. Despite three revisions in language, the same constitutional and other objections exist in H.R. 980 as were referred to in our earlier letter with respect to H.R. 319.

In addition, it is our belief that the present legislation would not only fail to solve the problems which exist with relation to any abuses in the use of the mails, but would establish a structure which would lend itself to harassment of legitimate mail users and impede the free flow of ideas and thought to recipients of the mail, raising problems of freedom of the press.

The Post Office Department has submitted a statement to your committee saying that it does not need this legislation to protect postal patrons as there are adequate laws on this subject. The Department of Justice has submitted a statement concerning the constitutional problems raised by the proposed legislation. These two agencies of Government would share the responsibility for administering the provisions of this bill should it be enacted into law. We can add nothing further to their statements except to urge that their views be given great weight by your subcommittee.

While there is an exemption in the bill for solicited mail matter which would cover second-class matter, the magazine industry is an extensive user of third-class circular mail. It is this type of mail which might be subject to abuse by disgruntled patrons who would object that matter was "in their opinion" obscene. We object in principle to setting up a nation of 180 million censors, each of whom would have the authority to decide what matter was obscene. The Post Office Department would, upon complaint, be obliged to issue an order forbidding the mailer to send other "such mail" to those objecting addressees.

While the present bill contains provisions for a hearing, such a hearing would be limited to the question of whether the sender was complying with the Postmaster General's directive not to send "such mail" to the objecting patron. Such a hearing would not meet the due process requirements of the Administrative Procedure Act, and indeed the bill states that the act is not applicable, even though that act covers all hearings required by statute. We believe that, if it is the judgment of this committee that this bill be reported, a full hearing pursuant to the provisions of the Administrative Procedure Act should be provided and that the question of whether the matter objected to was obscene should be the issue at such a hearing.

We appreciate your consideration of our views on this important subject.

Sincerely yours,

WHITMAN, RANSOM & COULSON.

LOS ANGELES COUNTY COMMISSION AGAINST INDECENT LITERATURE,
Hollywood, Calif., March 30, 1965.

HON. GLENN CUNNINGHAM,
House of Representatives,
Washington, D.C.

DEAR MR. CUNNINGHAM: I hope this letter reaches you prior to the hearings on your H.R. 980 as I am most anxious that such legislation be passed. Certainly mail-order obscenity is the fastest growing portion of the entire problem.

Many parents have expressed their concern to me over the kinds of material received through the mail by their children. I always encourage them to report such material to their postmaster. However, even though the postal authorities are doing their utmost to successfully prosecute mail-order smut peddlers, much of the material reaching children through the mail may not be legally obscene. Therefore, certainly a parent should be able to petition the Postmaster General to have his name removed from the mailing list.

The flood of obscene material available to children, on newsstands as well as through the mail, is becoming increasingly alarming. It is only through adequate

legislation that we can ever hope to achieve any degree of permanence in a solution to the problem. We are a nation of laws and as citizens we have a right to expect adequate laws to protect our children.

My sincere thanks to you for your continued interest in the cause of decency.
Sincerely,

R. P. GAUER, *Chairman.*

Mr. DULSKI. If there are no other witnesses, the subcommittee will adjourn.

(Whereupon, at 10:45 a.m., Tuesday, March 30, 1965, the subcommittee adjourned.)



