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TO CREATE A COMMISSION ON NOXIOUS AND OBSCENE MATTERS AND MATERIALS

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HEARINGS

BEFORE THE

SELECT SUBCOMMITTEE ON EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 7465

A BILL CREATING A COMMISSION TO BE KNOWN AS THE
COMMISSION ON NOXIOUS AND OBSCENE MATTERS AND
MATERIALS

HEARINGS HELD IN WASHINGTON, D.C.,
SEPTEMBER 1, 2, 8, AND 14, 1965

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ADAM C. POWELL, *Chairman*

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TO CREATE A COMMISSION ON NOXIOUS AND OBSCENE MATTERS AND MATERIALS

WEDNESDAY, SEPTEMBER 1, 1965

HOUSE OF REPRESENTATIVES,
SELECT SUBCOMMITTEE ON EDUCATION OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 9:45 a.m., pursuant to call, in room 2257, Rayburn House Office Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Present: Representatives Dent, Daniels, Mink, Scheuer, Meeds, and Andrews.

Also present: Robert E. Vagley, director of subcommittee, and Charles W. Radcliffe, special education counsel for minority.

Mr. DENT. The Select Subcommittee on Education will come to order for the purpose of considering H.R. 7465, introduced by Mr. Daniels, presently a member of the committee, to create a Commission on Noxious and Obscene Matters and Materials.

We will consider this bill, and related bills, today and tomorrow. If necessary, we will hold further hearings. The bill is not complex and is explained in the summary sheet. The nature of the legislation is not new; it has been introduced in the past and on two separate occasions was favorably considered by the Senate, both in the 86th and 87th Congresses.

We will try to hold these hearings in a spirit of learning what we can in order that we may be able to do what we can to correct a situation that has become increasingly worse over the years.

At this time I would like to have come forward as a witness the gentleman from New Jersey, who sponsors the act, Congressman Daniels.

STATEMENT OF HON. DOMINICK V. DANIELS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. DANIELS. Mr. Chairman and members of the committee, at the outset of this hearing I would like to thank the very distinguished chairman of this subcommittee, Congressman John H. Dent, of Pennsylvania, for his cooperation in scheduling hearings on this very important and vital matter.

As a member of this committee, I am well aware of the press of legislative business during this session of the 89th Congress. It is only because of the kindness of the chairman that these hearings are being conducted.

Mr. Chairman, I am here this morning because as a father of two children, one of whom is now raising two children of her own, I am

concerned about the effect of smut upon those members of our society who are young and impressionable.

What we are dealing with is a billion-dollar industry whose rotten wares are in evidence in every part of the United States. There is hardly a newsstand in the United States where you cannot find filth and perversion of every type and description. I need not dwell upon this problem to any great extent. All one has to do is take a walk along the main streets of any one of a thousand cities and obscenity leaps out at you. In my opinion, the present situation cries out for action.

My bill, H.R. 7465, would set up a Presidential commission to find ways to combat smut. The bill is not unduly complex or legalistic and I would ask unanimous consent to have it inserted at this point in the transcript.

Mr. DENT. Without objection, it is so ordered.

(The bill referred to follows:)

[H.R. 7465, 89th Cong., 1st sess.]

A BILL Creating a commission to be known as the Commission on Noxious and Obscene Matters and Materials

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS OF FACT AND DECLARATION OF POLICY

SECTION 1. The Congress finds that traffic in obscene matters and materials is a matter of grave national concern. The problem, however, is not one which can be solved at any one level of government. The Federal Government has a responsibility to find more effective ways of preventing the transmission of such matters and materials through the instrumentalities which, under the Constitution, are subject to Federal regulation. The State and local governments have perhaps an even greater responsibility in the exercise of their police powers to protect the public, and particularly minors, from the morally corrosive effects of such matters and materials. Governmental action to be effective needs the support and cooperation of an informed public. It is the purpose of this Act to bring about a coordinated effort at the various governmental levels, and by public and private groups, to combat by all constitutional means this pernicious traffic.

ESTABLISHMENT OF THE COMMISSION ON NOXIOUS AND OBSCENE MATTERS AND MATERIALS

SEC. 2. (a) For the purpose of carrying out the provisions of this Act, there is hereby created a commission to be known as the Commission on Noxious and Obscene Matters and Materials (hereinafter referred to as the "Commission").

(b) Service of an individual as a member of the Commission or employment of an individual by the Commission as an attorney or expert in any business or professional field, on a part-time or full-time basis, with or without compensation, shall not be considered as service or employment bringing such individual within the provisions of section 281, 283, 284, 434, or 1914 of title 18 of the United States Code, or section 190 of the Revised Statutes (5 U.S.C. 99).

MEMBERSHIP OF THE COMMISSION

SEC. 3. (a) NUMBER AND APPOINTMENT.—The Commission shall be composed of fifteen members, appointed by the President, as follows:

- (1) One from the Senate;
- (2) One from the House of Representatives;
- (3) One from the Post Office Department;
- (4) Two from the Department of Justice, one of whom shall be from the Federal Bureau of Investigation;
- (5) One from the Department of Health, Education, and Welfare;
- (6) Three from the clergy; but no two members shall represent the same faith;

- (7) One who shall be a prominent librarian;
- (8) One who shall be a prominent representative of the book publishing industry;
- (9) One who shall be a prominent representative of the newspaper, magazine, and periodical publishing industry;
- (10) One who shall be a prominent representative of the motion picture industry;
- (11) One who shall be a prominent representative of the radio and television industries;
- (12) One who shall be a chief prosecutor of a city or county government; and
- (13) One who shall be a prominent educator.

(b) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(c) CONTINUATION OF MEMBERSHIP UPON CHANGE OF STATUS.—A change in the status or employment of any person appointed to the Commission pursuant to subsection (a) of this section shall not affect his membership upon the Commission.

ORGANIZATION OF THE COMMISSION

SEC. 4. The Commission shall elect a Chairman and a Vice Chairman from among its members.

QUORUM

SEC. 5. Eight members of the Commission shall constitute a quorum, but three members shall constitute a quorum for the purpose of taking testimony or interrogating witnesses.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 6. (a) MEMBERS OF CONGRESS.—Members of Congress who are members of the Commission shall serve without compensation in addition to that received for their services as Members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(b) MEMBERS FROM THE EXECUTIVE BRANCH.—The members of the Commission who are in the executive branch of the Government shall serve without compensation in addition to that received for their services in the executive branch, but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(c) MEMBERS FROM PRIVATE LIFE.—The members from private life shall each receive \$75 per diem when engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

STAFF OF THE COMMISSION

SEC. 7. The Commission shall have power to appoint and fix the compensation of such personnel as it deems advisable, without regard to the provisions of the civil service laws and the Classification Act of 1949, as amended.

EXPENSES OF THE COMMISSION

SEC. 8. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this Act.

DUTIES OF THE COMMISSION

SEC. 9. (a) INVESTIGATION, ANALYSIS, AND RECOMMENDATIONS.—It shall be the duty of the Commission—

- (1) to explore methods of combating the traffic in obscene matters and materials at the various levels of governmental responsibility;
- (2) to provide for the development of a plan for improved coordination between Federal, State, and local officials in the suppression of such traffic;
- (3) to determine ways and means of informing the public as to the origin, scope, and effects of such traffic, and of obtaining public support in its suppression;

(4) to secure the active but voluntary cooperation of leaders in the field of mass media for the accomplishment of the objectives and purposes of this Act;

(5) to formulate recommendations for such legislative, administrative, or other forms of action as may be deemed necessary to combat such traffic; and

(6) with the aid of the Nation's most outstanding constitutional authorities, to analyze the laws pertaining to traffic in noxious and obscene matters

(4) to secure the active but voluntary cooperation of leaders in the field of and materials; establish suggested definitions of noxious and obscene matters and materials, and to make such recommendations to the Congress for appropriate revisions of Federal laws as the Commission may deem necessary in order to effectively regulate the flow of such traffic, without in any way interfering with constitutional safeguards of freedom of speech or freedom of the press.

(b) REPORT.—The Commission shall report to the President and the Congress its findings and recommendations as soon as practicable and in no event later than January 31, 1966. The Commission shall cease to exist sixty days following the submission of its final report.

POWERS OF THE COMMISSION

SEC. 10. (a) HEARINGS AND SESSIONS.—The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this Act, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as the Commission or such subcommittee or member may deem advisable. Subpenas may be issued over the signature of the Chairman of the Commission, of such subcommittee, or any duly designated member, and may be served by any person designated by such Chairman or member. The provisions of sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192–194) shall apply in the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section.

(b) ADVISORY COMMITTEES.—In carrying out its duties under this Act, the Commission (1) may constitute such advisory committees within States composed of citizens of that State, and (2) may consult with Governors, attorneys general, and other representatives of State and local government and private organizations, as it deems advisable. Any advisory committee constituted pursuant to this subsection shall carry out its duties without expense to the United States.

(c) OBTAINING OFFICIAL DATA.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality, information, suggestions, estimates, and statistics for the purpose of this Act, and each such department, bureau, agency, board, commission, office, establishment, or instrumentality is authorized and directed to furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman or Vice Chairman.

Mr. DANIELS. Very briefly, before I go into the reasons for setting up the Commission, let me describe the operations of the Commission as I visualize it.

The Commission would have 16 members, although this number is by no means absolutely mandatory. As a matter of fact, by error on page 3, line 3, is printed the word "fifteen." I have chosen this number because I am vitally concerned with having a group which is broadly representative of a wide spectrum of our society. If there are too many members the Commission becomes unworkable. Too few, and it would not give the breadth of viewpoint that I feel is necessary.

The members are, of course, to be appointed by the President and shall, except for those in the employ of the Federal Government, receive a per diem allowance of \$75.

The Commission shall elect its own chairman and eight members shall be a quorum. Three members shall be a quorum for the purpose of taking testimony and interrogating witnesses.

The Commission shall have the power to hire a staff. I do not think that I need to dwell upon the necessity for effective staff work.

Included in H.R. 7465 is a provision stating that the Commission shall report its findings by January 31, 1966. A good deal of time has elapsed since this bill was introduced and as a result I would now favor changing the deadline to January 31, 1967.

The duties of the Commission shall be—

- (1) to explore methods of combating the national traffic in obscene matters and materials at the various levels of governmental responsibility;

- (2) to provide for the development of a plan for improved coordination between Federal, State, and local officials in the suppression of such traffic;

- (3) to determine ways and means of informing the public as to the origin, scope, and effects of such traffic and of obtaining public support in its suppression;

- (4) to secure the active but voluntary cooperation of leaders in the field of mass media for the accomplishment of the objectives and purposes of this act;

- (5) to formulate recommendations for such legislative, administrative, or other forms of action as may be deemed necessary to combat such traffic; and

- (6) with the aid of the Nation's most outstanding constitutional authorities, to analyze the laws pertaining to traffic in noxious and obscene matters and materials; establish suggested definitions of noxious and obscene matters and materials, and to make such recommendations to the Congress for appropriate revisions of Federal laws as the Commission may deem necessary in order to effectively regulate the flow of such traffic without in any way interfering with constitutional safeguards of freedom of speech or of the press.

This, Mr. Chairman, is what the formal structure of the Commission would look like.

Mr. Chairman, I make no claim to being one of the great constitutional lawyers of our time but as one with more than a passing interest in the development of our law, I am well aware of the difficulty of enforcement of antipornography statutes in view of the somewhat conflicting pattern of judicial decisions. Further, I am a firm believer in the American tradition of freedom of speech and the press and I am well aware of the dim line which exists between that which is obscene and that which is not.

I might point out that the history of legislation and judicial action in this area has not been an entirely happy one. Overzealous prosecutors and policemen have at times taken action against recognized works of art and some justly celebrated literary masterpieces have been unjustly proscribed. At times in the United States, works like Walt Whitman's immortal "Leaves of Grass" have been banned and celebrated plays by men of undoubted genius like Eugene O'Neill could not be performed in leading American cities.

What makes action in this field extremely difficult is the fact that filth purveyors are invariably quick to wrap themselves in the mantle of art and claim that hard-core pornography has, in fact, some intrinsic artistic merit.

The leading case on obscenity, *Roth v. United States* (354 U.S. at 497-498, 1957), has not made enforcement easy. In this case the Supreme Court defined "obscenity" as "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest." The Court stated that obscenity is excluded from constitutional protection only because it is "utterly without redeeming social importance."

The Court has held that the guideline "contemporary community standards" refers to national, not local, standards, *Jacobellis v. Ohio* (378 U.S. 184), although Chief Justice Warren in a dissenting opinion said: "When the Court said in *Roth* that obscenity is to be defined by reference to 'community standards' it meant community standards—not a national standard—as it is sometimes argued."

The Chief Justice in his dissent made two singularly valid points. He pointed out, one, that ours is a pluralistic society and standards differ throughout the Nation. And, two, that material which is inoffensive to adults if portrayed in a legal treatise on pornography might be thoroughly offensive if sold to children.

I point out these cases as examples of the incredible complexity of doing battle with the purveyors of filth.

I might cite another case, *Bantam Books, Inc., v. Sullivan* (372 U.S. 58), in which the Supreme Court held unconstitutional procedures adopted by a State in attempting to control the distribution of undesirable books.

The *Bantam Books* case involved legislation enacted by the State of Rhode Island which created a Commission "to educate the public concerning indecent books and other materials which tend toward corruption of youth." The Commission would notify a distributor that certain materials distributed by him had been reviewed by the Commission and had been found to be objectionable for sales, distribution, or display to youths under 18 years of age. Such notices requested the distributor's "cooperation" and the lists of questionable material was then sent to local law-enforcement officials for possible prosecution.

In the *Bantam Books* case, the Court held in an opinion delivered by Mr. Justice Brennan that the Commission's notices were intimidating and were in violation of the 14th amendment.

This spring the Supreme Court has made two important decisions in the area of motion picture censorship.

In *Freedman v. Maryland* (docket No. 60 (opinion handed down Mar. 1, 1965)), the Court annulled the Maryland censorship law, ruling that its procedures were a threat to freedom of expression. Refusing to rule on the question of the constitutional question of censorship itself, the Court held that the Maryland statute failed to guarantee prompt judicial review of the censor's action.

In a similar action, the Court struck down, in *Trans Lux Distributing Corporation v. Board of Regents* (docket No. 314, Mar. 15, 1965). In this case the Court cited the *Freedman* case and stated that the New York statute did not provide sufficient procedural safeguards.

Mr. Chairman, I cite all these cases because I would like to impress upon all members of this subcommittee, and of the Congress, the tremendous complexity of the problem which we face.

My own experience as a member of the judicial branch of Government makes me very wary about legislation enacted in a hurried way. We must proceed carefully and judiciously if we are to find a way to eliminate the filth which is all too prevalent and far too easily available for juvenile consumption.

It is for these reasons that I propose a Presidential study commission of the very best men available to uncover ways to conduct an effective war against pornography. My own prejudices lie in the direction of voluntarism. I would infinitely prefer that the publishing industry and the motion picture and television industry undertake to clean up their own backyard.

I think my bill which presupposes a comprehensive study of the whole problem and the uncovering of ways to defeat the smut peddlers is a necessary first step in the war against filth. Those who make their living selling filth are involved in an industry which has a gross income of more than a billion dollars annually. They are defended, invariably, by some of the most astute members of the legal profession.

This is not a time for a shotgun approach to the problem. All of us in the Congress who are responsible, at least in part, for creating a decent environment for a new generation and are concerned with this most serious problem must take action to halt the spread of filth. I cannot impress too strongly upon the members of this subcommittee that this action must be effective action. It is of little value for us to recommend laws that the courts will immediately strike down. Our responsibility is too great for that. I have faith that this subcommittee will favorably report my bill. I think we owe at least that much to our children.

Out of this study commission will come, I am sure, the plan of action for a great war on filth at all levels of American Government.

Thank you very much, Mr. Chairman, for allowing me to speak in favor of this legislation which can be the forerunner of greater things to come.

I strongly urge approval of H.R. 7465.

Mr. DENT. Thank you, Congressman Daniels, and since you are a member of the committee, I will request that the committee not question you at this time, since you will be present during discussions on the bill and we will benefit from your long experience in the field. Now if you will join us up on the panel, you will be helping us to conduct the hearing.

I want to say to the next witness I am sorry we had to proceed. I know the Senator is anxious to get back to his very busy schedule, but I would like Senator Mundt, of South Dakota, an old and valued friend, to take the witness stand. I want to say that much of the success we have had in pointing out to the American people the dangers of this particular traffic have been a result of the work done by the good Senator in his long years of fighting this particular area of dangerous propaganda. I welcome you, Senator Mundt, in behalf of the committee, and we are happy to have you with us.

**STATEMENT OF HON. KARL E. MUNDT, A U.S. SENATOR FROM
THE STATE OF SOUTH DAKOTA**

Senator MUNDT. Thank you, Mr. Chairman, and it is good to be here and I am very grateful to you for your felicitous comments. I apologize for being tardy but I got lost. I imagine you have heard that before. We humble Members of the Senate live in rather somber quarters and it is a little bit confusing when we get over here, but I am happy I was tardy so I got to hear Congressman Daniels' presentation, because I thought it was a very fine presentation. It went into the background, the reasons, and legality of this matter and he can approach it from a more judicial viewpoint than I can. I am not handicapped by ever having served as a judge and I just keep pushing along, trying to get something done, but I associate myself completely with the approach he recommends because I think it is systematic, effective, and worth while.

I want to congratulate the chairman of this committee, whom I have known for a long time, for scheduling these hearings and calling to the attention of the American public the seriousness of this filth record which just simply should not be permitted to continue to function in this country.

As you know, I happen to be the author of S. 309, which has 29 cosponsors in the Senate and this legislation follows along the same similar line of the bill which has just been discussed by Congressman Daniels.

We have this bill before the Committee on Government Operations. It is on the agenda and will probably be brought out of our committee at our next meeting, which I think probably we will still have another meeting before we adjourn, unfortunately, but not to be brought out early in January.

Let me speak generally why I think this legislation is so tremendously important. Since my name has been identified over on the Senate side with this legislation, I have received a tremendous number of letters from all over the country, from mothers and parents, greatly disturbed by the filth which is being poured into their homes through the mail. And the Post Office Department, without adequate tools, has been making a valiant effort to do something about it. They have alerted parents and PTA people and the good people of the community on what they can do with a piece of filth that comes into the home without the consent of the Post Office Department and ultimately sometimes they catch someone and then as Mr. Daniels pointed out they run into the obtuseness of the law and the difficulty under the 14th amendment and 1st amendment and other amendments of the Constitution.

So I am perfectly convinced in my own mind, from the time I have spent studying it, that the proper approach is to create this Commission on Noxious and Obscene Matters and Materials. Our bill in the Senate proposes to establish that kind of commission to explore all of the available methods to combat the traffic in obscene and noxious materials and to fully seek all of the means of coordination between various levels of traffic to suppress such traffic. There is more that can be done at the State and local and Federal levels. Certainly much more can be done at the Federal level.

It is my plea this morning and the plea of Mr. Daniels, I hope, the House enacts the legislation. We passed the bill several times

on the Senate side, but it never came up for vote on the floor of the House, but I am confident the House Members are just as concerned about this as we are and in this Congress we will enact S. 309 and the companion bill in the House.

I would like to see the House act first this time. I am sure the Senate will act very promptly to get this machinery set up so we can begin to do something constructive in this field.

Now may I say that in addition to the letters which have come in from distraught parents, some fine organizations, some of which I notice are represented here this morning, have been very active in the dissemination of information to the public about the magnitude of this problem and the methods which are available to curb this flow of filth and of smut. It is difficult against statistics to demonstrate the magnitude and proportions and dimensions of operations of this kind, but it has been referred to as a billion-dollar smut racket. That may be a bit hyperbolic and it may be on the modest side, because it is very difficult to get the accurate figures.

But it is a tremendously great problem, a big problem, and it has concerned people for a long time. In fact, the public-information programs on this subject have been lacking because of very shaky guidelines. People hesitate to raise too much of a clamor because of the possibility, as Congressman Daniels pointed out, of censorship. That is the last thing we want. We don't want any censorship.

Having said that, however, we have a great field in which to operate, which has been unplowed and untraveled, to do something in the area and it would be certainly the purpose of this commission to explore every conceivable method.

In the first place, we lack meaningful definitions on what is filth and what is pornographic literature, and how you can determine the criteria for meeting that particular challenge, staying on the correct side of censorship. Critics of this legislation may appear before your committee; I don't know, they have at times over on the Senate side, but usually they use the technique of letters and petitions and things of that kind, and of exaggerated criticisms, claiming the fact that people buying these books aren't affected by them, that it does not have any result in connection with their social attitudes, that censorship is the only way in which you can deal with it, and that censorship is bad and I am sure if we listen to these critics we will never take any action because they would attack any specific approach or curative that we might suggest.

But this will take their area of criticism over to a blue-ribbon commission which will be comprised of people who will have approached this on a cautious but in an energetic manner.

Now I don't need to spend any time, I know, with this committee talking about the magnitude of these dangers both on the Senate side and on your side; I am positive you have had abundant evidence of the fact that this is something which is serious, this is something we can do appropriately, this isn't a great costly program, but it is a chance to render some constructive service.

There have been studies made relating to juvenile delinquency and the kind of problems they are running into these days with pornographic literature. You can't say it is a scientific program; there is not a subjectivity in them all, but they are persuasive. They are indicative there is some relationship and by getting this commission we can get down to the hard core of facts.

I have come this morning to congratulate the committee on its procedure, to commend you for the dispatch which you are demonstrating, to urge you to beat the slow-moving body of which I am a member, and get your bill passed and get it over to our side and we will be happy to cooperate in getting action.

I don't believe we are ready, honestly, to write specific legislation in this field, because I think we need the benefit of the kind of study that the legislation I have been discussing proposes. Whatever we do ultimately it is going to be attacked in the courts and properly so. It is going to be challenged. Men are making millions of dollars in this racket and they are not going to surrender easily, so I think we should proceed in a scientific manner; I like the Congressman's phrase, "I don't think we should have a shotgun approach." We should make a rifle approach. The main thing is to make an approach because these rascals have been getting by with this type of thing for a long time.

So let me simply thank you for permitting me to appear. Let me commend you on your work and we shall go full speed ahead. If there are any questions I can answer, I will be happy to stay for them.

Mr. DENT. Senator, let me thank you on behalf of the committee and the decent people in this great community of ours for taking time out of your busy schedule and coming here this morning to give us stimulation in our fight to do something about this, and particularly we are pleased to hear you say, forthright and outright, that there is a difference between censorship and the stopping of the traffic of pornographic materials. And it is because the word "censorship" has been used by those who peddle this filth that we have the very difficult job of arriving at some solution to this serious problem you have portrayed.

I am also very pleased, as I am sure is the committee, to know we will have your assistance and cooperation over in the Senate and that both bills aim toward the same type of legislative goal. This is excellent, I believe, because in the past there has always been a difference between the House and Senate versions. If we can wipe that out, we can probably come to some agreement very quickly on establishing at least the recruitment for an army to fight this thing, and I, personally—I am sure I speak for the committee—want to again thank you for coming over this morning and helping us.

Do any of the committee members have any questions or observations?

Mr. DANIELS. Mr. Chairman, I would like to, at the outset, thank Senator Mundt for his complimentary remarks concerning myself.

Senator, I welcome your support and that of your colleagues in the Senate in this matter which I consider a very, very serious threat and particularly toward our youth; I think there is a direct connection between smut, filth, pornography, and juvenile delinquency.

I happen to also serve on the Post Office and Civil Service Committee, on the Subcommittee on Postal Operations. It was my privilege several years ago under the chairmanship of the gentlewoman from Philadelphia, Kathryn Granahan, to attend extensive hearings which were held throughout the country, and it was during that period of time serving on that committee that my eyes were really opened as to the magnitude of the traffic in this area; and not only is it being poured out by publishers in this country who, when they are arrested, close their doors and reopen under a new trade name or

a new corporate name with the same officials behind them, but there is a great deal of this traffic coming in from foreign countries. I was surprised to see, when we attended the hearings in New York and in Boston, that this stuff is coming in from various foreign countries, and the covers of the books contain different outer coverings to camouflage the true name of the book and the nature of the book.

I remember sitting in Boston where a book came in that was supposed to be a book concerning babies' melodies and I just happened to open it up and peruse it by chance, and paragraph after paragraph, page by page, it was the worst filth that one would want to gaze at, and the book came from a foreign country; I don't recall the name of the country right now. So you see we have not only this great traffic in this country but we also have the traffic coming in from foreign countries.

I think our postal inspectors are doing a wonderful job, but they have so many duties to perform that it is rather difficult for them to really cope with this question and to devote all of their time to it.

So I think it is a serious problem and I am happy to see that you are here working side by side with us in the House to try to stamp this traffic out. I feel it is a proper approach because many legal complexities are involved that a Commission should be appointed to study the problem and make recommendations to Congress.

Senator MUNDT. I certainly appreciate what the Congressman has said and it is so true the deeper you get into it, the more amazed you become by the fact it is so much larger than you ever anticipated. One of the most gruesome and ugly experiences I have had since being on Capitol Hill was going downtown and looking at the Government exhibit and just what is being done. They have a secret classified room and if the committee has not seen this exhibit, you should go there. It is not a pleasant sight. It is an astonishing thing, but this is happening in our beautiful country and we, working together, I am sure, can prevent it; and what the Congressman has said, the differences are immaterial; if we decide upon a Commission approach we can work out a Commission and suggest its membership without any serious disagreements and get on with the job, it seems to me.

Mr. DENT. Mr. Andrews.

Mr. ANDREWS. Senator, welcome to this side of the Hill. I am very happy to get together with you; there are so many things we have as a common objective.

Senator MUNDT. Thank you very much.

Mr. DENT. Mrs. Mink.

Mrs. MINK. I would like to add my words of commendation for your efforts on this very serious problem and thank you for taking the time to appear before our committee this morning.

Senator MUNDT. I am sure that having a charming lady on the committee has inspired these gentlemen to move forward with even greater dispatch than normally.

Mr. DENT. Mr. Meeds.

Mr. MEEDS. Senator, I do want to commend you for appearing here and for your excellent testimony and for your own fight in this field. I am well aware of it and it is good to know that a person of your reputation and ability is working hard on this matter in the Senate. So my compliments, sir, to you.

Mr. DENT. If there are no other comments from the members, again we thank you very kindly and again we hope we will be free to call upon you for your further assistance.

Senator MUNDT. Thank you very much. I will be happy to cooperate when it happens to come before the committee of which I am a member and the chairman is Senator McClellan, of Arkansas, who is equally interested in getting the job done, so it is just as well we get going with this accomplishment.

Mr. DENT. We will now hear the statement of our colleague, the Honorable Lloyd Meeds of the State of Washington.

STATEMENT OF HON. LLOYD MEEDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. MEEDS. Mr. Chairman, I am pleased today to appear before our committee and testify in support of H.R. 7465, a bill to create a Commission On Noxious and Obscene Matters and Materials. There are, of course, several approaches to the problem of combating the traffic of obscene literature. Some will say that the bill before us goes too far simply by indicating the Government's concern with the problem. Others would have us establish a National Censorship Board to which all materials had to be submitted prior to their release to the public. I believe that neither of these approaches is satisfactory. But the method proposed by my distinguished colleague, Congressman Daniels, is the most reasonable. I believe that the method of study and investigation is the most responsible approach open to us.

Today the alarming increase in the traffic of obscene materials, and the appalling change in the type of pornography being sold, can only be regarded as a threat to our well-being and as an insult to our efforts to make education the key to a better America.

I have several reasons for supporting H.R. 7465. As a former prosecuting attorney for Snohomish County, Wash., and as a former member of the National Council on Crime and Delinquency, I was and am impressed by the need for a comprehensive study into the relationship between crime and obscene literature. H.R. 7465 will enable such a study.

In the celebrated case of *Roth v. United States* (354 U.S. 476 (1957)), the dissenting opinion of Mr. Justice Douglas pointed to a study conducted by Sheldon and Eleanor Glueck. This investigation concluded that there was no demonstrable relationship between the type of reading materials and crimes committed by juveniles.

For two reasons I question the validity of this study today. First, more children are reading more literature today than in 1957. Second, and this is the key point, over the past several years there has been a drastic change in the type of obscene matter. Formerly, obscene materials emphasized sex for its own sake, or if you will, sex made dirty for the sake of cash. But today's obscenity has lionized the Marquis de Sade. Maschoism, floggings, incest, sodomy—all forms of perversion—are increasingly relied upon by smut peddlers to promote their billion-dollar industry. I cite here the testimony of Mr. Clancy and his references to a letter allegedly sent to a rejected

author by Mr. David Zenter. Mr. Zenter's alleged letter illustrates the change in the type of pornography being sold today.

It is this new and ghastly pornography which has multiplied. What we need to know is if the spread of this grotesque literature is related to the increase in violent crimes, particularly sex crimes. We need to know the extent to which this new pornography is being consumed by juveniles. I agree with the statement of Mr. Justice Clark in the 1952 case of *Joseph Burstyn v. Wilson*, 343 U.S. 495. Speaking of possible effects of obscene materials, Justice Clark said:

If there be capacity for evil, it may be relevant in determining the permissible scope of community control * * *.

Another reason for my supporting H.R. 7465 is the necessity to learn more as to the means of traffic of obscene materials. If indeed the mails are being bypassed in favor of other modes of transportation, then it is clearly the duty of the Government to investigate. The postal power, is of course, substantial. But the regulation of harmful goods which travel across State lines has for years been considered a proper and necessary function of Government.

As we all know, combating the traffic of obscene materials necessitates a search for standards. What is "obscene"? H.R. 7465 will help us find judicial standards within the first amendment framework of constitutional safeguards. Particularly, my experience has taught me that there is a need to provide law enforcement officers with the proper knowledge as to how they should combat this pernicious traffic. For example, in 1961 the Supreme Court decided the famous case of *Mapp v. Ohio*, 367 U.S. 643. This case involved illegal searches and seizures, and the use of evidence so obtained. But the law enforcement officers had been attempting to ferret out obscene literature. The defendants possessed such materials, but, since the method of search was declared illegal, the conviction was overturned. H.R. 7465 will facilitate a coordinated effort between Federal and State officers to establish proper methods of arresting those suspected of selling or possessing obscene literature.

Let me reiterate my concern for the proper approach to this problem. My thinking here is that, while some would say that we are going too far in creating the Commission, others would desire a Federal agency to which all material must be submitted prior to publication. These approaches are not wise. Clearly, a serious problem exists in America today. The broadly based Commission proposed by Congressman Daniels is the most reasonable approach. Through study and investigation we will be able to better combat the traffic of obscene matter while upholding our constitutional rights. I strongly urge the committee to approve H.R. 7465.

Mr. DENT. Congressman Meeds, it has been a pleasure to hear your testimony. Thank you for appearing here today.

The next witnesses represent the Citizens for Decent Literature, Mr. C. L. Keating, founder and director, and Mr. James Clancy, counsel. Will you both take positions at the witness stand and you may follow whatever course or discussion you feel will give the committee the best benefits from your testimony.

**STATEMENTS OF C. L. KEATING, FOUNDER AND DIRECTOR,
ACCOMPANIED BY JAMES CLANCY, COUNSEL, CITIZENS FOR
DECENT LITERATURE, INC.**

Mr. DENT. Proceed, Mr. Keating.

Mr. KEATING. Mr. Chairman and members of the committee, my name is Charles Keating, and I am founder and presently a legal counsel with Citizens for Decent Literature.

In the room this morning to indicate the support of the youth of America consistent with the comment of Mr. Daniels, that this is of great concern directly to the youth, are Mr. Joseph Trauth of Cincinnati, and next to him Miss Becky Rodenbaugh of Indianapolis, Tom Sofka of Akron, Ohio, and Chris Hyde of Silver Spring, Md. These young people were kind enough to come here this morning and allow me to mention their names as being representative of the type of youth that we appreciate in this country, and also as being in full support of this particular bill.

I had the opportunity, I think, Mr. Daniels, of testifying before a committee with Mrs. Granahan that you mentioned. H.R. 7465 obviously presumes the existence of a problem. My experience from some 8 years of aiding and abetting arrest, prosecution, and conviction of the pornographers is, indeed, there is a problem but the nature and extent of the problem is not known to the people who are in a position to do something about it.

Therefore, presuming even that all of us here are not aware of the full extent of this problem, I took the liberty last night, upon arriving in Washington, of hitting a few newsstands, the material here in this pile represents an expenditure of some \$45, and it was purchased at a series of newsstands around the Capitol.

I would say that the makeup of this material was predominant on the racks of the particular places that I went. I went to about four all-night stands, two of them were on street corners, and had, I suppose, 25 lineal feet of display. Many people conglomerated around the stands. There were bars in the area, and so forth. Don't misunderstand me. I get in a position of being thought a prude talking about this. I enjoy the bars, but what I am saying is this flammatory sex violence instruction, and perversion is available on an all-night basis to whoever wants to pick it up, and in fact it literally leaps out at the by-passer.

This material is something that I would like to introduce and make a part of your record. It is unbelievably depraved. Now, I have been kicking around in this business for about 8 to 10 years. Whether you are in a little cowtown of McAllen, Tex., down on the Rio Grande or in Chicago or Los Angeles or New York, the situation is precisely similar to what it is here in Washington. In any sector of the community this material is readily available, whether it is Charley Keating purchasing it, or Joe Trauth, or someone much younger than Joe.

The material will best speak for itself, but I want to make a couple of points with it. Here is one called "Love's Lash." I have not looked at most of these books and I defy anyone to go more than 8 to 10 pages, literally speaking, without coming across passages similar to that which I will pick out, and with your consent just briefly read,

or worse in any of these books or in any of the books like them on the newsstands.

If you will just read the passages in pages 126 to 132 in the one here, entitled "Love's Lash."

Mr. DENT. I would suggest you mark whatever passages you want in there and spare the committee because I think the committee has had some experience in reading some of this stuff.

Mr. KEATING. I will spare you.

Mr. DENT. Whatever you want to make part of the record shall be, of course, accepted. I think you all understand the nature and kind of complaints. We are most particularly interested in knowing the titles and the publishers of this type of material, so we may have some background for whatever action we may take in the matter.

Mr. KEATING. I will spare the committee. I would point out, however, that the material which was available when Mr. Daniels was with the Granahan Commission was in no wise comparable to this. It was the prediction of our organization, as it was of the Commission, at the time, that the material would descend into this particular type of depravity. This is relatively new to the market and it is very prevalent on the market.

Mr. DENT. Would you name the publisher?

Mr. KEATING. This is "E. B.," which is Exotic Book, San Diego.

That is Exotic Book in San Diego. Their material is relatively new and is all over the country.

Mr. MEEDS. Mr. Chairman, if I may, so that there is no question about this in the record, were these books purchased in Washington, D.C.?

Mr. KEATING. Yes, all of these.

Mr. MEEDS. Would you please say when and where the one you spoke about was purchased.

Mr. KEATING. Yes, last evening.

Mr. MEEDS. Would it be the 31st day of August, 1965?

Mr. KEATING. The 31st day of August, 1965, at an open street stand at Northwest 14th Street and Kenyon, and the person selling us that book told us he had received it from either District News or Atlantic magazine, I am not sure which. Do you remember?

Mr. CLANCY. Either one of them.

Mr. KEATING. I would say about a third of this material was purchased there and the other was purchased at something called General Newsstand at 18th and Columbia, and he said his distributor was District News. This other material, the balance of it, was purchased at 15th and F, a block from the White House, a little newsstand on the corner.

The gentlemen told me this stuff would not be on his rack very much longer. He said they recently passed a crime bill, and that obviously would get rid of the material. In any event, he said he was a newspaper seller. About 10 percent of his shop was decent newspapers, and the rest was this stuff.

Mr. DENT. Excuse me, did you question the stand operators as to whether they knew the nature of the stuff they were printing?

Mr. KEATING. Well, sir, the gentleman this morning at 15th and F, without my speaking at all, followed me around the store a bit and carried on this long conversation about the crime bill. I guess he took it that Jim and I were not normal persons, which is probably

by reason of the quantity, but he carried on this dissertation that generally this "was not his business"; he thought now "it would all be cut out"; they "don't look at what the distributor puts in"; they "have no selectivity"; "the distributor just puts this stuff on his shelves," and that type of thing. There is no question he knows what he sells.

As I say, without exaggeration, 80 percent of his store, on a conservative basis, would contain this type of material I have in front of me.

Mr. DENT. At the time you were there, did you notice any young people which you would consider below high school age?

Mr. KEATING. Not below high school, but there were certainly high school age both this morning and last night. I would say I probably saw a total of 15 kids at the various stands and they would predominate. You see all types of people at these stands, but this would be the same anywhere in the country. What I am saying with respect to Washington holds true on the basis of my experience across the Nation.

They would be, on about 50 percent of the purchases, and this is only an observation, 21 years or under.

Mr. DENT. Proceed.

Mr. KEATING. Now, the Congress, in the Gathings committee in 1952 and through the countless committees that have hit this problem, including Kefauver in the Senate and Congresswoman Granahan, literally has had thousands of pages of testimony taken on this subject. There is no question that they prove not only the tremendous extent of this problem and the depraved nature of it, but the harmful effects and it hardly seems worthwhile for the committee to do other than search the record if they want much testimony in this regard. It is there. It has been there for 13 years.

I would urge you that this great mass of testimony on this problem certainly should underscore the necessity for this particular bill.

Mr. DENT. Excuse me, again. Did you say that this material is relatively new and worse than that which was previewed or reviewed by a previous committee that you attended?

Mr. KEATING. Right. No question about it, particularly this type of thing out of San Diego [indicating]. I could run through here, for example a homosexual book, "His Brother Love." This type of thing was not available, not at all available to my knowledge 2 years ago.

"Sensational Step Daughter." Just from the looks of the cover, without going into the detail.

Again, this type of thing, "Experimenters."

The hardened homosexual's lines, whether lesbian or otherwise, indicate a difference in material.

Here, "Fiseck Art Quarterly" is a homosexual magazine. I would just beg you to take a glancing look at this for your convenience. This fellow named Womack, I believe, pleaded insanity, was not tried on the obscenity charge, was confined by reason of his plea of insanity, later got out and now prints this material in Washington, D.C.

The fellow over on 15th Street, next to Keiths Theater, has a line of display that must be 3½ or 4 lineal feet long.

It shows erections on this particular one. There is not much left to the imagination. Here is one which is a lesbian review.

Again, speaking to your question for a moment, and I won't let it lengthen my testimony, in 1955 or 1956 the Supreme Court had a case involving Sunshine and Health, I believe it was.

Mr. CLANCY. 1958.

Mr. KEATING. 1958. It started in 1955. The magazine in question was "a nudist publication." The nudists and publishers of this material have been using some of the language of this decision as a blanket for further publications. You will find tremendous numbers of nudist publications again, all over the country. I would stress that, although what I have here is from Washington, I don't want to bore you with a repetition. This is not uncommon anywhere in the United States.

Here is "Teenage Nudist," which is nudism of kids and there is nothing left to the imagination. In 1955 or 1958, there was copious use of the air brush, and so forth, to draw out pubic hairs in private parts; today there are no such things.

The most glaring example I have seen to date was the one picked up last night, "Jaybird Safari." Again referring to Mr. Daniels' experience on the Granahan committee, you had receipts, as I recall it, from a number of models who posed for these; not nudists at all. This is obviously that case. This is no more a nudist publication than I am an elephant. It is extremely male-female contact, and so forth, again pubic-genital view, which was not at all present in the magazines brought before the Court and ruled on in 1958.

Mr. DENT. Of course, that is the reason the committee has been convened on the subject, because of the fact there has been a growing population in this particular area, more youngsters particularly that are being led down a very bad road by the availability of this material, most of which you know about, and I would be happy to have your testimony particularly when you bring material that you picked right up off the newsstands right in the city of Washington, a few blocks from the Capitol, and certainly it becomes a problem for Congress rather than the States, in my opinion.

Mr. KEATING. I would hope so. We would like to suggest there are two basic actions necessary to stop the pornographers. One is the responsible public has to be educated to the extent and nature of the problem. Secondly, there has to be an arrest, prosecution, and conviction. The law is a weapon to be used against the pornographer and not the censor board or anything of that nature.

I don't want, any more than the next guy, a mayor's review committee, telling what I can or cannot read in Cincinnati. But there are laws on the books in these 50 States that make the Criminal Act of Disseminating Obscenity a crime. I would like to see those laws enforced and I think it is necessary for a National Commission to come into existence, and address itself with dispatch to the actions of the pornographers so that it becomes a clearinghouse for information to aid and abet in arrest, prosecution, and conviction.

Men like Aday and Maxey, Ginzberg and Girodias, who proposes to come over from France, have to be stopped or the United States of America is in for problems that you can't imagine exist. Girodias is a French sex salesman who was convicted in Paris for selling pornography. I saw a statement of his in the papers. He said that he is giving up business in Paris and is coming over here to set up shop and gave as a reason, "You can publish anything in the United States."

Maxey and Aday, I mentioned, just briefly, are two gentlemen that went into the publishing business with the type of background for the type of material they put out.

Aday, I believe was convicted in the Federal court as a pimp and panderer. He went into the publishing business with a fellow named Maxey who had been convicted twice for morals offenses and was a member of a society to promote the interests of homosexuals—the Mattachine Society. This is the organization which publishes this type of literature.

Their books were exposed to any college kid, basically, across the country. This particular pair did get bounced in a trial in Grand Rapids, Mich. Judge Fox said they were two of the most despicable characters, or words to that effect, he had ever had before him. It involved a 6-week jury trial. They were found guilty, and Judge Fox gave Aday \$25,000 or 25 years, and Maxey got \$10,000 and 10 years.

The case is on appeal and the two buzzards are still free. The American Civil Liberties has filed a brief worrying that Judge Fox's sentence was cruel and unusual punishment.

Now, we think the proposed Commission would bring out the facts—the criminal conspiracy that the pornographers have today—to disseminate this material across the United States. We think the conspiracy would be disclosed, that the facts of the material, the evolution of depravity in it would come to light by the investigation by the Commission which could coordinate, local, State, and Federal law authorities.

We think the law is sufficient. We think the laws are sufficient for prosecution. Mr. Clancy will touch on that more than I will.

Now, again, as part of the record, I would like to mention, just so that the Commission is aware of the fact, that there is a feeling abroad and in the United States that something has to be done. People feel helpless. The prosecutors tell them they can't do this, that, and the other thing. There is a terrific feeling that the people want something done. I said that before and I was challenged.

Here is the September Reader's Digest, I would like to put in the record. There is an article on the pornographers and courts, and how the people are up in arms against it. This follows a May 1964 article in the Reader's Digest, a reprint I would like to put in.

I understand the Digest is very seriously concerned with the problem, and wants to get the information to its 25 million readers, and it is printing articles in the November, December, and January issues, also on this subject.

We have in "Citizens for Decent Literature," again, as part of the record, a procedure's handbook, which we think sets up the fact that the law can be used as a weapon and should be used as a weapon against the criminals perpetrating the crime of obscenity. We have a National Decency Report which has a subscription of some 6,000 people across the Nation, and it brings news and court decisions and general information regarding the pornographers and the few feeble efforts that are being attempted to curb them.

Mr. Clancy recently produced, and we now have for dissemination, "Commentaries on the Law of Obscenity." This is available from our organization.

We have two medical doctors as national cochairman, Dr. William Riley of New York, and Dr. Don Cortum, of California. You will

note from the letterhead, if it is available, and if it is not available I will make it available, the substantial nature of the people we represent. These people are all concerned with the problem and want something done.

We have a convention at the Waldorf-Astoria on October 22 and 23 at which Rabbi Kuhn of Texas and Dr. Donovan, the superintendent of the New York School System, and Supreme Court Justice Musmanno of Pennsylvania, and such, will speak.

I want to thank you for the opportunity of appearing here this morning. I don't know exactly if I added any facts. I leave that more to Mr. Clancy. I positively urge; beg you, if necessary, that this Commission be created forthwith. It is very necessary, gentlemen.

I would love to see a representative of our organization included in the membership of the Commission, very much so. I believe that in our 8 to 10 years of effort here that we have accumulated facts and information and experience which would be helpful and valuable. This may sound somewhat egotistical, but I had to say it because we hate to see the information just die on the vine. We would love to have it available to you, particularly in the form of one of our more competent persons.

If you get the Commission underway as soon as possible, we think in the next 3, 5, or 10 years, the substantial majority of the pornographers that are destroying America's moral fiber today will end up rotting in prison, which is precisely where they belong.

Thank you.

Mr. DENT. Thank you very kindly.

We will reserve questions until after Mr. Clancy speaks.

Mr. CLANCY. Mr. Chairman and members of the committee, this Nation is in urgent need of the Commission proposed by H.R. 7465. The present inability of the several States to check the dissemination of obscene materials deserves the spotlight which such a body can shed upon the problem.

Obscenity control plays an important role in Government by maintaining a healthy, moral climate for, as Justice Harlan noted in his opinion in the *Roth* decision: "The indiscriminate dissemination of materials, the essential character of which is to degrade sex, will, over a long period of time, have an eroding effect on moral standards." In my opinion, the eroding effect of obscenity is seriously being felt.

Obscenity isn't proscribed, as so many people try to say, because its immediate effect is to drive the reader to crime. For example, a story on incest does not drive the reader to commit incest. It is proscribed, because that publication or group of publications will give shame to the Nation for tolerating its existence. When you have magazines dealing with homosexuality to such a large degree, how are you going to tell the youth of the Nation that homosexuality is not tolerated in this Nation?

They talk about incest, which is one of the growing topics in the paperback book today. For example, there is one book entitled, "Queer Daddy," which relates to nothing but incest. There are 155 pages of it. How are you going to tell your youths or growing people that incest is not tolerated? You have people appearing on TV now, who say there is nothing wrong with incest. Well, it is, in our culture. The mere fact you permit this type of material to stay on the market without taking steps to stop it, is a shame to the Nation.

I doubt that many will deny that our leaders today are seriously concerned about the faltering moral standards of this Nation. They recognize, as historians remind us, that 16 of the 19 great civilizations which flourished in world history, crumbled into ruin—not because of armed aggression from without, but because of moral decay from within. The moral climate of this Nation and the factors which detract therefrom should concern us as much as our enemies' capacity for nuclear warfare.

It is now 8 years since the *Roth-Alberts* decision conclusively established that obscenity was beyond the protection of the first amendment. Yet, in examining the materials which are flooding the markets today, the concerned citizen cannot help but question whether there is such a thing as an obscenity law.

I can say from firsthand experience that the major difficulty in this area is not that the laws are inadequate, but rather it is that the laws are not being adequately enforced. From December of 1963 to December of 1964, I had the unique opportunity of participating in a determined examination of the obscenity problem in Los Angeles County.

During that time I was employed by the then district attorney of Los Angeles, William B. McKesson, as a special deputy to conduct an investigation into the manufacture and dissemination of obscene materials from Los Angeles County.

What I found was that the battle against obscenity is being lost because law enforcement is not moving. There is a lassitude, an incompetence on the part of law enforcement officers in this area. The prosecutor is not doing his job. If the prosecutor would stand tall behind the law officer, behind the sheriff, the constable, and the people, there would be something done about this particular problem.

I do not mean to discount the opposition which exists among some members of the judiciary. Certainly it is there. One need only read the opinions of Trial Judge J. Irvin Shapiro in *New York v. All State News Company, et al.*, or Trial Judge Joseph Sprankle in *California v. Milton Lueros, et al.*, to recognize that there are some whose judgment is dulled; in some instances, by their daily acquaintance with the corruption they witness from the bench. Somewhere along the line these judges have fallen out of touch with the problems this Nation is facing.

Too often, however, the prosecutor lacks the courage to press the fight hard, even in situations where a sensitive bench is sympathetic to the people's desire to bring obscenity under control.

The defense attorneys for the industry are not ones to plead their defendants guilty. On the contrary, being well paid for all their extra efforts, they use every opportunity the law allows them to draw out the proceedings and make the case difficult for the prosecutor. The odds are in their favor that they can break down the opposition by sheer weight of determination. In a great many instances, their approach is successful.

This is a hard case. This is more difficult than a murder case or a robbery case.

They are hard simply because the prosecutors lack the fundamental knowledge and necessary experience in this specialized area. There is no extra compensation for them, as there is in the case of the defense attorney. You take away the profit from pornography and you won't

have any defense counsel. A tremendous amount of money is going down in legal fees. This is why they are in there. Turning it around, the prosecuting attorney is paid a set sum. He has murder, rape, capital crimes, and doesn't have the incentive to face up to these individuals.

What I am saying here is, however, not new. It has been testified to before. I have heard it repeatedly from the average citizen who turns in a complaint and watches the misadventures which follow his making the complaint. The complaint has come from as far up as Supreme Court Justice Warren, when he said in *Jacobellis v. Ohio*, 84 Supreme Court 1674 at 1685, a famous statement now:

There has been some tendency in dealing with this area of the law for enforcement agencies to do only that which is easy to do—for instance, to seize and destroy books with only a minimum of protection. As a result, courts are often presented with procedurally bad cases and, in dealing with them, appear to be acquiescing in the dissemination of obscenity. But if cases were well prepared and were conducted with the appropriate concern for constitutional safeguards, courts would not hesitate to enforce the laws against obscenity.

This is true. I think the majority of our courts would if the cases were presented properly and forcibly.

To illustrate my point and to depart from generalities, let me cite a few instances of what I regard as failures on the part of a law enforcement official—situations in which the people's case has been ineptly handled in the courtroom.

The first example that comes to mind was the case of a mail-order advertisement for an artificial vagina, priced at \$20.

Basically, the item offered was a 12-inch piece of plastic tubing, 2 inches in diameter, with minor accessories. A 14-inch piece of rubber inner tubing was drawn through the plastic tubing, one end of which was turned back over and fastened at each end of the plastic sleeve. A small hole was drilled in the plastic tubing in which was inserted an adapter fitting for a rubber tube which was attached to a syringe. By squeezing the syringe, air was forced between the sleeve and rubber inner tubing, causing the latter to expand radially to close the 2-inch orifice.

More than a hundred complaints were lodged with the Federal Government and local police units in the jurisdiction of distribution, by irate citizens whose minor children had received mail-order brochures. Both the U.S. attorney and the city prosecutor of the jurisdiction from which the ads were mailed refused to undertake a prosecution on the grounds that the item offered was not obscene.

A case was initiated in a jurisdiction outside that of the one in which the operation was centered. The investigation revealed that the female operator, 1 lone female operator, had conducted a nationwide mailing and had mailed 10,000 brochures from each of 4 post office boxes within the jurisdiction—a total of 40,000 mailings. When the case came to trial the defendant offered to waive a jury trial, but the people insisted on the same. On the date set for trial the defendant pleaded “*nolo contendere*” (equivalent of guilty) rather than face a jury on the issue.

This was a simple situation. To me, it is very obvious that certainly there was probable cause to believe that a jury of 12 people looking at this, the manner in which it was conducted and the manner in which it was mailed, would believe this was an obscene item, and yet the U.S. attorney and the city prosecutor looked at it and said

it couldn't be, under the decisions. This is hogwash. Their judgment was dulled.

Another case in the same category as the artificial vagina was *U.S. v. Louis Wolff Linetsky* (Crim. No. 39708). Linetsky has a nationwide reputation among law enforcement officers for his mail-order distribution of smut. A Federal grand jury—I think there are 24 in the grand jury—had returned a 16-count indictment against the defendant for causing to be mailed an obscene device described as an “uthaid,” described as a grease-resisting, soft plastic material whose purpose was—

to aid married men in prolonging healthy marital relations and * * * designed as an aid to the satisfaction of the female.

The uthaid was attached to the male penis. This was mail-order distribution.

On May 28, 1964, Federal District Judge Ralph Freeman for the Eastern District of Michigan, Southern Division, kept the matter from a jury by granting a motion to dismiss the indictment before trial, on the ground that the material was not patently offensive.

In my opinion, this is reverse censorship by the judiciary. We have the *Manual Enterprises* case and a series of cases in which the courts have said the Postmaster General cannot, on his own judgment, keep materials from the mails on the ground he considers it obscene. We have closed the circle. We now have the judges holding, as a matter of law, such material cannot be obscene.

To me, this is reverse censorship. If the postmaster cannot, on his own, without a jury trial, decide material is not obscene, neither has one judge sitting on a bench the right to overrule a grand jury indictment on material such as this. How the blind, mail-order mailing of the uthaid by a person—and it goes out indiscriminately to people—how this does not indicate probable cause, which is the only issue before the judge in such a motion, escapes me.

What is more startling, the Federal Government neither appealed the case nor renewed the charge.

In 1964 the Los Angeles district attorney's office attempted to bring to trial the manufacturer of “Bondage” and “Flagellation” films, pictures, and books, who was operating a mail-order business from Culver City, a charter city in Los Angeles County. The California statute authorizes a maximum of \$10,000 fine for each misdemeanor count, based upon a penalty of \$5 per unit involved in the crime.

This was adopted by the legislature in 1961 to get at the manufacturers. People who had 2,000 units, on a simple misdemeanor, could be fined \$10,000.

To take advantage of the statute required the use of a search warrant to inventory the number of similar items kept for sale at the plant. After the search warrant was prepared, the city attorney objected to its use in his jurisdiction since the “possession for sale” was a crime within his primary jurisdiction. Out of courtesy, his office was given the search warrant to execute, which it did. He filed the charge as agreed upon but continued the matter for a year, until a new district attorney came into office, at which time he then dismissed the charge.

He had previously explained that no one could get at the individual under the law, but no one tried to get at the individual to bring him

to trial. When the attempt was made, he saw that it didn't get to trial.

The same procedure was attempted in the case of paperback books being manufactured in Los Angeles City. Purchases for the misdemeanor crime were made in the jurisdiction of the district attorney (unincorporated territory). When the city attorney of Los Angeles was informed of the intended use of search warrants to allow the maximum penalty authorized by the California statute, the same objection was interposed and the district attorney's office, to get at the publisher, was forced to prepare each case on a felony conspiracy charge, as to which that office had jurisdiction.

The primary difference in the charges lies in the time interval before the matter can be gotten to trial in the California jurisdiction. A misdemeanor charge can be brought to trial within 30 days; a felony charge requires up to a year before the matter can be brought to trial.

During my employment with the Los Angeles County district attorney's office the grand jury returned felony conspiracy indictments against 14 persons, including the authors, manuscript jobbers, publisher, and national distributor and local distributors for publishing 9 All Star books, 3 through 11. The books were "Beds of Canyon Grove" (AS-3), "Sin Island" (AS-4); "Wild Woman of Wolf River" (AS-5), "Women of Beaver Mountain" (AS-6); "Girls in the High Spike Heels" (AS-7), "Suburban Sex Pots" (AS-8), "Route 69" (AS-9), "Fanny Hill" (AS-10), and "The Love Teacher" (AS-11).

The indictment was upheld in the superior court on a statutory motion to strike the indictment, and a writ of prohibition was denied by both the district court of appeals and the California Supreme Court.

The district court of appeals is a three-judge court, and the California Supreme Court is a seven-member judge court. Both of those courts denied the writ of prohibition, indicating the matter had to go to trial.

Before the matter came up for trial, the new Los Angeles district attorney decided against continuing the special section on obscene material and on his own motion voluntarily struck "Fanny Hill" from the indictment. In his own words, the new district attorney couldn't care less that "Fanny Hill" was being sold on the stands.

Here is a situation where the publisher of this type of sex book was putting out "Fanny Hill." He clearly wasn't putting it out for its literary quality. He was putting it out for its appeal to the prurient interest. The Los Angeles district attorney, after indictment, on his own motion, struck "Fanny Hill." At the time it was struck from the indictment, "Fanny Hill" had been held to be obscene in trial courts in three out of four States, and at the present time, it is four out of five. The Massachusetts Supreme Court has held it to be obscene, and presently it is before the U.S. Supreme Court on a petition for a writ of certiorari.

The trial judge instructed the jury to return a not guilty verdict on the conspiracy charge, after striking much of the evidence obtained through the use of search warrants.

This is the peculiar part: the jury didn't pay attention to the judge's instructions. He said:

You have to return a not guilty verdict, I instruct you, because there is not enough evidence to support the charge.

They were out a whole day. They were out Thursday morning, and came in Friday morning. Finally they decided they couldn't bring in a conviction on a conspiracy charge, but brought out a special verdict that all five All Star books read to them were obscene.

This is a sophisticated Los Angeles County jury in which 30 challenges were used before the defense counsel were satisfied with the 12 individuals who were going to sit in judgment on these books and their conduct.

In another case entitled, *California v. Milton Lueros, et al.*, heard by the grand jury in 1964 before the new district attorney took office, the Los Angeles County Grand Jury had returned a conspiracy felony indictment in two counts, one count involved girlie and nudist magazines and one count involved nine paperback books; eight lesbian-type paperback books, and "Fanny Hill."

Under the new policy, the special section devoted entirely to obscenity matters was abandoned.

On a statutory motion to strike the indictment, the defense counsel filed 50 pages of points and authorities and attached copies of five court opinions. The district attorney's office filed no points and authorities, and, in oral arguments, cited no cases dealing with specific subject matter on the issue of obscenity. Once again the district attorney on his own motion struck "Fanny Hill" from the indictment.

I might say that in the first trial after the district attorney struck "Fanny Hill" from the indictment, the defense attorney offered it in evidence on community standards.

The trial judge struck the count involving girlies and nudist magazines but upheld the count involving the eight lesbian-type paperback books. The defense attorney petitioned the district court of appeal for a writ of prohibition alleging the books were protected.

In an unusual action, the district court of appeals 3 days later, without waiting for the district attorney's reply, denied the petition. This is rather unusual. The district attorney has 5 days after the petition is filed in which he may file points and authorities in opposition. The court didn't wait. Three days later the court denied it summarily. The defense attorney petitioned the California Supreme Court for a writ of prohibition on the ground that the books were protected. This was the specific issue. The California Supreme Court also denied the petition.

When the matter came up for trial, Superior Court Judge Joseph Sprankle dismissed the indictment before trial, holding the material protected matter.

He wouldn't permit it to go to the jury. To me, this is astounding. The case went up to the supreme court on a writ of prohibition. The denial held, in effect, that it was a jury trial issue and should go to the jury. When the case came back, the judge read the books and said, in effect, "It is protected; I won't give it to the jury, and won't let you present your case."

The new district attorney refused to appeal the matter, notwithstanding a different superior court judge had held the matter to be a jury issue, on which issue it must be assumed the district court of appeals and the California Supreme Court were in agreement, having refused to stay the trial of the matter.

Judge Sprankle's action recalls the radical ruling of Trial Judge J. Irwin Shapiro in *New York v. All State News Co.*, known throughout

the United States for the publication of the type of material they distribute. All State News Co. has now gone bankrupt.

Shapiro dismissed an indictment against a notorious major distributor, an indictment involving eight paperback books, one of which, "College for Sinners," had already been held obscene by the highest court in New York State. "College for Sinners" had been declared obscene in *New York v. Fried*, 18 A.D. 2, 996, 238 N.Y.A. 2d, 742 (Mar. 26, 1963). An appeal to the U.S. Supreme Court was dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari was denied (378 U.S. 578 (June 22, 1964)). Yet everyone relies on Shapiro's judgment.

A far more interesting case was brought to light by the defense counsel in his points and authorities filed with Judge Sprankle in the *Luros* case. The defense counsel pointed with pride to two cases which the Los Angeles city attorney's office had abandoned in July of 1964, entitled, *People v. Stratton* and *People v. Ridgley*. Both defendants were major exclusive distributors of sex materials in Los Angeles County and had been arrested in 1960 (4 years earlier). Quoting from the defense counsel's points and authorities, the defense counsel said:

The Los Angeles city attorney recognizes that books similar to those now before the court are constitutionally protected expression. Prior to the ruling in *Zeillin v. Arnebergh*, 59 Cal. 2d 901, 383 P. 2d 152, 31 Cal. Rptr. 800, holding that only hard-core pornography may be suppressed under the California obscenity law, the city attorney caused a criminal complaint to be filed in the cases of *People v. Stratton*, Municipal Court No. 132014, and *People v. Ridgley*, Municipal Court No. 132013. It was there claimed that the following paperback books were obscene: (Hereinafter numerous paperback books are listed including "College for Sinners", "Joy Killer", "Fear of Incest", and "Sex Cat" * * *).

On June 10, 1963, the Honorable Morton L. Barker made a preliminary order in which he found that 18 of the paperbacks submitted to him for examination were obscene under the laws that then existed. The court then went on to say: "The parties stipulated in open court that in pending proceedings before the U.S. Supreme Court concerning an appeal from a verdict in a court of this judicial district involving the question of the character of the book 'Tropic of Cancer,' it is quite likely that the Supreme Court will set forth in its opinion rules that will clarify the law on the subject involved. * * *" Following decisions by the U.S. Supreme Court in *Smith v. California* and *Grove Press Inc. v. Gerstein*, and the California Supreme Court case of *Zeillin v. Arnebergh*, the case again came on before the Honorable Morton L. Barker in division 11 of the municipal court in July of 1964. At that time Mr. Herbert Blitz, deputy city attorney, appeared for the people and stated:

Mr. BLITZ. "As to both cases, the people move to dismiss. The law in the area of obscene matter has changed, so the people could not successfully prosecute either one of these cases. * * *"

The city attorney's action is unbelievable, not only because he chose to dismiss the prosecution after Judge Barker had found that 18 were obscene, but also because of existing case law on the identical materials which were the subject of the action. "College for Sinners" and "Sex Cat" had been found obscene in *New York v. Fried* (supra). In *California v. Williamson* (infra), a California jury had held "Fear of Incest" to be obscene. Certiorari was denied by the U.S. Supreme Court. The California Supreme Court had held in *Aday v. Superior Court of Alameda County* (infra) that there was probable cause to believe "Joy Killer" obscene.

Notwithstanding that four of the books had been adjudicated in the courts, the city prosecutor kicked the case out and let the major distributor go; not a retailer as you have here, but the major distributor who distributes materials in Los Angeles County.

It was less than 3 years ago this month that Justice Fox, of the District Court of Appeals in Los Angeles, wrote an opinion affirming the jury conviction in an obscenity case of one Samuel Dodd Williamson for the sale of the paperback book, "Fear of Incest." Thereafter, the California Supreme Court denied Williamson's petition for a hearing in the matter and on June 22, 1964, the U.S. Supreme Court denied Williamson's petition for a writ of certiorari. *California v. Williamson*, 207 Cal. App. 2d 839, 24 Cal. Rptr. 734 (Sept. 26, 1962), writ of certiorari denied 377 U.S. 994, rehearing denied — U.S. — (Oct. 12, 1964.) As mentioned before, "Fear of Incest" was one of the books in the *Stratton* and *Ridgley* cases.

Justice Fox' opinion is outstanding in its statement of the people's case against obscenity. I would like to refer to that statement now, to illustrate what is occurring at the present time. Speaking of "Fear of Incest," Justice Fox said:

The effect of such "literature" is to dull the moral sensitivity of many, if not most, of the people who read it. It serves to erode our moral standards and tends to bring about the moral decay of our people. If the time ever comes when the average person, applying contemporary standards, does not look upon such a book as detrimental to the public welfare, it will be a signal that our society has deteriorated to a low level and that our civilization is in danger of collapsing as other civilizations have in the past which have overindulged their appetites and cast aside decent standards of behavior.

"Fear of Incest" is what I would describe as the 1959 brand of paperback obscenity. It doesn't come close to what is on the market now. The book was copyrighted in July 1959 by Mark Hastings and published by Newsstand Library, Inc., of 7614 West Belmont Avenue, Chicago, Ill.

Another 1959 publication involved in the *Stratton* and *Ridgley* cases—and one more familiar to congressional committees was the paperback book, "Joy Killer." This is more familiar to congressional committees because it was one of the two books that "Aday" put out, the other being "Sex Life of a Cop." When both of these books came up to the California Supreme Court, which is regarded as a liberal court in this area, all seven members having cleared "Tropic of Cancer," the California Supreme Court said, about 3 years ago:

An examination of the two books convinces us there was probable cause for believing that they are obscene. Their text is such that an average person, applying contemporary community standards, could reasonably believe that their dominant theme appeals to a lascivious, shameful, and morbid interest in sex and that they are totally lacking in redeeming value, literary or otherwise * * *.

The California Supreme Court recognized what the rule is. They are only concerned with probable cause. The question is whether or not 12 people would believe it to be obscene. They took a look and recognized it for what it is. It is out and out obscenity, or at least pitched in this direction. They said this is all we have to decide—probable cause to believe that a jury could hold the book to be obscene—and they upheld the search warrant.

"Joy Killer" is on a par with "Sex Life of a Cop," found to be obscene by a Grand Rapids Federal jury in 1963. Judge Noel Fox sentenced its publisher, Lester E. Aday, to 25 years in prison and fined the corporation and the publisher \$25,000 each.

Aday is out on bond and turning out as many books now as he did 5, 7, or 8 years ago. Some of the books here involved come from the

Aday plant in Fresno, Calif. The most amazing part is, he has been prosecuted all over the country, but not in Fresno. The district attorney has not moved against him once. He has been prosecuted in Grand Rapids, indicted in two places in Texas, and subject to probably as many as six indictments in 1961 because of "Sex Life of a Cop." Yet Fresno County has, in effect, offered him a shelter there, by refusing to move against him.

This case is currently on appeal to the Circuit Court of Appeals, Sixth Circuit. Arguments have been heard and an opinion is expected momentarily.

With court decisions as favorable as the *Williamson* and *Aday* cases, one should reasonably expect that the publication and distribution of similar materials might be held in rein in California. An examination of the markets points to the contrary. One reason is, the Los Angeles city prosecutor has chosen to abandon the people's cause in the face of favorable decisions.

The prosecutor says "if 'Tropic of Cancer' is not obscene I can't do anything." The publishers continue to grind out their materials. The current materials appearing on the market make "Fear of Incest" and "Sex Life of a Cop" look like kindergarten material. We are faced with an "anything goes" attitude. Let me cite a recent example of the "anything goes" attitude that prevails among the pornographic trade.

Early in 1964—and this was right after the "Tropic of Cancer" decision was cleared by the California Supreme Court in late 1963—a pornographer by the name of David Zentner, operating under the name of Tempo Publishing Corp. at 6912 Hollywood Boulevard, Los Angeles, Calif., commenced publishing a new line of paperback books which he called Boudoir Classics.

Zentner is well known in this area as the publisher of girlie magazines "Spree," "Topper," "Bare," "Playtime," and paperback books "Boudoir Books" and "Intimate Books," and a sex tabloid "Keyhole." His girlie magazines and paperback books have been found obscene in a number of State courts. His girlie magazine "Spree" was one of the magazines involved in *Chobot v. Wisconsin* (12 Wisc. 2d 110, 106 N.W. 2d 286 (Nov. 29, 1960)). Appeal dismissed for want of a Federal question (368 U.S. 15 (Oct. 23, 1961)). Rehearing denied (368 U.S. 936 (Dec. 4, 1961)). Another edition of "Spree" was recently involved in the obscenity conviction *Kentucky v. Austin*, in Kentucky, as to which a petition for certiorari has been filed with the U.S. Supreme Court.

Zentner made known his requirements for his 1964 line of books in a letter to an author who had submitted a manuscript. It should be noted that this letter was written after the California Supreme Court had cleared "Tropic of Cancer" for sale in California. Zentner interpreted the California Supreme Court decision to mean "anything goes":

DEAR MR. _____:

With reference to your manuscript we have returned, I am sending you the following letter outlining precisely our needs. Your manuscript was not even remotely geared to these needs, nor was it the required 40,000 words.

We need tough, strong, hard-hitting, sex-action-filled books, geared to the demands of today's and tomorrow's market—rather than to the standards of even a few months ago.

What we basically seek is offbeat sex, with emphasis on deviations. Some possible themes to write by: footwear lined and rubber clothing, ultra-high heels, whipping, gagging, female dominance, gloves, sex rituals, transvestia, sadism, masochism, homosexuality, phallic symbols, buttocks, interracial affairs (oriental, African, Indian), boots and shoes, corsets and tight lacing, spanking, tying, girls fighting, wet clothing, masks, wife swapping, lesbianism, exotic lingerie, group orgies, voyeurism, aphrodisiacs, fetishes.

Plot is secondary. We do not want complicated plots, naive sex adventure stories "spiced" with sex—nor pages of rambling, pointless dialog. I need more descriptions and more character per book. Naturally, I expect the descriptions of these various things to be in good taste. The mere fact that some of these themes are used will sell our books.

Manuscript for this line, if acceptable, will run up to \$600 or more if necessary, with a small token payment of approximately \$100, after approval and final acceptance, and the balance after publication.

Perhaps the above will explain the unacceptability of your manuscript and guide your future efforts for submissions to us.

Thank you for your interest.

The responses to this form letter hit the target and produced the following titles, and you will notice the titles are in order: "Lesbian Love" (B0001); "Oversexed" (B0002); "Lash of Lust" (B0003); "Lesbian Sorority" (B0004); "Lust in Leather" (B0005); "Whipped Passions" (B0006); "Perversion Resort" (B0007); "Club Unique" (B0008); "Lady Stud" (B0009); "Beyond Lust" (B0010); "Couple for Hire" (B0011); and "Sexurbia" (B0012). Let me read you a book outline of the first two chapters of "Lust in Leather":

Chapter I (pp. 5-17):

Bruce and Johnny are watching a sex orgy in the next apartment through peepholes that Bruce has drilled in the wall between the two apartments. As they watch, a girl, dressed only in a lace cape and sheer stockings and carrying a bullfighter's cape made of red lace, acts as a matador to a naked man in a bull's head mask. He rushes her on all fours and she pierces his shoulder with a sword. This is the signal for "orgy." The audience consists of naked men and women. The women descend on the girl and rip off the lace cape and stockings, and the men grab the "bull." The girl is lifted high off the floor. She spreads her legs open and the women kiss, stroke, and caress every part of her body. An older woman, "lean and leathery," moves in between the girl's legs and lowers her head, "to the very heart of passion" (p. 9). The "bull" is brought over by the males and placed in back of the older woman so he is in contact with her legs and buttocks, then a perverted act of intercourse is carried on. "Moans of ecstasy from the sex-drugged revelers" (p. 9), are heard as music is played in a bolero beat. After climax the "bull" is carried away "where both men and women now love and caress him" (p. 10). The girl is lowered to the carpet "and women stroked and loved her passionate flesh that was glistening with perspiration" (p. 10). Bruce tells Johnny that Bill's wife, Gina, was the matador last week. Bruce is a homosexual and wants Johnny, but Johnny is sexually aroused and wants to go home to his wife, Rose. Johnny recalls a sex orgy he had before he married, in which he was tied down, naked and spread-eagled on a bench, while naked men, and women danced around him, teasing, caressing, and kissing him, performing perverted acts until climax was reached. He is now starved for "sex and action" (p. 16). He is not getting along in the sex department with his wife, Rose. Two days later his best friend's wife, Gina, pays him a visit,

Chapter 2 (pp. 19-39):

Johnny's wife, Rose, is out for the afternoon. Gina arrives and Johnny knew he would "have her legs spread before the afternoon was over" (pp. 21). Pages 23 to 30 describe Gina undressing and Johnny taking her to the bedroom where she undresses him. Sexual intercourse is interrupted when Rose and her friend, Edna, arrive. They come into the bedroom but Johnny orders them out saying, "I'm not about to stop" (p. 30). After he reaches climax, they dress and join Edna and Rose in the living room for a drink. Gina reminds them they are all invited to her house that evening for bridge. Rose tells Edna that she will make Johnny pay for what he has done. That evening Gina and Rose have a fight. Johnny goes out to the backyard with Edna. Pages 37 to 39 describe love-making and perverted intercourse. "I shoved her off the lounge to her knees and

positioned myself behind her" (p. 38). After climax Edna cries and tells Johnny she thinks Fred, her husband, is a queer.

The *Zentner* trial involving four of these books goes to trial next week. There is a good chance that the case may be lost because of failure to devote adequate time and effort to the courtroom presentation.

In October of 1964 the Los Angeles vice officers made an arrest for the exhibition of "Olga's Girls" in Los Angeles city. The city attorney's office has permitted the trial to be put off until January of 1966. This follows the pattern set in the *Stratton* and *Ridgley* cases. There the case was filed in 1960 and dismissed in 1964. Contrast this with the performance of the Portland, Oreg., district attorney, Van Hoomissen, who secured an indictment for the exhibition of "Madam Olga's House of Shame" in a Portland, Oreg., theater. In July 1965, 5 months after the secret indictment was returned, the California distributor pleaded to the obscenity charge rather than go to trial in Portland, Oreg. Portland deputy district attorney, Lewis Hampton has taken steps to extradite the producer and director of the motion picture film from New York for trial in Portland, Oreg. The extradition hearing was scheduled to be heard in New York this week.

I could go on at great length with a critical analysis of the general failure of law enforcement in the California area. Much more on this subject would, however, be merely repetition. While my particularized discussion of the California problems is perhaps impolitic, it is essential to your consideration of this bill. The jurisdictions wherein the centers of distribution are located have similar law enforcement failures which must be corrected.

As I have indicated before, the Commission provided for in this bill can do a lot toward sweeping out the dust from under the rug. If it succeeds in doing this, however, it will not have accomplished its full purpose.

What is needed even more is the development of an operation plan for the use of law enforcement officials. All of the experience which has been gained by persons who have taken aggressive action in this area over the years must be collated. I sincerely believe that the people's cause would take a major turn for the better if public prosecutors were presented with the entire picture of what was going on together with practical guidelines; reference material placing at their fingertips a ready analysis of the outstanding obscenity cases, and the major cases dealing with each important issue; material demonstrating how to prepare an obscenity case, how to prove scienter, where to look for the smokescreen, et cetera, and above all a practical and critical analysis of the subject matter involved in the major obscenity cases.

An example of this occurred recently in Phoenix, Ariz. County Attorney Robert Corbin had made an arrest of the major distributor in the area on the sale and distribution of "Candy" and Urban Nudist No. 17. He approached CDL for technical assistance. Given the complete background material on the publication and distribution of the paperback book and nudist magazine—its history, distribution, etc.—and a summary of the case authority needed for prosecution, the deputy county attorney, Pat Eldridge, went on to win a jury verdict and the judge assessed a \$1,000 fine.

There was a reversal of the usual procedure in this case. When the prosecutor on the date set for trial presented 40 pages of points

and authorities summarizing 20 cases on "scienter" handed down by other State courts, the defense attorneys—two—asked for, but were denied, a continuance in order to check out the people's authorities. The county attorney pointed out to the court that the cases which were cited were well known in the obscenity area and that had the defense attorneys done their homework properly they would be prepared for trial.

The duties conferred upon the Commission by section 9(a) (1) and (2) of H.R. 7465 appear to be broad enough to authorize implementation of this concept of aiding and abetting law enforcement by providing the necessary know-how to effectively enforce existing laws. As I read H.R. 7465 its broad description of duties authorizes to Commission to act as an agency in bringing the full force of all law enforcement agencies to bear upon the problem. If such an interpretation is placed upon the bill much good can come about through this legislation.

Mr. DENT. May I interrupt. We have two other witnesses and both are here and if you could sum up in a few minutes we would appreciate it. You can add any other material to the record which we would be happy to accept.

Mr. CLANCY. I believe pages 8 and 9 are the only ones I have not covered. I would like to make the point here, however, I believe that this committee can do a tremendous amount of good not only in sweeping the material out from under the rug which does exist there, but it can prepare the instruments which are necessary for law enforcement officers to cut through the amount of work which is required to acquaint him with the law.

If this is done, if this is an aim of the committee—and I understand from reading section 9(a) (1) and (2) this is quite possible—then they can be the instrumentality for showing what has to be done and to present the means for these prosecutors to take the guides or the operating plan and to put it into action. This is what they need. Each prosecutor cannot devote 6 months of study in this area. He is going to have to get the material boiled down and presented to him in a manner so he can pick it up rapidly and present it in a courtroom.

An example of this occurred recently in Phoenix, Ariz. The county attorney had made an arrest of the major distributor in the area on the sale and distribution of "Candy" and "Urban Nudist No. 17." He approached CDL for technical assistance. Given the complete background material on the publication and distribution of the paperback book and nudist magazine (its history, distribution, et cetera), and a summary of the case authority needed for prosecution, the deputy went on to win a jury verdict and the judge assessed a \$1,000 fine.

This is an example of what a prosecutor can do if he is given the means and he knows that he has the law behind him, and so help me God, he does have the law behind him, if he can only understand it.

Thank you very much.

Mr. DENT. Without objection, the material offered for the record will be accepted by the committee.

We have a 5-minute period for anybody who wants to ask questions.

Mr. DANIELS. I notice that most of the books that the witness referred to in his testimony are paperback books. How much do they usually sell for around the newsstands?

Mr. KEATING. Here is one at a price of 75 cents, that is the average.

Mr. CLANCY. 75, 95 cents. The publisher and national distributor get 50 percent, the secondary distributor gets 25 percent, and the retailer 25 percent. The publisher and national distributor have an investment of \$600 in the script. He does everything on credit. He operates with the printer and author on credit and nothing goes out of his pocket. It takes no money.

If I went out tomorrow, I could publish one of these without one cent, 25,000 copies, and put them on the market without any difficulty.

Mr. KEATING. The Jaybird nudist magazine costs \$3. I tried to chisel the guy down, but it didn't do any good.

Mr. DANIELS. Are there any common publishers of this material in the country?

Mr. CLANCY. They are well recognized.

Mr. DANIELS. Give us the names.

Mr. CLANCY. Columbia News.

Mr. DANIELS. Located where?

Mr. CLANCY. Los Angeles County. I mentioned this case in which the Los Angeles jury returned a verdict against five All Star books. I think we have one of the All Star books here. This is a Raven book distributed by Columbia News, Edwin Schnepf is the publisher. Another, "Whore Monger," is from Columbia News—Edwin Schnepf. "Passion Hunt" comes from San Diego—Reed Enterprises. "First Nighter" is from California. All of these are from southern California. I can't say who the publisher of Exotik books is at the present time, but he is from San Diego, Calif. Satan Press books, similarly are from California, as are Nitelite books. "Youth Against Obscenity" is one of Aday's books, known as a Saber book. WCNC is West Coast News Co., which is his distribution corporation.

There is Sun Era, Inc.'s "Jaybird Safari," which is published by Milton Juros, who started in 1958 publishing girlie magazines. He is the sole owner of Parliament News, the national distributor; American Art Agency, a publishing company; London Press, which prints it, Pacific News, which distributes it locally; and Sun Era, Inc., which is the Nudist magazine publisher. He publishes girlie magazines, nudist magazines, and lesbian books, together with "Fanny Hill."

The other one, most notorious, is Ruben Sturman from Cleveland, Ohio, and the trade name is WWNC (World Wide News Co.). He also operates under Cuyahoga County News. He is presently under indictment and is the distributor of Exotik books. WWNC is well known in the trade.

Mr. DANIELS. In view of your experience as an attorney, a prosecuting attorney, do you consider all of this material you have produced here today hard-core pornography?

Mr. CLANCY. Certainly. It is, what I would say is, commercial obscenity. You don't gain anything by saying it is hard core. It is hard core, if it is aimed at the prurient interest, commercially. Take a look at "Tropic of Cancer." It was not aimed at the same audience as this material. Very few people would read "Tropic of Cancer." This is why it got by in California. This is all aimed at one trade by people who pander to the prurient interest.

Mr. DANIELS. You stated in the course of your testimony that the conduct of the Los Angeles prosecutor in asking the court to dismiss the case against the defendants involved was unbelievable.

Do you care to venture any opinion as to the conduct of the prosecutor in making such a motion to the court?

Mr. CLANCY. Well, this happened. It didn't come to my attention until I read it in the defense counsel's brief. To me it is fantastic in that there were four books which had been adjudicated.

Mr. DANIELS. I mean in view of the decision of the upper court, how can you explain the conduct of the prosecutor in asking for this?

Mr. CLANCY. It is a misinterpretation of the law. This is why I say you have to get the prosecutor to move. He is going to have to press it hard. He can't make his own determination that the case is lost until he gets to the Supreme Court. He didn't see a distinction between "Fear of Incest," "Sex Life of a Cop," and "Tropic of Cancer." I do.

Mr. DANIELS. You see a lack of fundamental understanding of the law in handling these cases?

Mr. CLANCY. Absolutely. This is all that is required.

Mr. DANIELS. That is all.

Mr. DENT. Thank you very kindly.

STATEMENT OF RABBI DR. JULIUS G. NEUMANN, CHAIRMAN OF THE BOARD, SOCIETY FOR THE PROTECTION OF CHILDREN'S MENTAL AND MORAL HEALTH

Dr. NEUMANN. Mr. Chairman and Congressmen, I have come here to plead the cause of the proposed bill as it was introduced by Congressman Daniels, who spoke eloquently on this today, and today at the outset we believe that the creation of this commission is an urgent necessity.

I do hope the Lord will forgive me and, in turn, will glance at the bill, but I wonder if you gentlemen realize or have come here today to discuss the failings in various ways in various parts of the country, which seems to be prevalent, and Mr. Clancy has put in a yeoman's job in preparing this case.

But I want to say, No. 1, Mr. Keating, who is a wonderful person and has done a marvelous job for CDL, as its founder, he claims that we have the law and the law is our weapon. Mr. Clancy, who is secretary of the organization, an executive man, he seems to tell us that the prosecutors and on occasions the judges fail to do the job they are out to do and to me, it seemed that obscenity or pornography and all of this material that we are discussing today is not something like the weather, on which we can just talk and can do nothing about, but we have come here today to urge the creation of this commission which we feel will at least pinpoint and highlight public opinion to the existence of this problem.

There is no doubt in my mind that if the proper atmosphere was created throughout the country, not excluding Los Angeles and California, the things of the court that Mr. Clancy described will be kicked out on their ears if they keep behaving in the manner that they did, not excluding Congressmen, too, if they were to foster or help along these pornographers.

But what we are here today for and what I feel, for instance, the chairman of this overall committee, Adam Clayton Powell, and you, Mr. Chairman of Pennsylvania, are aware of the dangers of the increased traffic in pornography. It is evidenced by the hearings you

are conducting today. We feel that the juvenile crime rate which is sharply increasing just as much as narcotics, venereal disease, and homosexuality among our youth, are due, in large part, according to the New York Academy of Medicine, to the vigorous promotion of salacious literature in every form on an unbelievably vast scale.

Just like you said in the proposed legislation, Mr. Daniels, pornography is having a morally corrosive effect on our society. The problem that we face in our estimation, and we have put in only about 3 years on this problem, we call your attention to the results of the "Reader's Survey" printed in the August issue of the Christian Herald, a copy of which will be put up for insertion in the record.

The editor comments that among the readers polled, there is a determination that something must be done. That is, the American public per se pleads with you gentlemen, "What are you going to do for us?" perhaps adults, but definitely so for our youth, in preventing this material from falling into their hands without, in any way, curtailing our rights, our basic rights such as freedom of speech, which is fundamental in our Nation.

Now, the Reader's Digest, we feel that while it has done and is doing a tremendous job, but the latest report in the September issue said that the legal balance is not shifted over to the decent-minded public. We feel that courts continue to be swayed just like Mr. Clancy said by ridiculous argumentation and continue to rule in favor of pornographers. There is little or no possibility at this time to carefully map community action throughout the United States and, therefore, we feel that a commission of this sort today is an absolute necessity.

The only thing that we suggest, if we may, is that we believe that this committee, in turn, should find out where the source of material is, whether or not there is any connection between the traffic and criminal elements here in these United States.

We also, if we may, and I don't know if it is within our province, recommend that the members of this Commission, if and when this bill is accepted or passed, that they be chosen for openmindedness and the members of any organization involved in the defense of pornographers, or involved in profits in publication of this material, be excluded from this Commission, because even one such Commissioner would create a debating society rather than a group of action, that each member perhaps, if possible, be guided by Judeo-Christian values upon which our society is founded.

We also recommend that candidates for this position be asked to express their views on the subjects of noxious and obscene materials perhaps both to the President and to the congressional committee before their official appointment. Persons representing organizations which demand a free and unfettered flow of all printed matter should not be included. We would also like to recommend the addition of a clergyman of the Orthodox faith so that all of our Nation's faiths will be represented.

We are in wholehearted agreement with the duties of the Commission as proposed by Mr. Daniels and we also feel that not only must public support be obtained but it must be sustained over a period of time longer than 1966 or even 1967, as you have suggested. We ourselves feel that the decent man's point of view should be heard within the courts and through mass media as the need arises and to

channel public support into massive expressions of community standards.

If the commission does nothing else but come to this same conclusion after careful study and subsequently so advise the President, and if the President in turn will bring both the problem and suggested solution to the people of the Nation, the existence of the commission would be more than justified.

I would, on my own, if I may, put into the record a bill that we may have passed in the State of New York and it has already passed both the assembly and the senate, and was signed by the Governor, but, of course, it has not as yet been tested in court, so to what we feel is obscene. I think it has proper safeguards for people who want to express themselves either in medical or in other constructive forms, even if they have pictures that may seem to be obscene to some people, because we feel that this is a real and concise bill, that it in turn should be recommended by the commission if and when it comes into being.

We pray that the solution to the problem of obscenity can thus come through a commission of this sort, so that might might be brought to bear against might, that is, the might of decent people might be brought against the might of pornographers and those who try to corrupt the American youth, because we feel this is the only way upon which the Great Society of which the President speaks and which we feel can be and must be built.

I thank you for your time and, if I can, I would like to answer any questions you have.

Mr. DENT. Thank you very kindly, Rabbi.

Reverend Hill, you can go ahead and then we will ask questions we may have.

STATEMENT OF REV. MORTON A. HILL, SECRETARY, SOCIETY FOR THE PROTECTION OF CHILDREN'S MENTAL AND MORAL HEALTH

Reverend HILL. I will be very brief and spare you members of the committee, who have been here a long time, and speak about a few of my ideas that have come up this morning.

First, we are very happy that men of your caliber are thinking of this problem. Mr. Mundt and Mr. Daniels and other gentlemen are certainly well equipped on everything you said as indicated. You have a real grasp. The rabbi and I have been in it so long we can tell immediately if someone knows what they are talking about. I get the impression, and I am sure the rabbi does, that you understand the problem.

There is one word in Mr. Daniels' testimony I would like to perhaps suggest to him that he might change. It is the word "definition." I won't go into the text here, but he refers to the definition of the *Roth* case. Now, the use of this word can be very misleading and cause a lot of trouble, so I would like to suggest that possibly you use the word "description" instead of "definition," or the verb "describe" instead of "define," because this is a working rule, it is not a definition of obscenity.

You can't get a definition of obscenity. You can describe clearly that which is obscene but obscenity is such an all-embracing concept

including not only illicit sex, and violence of all different kinds, so you can't get a definition. It is not intended to be, but it is a working rule. If you refer to it as a definition it creates a lot of confusion.

In part of our testimony, there is a section in an article by Deputy Mayor Cavanaugh which describes clearly the word "obscene." I am not going into it now. If you read that, you might possibly change this word which can have quite an effect in subsequent discussion.

Now, about the bill itself, I will be very, very brief with you and just say that public opinion is shifting and the best proof of that is the number of articles that are coming out in major magazines of all types. Here is Report magazine with a major article for June. The America is a national publication and has a major article for August. The Club Woman magazine for women's clubs representing a million people and hundreds of thousands of clubs, have published a whole series of well-done articles.

The Church Advocate has a major article in this issue, August. The Christian Herald has a whole series and goes to all faiths and has a major article in the August issue, and in the previous issue. This is an important article because it is a poll on public opinion. They have 7,000 answers to 1 article. They think it is phenomenal because they had no return postage.

From the magazine and from the response the Daily News got in an editorial, they got 15,000 responses which is something they never had in their history, and from a little event in Mount Kisko, N.Y., the mayor put on the meeting, the rabbi was there, and BCS televised and the mayor got 200 replies from all over the country. From these things, I can tell you that public opinion is getting behind this bill and the people are with you.

The reason for this committee being so important as we see it is that it will give the President backing so that when he stands up and speaks to the whole Nation he will have the thinking of all of these men behind him as to the nature and extent of this problem.

It is only through the President getting all of the forces and all the 50 States simultaneously to act that you can get the proper convergence of public opinion on this thing and do it quickly, like that, because otherwise it is a 10-year thing and this thing can't wait 10 years. Our youth will be destroyed in 10 years. I would say the getting together of these men is most important in initiating ideological warfare because that is what it is.

It is an ideological war being fought in the United States, within the country, therefore, we need specialists in that warfare which will insure winning when we merge as a result of this committee's presentation of the problem to the President and his enunciation of this problem to the United States.

That is about all I have to say here.

Mr. DENT. Thank you, Reverend.

I want to say to both of you that I see in your testimony a sort of sense of urgency, your opinions collectively or individually, that we—regarding this particular type of public matter—have been having an extraordinary growth in the country in recent months or years.

Reverend HILL. Recent months. Opinion is beginning to take hold, starting from the theological guides of the people and this is reflected in these theological magazines. Right?

Rabbi NEUMANN. I would say so. Of course, as Mr. Keating has properly observed, perhaps the various committees that have been in existence, such as Mrs. Granahan's, whose name is the foremost one in this fight, and Senator Mundt's, and so on, there is no doubt in my mind that within these 2 years you have seen a tremendous change, I mean change for the worst.

Both in the contents and in the number of these books as they are being sold all over and this is a basic matter, because you know as these people, these publishers, so-called publishers hide themselves behind the skirt of censorship and say to us that while today they may agree, some of the decent-minded people may agree to ban this material.

From stands they will say you fellows will be inching in and what about tomorrow if someone's political ideals or other ideals are inimical to the existent climate, what will then happen that the Congressman or Federal laws will come about and they will in turn be able to tell us what to read or what not to read.

So this inching in is always making a great dent on people's mind, and I am using the word "dent" because of our chairman, but this fear of inching in on the part of decent people shows that we are not inching in, they are inching in, because during these 2 years the change is so marked and so tremendous, as Mr. Keating has pointed out, and anybody will point out to you, and indeed they are getting so bold and brazen every day, in every one of these books, and I hate to say it, but I don't read this garbage, but I am told that one is worse than the other and they don't know what else they are going to tell you.

Someone may tell you gentlemen 6 months from now, "What else can they tell you?" they have told you everything.

Mr. DENT. That is one weakness in the arsenal of those who have to fight this because they print theological magazines and call attention to it, but in order to impress their readers with the seriousness of it they would have to repeat the material that is contained. A person that does not read it. I am very frank about it, I am shocked about it, because I don't read it.

Rabbi NEUMANN. So am I.

Mr. DENT. In fact, I have never seen one of these books and I have never read them, never picked them up. Now, to me the Nation needs to be shocked into the realities of the situation because there is a vast difference between this particular deal and those who promote censorship, because they are a mild sort of person without an idea of the seriousness of this matter. But how do you get it across to the people? The theologicals, the agencies of church and State that have the weapons they could use in this matter are restrained because they themselves would be compounding the felony by repeating the things in the books, but yet without repeating them how do you shock the people into the sensibility of it? How do we do it?

Rabbi NEUMANN. With a commission, if you have 15 or 16 men of stature who will say that the books that now appear on the shelves or in the stands of our Nation, the various depravities that they discuss, is something that is bad for our people and then I feel people will rally behind them without sending them a copy of what goes on.

You need not commit a crime to awaken the people to the bad ideology of those who commit a crime.

Mr. DENT. I appreciate your faith.

Rabbi NEUMANN. If that will not work, then we can throw up our hands.

Mr. DENT. I have had a great deal of it myself and I have experienced, and I think I believe, it is part of the fight. Our fight is in trying to point out the bad theater plays that come on the scene. Once in a while they pique a certain amount of the enlightened people in our church and yet we know from our experience many of our own parishioners get the list of the bad movies and they are the ones that head for it as fast as they can. It is just a question of how to combat the thing. I am impressed with your argument that the commission can do it. We are now embarked to see whether or not that might be the answer, rather than establishing a strict censorship or a great number of legalistic barriers for these people to overcome.

All of us will have to work here—you, your organization—to see if we can't impress the whole Congress with the urgency of this matter. That is the thing that strikes me more than anything—the urgency. The urgency is here. Can we arouse the Congress first and then the people of the necessity for action?

Rabbi NEUMANN. That is the greatness of these United States, of gentlemen like yourself, Members of Congress, and all I can tell you is what I pleaded before: the people want you to do something about it. You are the legislators. If we had an easy answer, we certainly would propose it to you. But what we would like to have, of course, is to have our cake and eat it, too.

We want our liberties and still keep this trash away from the youth and those who don't know how to handle it, we are not in favor of precensorship, prepublication censorship. Let them write whatever they want. All we would like to have is, if it is possible, to see to it that youngsters cannot buy this stuff, thus, I would say it would take away 50 or 60 percent of the prospective buyers and then you will find that this material would suddenly disappear because there would be no money. It would be as simple as that. Beyond that we just pray and hope that you will come up with something good.

Mr. DENT. I don't want to take any more time, but I just want to say it appears to me, offhand, a quick analysis of what we need is a powerful insecticide, the kind developed in our agricultural process and although they may kill some of the bugs that are beneficial at least we kill the ones that are bad. So, therefore, we need an insecticide to clear it out.

Mr. Daniels, any questions?

Reverend Hill. May I ask a question? We have had hundreds of meetings all over New York, hundreds of them, and we used Mr. Keating's wonderful film to wake parents up and we showed them, as Mr. Keating did today, the material. But the people don't get excited about it and their energies are unchanneled, and we have no way of remaining in contact with these people after the meetings.

What is desperately needed is a full-time office of people that will be in contact with the mass media and get the right people on radio and television as crises come up, men who will also get inside the courts. Now, the CDL is one attorney but the people defending it have one now. So, consequently, the defensive network has to be penetrated by another group and unless that is done nothing can

happen. We hope that that is one of the things that will emerge from your commission, that they will see this very clearly, but unless this function, this new entity comes into being, there is no hope.

Mr. DENT. Mrs. Mink from Hawaii.

Mrs. MINK. From your comments, do I understand that what you are suggesting is some sort of permanent structure within the Federal Government to keep watch over this matter?

Reverend HILL. I don't know whether it would be within the Federal Government or whether it would be a private affair, private initiative, interfaith, and with privately financed funds, I don't know. Maybe it would be part, maybe the Federal Government would act, well, I don't know.

Mr. DANIELS. Do you think this commission as proposed is it?

Reverend HILL. I think this commission could advise the President of the seriousness and give it to the Nation and let the Nation pick it up from there, but this is very important.

Mr. DENT. Mr. Andrews.

Mr. ANDREWS. I want to thank you for presenting this statement. I like free speech, a free press, the institution of democracy itself has the seeds for its own destruction and we are at a crucial point, and a very highly technical point, I believe, is before the Commission that has to study it thoroughly and go over the court decisions and all the difficulties that are involved.

Mr. DENT. Mr. Meeds.

Incidentally, I might say Mr. Meeds comes to us with a great background in the prosecution of individuals and organizations in the area we are discussing and his membership on this committee is considered very valuable by the rest of us.

Mr. Meeds.

Mr. MEEDS. I would like to compliment both you gentlemen and the previous gentlemen for bringing to this committee what was, in the first instance, a real shocker and, in the second instance, very good guidelines, and I am particularly impressed by your statement, Rabbi, that you don't want full censorship, that we work through the law on this and while the seeds of democracy may attain, or while democracy may contain the seeds for destruction it also contains the seeds for its own salvation and that we should utilize these seeds.

Thank you.

Mr. DENT. Any other questions from any members of the committee? If not, the committee will stand adjourned until tomorrow morning at which time we will have a set of witnesses including Mr. Lawrence Speiser, director of the Washington office of American Civil Liberties Union.

Thank you all for coming and thank you all for participating.

(Whereupon, at 12:15 p.m., the committee recessed, to convene at 10 a.m., Thursday, September 2, 1965.)

TO CREATE A COMMISSION ON NOXIOUS AND OBSCENE MATTERS AND MATERIALS

THURSDAY, SEPTEMBER 2, 1965

HOUSE OF REPRESENTATIVES,
SELECT SUBCOMMITTEE ON EDUCATION
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 9:45 a.m., pursuant to recess, in room 2257, Rayburn House Office Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Present: Representatives Dent, Daniels, Mink, Scheuer, Meeds, Andrews, and Gurney.

Also present: Robert E. Vagley, director of subcommittee.

Mr. DENT. The Select Subcommittee on Education will now continue the hearings on legislation before them introduced by the gentleman from New Jersey. Due to other committee meetings, we may have a slight delay in all of the members being here, but they will arrive sometime during the hearings.

The first witness this morning is Mr. William F. Callahan, Director of Fraud and Mailability Investigations Division, accompanied by William F. Lawrence, Counsel for U.S. Post Office Department.

Gentlemen, will you take your positions and give the committee the benefit of your experience and your testimony in this matter.

STATEMENT OF WILLIAM F. CALLAHAN, DIRECTOR, FRAUD AND MAILABILITY INVESTIGATIONS DIVISION; ACCOMPANIED BY WILLIAM F. LAWRENCE, COUNSEL, U.S. POST OFFICE DEPART- MENT

Mr. CALLAHAN. Thank you, Mr. Chairman and gentlemen of the committee.

I am William F. Callahan, Director of the Fraud and Mailability Investigations Division in the Office of the Chief Postal Inspector. I am appearing here today in lieu of Mr. Montague, who was scheduled to appear, and he asked me to express his regrets and say to the committee he wished he could have been here personally at this time.

Mr. DENT. I want to say for the record that the gentleman, Mr. Montague, could not be here this morning because of a very important assignment, meeting the new Postmaster General, and I am happy to have Mr. Callahan in his place.

Mr. CALLAHAN. I have a prepared statement here I would like to read into the record if it is all right.

Mr. DENT. That is perfectly all right.

Mr. CALLAHAN. I am William F. Callahan, Director of Fraud and Mailability Division, Bureau of the Chief Postal Inspector, Post Office Department. I have with me Associate General Counsel William F. Lawrence. We thank you for the opportunity to appear before you and to present the Post Office Department's views on H.R. 7465.

The broad purpose of H.R. 7465 is to effect a coordinated effort at the various governmental levels, and by public and private groups, to combat by constitutional means traffic in obscene matters and materials.

The commission to be created by this bill would represent a broad spectrum of activity whose mission would be to determine the problem areas, and to recommend curative measures in an effort to curb the spread of obscene matter.

The basic statutory weapon available to the Post Office Department in restricting the use of the mails to disseminate obscenity is section 1461, title 18, United States Code. This statute prohibits the use of the mails to transmit any obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance.

Convictions for first offenders under this statute call for fines up to \$5,000 or imprisonment up to 5 years, or both. For each offense thereafter, the violator may be fined up to \$10,000 or imprisoned up to 10 years, or both.

Several years ago, the Post Office Department began a nationwide crackdown to combat the dissemination of obscenity in the mails. Under this program, conducted primarily by selected experienced postal inspectors, the arrest and conviction percentage was greatly increased as evidenced by the following statistics:

Fiscal year	1959	1960	1961	1962	1963	1964	1965
Arrests.....	315	389	457	605	761	805	874
Convictions.....	272	306	377	503	637	627	696

Mr. DENT. Mr. Callahan, in 1965, to what date would that be?

Mr. CALLAHAN. This is the fiscal 1965. All of these are fiscal years. This is the cutoff here; the cutoff would be June 30.

Mr. DENT. I notice the steady increase from 1959 to 1965, where it is 300 percent approximately for the number of arrests.

Mr. CALLAHAN. Yes, sir; we have been giving this thing intensified attention with a view to stopping this type of activity.

In this program the Post Office Department has developed methods of cooperation with law enforcement organizations on all levels of government. We feel that the proposed commission, if established, should recognize the basic investigative responsibilities and duties of the postal inspection service under the cited statute.

We share the concern of this committee in the significant increase of distribution of offensive matter during the past several years. However, we find that the greatest portion of mail patron complaints concern matter which is lewd or offensive to them, but which in fact would not be regarded by the courts as violative of the obscenity statutes.

Needless to say, material cannot be arbitrarily excluded from the mails but must be considered in the light of court decisions on the

question of mailability. In 1957 the Supreme Court of the United States observed that the test for obscenity is whether to the average person, applying contemporary standards, the dominant theme of the material taken as a whole appeals to prurient interests. This, we believe, clearly leaves the decision up to the courts or juries as to whether material is violative of law. This is the framework within which we in the Post Office Department have, with conspicuous success, approached the statutory obligations of enforcing the postal obscenity statute.

Under the present procedure, when a possible violation of the postal obscenity law comes to our attention, a postal inspector is assigned to thoroughly investigate the case. The inspector secures all available evidence concerning the circumstances of the mailing and the pertinent activities of the mailer.

We then examine the evidence in keeping with the decisions of the Federal courts. And if it is determined there is a probability of a violation, we then refer the matter to the Department of Justice for consideration of prosecution.

The ultimate decisions must, of course, lie with the courts proceeding under the constitutional test prescribed by the Supreme Court. A vital element of the test for obscenity is community standards. This gives recognition to the community consensus of tolerance with respect to sex-oriented materials.

We believe that it is in this area that the commission could perform a valuable function. It would be of inestimable help to a court to provide acceptable evidence of community thinking and limits of tolerance on such matters. We believe that the commission might well marshal the necessary information from communities across the Nation from which to arrive at a reliable determination of community standards acceptable to the courts.

At the same time an objective study by such an impartial group may well be the foundation on which to build a program to dispel the fears of censorship. The commission may also determine the relationship between the high incidence of distribution of obscene materials and antisocial behavior, particularly as it relates to juveniles.

We are hopeful the commission would attract the best thinking of members of the public, legal profession and those in mass media so as to lead the way to an even more vigorous enforcement of obscenity laws on the Federal, State, and local levels in keeping with the rights accorded all people under the first amendment.

H.R. 7465 provides for a representative of the Post Office Department to serve on the commission. The postal service has a considerable interest in the area of the proposed commission's function. And I might add that the postal inspection service would be in a position to furnish the commission with information and materials that would be of help in accomplishing the objectives of this bill.

Thank you.

Mr. DENT. Thank you very kindly, Mr. Callahan. I might say before we proceed any further that I see what I think are youngsters in the crowd. They may fool me, because it has been a long time since I was a youngster. I want to state these committee hearings are open to the public as all committee hearings are in this Congress; however, there may be material presented here that might be offensive to some of you and I ask you all to examine your own conscience as to whether

or not you want to stay here during the hearings of this particular subject.

It is not a pleasant job to have to hold these hearings, because it covers areas that are not normally subject to conversation in our society. However, if you wish to stay, we are perfectly willing to have you stay. I hope you are old enough to appreciate the problems we have before us.

At this time I might ask you a few questions, Mr. Callahan. I note that you state that the Post Office has developed methods of cooperation with law enforcement organizations at all levels. How do you first become aware of your mailings of what is termed obscene or filthy materials?

Mr. CALLAHAN. Primarily through complaints received from the public. I might say that many of them come from congressional sources. As a matter of fact, I think last year we had something over 500 complaints referred to us from congressional sources, relating to alleged obscenity in the mails.

Mr. DENT. Now, these books were picked up, I understand by a witness yesterday, within a block or two of the Capitol. There are a whole slew of them. Here are just a few of them we have here today. Now, how do these books get to the newsstands—through the mails?

Mr. CALLAHAN. No, sir. We have gone into this on numerous occasions and these are through interstate transportation, usually by truck and other public carriers. We have, or there may be some instances where some of them do go through the mails. We have gone into that from time to time. The majority of this distribution is by truck.

Mr. DENT. Now if, on materials such as this, you are notified that this is going through the mails, then just what can you do about it?

Mr. CALLAHAN. Well, we would assign an inspector to the case and he would make test purchases of the material. It would be examined to determine whether it appeared to fall within the prescribed prescriptions of the *Roth* case and if it did we would take the matter up with the U.S. attorney or might refer it to the Department of Justice if it appeared to warrant that type of treatment.

Mr. DENT. Where does the local court come into the picture?

Mr. CALLAHAN. Very frequently, U.S. attorneys under the Department of Justice prefer to have these things handled at the local level, in which event the inspector then takes the evidence to the local district attorney or county attorney.

Mr. DENT. You are not compelled to take it to the local attorney?

Mr. CALLAHAN. No.

Mr. DENT. If it goes through the mail, it is a Federal violation.

Mr. CALLAHAN. Yes.

Mr. DENT. Now, we had a case brought to our attention yesterday concerning an artificial mechanism and it appears that 10,000 brochures were mailed from each of 4 post offices within the jurisdiction of the courts to which this case was taken; would it not seem that the Post Office Department, in a violation or apparent violation or alleged violation as widespread as this one, where 40,000 brochures were mailed by 1 person, from 4 different post offices, would it not seem to be proper and more to the point if the Post Office Department would have insisted that this be tried in a Federal jurisdiction, a Federal court, rather than in a local court?

Mr. CALLAHAN. Well, sir, I think I know the object to which you refer. I might say this was, in fact, referred for consideration by the U.S. attorney at that point and it was determined that it did not fall within the prescriptions of 18 U.S.C. 1461 in view of the various decisions of the courts, particularly those of the Supreme Court. In other words, they held it did not violate the Federal obscenity statute.

We then cooperated with local authorities and, as I recall, there was an arrest and a local prosecution.

Mr. DENT. What kind of a device would they have to develop for it to be called a violation of the standard set by the *Roth* case or whatever case it is? There is a description given here and it is apparent to me that this would certainly fit the description, any description you could give to obscenity, no matter how lax you were in the definition, how determined you were that it was not within it. Was this the Justice Department?

Mr. CALLAHAN. This would be the U.S. attorney.

Mr. DENT. He determined this was not within it?

Mr. CALLAHAN. He examined it and felt it would not sustain a prosecution.

Mr. DENT. Do you know the case?

Mr. CALLAHAN. I am quite sure I do. That is an artificial vagina.

Mr. DENT. Yes. What did the Justice Department think it was made for or mailed for or they were selling it for?

Mr. LAWRENCE. I might respond that this was brought to the attention of the U.S. attorney and he, in turn, took it up with the Justice Department and they advised the U.S. attorney it would not be violative of the statute; therefore we were precluded from prosecuting and as a result we sought other areas to carry the case.

Mr. DENT. Was it, in your opinion, as counsel for the Post Office Department, if you were in the case at the time, was it your opinion that this was obscene material?

Mr. LAWRENCE. We felt it probably would violate the statutes. That is the reason why we carried it.

Mr. DENT. I might say for the record that I think if the Justice Department would devote a little more energy and time on this moral question before us rather than some of the phases of activities that they go out on wild goose chases, that would do the country more good and this problem would not be as serious today as it is to the children of America.

Any person who would not judge this as obscene ought to be investigated himself and examined by a psychiatrist, if this material contained in here is the material that was sold to the 40,000. I wish you would see this, Mr. Gurney. That kind of material if it is judged by anybody in the Department as not being a proper subject of laws dealing with obscenity, certainly ought to be under investigation.

I am not holding you responsible. I commend you for bringing it to our attention, but we have to see what we can do in order to bring it into the proper hands of the officials that can stop this danger. I am sorry to break loose on it, but I had time to see some of the pictures this morning and you don't need too much of an imagination to see what they are driving at.

I think that is the answer, isn't it? We stopped selling liquor to children and we seemed to do it pretty successfully all over the

United States, and certainly it is more accessible to children than any of this material would be. We have liquor on practically every corner, but, in my opinion, as a whole the Nation does a good job of holding down juvenile drinking.

Now, I notice you have the arrest record, or records. In these arrests, in most instances do you arrest the principal in the case as the distributor at the local level, or the publisher? You have no law that allows you to arrest for possession; do you?

Mr. LAWRENCE. No, not possession exclusively. We seek the disseminator. I don't think we can use our statutory authority for mere possession.

Mr. DENT. Well, as counsel for this very important Department, would you care to send to this committee your recommendation of what ought to be in the law to give you a stronger hand in the management of the distribution of this material?

Mr. LAWRENCE. Well, we have been trying over the years to write a constitutional law. This is one of the most difficult problems I have ever faced in the Post Office Department. It is almost impossible to write a definition within the constitutional meaning. The thought I had for some time was to depict it in an area of degrees or perhaps we may be successful in limiting it to a degree factor as pertains to juveniles. I think this may carry some weight sometime. Of course, I am not sure.

But I would be very happy to do what I can for you. I might add that we tried to do something earlier this year for Congressman Daniels and we hung up on writing a statute defining the material. We just couldn't do it.

And I think the Congressman, who is quite knowledgeable on constitutional law, understands our situation.

Mr. DENT. Thank you kindly for your testimony and for your cooperation.

Mr. Daniels, do you have any questions?

Mr. DANIELS. Mr. Lawrence, you did assist the Post Office and Civil Service Committee in drafting a bill with respect to unsolicited mail going into the homes of people, reaching children?

Mr. LAWRENCE. Yes, I did.

Mr. DANIELS. And you and your office were kind enough to assist us on the legal aspect of that and finally we did draft a bill which passed the House by an overwhelming vote.

Mr. LAWRENCE. Yes, indeed.

Mr. DANIELS. Now, I know there are serious constitutional questions involved and you and your staff went into those questions. I do think we have a very, very good bill here. As the chairman has pointed out, the danger of this smut and obscenity is its coming into the homes and reaching children, immature hands, where they do not have the knowledge and experience of adults who can make a decision for themselves.

I am of the conviction that there is a direct causal relationship between this smut, this obscenity, and the juvenile delinquency. I think if we can assist our youth by making it almost impossible for them to get this filthy material, that perhaps we would have a cleaner and better country to live in.

Mr. LAWRENCE. I agree.

Mr. DENT. At this point, I would like unanimous consent to include in the record, at the end of Mr. Callahan's testimony, the report of

the Postmaster General, John A. Gronouski, when he was Postmaster General, on this particular subject.

Mr. Andrews.

Mr. ANDREWS. Mr. Callahan, am I to understand, from the Post Office Department's standpoint, we have this conception, more or less in each community, more or less of what is obscene and what is not obscene, that this situation is still a fact under the present laws?

Mr. CALLAHAN. Yes, that is our view, I think as contained in the 1958 venue law which was passed by the Congress and which gave us the right to bring the action and present the matter for prosecution. As I recall, they passed the law in 1958 and what is done with that in view. We had, for instance, complaints from the communities around the country that were relative to material for which we could not obtain prosecution, for instance, under the concept they had of these things in Los Angeles; yet there were towns flooded with material which the people felt were quite objectionable and it was that that led the Congress, and I think the notes on that legislation will show or indicate that it led the Congress to pass the 1958 venue law.

Mr. ANDREWS. Well, it is a most astonishing and ironical position that some of us, committed against the erosion of States rights and devoted to freedom, are now caught in the trap of defending freedom of pornography. This is something that is really completely wrong and nobody literally would approve of this sort of thing.

Of course, all of this time we seem to be discussing the merits and demerits, Mr. Chairman, of legislation, when as a matter of fact, what we are trying to do is appoint a committee to give us advice on this tenuous situation where we have freedom of speech and press on one side and the tremendous abuse of it intentionally on the other. We are trying to have this Commission draw lines in between for some effective means of controlling this abuse of freedom of speech. As far as I am concerned, we have more or less arrived at the time for my vote, which is that we establish this Commission and let's get it on the road.

Thank you.

Mr. DENT. Thank you.

Mrs. Mink?

Mrs. MINK. I have no questions.

Mr. DENT. Mr. Gurney?

Mr. GURNEY. I would make this observation in line with what the chairman said a while back: I certainly think we ought to get any suggestions we can from your Department and your expertise on how to improve the language of this thing. After all, this is one of your principal functions and certainly from the long experience you have had in this field you ought to be able to give some suggestions to the Congress on how to combat it. I would hope you would give this long and serious thought and come up with some helpful suggestions.

I can't believe that our society has reached the point where we are helpless in the matter because I certainly think that public opinion, at least as I know it in the region I live in, certainly would back up almost all the way any stepped-up efforts by the Post Office Department or any other agency that handled this matter.

I think it behooves us all in Government to find a solution and get about the job rather than throw up our hands. I think there are per-

haps some law enforcement officers or some courts that are taking a rather lenient view on this matter and I think that is probably part of the job.

Let me ask you this: Getting back to the case the chairman was discussing with you, what did you do? As I understand it, you presented the matter to the U.S. attorney in this particular district and he refused to prosecute; is that it?

Mr. LAWRENCE. That is correct.

Mr. GURNEY. Where was the district and who was the attorney?

Mr. LAWRENCE. Los Angeles southern district.

Mr. GURNEY. Now, was that the decision of the U.S. attorney, Chief of the Department, or who?

Mr. LAWRENCE. Presumably these things are cleared with their headquarters here in Washington. From my experience, I don't think they have a complete discretion in these matters. They check with the Criminal or Civil Division, as the case may be, in the Department of Justice.

Mr. GURNEY. Was the decision made in Los Angeles or Washington?

Mr. LAWRENCE. The decision was made in Los Angeles. It had to be corroborated with the headquarters in Washington.

Mr. GURNEY. Let me ask you this: On this problem, if you were thoroughly convinced this was an obscene thing which certainly ought to be prosecuted, did you attempt to turn on as much heat as you could to see that it was or did you simply throw up your hands when you got a decision out of the Los Angeles office?

Mr. LAWRENCE. We made the best case we could make for an indictment and there was not much more we could do after that.

Mr. GURNEY. Well, did you pursue it in Washington? This is really what I am getting at. Or did you drop it in Los Angeles?

Mr. LAWRENCE. There were some talks between our people here in Washington and the Appellate Division of the Justice Department.

Mr. GURNEY. In Washington?

Mr. LAWRENCE. Yes.

Mr. GURNEY. What was the result of those talks?

Mr. LAWRENCE. Negative.

Mr. GURNEY. And what reasons were given?

Mr. LAWRENCE. The reason, principally, was that in view of the court decisions it was not believed that the prosecution could be had, pursuant to 18 U.S.C. 1461.

Mr. GURNEY. Was this again taken up with the head of the Criminal Division who would have charge of these cases here in Washington?

Mr. CALLAHAN. Might I just say something here which I think will clarify it just a little bit?

Mr. GURNEY. Yes.

Mr. CALLAHAN. These court decisions have become so complex and the decisions of the Department of Justice have been reversed on occasion, where we have secured indictments with their assistance, that they now, of course, attempt to reconcile all of these conflicting decisions in arriving at a conclusion.

In other words, you bring a case of this kind, there is an immediate uproar, denunciation of all law enforcements. You have your civil liberties groups and others and, of course, the people who are promoting this stuff for the dollars that are in it and they all scream very loudly, they make a great noise, considering their numbers, and as a result, why a reversal takes place.

I might cite you just two cases in which we got thousands and thousands of complaints, and after discussion with the Department of Justice they authorized a prosecution under the venue law. We took these people, who were on the coast and we had them indicted in Kansas with this result—at Topeka—this is just a little note I have on this that I don't want to really take up your time with, but I think it might lead to a better understanding, and I don't think the Department of Justice is at fault in this thing; I think they are trying conscientiously to stay within what they view to be the concept of the law as enunciated by the Supreme Court and the other courts.

These men over there are sincere, hard-working people. They are family men and as much shocked by this as we are. They don't like it, but they have to deal with the hard facts. This is what happened here in the two cases which we have.

Thousands of complaints were received over a few years concerning the mailings by Louis Linetski, of Culver City, Calif. I have some of the material and it is vicious stuff, and by one of the largest mail-order dealers in this material in the country. His activities were investigated by the postal inspector over a period of time and in one of his later operations, John Anslow & Associates, especially offensive advertising was sent to many persons offended by the descriptions, some almost pornographic in themselves, of the material offered for sale.

On August 29, 1963, Linetski was indicted in the Federal district of Kansas on 22 counts and the Justice Department gave us tremendous aid on this case. They urged the U.S. attorney out there to present it because they agreed with us that something should be done on violation of the obscenity statute under the venue provisions of the statute for mailing obscene matter into the district of Kansas.

The case came to trial in 1965 and on June 29, U.S. District Judge George Templer ruled on the defense counsel's motion to dismiss the indictment on the basis that the matter charged was not obscene, and the judge went further and stated that the matter was not hard-core pornography and was not obscene under current controlling court decisions.

The 22-count indictment against Linetski was then dismissed.

This is the first time there was a requirement it had to be hard-core—in other words, action-type stuff—had ever been raised, to my knowledge.

Judge Templer made a similar ruling in another case, dismissing a 21-count indictment returned against Howard Wasserman and so on, who, among other means, mailed his material on an extensive basis. He is considered to be one of the biggest dealers in this business.

These are the people who occasioned thousands of complaints to Congress. I think that in this 1 case alone we have some 25,000 complaints.

Now, you can see, in the light of this type of thing, why the Justice Department has to be concerned about bringing these cases and they try to evaluate them in every conceivable way with a view to reconciling what we have and what we are prepared to prove, with the requirements laid down by the various courts. This is another of the problems actually.

Mr. DENT. Will the gentleman yield?

Mr. GURNEY. Yes.

Mr. DENT. This is the same Linetski, Louis Linetski?

Mr. CALLAHAN. Yes, Louis Linetski.

Mr. DENT. In another case, before Judge Ralph Freeman in Michigan, eastern division of Michigan, the issue was resolved by the judge, and he was dealing with another one of these artificial mechanisms, in which the judge threw it out on the grounds that although it could be one probable cause it was not solely probable cause; therefore, it was dismissed.

Now, I can understand that maybe the hard-knocking Justice Department needs tempering a little bit because they may have troubles of their own getting past some of their own barriers.

Mr. CALLAHAN. I think this is the basic problem, the interpretations placed on that, and even the courts seem to be confused. This is, of course, where this Commission could serve a tremendously useful purpose, in my opinion.

Mr. GURNEY. What you are saying is, the root of our trouble is the courts and their decisions on these matters?

Mr. CALLAHAN. We feel so. We have no quarrel with the courts. We feel all of these people are acting in good conscience in light of their own understanding of the statute, but it does give us a tremendous problem. For instance, last year we received 128,000 complaints.

Mr. DANIELS. Will you yield?

Mr. GURNEY. Yes.

Mr. DANIELS. Mr. Linetski and these other characters you mentioned engaged in the wide distribution of this pornography have distributed so many thousands and thousands of copies of this smut throughout the Nation, and you mention in your statement that during the year 1965 there were 874 arrests and 696 convictions that were obtained.

Could not the Federal Government bring charges against these men in a jurisdiction where they had had experience in dealing with these cases?

Mr. CALLAHAN. You see, this is what happened here. When we couldn't prosecute in Los Angeles, which was the source of the material, and this is the basis of the operations, why, we did, with the advice and assistance of the Justice Department, present them under the venue law, in the district of Kansas.

Mr. DANIELS. Did you get an indictment?

Mr. CALLAHAN. Yes; we got an indictment and then the judge there rules it was not hard core and threw out both indictments.

Mr. DENT. Maybe you had better get the same kind of setup that we have in small towns where we find there is a great deal of traffic violations. We find one justice of the peace that is not soft and all the cases go to him.

Mr. GURNEY. That is a good suggestion. Here is another suggestion. There are many ways of fighting fire with fire. It would occur to me that if you brought a great many more cases of this sort, even though you knew you were going to lose some of them, the public would feel very deeply on this when the message gets to them, they would become aroused, and I think you would find a different attitude on the part of the judges.

I would think in many of these cases your public is not aware of what is going on. Public opinion in this country is a powerful weapon and once aroused can change the whole course of human events.

What I am saying is, why not prosecute a few more of these more vigorously and possibly the public opinion will come around to our way of thinking?

Mr. LAWRENCE. In the legal thinking, which I am concerned with, this may cause a furor worse than the law we have.

Mr. GURNEY. How could it be much worse than it now is?

Mr. LAWRENCE. Well, indiscriminate prosecution and indictments could create a worse situation than we have now. What we have tried to do, what Justice has in mind, is to carry the cases and stand on appeal. They don't necessarily look to the lower court as the ultimate. They have to keep in mind the appellate procedures involved.

Mr. DANIELS. Mr. Lawrence, I disagree with you. I have been an attorney for 35 years and also served as judge and I have had experience in this type of case and I think if you prosecute more diligently and arrest them indiscriminately, they would not be able to go out and pay the high prices they pay for their legal services when they hire lawyers.

They do not hire the lawyers cheaply. They get the best, most astute minds and pay big fees, and if you keep on making these arrests and keep them in trouble, you might drive them out of business and take the profit out of it.

Mr. GURNEY. That was the point I was trying to make.

Mr. DANIELS. That was how they had run the bookmakers out of business.

Mr. DENT. It worked in that case. I guarantee you that this committee, as long as I am its chairman, is not going to rest until we find some solution, maybe not a solution, but, by golly, we are going to try.

Mr. GURNEY. One other question I want to ask about, and I am totally unfamiliar with the law on this subject and I am groping in the dark, but as I understand it, your controlling statute simply gives you the power to prosecute, in effect, if someone is using mails to transport unseemingly materials, isn't that it? In other words, they have to do it and then you catch them and prosecute them? Is there any confiscation authority that you have here?

Mr. LAWRENCE. None whatever.

Mr. GURNEY. Why not get that statute and confiscate some of these things and maybe the Federal Government would be wise to pick up some of the tab if they lost the case. What is wrong with that approach?

Mr. LAWRENCE. Well, we had an administrative impounding approach at one time and it was defeated by the courts pretty much.

Mr. GURNEY. Excuse me?

Mr. LAWRENCE. We had an impounding procedure, administrative impounding procedure, some years ago and the courts were completely against it.

Mr. GURNEY. Well, that wasn't exactly my point and I wish, when you think of some of the suggestions you might come up with about how to remedy this, that you at least suggest that. I think it might be fairly effective if properly pursued. I have no further questions.

Mr. DENT. Thank you.

Mr. MEEDS.

Mr. MEEDS. Mr. Callahan, I will address my questions to you and if you prefer to have counsel answer them, that is perfectly all right.

Now I have here four books which came from a group of books which were introduced and put in the record yesterday. For the record, the names of these books are "The Love Affairs of Gloria," "Sextsational Step-daughter," "Flesh Flogger," and "Love's Lash." All four of the books were purchased yesterday in Washington, D.C., by members of the Citizens for Decent Literature—Mr. Keating.

All four of them are published in places other than Washington, D.C., which means, of course, they got here through some route.

Now, as I understood your testimony, Mr. Callahan, it was your feeling that most of these things did not come through the mail but were shipped on trucks and by other means to arrive at places like Washington, D.C., is that correct?

Mr. CALLAHAN. That is correct.

Mr. MEEDS. So that we have that background; then would you suggest that in any investigation by a commission which might be formed under the bill that is before us, certainly one of the areas they ought to be looking into is the prosecution for interstate transportation by means other than the mail of obscene literature?

Mr. LAWRENCE. That is already in the law—interstate transportation.

Mr. MEEDS. All right, then, this is my thinking. Who handles that?

Mr. CALLAHAN. The Federal Bureau of Investigation, FBI, and we work very closely with them on this.

Mr. MEEDS. I see.

Mr. ANDREWS. Will you yield?

Mr. MEEDS. Briefly, yes.

Mr. ANDREWS. I just want to put one question—if a case is investigated by the FBI after it is turned over to them, and the FBI informs the Justice Department, then it is the responsibility of the Justice Department to prosecute the transportation. Is that correct?

Mr. CALLAHAN. Yes.

Mr. ANDREWS. The initiation of the suit to stop the distribution across State lines is in the Justice Department's hands at that point?

Mr. CALLAHAN. Well, it would be in the FBI's hands and then they would present it to the U.S. attorney. They would operate just about the way we do.

Mr. ANDREWS. Thank you.

Mr. MEEDS. It is my understanding their statute is somewhat similar to yours?

Mr. CALLAHAN. It is modeled after it.

Mr. MEEDS. Stating "obscene, lewd, lascivious, indecent, filthy," and so on?

Mr. CALLAHAN. Yes.

Mr. MEEDS. So that if these books I have in my hand, as I have noted here, were to be, or were thought to be offensive or obscene in violation of this statute, the FBI would then instigate an investigation and ask the Justice Department to pursue the prosecution; is that correct?

Mr. CALLAHAN. That is correct, yes, sir.

Mr. MEEDS. All right, now, my second question is this: Is it a violation to attempt to solicit purchases by mail? In other words, do you have, as a violation of this statute, "any attempt to violate the statute"?

Mr. LAWRENCE. No; we are dealing with goods, not solicitation, as far as 1461 is concerned. That I am sure of. Pure solicitation of obscene material would not be violative, in our opinion. We are dealing with the hard goods.

Mr. MEEDS. All right, if I were a publisher of a book that was held by the court to be obscene and I asked for a response or purchase of that book through the mail, would this be an attempt to violate this statute? It certainly seems to me it would.

Mr. LAWRENCE. You are speaking in the case of some years ago, I forget the case, in the Federal Court of New York, the *Horning* case, I haven't the complete caption on that, where the Court held that consistent with 1461, not the solicitation, now, by a prospective purchaser, but a seller, if a seller—it relates to others, "where, how, or through whom he could purchase the material"—that the court held to be violative of the law; but, since, there has been erosion of that particular concept; we don't think it has too much bearing in the law right now.

Mr. MEEDS. In other words—and now I am going to refer specifically to a book, "The Affairs of Gloria," which is by Victor Jay, and which was purchased the day before yesterday in Washington, D.C., referring to the last page of the book and I will read for the record: "Brandon House Books, 731 Fulton Avenue, Hollywood, Calif. Please send me the books I have checked. I enclose blank to cover their cost. I understand you will pay postage and handling. Name, blank, address, blank, city, blank, and zone, blank."

Mr. LAWRENCE. Under the *Horning* decision that would have been violative of the statute, but, as I said, the courts are not upholding that particular decision.

Mr. MEEDS. Do you have any decision which you could tell us that would do this?

Mr. LAWRENCE. I will search for a particular one.

Mr. MEEDS. Would you furnish us with that information?

Mr. LAWRENCE. I will.

I might add the comment that we did talk to the Justice Department some years ago and it is their feeling that *Horning* would not prevail for indictments. I don't think there is a particular decision overruling *Horning*. I know there is not. It is a feeling acquired between the Justice and Post Office Departments that the decision would not prevail.

Mr. MEEDS. So you wouldn't attempt to gain a prosecution of this if you were to peruse this book and feel that it was obscene or at least there was probable cause?

Mr. LAWRENCE. If the book came before us, we definitely would go through it, study it, but if we thought there would be a probability of violation we would carry it to the Justice Department and seek an indictment.

Mr. MEEDS. Well, Mr. Chairman, and for the record, I have perused this book just sitting here and, in my opinion, it is highly obscene. That is my personal opinion. I think, as a citizen and as a former prosecuting attorney, and I have done some work in this area, have prosecuted cases in this area, that this kind of thing certainly ought to be looked into, and I am making a formal request of you right now that you do so.

Mr. LAWRENCE. What is the name of the book, Mr. Meeds?

Mr. MEEDS. "The Affairs of Gloria," and there is a solicitation for purchase on the back page of this book to be mailed. I am making the same request with regard to the book "Sexsational Stepdaughter," by Lana Preston, which has a similar solicitation on the last page.

Mr. DENT. Does it have some letters?

Mr. MEEDS. "EB" and the other is by "Brandon."

Mr. DENT. You can add the name of "The Experimenters" to it.

Mr. MEEDS. I have perused both of these books just sitting here, and if this does not meet the test, nothing does, of "prurient interests," and the dominant theme in both of these books is sex perversion, lesbianism, there being, in my mind, no question about it.

Mr. LAWRENCE. I want to comment that you must keep in mind Mr. Congressman, the decision of the courts saying that the book itself must be utterly without social redeeming importance. If it has a germ of fairly—well, I shouldn't say "germ"—if it is even a fair attempt at literary value, it would be upheld.

Mr. MEEDS. Well, it is my feeling that the *Roth* decision is still the law of this land and that the test laid forth in the *Roth* decision is the correct test and the test which the Supreme Court of the United States will apply.

Mr. LAWRENCE. We have tests subsequent to *Roth* that went to the idea that it must, as I said, have utterly social redeeming importance. In one particular case—I don't recall the case, the citation rather—the court said: Any idea having the slightest social importance however unorthodox, however controversial, even hateful to the prevailing climate of opinion has the equal protection of the first amendment rights.

Mr. MEEDS. I understand that and I think they are referring more to a political doctrine and mores than they are to sex perversion at this point.

Mr. DENT. Mr. Meeds, while you are on that subject, I would like to know whether or not you ever had any case against Deal's book. There is a book called "Dial Me for Pleasure," and it describes the books and I doubt there are redeeming features, and this is a full page of typing, where they use the proper name of one of the characters. This is an indecent description of what they are offering for sale.

Mr. LAWRENCE. I am not familiar with their book, Mr. Chairman.

Mr. DENT. Even the "Arabian Nights" didn't go that far.

Mr. MEEDS. One further question. What, if anything, is being done with regard to inspection, and I don't mean censorship, I mean inspection, to determine whether action should be brought with regard to foreign imports of material?

Mr. CALLAHAN. Well, we work very closely with the Customs Service and we feel we have had considerable success in this field. We have also worked with the Postal Interpol and as a result of some of the material we have furnished to Interpol in Holland, a number of dealers over exporting the stuff to the United States were prosecuted. This happened just a few years ago. We have worked with them very carefully. It is a difficult thing to control because of the many, as you know, ports of entry.

Mr. MEEDS. As a practical matter, however, the importation, does not the Customs Department have a statute very similar under which they work?

Mr. LAWRENCE. Yes; they do.

Mr. DENT. Also copied after yours?

Mr. LAWRENCE. Substantially.

Mr. GURNEY. Will you yield at that point?

Mr. MEEDS. Yes.

Mr. GURNEY. Isn't it a fact that a good part of this obscene literature comes from a few publishing firms and you know where they are; isn't that right?

Mr. LAWRENCE. I would ask Inspector Callahan to answer that.

Mr. CALLAHAN. I would say a few, relatively few, yes, sir, in relation to the large publishing industry. I would say the major portion is coming from a relatively few concerns, yes.

Mr. GURNEY. If that is the case, is there an attempt on your part to intercept the mailings as they mail them, those that go through the post office, not by truck?

Mr. CALLAHAN. You see, the basic question here is the question of obscenity.

Mr. GURNEY. I realize that.

Mr. CALLAHAN. I mean we can't intercept them unless and until they are ruled to be obscene. I would just like to mention this.

Mr. GURNEY. Well, first, let me pursue this. This is the point I am making, I mean this filth is coming from just a few people and you know who they are and where they are, wouldn't it be a sound idea to develop some sort of legislation to permit you to inspect some of these mailings when they go out? Wouldn't this be another weapon in your arsenal to try to combat this?

Mr. CALLAHAN. This would be prior restraint under the rules of the courts and I think it would not be feasible. I am sure that legislation would not allow it.

Mr. MEEDS. I would like to state my opposition to that.

Mr. CALLAHAN. Well, I would like to mention this one thing, though, and this has been one of the things with reference to books and so-called literature and so forth. We have, I guess you are familiar with Henry Miller's "Tropic of Cancer." Now, here we had on June 22, 1964, the Supreme Court of the United States held by a five-to-four decision that Henry Miller's "Tropic of Cancer" was not obscene.

It will be recalled that on July 10, 1963, the Court of Appeals of New York held the book to be obscene, hard-core pornography under the New York State obscenity laws. If you are at all familiar with the book, "Tropic of Cancer," you can see the concept on which the prosecuting attorneys have to view the problem. In other words, here the Supreme Court has, in effect, given its seal of approval to the "Tropic of Cancer," which had been proscribed by some 35 years prior to this.

Mr. MEEDS. Mr. Callahan, may I state I am familiar with the "Tropic of Cancer," and what I just looked at here, and they are not even in the same league.

Mr. GURNEY. I would also make this observation. If you had a five-to-four decision on that case, that again points up the importance that Congressman Daniels and I have brought out here, that a little vigorous prosecution down along the line and a lot of these other things might produce some results even though you did lose the "Tropic of Cancer," and I think it would make some sense.

Mr. MEEDS. I have one more observation. Is it not true, Mr. Callahan, that all prosecutions in the Federal jurisdictions are brought in the name of the U.S. attorney—the U.S. attorney?

Mr. CALLAHAN. They are brought in the name of the U.S. Government, yes.

Mr. MEEDS. And final determination as to whether a case is brought or not brought in any jurisdiction in the United States any Federal jurisdiction in the United States, is the determination made by Mr. Katzenbach, the ultimate decision?

Mr. LAWRENCE. The ultimate, but we know as a practical matter it is not that.

Mr. MEEDS. We know, as a practical matter that certainly on most he doesn't have knowledge, but on any matter of policy, that these matters could be brought to his attention?

Mr. LAWRENCE. Of course.

Mr. DENT. Mrs. Mink has a question.

Mrs. MINK. I have a few questions, Mr. Chairman. On page 2 of your testimony you have a list of the number of arrests and convictions over the past 6 or 7 years. I wonder if the names of the parties who were convicted could be provided to the committee.

Mr. CALLAHAN. This would be quite an undertaking. I suppose we could get them but it would be quite an undertaking.

Mrs. MINK. Well, suppose we limit it to the last 3 years.

Mr. CALLAHAN. Oh, I think it would be quite a difficult thing. We would have to go back through records. Our records would be over in the records center, if at all available. It would be very difficult.

Mrs. MINK. I think that information would be most helpful.

Mr. DENT. Would he give us 1 year?

Mrs. MINK. One year. Last year.

Mr. DENT. That wouldn't be too many cases, 800?

Mr. CALLAHAN. Well, it means searching—we made 16,000 investigations last year.

Mr. DENT. How many?

Mr. CALLAHAN. 16,000 of alleged obscenity.

Mrs. MINK. I think it is important for the committee to know the parties that were convicted and the kind of publications involved in the convictions and the States where the convictions were secured. I think that information would be most helpful in preparing the record for this particular bill.

Mr. DENT. Excuse me, gentlelady; from observations we have heard already the entire fraternity that indulged in this particular traffic is very small compared with the normal thing.

Mr. CALLAHAN. Our investigations, of course, do not relate solely to publications. I mean they relate to the distribution and exchange of obscene pictures and various other things.

Mr. DENT. Could we get a list of the publishers?

Mr. CALLAHAN. I would say yes. We will certainly try to get them.

Mr. DENT. Well, that is the most important thing.

Mrs. MINK. Also, I was interested in your comment with reference to just a single publication, the thousands of complaints that you received, and I wonder if you could provide the committee with the total number of complaints that you received State by State, not with reference to the particular item, but the total figure of complaints you received for each of the 50 States over the past year.

Mr. CALLAHAN. Yes; I think we have a breakdown on that. The total, as I said, in 1965, fiscal 1965, we received a total of a little over 128,000 complaints from the entire country. I think we could break that down to States if you would want it.

Mr. DANIELS. Could you give us a summary of the number of complaints received by the Post Office Department, say, going back to 1955 up to the present time, which would be a period of 10 years? We would like to see whether or not the number of complaints have increased over the years.

Mr. CALLAHAN. I don't think we could go back to 1955, but I can take it back to 1957. I think I have that record right here if you want it in the record.

Mr. DENT. Submit it for the record.

Mr. CALLAHAN. Surely.

Mr. DENT. All right.

Mrs. MINK. Mr. Chairman, I have a few further questions, if I may.

Mr. DENT. Yes.

Mrs. MINK. With reference to the parties that have been convicted and the publications that led to the conviction, what has the Government done with reference to the books or other things that were already in the jurisdiction that were the subject matter of that conviction? Does the Government possess any power with reference to the continued sale of these books which did in fact lead to a conviction in that particular jurisdiction?

Mr. CALLAHAN. Well, normally, of course, the books that are part of the cases are destroyed by order of the court and if we had a conviction for the sale or transfer through the mails of a particular book, anyone else who was sending that book through the mails would then be indicted also.

Mrs. MINK. What about all the books that were already in this particular area, does the Federal Government actually go out to search out these books and confiscate them from the newsstands?

Mr. CALLAHAN. We wouldn't have that time, if we had the authority.

Mrs. MINK. Do you have the authority?

Mr. LAWRENCE. No.

Mrs. MINK. Does the Federal Government possess the authority?

Mr. LAWRENCE. If they have a search warrant.

Mr. DENT. Would you yield?

Mrs. MINK. Yes.

Mr. DENT. If there has been an indictment and conviction on a certain book, wouldn't the possession of that book be a violation of law afterward?

Mr. CALLAHAN. Not a violation of any Federal law I am aware of.

Mr. DENT. Well, it seems to me that would be a very good follow-up enforcement procedure, would it not—possession of a book judged to be obscene? You walk into one of these stands and if they are still selling what has been judged to be obscene you know what happens. There comes a greater search by the people to get it after the court has decided that it is bad. There are some people that just go out to look for it then and this increases the sales rather than diminishing them, and it would seem to me it would make the possession of the book in the hands of the distributor after the court case a violation.

Mr. CALLAHAN. Of course, our jurisdiction would depend upon the use of the mails.

Mr. DENT. We will try to get the Justice Department in, but I understand up to now they have rejected the offer to appear.

Any other questions?

Mrs. MINK. Well, a followup question is, do our present statutes, to your knowledge—I realize your jurisdiction is the Post Office—but do our statutes, to your knowledge, cover the internal distribution within a State once they have gone through the mails to a particular newsstand; do you have jurisdiction over that newsstand?

Mr. LAWRENCE. No; it is entirely limited to conveyance in the mail.

Mrs. MINK. Are there other statutes that would cover the retailer?

Mr. LAWRENCE. Their local laws, and practically every State has an obscenity law. Even local jurisdictions have ordinances on that.

Mrs. MINK. Does your jurisdiction end with the publisher or wholesaler in mailing this particular book?

Mr. LAWRENCE. We have no jurisdiction other than a matter of deposit in the mails.

Mrs. MINK. Does the Justice Department have any further statute which they could apply to the retailer?

Mr. LAWRENCE. Yes; in the interstate transportation, they do.

Mrs. MINK. Now, what about the books and other things that are sent by truck and not by mail?

Mr. LAWRENCE. That would probably be interstate activity in the jurisdiction of the Justice Department.

Mrs. MINK. Would this be covered by a separate statute already in existence?

Mr. LAWRENCE. Yes.

Mr. GURNEY. Are there any Federal statutes that govern the prosecution of local vendors having received these kinds of literature through interstate commerce?

Mr. LAWRENCE. Yes, there are.

Mr. GURNEY. I am not talking about local laws but Federal laws. Do we have Federal jurisdiction?

Mr. LAWRENCE. The local distributor that receives it via interstate would come under the statute we are speaking of, which would be the Justice Department.

Mr. GURNEY. That is all.

Mrs. MINK. I have no further questions.

Mr. DENT. Thank you, Mr. Callahan and Mr. Lawrence. I am sorry we kept you so long.

Mr. CALLAHAN. Thank you.

Mr. LAWRENCE. Thank you.

(The document referred to follows:)

OFFICE OF THE POSTMASTER GENERAL,
Washington, D.C., September 1, 1965.

HON. ADAM C. POWELL,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your requests for reports on H.R. 7465 and H.R. 526, similar bills, to establish a Commission on Noxious and Obscene Matters and Materials.

The broad purpose of this legislation is to effect a coordinated effort at the various governmental levels, and by public and private groups, to combat by all constitutional means traffic in obscene matters and materials.

The Commission to be created by these bills would represent a broad spectrum of activity. Under H.R. 7465 the Commission would be composed of 15 members, with 1 member from the Post Office Department, while H.R. 526 provides for a total of 19 members with 2 members from the Post Office Department. Under H.R. 7465 the Commission's findings and recommendations would be reported to the President and Congress by January 31, 1966, whereas under H.R. 526 the reporting date would be January 31, 1965.

The basic weapon available to the Post Office Department in restricting the use of the mails to disseminate pornography is section 1461 of title 18, United States Code. This statute prohibits the use of the mails to transmit "every obscene, lewd, lascivious, indecent, filthy, or vile article, matter, thing, device, or substance; * * *," and rigid penalties are prescribed for violations. Implementing this authority, we have in operation, and have had for several years, a program on a national scale under which selected postal inspectors are used to conduct investigations involving obscenity. The Department has developed methods of cooperation with police organizations on all levels of government, and we receive the active help and encouragement of the Criminal Division of the Department of Justice. We feel that the proposed Commission, if established, should recognize the basic investigative responsibilities and duties of the Postal Inspection Service under title 18, United States Code, section 1461.

The Post Office Department's obscenity program is operating effectively to purge the mails of hard-core pornography. However, the hard-core standard does not cover certain publications which some people find distasteful and obscene while others consider them to be acceptable on the basis of their literary merit. Herein lies the difficulty. The problem on the one hand stems from the lack of a clearly accepted definition of "obscenity"; and on the other hand a careful and proper concern by the courts for the constitutional guarantees of free speech and freedom of the press.

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.

STATEMENT OF GEORGE E. DAVIS, DISTRICT DEPUTY, KNIGHTS OF COLUMBUS, JERSEY CITY, N.J.

Mr. DENT. The next witness is Mr. George E. Davis, and I believe we will have the introduction of this gentleman by Mr. Daniels.

Mr. DANIELS. Mr. Chairman, it is a great privilege for me to introduce the next witness, Mr. George Davis, a very distinguished citizen of Jersey City in Hudson County, which community I have the honor and privilege to represent in this Congress. Mr. Davis was singled out by the late Pope John XXIII, and named by him as a Knight of St. Gregory. He is also vice president of a very respected printing firm in the city of Jersey City and has been active in many civic affairs.

There is no one person that has given me more consistent support in this matter than Mr. Davis. He is president of the Newark Archdiocese Council of Catholic Men, State coordinator of the New Jersey Federation of Holy Name Societies, secretary of the Newark Federation of Holy Name Societies, and district deputy of the State council of the Knights of Columbus, and he has swung the support of vast organizations in this State of New Jersey to my bill.

I know that I shall never forget his singly effective work in this cause, and I am proud to present to the subcommittee Mr. George E. Davis.

Mr. DENT. We welcome you before the committee, Mr. Davis, and you may proceed to present your statement.

Mr. DAVIS. Mr. Chairman and members of the committee, I would like to state at the outset my appreciation for the kind remarks read into the record by Congressman Daniels. It has been a pleasure to work for this piece of legislation, this bill. We feel, that is, the organizations that I represent, we feel that it is a commendable bill and a wonderful giant step forward in the right direction.

To say that I am greatly honored and privileged to have been invited to speak on this occasion, before this august body, would be to make a distinct understatement. It is with mingled feelings of pride, at this wonderful opportunity to serve my country in its deliberations, through your honored committee, and with a deep sense of humility at the knowledge that my voice is so very minute, that I speak out at this time in a humble attempt to assist you in your tremendously important decisions at hand.

May I offer you, Mr. Chairman, and the members of this subcommittee, my sincere congratulations, and those of all whom I here represent today, that you have recognized the vital need for Federal legislation to combat the insidious wave of pornography and smut that is tearing at the very vitals of the youth, as well as the adult citizenry, of our Nation; and through these hearings that you are considering ways and means of effecting such needed legislation through the establishment of a commission to combat the noxious and obscene matters and materials, as is put forth in bill No. H.R. 7465.

In order that I may properly identify myself to the committee, may I respectfully make note, at this time, that my name is George E. Davis, and I live at 630 Bergen Avenue in the city of Jersey City, N.J. My family has lived in Jersey City since 1849, when my grandfather, Robert Davis, arrived in America from Ireland. To this date, a period of 116 years, four generations of my family have been raised in Jersey City.

Mr wife, Catherine, and I have been the proud parents of six sons; four living; one, George, Jr., entering his sophomore year in St. Peter's College in Jersey City; one, Robert, entering his junior year in St. Peter's Prep in Jersey City; one, William, entering the second grade in St. Aedan's Grammar School in Jersey City, and one, Joseph, a little 4½-year-old, who is eagerly awaiting his turn to enter school in another year.

I am a State coordinator of the New Jersey State Federation of Holy Name Societies, and I am the secretary of the Newark Archdiocesan Federation of Holy Name Societies, in the State of New Jersey. In past years I have held the honored offices of president of the Hudson County Federation of Holy Name Societies and president of St. Aedan's Holy Name Society, having served for two terms.

I am the president of the Newark Archdiocesan Council of Catholic Men, and I am a delegate to the National Council of Catholic Men. I have held, in past years, the honored offices of president of the Hudson County Council of Catholic Men, and president of the South Hudson Regional Council of Catholic Men in the State of New Jersey.

I am a district deputy of the New Jersey State Council of the Knights of Columbus and I am the vice chairman of the New Jersey State Decency Committee. I am also a past grand knight of Paulus Hook Council No. 475 of the Knights of Columbus in Jersey City, N.J.

I am deeply and humbly honored to state, at this time, that in December of 1962 I was elevated to the rank of Knight of St. Gregory the Great of the Roman Catholic Church by His Holiness, our late revered and beloved, Pope John XXIII.

In civic life I am the chairman of the Hudson County Planning Board in the State of New Jersey.

In the business world I am vice president of the Scott printing organization in Jersey City, N.J.

I am here today speaking on behalf of, and as the official spokesman for, the National Council of Catholic Men, representing 10 million Catholic men of the United States; and I am also here as the authorized spokesman for the National Federation of Holy Name Societies, representing 7 million Catholic men in the United States.

I am also here as the authorized spokesman for the Newark Archdiocesan Council of Catholic Men of the State of New Jersey, representing one-half million Catholic members. I am here, too, as the authorized representative and spokesman for the Legion of Decency of the Archdiocese of Newark, representing more than 1½ million Catholics.

I am also authorized to speak on behalf of the State council of the Knights of Columbus of the State of New Jersey, representing over 55,000 members, and I have been authorized by my State deputy, Stewart A. Schoder, Jr., a member of the Supreme Court of the Knights of Columbus of the United States, to advise this committee that the Knights of Columbus of this great Nation support this bill.

We believe that in our beloved United States of America the traffic in obscene matters and materials has grown to such overwhelming proportions as to be a matter of grave national concern. We agree, as is stated so clearly in section 1 of bill No. H.R. 7465, that the problem is not one, however, which can be solved at any one level of government.

The Federal Government does have a responsibility to find more effective ways of preventing the transmission of such matters and materials through the many instrumentalities, which, under the Constitution, are subject to Federal regulation.

We agree also that the State and local governments have an even greater responsibility in the exercise of their law enforcement authority to protect the public, and particularly minors, from the morally corrosive effects of such matters and materials. We agree that governmental action, in order to be effective, needs the support and cooperation of an informed public. We agree that it is necessary to bring about a coordinated effort at the various governmental levels, and by public and private groups, to combat, by all constitutional means, this pernicious traffic.

A \$2 billion business in raw and rampant pornography is poisoning our youth. What can be done to alert our Nation to this sickening flood of obscene material?

The U.S. Post Office recently reported that almost 2 million teenagers are solicited annually through the mails with lewd and obscene literature. As evidence of this, consider the story of one 14-year-old Boy Scout from the State of Nebraska, who read an advertisement in a national Boy Scout magazine to "start a stamp collection."

Clipping the coupon from the magazine, the youngster enclosed his name and address, along with 25 cents, and sent it off in the next mail. In a matter of days back came a colorful assortment of stamps.

Two years later, however, parental pride in a boyish objective turned to hostile anger when another collection arrived, this time unsolicited, and not of stamps.

But let me quote the father of this boy, Congressman Glenn Cunningham, of Nebraska, a Member of the House Subcommittee on Postal Operations. He stated:

The stamp people, in order to make a little pocket change, sold the list, containing my son's name, along with thousands of other teenagers, to a list broker. These list brokers, knowing that these young people, by and large are the ones that start stamp collections, wait 2 or 3 years, until they are a little more mature, and then start sending this filth. This happened in my own home, and I have six children.

Shaken by this firsthand encounter with obscene literature sent via the mails, Congressman Cunningham has joined in a war against this vicious racket. Yet the direct-mail pitch is just one phase, by pornographic peddlers, of a murky operation that is growing each year.

In books, magazines, movies, on TV, and the stage, and in some newspapers, the shocking word and the obscene posture are being cashed in with increasing profit. The real price has been degradation of both the young and the older. One postal inspector has reported that the output of smut sent through the mails must be measured in tons, not pounds.

James J. Kilpatrick, in his highly readable book, "The Smut Peddlers," concludes that the target of these trash merchants is not the grownup sucker. It is the curious adolescent, 16 or 17, receptive to a little dirty sex sent to him by plain envelope under first-class mail.

What effect is this having on young minds just awakening to sexual awareness? There is responsible testimony on record from psychiatrists, doctors, mental health people, and others, that this material largely contributes to juvenile crime. You cannot send dope through the mail. Dope wrecks the body. This type of material, however, destroys the mind. The question arises, "which is more important?"

The traffic in pornography goes far beyond what the Post Office might control anyway. Some parents are making tremendous efforts within their families to combat this filth. There are community groups wrestling with this elusive monster in the local candy stores and movie houses, and in the courts, as well as in State legislatures and Congress.

The Legion of Decency is engaged in an all-out effort to battle the spread of smut and filth on the parish and neighborhood level. The Knights of Columbus have taken up the battle and are engaged in pressing for proper legislation to halt the spread of pornographic filth.

The Vietcong is hardly so formidable as this: besides the more than 2 million teenagers solicited yearly through the mails, the Post Office estimates that about 750 overtly lascivious magazines are turned out each calendar year in the United States. The "girlie" type beats out the homosexually slanted ("body building" and "health" journals) 3 to 1. Often their owners switch titles after one or two issues in their successful attempts to beat the law.

In paperback pornography, the number of copies sold last year surpassed the 500 million mark. A New York distributor reported that "actual readership may exceed that estimate by as much as four or five times, because of pass-on-readership." Swap systems and secondhand outlets abound.

Stag films, erotic slides (color is extra), records and tapes of stereophonic passion and lusty love letters are produced with amazingly low overhead. A shabby walkup, a cheap camera, and a set of lights puts a producer of obscene photos and films in a business that reaps handsome profit—if that is the word for it.

Models, many of them engaged in the oldest profession known to mankind, can be had "for a few extra bucks." Some money-grubbing producers appeal to the craving of these young people in search of fame and fortune in the movies, seducing them with a pittance, and the glittering offer to "break into the big time." One such producer in an interview, said that he could make a fortune with a full-length "nudist film," with a cast of hundreds, for as low as \$35,000.

Book and magazine production costs are minimal, as their shoddy quality attests. The cheap pulp paper, printing and binding may amount, for a press run of 20,000, to no more than \$1,000. Sold at 50 or 75 cents, the profit comes easy, even including the enticing markup this allows the dealer. A pocket-sized "novel" can cost its publishers as little as 10 cents a copy and is usually sold at slightly under a dollar.

Newsstand dealers are easily cut in on this kind of money. As one of them is reported to have stated, "The legit magazines offer us a small margin of profit from the big distributors. The guys who handle this trash are small operators who offer us a better deal. Even though we don't like it, its hard to turn them down."

Bearing in mind that these channels of social decay are now nationwide, there is definite need for a commission to be formed on a national level to study fully the problems that are facing our Nation due to the ever-increasing flood of pornography and smut in every field of social and business association today. Bill No. H.R. 7465 calls for the creation of such a commission and would be a tremendous step forward in raising the standards of our American society to their former levels.

Easy money, to be sure, has played a decisive role in the explosion of muck and pornography; but its growth has largely capitalized on the decreasing moral tone of our society. The subtle, and sometimes not so subtle, exploitation of sex, especially in advertising, has set the pace for supposed standards. Some of the "nudist film" producers are even complaining of loss of revenues, because the legitimate movies have invaded their field. And, too, now parents are concerned about what shows up in even the most respectable daily newspapers and family magazines.

We might also bear in mind that many of those people, who have realized financial independence from the profits of this pornography, in any or all of its murky forms, are accepted to positions of social standing and responsibility in our American society without any question as to where or how they realized financial stability.

Judas Iscariot realized 30 pieces of silver for his treachery, but today the profiteers of pornography and smut are rewarded with untold

sums of wealth and are accepted into responsible positions in the business and the social world of our society.

Not long ago, British Essayist Malcolm Muggeridge recounted a Sunday visit to Racine, Wis., but it might just as well have been any other city in the United States:

Among the paperbooks and magazines for sale he wrote—

there was enough salacity to have made any under-the-counter Paris dealer turn green with envy. On free sale on a Sunday morning in Racine were, not just the old familiar classics, and some relatively benign examples, but also there was included the really vicious stuff about flagellation, wife changing, and every sort of sexy practice and perversion.

As I ate my breakfast and drank my coffee, I glanced through some of the advertisements. It was like lifting up a stone and watching all the creepy, crawly creatures underneath it, in this particular case, the squalor and filth underlying the sex-ridden society.

Father Paul Hayes, director of the Legion of Decency in the Archdiocese of Newark, N.J., has been one of the leaders in the fight against the spread of pornography and filth resulting from the sale of lewd, indecent, and immoral books and magazines. In an effort to add something positive to the negative battle being waged, he has opened a book store, the Thomas More Book Store, by name, in West Orange, N.J., and the results have been almost unbelievable.

In the 10 weeks that the store has been open to the public, over 35,000 people have come in to purchase books. The store carries more than 3,200 different pocket books of all interests appealing to good, wholesome reading. Protestant and Jew, as well as Catholic, make up its reading public.

Operation Yorkville, one of many community efforts to fight this smut situation, is an interdenominational group headquartered in New York City. Its secretary, Father Morton Hill, S.J., a Jesuit priest, states that:

There is a new amorality in society. Our society does not even recognize this pornography as being wrong.

Rabbi Julius G. Neumann, also of Operation Yorkville, points to one of the most significant effects of pornography:

The basic unit of our society is the family, yet, how are we going to establish family patterns in the thinking of our young adults, when these pornographic magazines show these young adults their opposite numbers as simply animals, vehicles which may be used to simply satisfy a sexual hunger, and then discarded when the hunger subsides.

In 1957 the U.S. Supreme Court declared that the control of obscenity does indeed fall within the province of the law. In the *Roth-Roberts* case the U.S. Supreme Court determined that constitutionally guaranteed freedom of speech and press does not cover obscenity, defining it as material "utterly without redeeming social importance."

The overwhelming need for a Federal commission of responsible and knowledgeable individuals, representing all the fields that are stipulated in bill No. H.R. 7465 are pointed up by the almost impossible task of successfully stamping out this pernicious disease at the lower legislative levels.

The peddlers of pornography in all forms have long ago grown to the stage where they are nationwide and reach across State and municipal boundaries like a giant octopus. Successful battles are waged

on lower levels and trials are won in municipal, county, and State supreme courts, only to have them reversed or lost in still higher courts.

There is now need for a full-scale national study and investigating commission responsible to the President of the United States, to explore methods of combating the traffic in obscene matters and materials; to provide for the development of a unified plan for improved coordination between Federal, State, and local officials in the suppression of such traffic; to determine ways and means of informing the public of such traffic and of obtaining public support; to formulate recommendations for such legislative, administrative, or other forms of action as may be deemed necessary, and, with the aid of the Nation's most outstanding constitutional authorities, to analyze the laws pertaining to traffic in noxious and obscene matters and materials, and most important to establish suggested definitions of these noxious and obscene matters and materials, and to make such recommendations to the Congress for appropriate revisions of Federal laws as the commission may deem necessary, in order to effectively regulate the flow of such traffic, without in any way interfering with the constitutional safeguards of freedom of speech or freedom of the press.

I know from personal experience the difficulties we face in obtaining standing convictions in obscenity cases. About 3 years ago, in the *Hudson County News* case, in New Jersey, it was my own testimony on local community standards that helped in getting a criminal conviction on 16 counts with a fine of \$1,000 on each of these counts.

The case was appealed to the higher courts and the New Jersey State Supreme Court, basing its decision on my testimony, decided to interpret what the U.S. Supreme Court meant in 1957, in the *Roth* case, when it mentioned "community standards." The New Jersey State Supreme Court interpreted this phrase as "national community standards" and sent the case back for retrial in the lower courts.

In another instance, in Jersey City, in the *Monticello Theatre* case 2 years ago, where, with wonderful cooperation of the law enforcement authorities, we had the manager of the theater arrested and the "nudist film," in full color, confiscated by the authorities and remanded to trial. The film was the first of a string of 28 similar films to be shown by new management of this long-since closed and dilapidated old movie house, which had been reopened just for the showing of these lewd films.

Here again the New Jersey Supreme Court decision in the *Hudson County News* case was invoked, and the case was held invalid because it was not tried on national community standards. I am happy to say, however, that because of the strong stand taken by the public and the local authorities, the people behind these movies closed the doors and left town because no one patronized the theater.

The U.S. Supreme Court has since gone on record as agreeing with the "national community standard," and it appears to have defeated itself in its inability to come up with a really useful test for determining obscene materials. Some think that the problem has arisen because the Court's job is to deal with obscenity only according to national standards. As Chief Justice Warren has said, "There is no provable national standard."

The lawyer who successfully defended "The Tropic of Cancer" stated:

To be obscene a book has to go significantly beyond what has already been declared not obscene, and that is impossible. You can't talk about sex any more frankly than is being done now.

But is this all the law can offer? Increased lawlessness in the streets of our cities, the upsurge of sexual offenses, vicious attacks on old and young alike—these are hard realities of modern American life that cannot be ignored. And who can dispute the obvious correlation between blatant pornography, sexual permissiveness, and the growth of sex-oriented criminality?

Statistics from the Federal Bureau of Investigation reveal that the U.S. rate of serious crimes is increasing six times faster than our population growth. A murder, rape, robbery, aggravated assault, burglary, serious larceny, or auto theft occurs on the average of every 15 seconds in this country.

The national increase in serious crimes is 11 percent over last year.

According to the FBI, forcible rape now leads the crime list in this country, with an annual increase of 20 percent. Nearly one-half of the serious crime offenders are young people. Of all those arrested last year, 76 percent were repeaters. Something is obviously wrong with our court and penal system; therefore it is up to Congress to take action.

The answer is a commission, such as is set forth in bill No. H.R. 7465, to investigate, analyze and recommend the proper legislative action to coordinate all governmental law enforcement agencies and powers from the national level to the local levels.

There are those who insist that the court has an obligation to work in terms of a moral responsibility, regardless of current so-called standards. It is not a question of setting up morals for individuals, which would be beyond the court's ability; it is a question of protecting society itself.

Scarcely anyone has missed the tendency of the peddler of pornography to link violence and sadism with sex, in order to make his product more appealing and increase his sales. Psychologists, however, have pointed out that illicit sex is unavoidably associated with violence in its very nature.

The American Civil Liberties Union has vociferously argued against the idea that lewd literature has any significant impact on the young. "There is no medical evidence to support the claims," the ACLU recently contended. But to reduce a question that includes social morality and lawlessness to a matter of "medical evidence" is preposterous.

J. Edgar Hoover, Chief of the Federal Bureau of Investigation, has flatly stated:

The circulation of periodicals containing salacious materials plays an important part in the development of crime among the youth of our country.

Mr. Hoover's position is supported by a growing number of specialists, whose observations over a period of years, provide a solid case against pornography as a contributing factor to the increase of violent crime among America's young.

The most compelling statement in support of these facts came, ironically, from a recent conference on crime at the United Nations.

A report stated that 85 nations attending the conference found the U.S. delegation—

pretty much alone on the issue of mass media. It seems that the portrayal of crime, violence, brutality and sadism has a bad effect on youth and is directly conducive to crime. The mention or lack of scientific proof by the U.S. delegation continues the report,

was met, by and large, with incredulity—perhaps one should say utter amazement, and a certain amount of hostility.

For this reason many feel that, if, in present circumstances, it is impossible to make a broad legal attack on obscenity, it is still possible to concentrate on the more blatant pornographic items and rally more support at all levels of government in the fight against overtly calculated smut.

We now forbid the sale of tobacco and hard liquor to minors in many States, therefore it is highly understandable that a similar law be passed forbidding the sale of lewd literature to minors.

Gov. Nelson Rockefeller recently signed into law in the State of New York the Hecht-Bernstein bill designated to stop the flow of printed filth to minors. The legislation was sponsored by Senator Abraham Bernstein and Assemblyman Burton Hecht of the Bronx, N.Y. Church and civic groups throughout the State supported the legislation.

The New York Daily News also supported the bill. The sponsors commended the News for publicizing "the seemingly endless amount of obscene literature and other smut materials available to children."

The legislation became law July 1, 1965. It received overwhelming approval in the New York State assembly by a vote of 136 to 10, and in the State senate 53 to 3.

The Hecht-Bernstein bill would make it a misdemeanor to sell or give to anyone under the age of 18 years any photographs or drawings, whether contained in a motion picture, book, or magazine, of any person of the age of puberty or older, posed or presented in such a manner as to exploit lust for commercial gain.

The bill seeks to overcome the recent decisions of the courts in holding unconstitutional present law governing obscenity on the grounds of vagueness and lack of an objective standard as to what is obscene. It avoids the use of language that caused the State court and the U.S. Supreme Court to rule antiobscenity laws unconstitutional.

The bill does everything to spell out to the courts what is obscene with regard to children. The language used is clear and precise. It specifically describes what should not be sold or distributed to those under 18 years of age.

The New York Daily News has been praised for providing leadership in the drive to draft laws to protect minors from the harmful effects of obscene literature, and has been a driving force in supporting this legislation.

The legislation specifically points out that photographs and literature, described in the bill, would have to "intend to exploit lust for commercial gain." This language could not be construed to apply to advertisements in newspapers and descriptions of news events.

The Knights of Columbus of the State of New Jersey have given their full support to this same bill, now in the New Jersey State Legisla-

ture and identified as bill A-768. The bill is bipartisan sponsored and was presented in New Jersey by Assemblywoman Mildred Barry Hughes; and it has passed the assembly unanimously and is now awaiting action by the New Jersey State Senate.

The New Jersey State Decency Committee has requested that copies of bill A-768, now awaiting action in the New Jersey State Senate, and which is identical with the Hecht-Bernstein bill, now voted into law in the State of New York, be respectfully submitted to this committee, in the hope that it may be of some assistance to this committee in its deliberations, and particularly in defining what is considered "obscene" with regard to those under the age of 18 years. I am pleased to comply with this request.

The New Jersey State Council of the Knights of Columbus does respectfully recommend to the Committee on Education, now seated in hearings, that bill H.R. 7465 be approved and that recommendation be made to the Congress of the United States for its enactment into law.

Communities have found that laws and ordinances do indeed exist, but are only weakly enforced. Local action that does not leave the cop on the beat to feel that he is alone, in an unwanted and thankless task, has had good effects.

Philadelphia psychiatrist Dr. A. M. Ornstein has stated:

Obscene material is an important contributing factor in juvenile delinquency. This kind of material exposes young minds to temptation, stimulates the most primitive feelings and impulses, and leads astray in thought and behavior.

Indecent photographs of women also cause teenagers to feel women are not to be respected as persons, but as luxury prizes distinguished chiefly by sexy attributes, rather than by any ideal of womanhood.

Dr. Max Levin, a New York psychiatrist, stated:

Let us not delude ourselves that pornography is a beneficial outlet for unwholesome sex tendencies. The smut merchants have no medals coming to them; they are not to be regarded as benefactors, or contributors to mental health. On the contrary they are crippling our youngsters by encouraging the expression of their sex impulses in an unhealthy direction.

In closing, Mr. Chairman, let me make note of these few statements from the San Francisco Examiner of Monday, January 18, 1965, from page 32:

What has happened to our national morals?

An educator speaks out in favor of free love.

Movies sell sex as a commercial commodity.

Bookstores and cigar stands peddle pornography.

A high court labels yesterday's smut as today's literature.

Record shops feature albums displaying nudes and near nudes.

Nightclubs stage shows that would have shocked a smoker audience a generation ago.

TV shows and TV commercials pour out a flood of sick, sadistic, and suggestive sex situations.

A campaign is launched to bring acceptance to homosexuality.

Radio broadcasts present discussions for and against promiscuity.

Magazines and newspapers publish pictures and articles that flagrantly violate the bounds of good taste.

Four-letter words, once heard only in barroom brawls, now appear in publications of general distribution.

Birth control counsel is urged for high school girls.

Look around you. These things are happening in your America. In the two decades since the end of World War II we have seen our national standards of morality lowered again and again.

We have seen a steady erosion of past principles of decency and good taste; and we have harvested a whirlwind. As our standards have lowered, our crime level and social problems have increased.

Today we have a higher percentage of our youth in jail—in reformatories—on probation, and in trouble than ever before.

Study the statistics on illegitimate births—on broken marriages—on juvenile crimes—on school dropouts—on sex deviation—on dope addiction—on high school marriages—on crimes of passion.

The figures are higher than ever, and going higher.

Parents, police authorities, educators, and thoughtful citizens, in all walks of life, are deeply disturbed. They should be; for they are responsible. We of the older generation are responsible.

Our youngsters are no better off and no worse, than we were at the same age. Generally they are wiser; but they have more temptations than we had. They have more cars. They have more money. They have more opportunities for getting into trouble.

We opened doors for them that were denied to us. We encouraged permissiveness. We indulged them. We granted maximum freedoms and we asked for a minimum in respect—and in responsibility.

Rules and regulations that prevailed for generations as sane and sensible guides for personal conduct were reduced, or removed, or ignored.

Prayer was banned from the schoolroom and the traditional school-books that taught moral precepts, as well as reading, were replaced.

Basically there are just two mainstreams of religious thought in these United States—those who believe in a Supreme Being, and those who do not.

The first group far outnumbers the second; but this Nation that was founded on the democratic concept of "majority rule," now denies the positive rights of many to protect the negative rights of a few.

As prayer went out of the classroom, so too, it appears, did patriotism. No longer are our children encouraged to take pride in our Nation's great and glorious past. Heroes are downgraded and the role played by the United States in raising the hearts and hopes of all enslaved peoples, for a century and a half, is minimized.

We believe this is wrong. We are convinced that a majority of our citizens would welcome an increase in patriotism and prayer, and a decrease in the peddling of sex, sensationalism, materialism, and sordidness. We salute the men and women who have contributed so much to our Nation's legacy in valor, in science, in education, in religion, and in art.

But the fight has barely begun. The cancer eating at the vitals of this great society is not dormant. It is malignant.

Therefore, in the name of more than 20 million Americans whom I here represent today, I respectfully urge the congressional Committee on Education, seated at, and conducting these hearings, that it formally represent to the Congress of the United States of America the enactment into law of bill H.R. 7465, and that the Commission, as set forth in said bill, be appointed by the President of the United States, so that it may begin its proper functioning as soon as possible.

I thank you.

May I just make one additional remark which is due to omitting some of the verbal comments in this statement. I hope that the tone of the address has not been changed. I hope that the committee

does not feel that we have been disrespectful in any way toward our courts or any of our jurisdictional environs in the United States. Our intention was to present this merely to bring to light the problems we are having.

Earlier this morning there was mentioned by Congressman Daniels and Congressman Andrews, I believe, and Congressman Gurney that vigorous prosecution at local levels would hurt them financially. This is true.

We have in Hudson County an ordinance on the books and it is not used enough. It is there. If a retail dealer has received any of these books that you have on your desk before you this morning, and he doesn't want them sent to his store by the distributor, if he puts that in writing to the distributor and the following delivery he again receives magazines that he does not consider proper for his customers, all he has to do is notify the prosecutor and that distributor can be fined \$500.

Now, the dealers don't utilize the facilities of this bill. Can you imagine in the entire county, and I mentioned Hudson County because this is where I live, but it can be any county or municipality in the United States, if 10 or 15 dealers, in a week or a month, utilized this, the amount of money that the distributor would be fined in short order would knock out the distribution of these salacious magazines.

As to the "Tropic of Cancer," earlier this morning, someone made mention of a 5-to-4 decision on the "Tropic of Cancer" and I hope the committee will bear in mind and take note that many of these decisions by the U.S. Supreme Court are not unanimous. It was a 5-to-4 decision. Four of the Justices felt there was obscenity present in the "Tropic of Cancer." It is a one vote difference.

In the *Monticello Theater* case, which I made mention of in my address, I would like to add these few little facts. The Monticello Theater was an old and dilapidated building, true, but it was situated in an area where only a block from the theater there was a public high school that housed over 4,000 boys and girls who came to and from the school right past this theater every day, and the advertisements in the lobby about this film were as good, and worse, let us put it that way, than any of the coversheets you have on the magazines before you this morning.

A half a block away was a Lutheran grammar school and the children at noontime walked back and forth and were seen looking at the advertisements in front of the movie. A block and a half in another direction was St. Peter and Paul's Ukrainian Grammar School. There was another Lutheran school, St. Patrick's Grammar School was two blocks in another direction.

Here were these children under the age of 18 years of age walking back and forth before this movie house advertising this nudist film. When I tell you it was nudist, what presented in full color and beautifully made and put out, made to appeal to all the physical tastes of the human being and all of the characters who were portrayed, the actresses and actors, were not normal, were not average Americans, were not average people, they were all models. But in the picture, the reason that we judged this as immoral was, not that there were portions of the ladies presented, but there were entire portions of the human body.

There was a scene in a pool where there was a platform over the pool and six men standing on the platform ready to dive in and there

was a beautiful shot of the six men in full length leaving the platform diving in. We feel that the children of this Nation do not have to look at this kind of material until they are well of age.

Mr. Chairman, I respectfully submit these few remarks for your consideration and I thank you for your patience and courtesy in hearing my address.

Thank you.

Mr. DENT. Mr. Davis, I know you are sincere and I think the committee has caught the sincerity in your remarks. I have no questions whatsoever because there are no questions to be asked. You have presented your case well and I personally thank you in coming here this morning.

Any questions?

Mr. DANIELS. Mr. Chairman, I would just like to commend Mr. Davis for a very fine statement and to express to him and to the organizations that he represents my sincere appreciation for your support of this bill.

Mr. DAVIS. Thank you.

Mr. Chairman, before I leave, last evening about 11 o'clock, these two books were brought to my home by an organization in Union City, N.J. I don't really know, at least I didn't know coming to the committee session this morning, whether or not this was the place to present these two books into evidence. I thought that possibly if and when the commission was approved and formed, it probably would be the place to present it. However, having seen these other magazines I would respectfully like to turn these over to you with these comments. There is a book and it is entitled, "The Man From Orgy," and it is put out by Ted Marks, and it is a Lancer Book, and this notice is attached on the letterhead from St. Anthony's Rectory, 8th Street, Union City:

The book, "The Man From Orgy" purchased by Joseph Morales, age 15, who lives at 510 10th Street in Union City, dated, August 8, 1965; place, Roosevelt Drug Store, 709 Summit Avenue, Union City, N.J.; the price, 50 cents.

and the parents' names are Martin and Mary Morales, and information is on the inside of the jacket of the book, and I thought you might be interested in how the parents feel.

This book was sent in written in his own handwriting:

Purchased by my son, Joseph, on Sunday morning, August 8, at 11:45 a.m. At approximately 10:30 a.m., the same day Joseph went into the Roosevelt Drug store to replace a purchase of this book to buy "Candy" or "Undressed Rehearsal."

Those are two books.

He couldn't find them on the rack and was assisted by an employee or the manager of the Roosevelt Drug Store in looking for them. They were not in stock. Joseph then left and returned at 11:45, and purchased this book, "No Questions Asked."

And it is signed, "Mr. Martin J. Morales," the boy's father.

Mr. Chairman, I will not read from this book. I could not read from this book. There are ladies present and I am speaking of Congresswoman Mink, and the ladies and gentlemen of the press, but I would ask that you and other committee men in your work in the committee please read from this book.

The other one, I imagine it was presented yesterday and if it was not, it should have. "Candy" is the name of that book. It is well

known by this time. Again, another letter, and the title of the book is "Candy" purchased by Julian Podesta, 815 Columbia Avenue, North Bergen, N.J., dated July 12, 1965, age 16, Transfer Newsstand, Transfer Station, Union City, N.J., price, 75 cents, and the parents are Julius and Marge Podesta, and information on inside of jacket books is similar to the other one although no signed signature.

I would ask this of you respectfully, I have a page noted here among many with a yellow slip of paper. I would ask that you please read this, if you have a chance, if you have an opportunity. The last line on this left-hand page and the first line of the next page I could not read in any public court. But this is what is in all of those other books and I think this is about as far as any book has ever gone, and it was purchased by a 16-year-old boy, and this, as a father, and I mentioned in my address, I am the father of six sons, four of them living, and I would like to say simply as an American citizen, simply as a father in these United States, I would not want my boys to read this until, God forbid, until they are well of age and well mature enough to properly handle it, I don't believe anyone ever could properly handle this even at my age. It is not for public consumption. There is absolutely no moral improvement or ethics for the human mind that can come out of these books, and they were sold to 15-year-old boys and they are for sale for 9-year-olds if they want them.

Thank you, Mr. Chairman and members of the committee, thank you for the opportunity of appearing before you and I hope, speaking for the organizations I represent, I have maybe brought some little assistance to your deliberations. May I wish you all good luck in the deliberations you are carrying on and I sincerely hope this bill will be enacted into law.

Mr. DENT. Thank you very kindly and without objection, the material will be received by the committee, but not made part of the printed record.

Mr. DAVIS. Thank you.

STATEMENT OF LAWRENCE SPEISER, DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION

Mr. DENT. We have only a few minutes and we would like to get started on our next witness. If the committee does not object, if no question is raised, we will continue until the quorum bell rings. I would like to call on Lawrence Speiser, director of the Washington office of the American Civil Liberties Union.

Mr. SPEISER. Thank you, Mr. Chairman.

Mr. DENT. I notice you have a statement here, Mr. Speiser, and it would take a long time to read it. Would you care to have it admitted for publication in the record and to proceed in a summarization of the contents or whatever you desire to do?

Mr. SPEISER. I would prefer to read it because I believe, in listening to the testimony up to now, there has not been sufficient consideration to some of the objections to the bill, which is the position I will be taking before the committee.

I am here today to testify on behalf of the American Civil Liberties Union, a nonprofit organization dedicated to the protection of constitutional guarantees, with regard to H.R. 7465, a bill which would create a Commission on Noxious and Obscene Matters and Ma-

terials—to explore methods of combating the traffic in such books and publications; to develop a plan coordinating Federal, State, and local efforts to suppress such traffic; to determine ways of obtaining public support in its suppression; to secure the active cooperation of the mass media in accomplishing this objective; and finally—

with the aid of the Nation's most outstanding constitutional authorities, to analyze the laws pertaining to traffic in noxious and obscene matters and materials; establish suggested definitions of noxious and obscene matters and materials—without in any way interfering with constitutional safeguards of freedom of speech or freedom of the press.

Members of the American Civil Liberties Union—like other Americans—are deeply aware of the problem of obscenity in our modern society. In the common desire to meet the challenge posed by the high incidence of juvenile delinquency, the inclination to pinpoint a simple cause and a quick solution is understandable. There are many who believe that if we can give some public official or officials broad powers to stop the flow of “smut,” we shall then have gone a long way toward insulating our children from pernicious influences which may lead them into degradation and crime.

But such an easy solution, attractive as it may seem, glosses over the complex and difficult question of obscenity, or the constitutional problems raised by enlarged governmental authority in this area. To begin with, we should recall that the Supreme Court has already ruled that we cannot constitutionally reduce all of our literature to a level fit for consumption by children (*Butler v. Michigan*, 352 U.S. 380, 1957).

Beyond that, we hold the constitutional guarantees of free speech and press apply to all expression, and that there is no special category of “obscenity” or “pornography” to which different constitutional tests apply. To be consistent with our view of civil liberties and constitutional freedoms, an obscenity statute must at least be definite enough to guide the average man, and also require that, before any material can be held to be obscene, it must be found to present beyond a reasonable doubt a clear and present danger of normally inducing behavior which has been made criminal by a valid statute.

Even under the Supreme Court's 1957 definition of obscenity in *Roth v. United States*, 354 U.S. 476 (1957)—“whether to the average person, applying community standards, the dominant theme of the material taken as a whole appeals to prurient interest”—courts and juries continue to differ over what constitutes obscenity, often including books which have won worldwide acclaim. This is only natural since individual judgments, whether of a book, a magazine, a film, a play, or a painting, are inevitably subjective and personal.

What may strike one man as pornographic may be a matter of complete indifference to another. What may be offensive to one person may be great art to another person. And, frequently, such individual judgments condemn most severely only controversial expression—the very kind of speech for whose protection the first amendment was written.

We wish to make clear that we do not profess to be experts on the issue of whether there is a causal relationship between the reading or viewing of books and films and the commission of an illegal act, but we do know there is a great difference of expert judgment on this question.

As we said in 1955, in a pamphlet which discussed the relationship between crime comics and juvenile delinquency:

The ACLU believes that comic books, like other mass media, may play an important part in the development of children's minds and behavior. But, in view of the divergent—even contradictory—opinions expressed by responsible and qualified persons, it believes that there is lacking the assurance that crime comics are a significant cause of delinquency.

The need for further research on this basic question was forcefully expressed in the final report of the Senate Subcommittee on Juvenile Delinquency in the 1st session of the 85th Congress, issued on March 4, 1957. That subcommittee was headed by Senator Kefauver, of Tennessee. Under the heading (p. 127) "More Basic Research Is Needed in Behavioral Problems," the report states:

The insistent demands for immediate action programs to prevent and treat juvenile delinquency should not obscure the equally important need for long-range, fundamental research on the nature of man and society. Research provides the necessary basic knowledge concerning human social behavior upon which rational effective action programs must be based. In the course of its deliberations, the subcommittee was impressed time and time again with the serious gaps in our knowledge of the fundamental mechanisms of human behavior in our society.

Such knowledge is as essential for a far-reaching solution of juvenile delinquency as it is to other pressing social problems. The subcommittee, therefore, believes that the encouragement of basic research in the social sciences must be an essential feature of any systematic program designed to meet the problems created by delinquent behavior.

Many expert witnesses before this subcommittee have reported on various phases of research findings to date.

Mr. DENT. Might I interrupt to say that is part of the report available to the committee and am sure that this deals mainly with the question of need of research on the matter of whether comic books as such were conducive to creating a climate of crime and the matter of crime thinking in the mind. We are dealing with another subject, entirely another subject, and the Commission can do the very thing you say can be done, the question of research which it will be doing.

I respectfully suggest you can leave that to the reading by your committee and go on with your testimony against the bill.

Mr. SPEISER. Well there was a prior version of this bill in the 86th Congress with the same title, H.R. 11454, which, in its original form, had as its purpose to conduct a scientific investigation to determine if there is a causal relationship between the reading or the viewing of noxious printed or pictured material dealing with acts or suggestive acts of sexuality or sexual deviations and perversions and the commission by readers or viewers thereof of criminal or other antisocial acts and to analyze the causes appearing thereto and to recommend the appropriate recommendations to the Congress.

It has the same title, "Commission of Noxious Printed and Pictured Material."

On the opening day of the hearings on that bill on May 24, 1960, Congressman Carl Elliott, of Alabama, in introducing the bill, made very much the same kind of comment as Senator Kefauver did in this report, and I would like to read this, which is quite short.

The bill provides for the establishment of a Commission on Noxious Printed and Pictured Material. It says:

The purpose of such Commission would be to conduct a scientific investigation to determine if there is a causal relationship between the reading of the viewing

of noxious printed or pictured material and the commission of crimes or other antisocial acts. It is my understanding that at the present time there has been no scientific study to either prove or disprove that such a relationship exists or does not exist.

Researchers in the Library of Congress have said that none of the literature pertaining to the subject can be said to be conclusive on the question as to whether reading pornographic material causes socially unacceptable behavior.

Other researchers have found no real evidence to date that such a relationship either does or does not exist, and they all say that this is a matter which requires further exploration and more thorough research. Persons with almost every point of view believe that such a commission, as provided for in this bill is needed.

At the present time we hear a lot of opinions expressed, but most of them are based—or some of them at least—on limited observation and, perhaps, some on prejudice.

The bill which we are considering today, if enacted into law, would, I think, replace at least some of the uninformed opinions that we hear with relation to these matters with facts.

We supported that bill in that form, but the duty of such a commission to make such a scientific study to determine the causal relationship does not exist in this bill in its present form.

Now, we do not argue that there may not be a causal relationship, but that in the absence of clearly demonstrable proof, there is no real basis for the assumption that such a relationship exists. This purpose, however, does not exist in the bill before the committee.

H.R. 7465 proceeds on the assumption that there is such a causal relationship, and that certain printed matter has a "morally corrosive effect." We have pointed out before that this statement of fact is not supported by reliable scientific studies of this problem and that, on the contrary, there is a great deal of confusion as to whether such a causal relationship exists or not.

The announced conclusion that there is a causal connection between obscene matters and juvenile delinquency and crime will undoubtedly satisfy great numbers of people, but will not necessarily solve the basic problem or dismiss the constitutional objections of H.R. 7465.

It should be noted that the word "noxious" does not appear in the findings of fact and declaration of policy in H.R. 7465, although the word "noxious" does appear in the title of the Commission itself, as well as section 9(6) on the duties of the Commission. The use of this word is important as an indication of the loose thinking which was used in the drafting of this bill.

It is obvious that "noxious" and "obscene" are not identical in meaning or scope, yet the drafters of this bill, either by design or inadvertence, have not included the word "noxious" in the finds of fact. Perhaps even more important, this word has never been judicially defined in the free press field. What effect it will have on the operation of the Commission if this bill passes is difficult to determine, but certainly such an ambiguity should be resolved before proceeding further.

It is true that the bill does state that the purposes and duties of the Commission are to be effected without interfering with constitutional safeguards of freedom of speech and press. We feel, however, that this is an illusory hope, since the bill itself is based on a dubious constitutional footing.

The Commission to be created by H.R. 7465 is aimed at suppressing some printed matter—in violation of the first amendment. It provides no judicial procedure to determine what comes within the purview of the Commission. The Commission may, in effect, estab-

lish a National Censorship Board. The patterns of commissions of this kind in the various States has been the development of lists of forbidden books which are supposedly used in an advisory capacity by various Government agencies. The Supreme Court specifically condemned this kind of procedure in *Bantam Books v. Sullivan* (372 U.S. 58 (1963)).

Until it has been conclusively established that there is a causal relationship between obscene materials and matters and crime and other types of antisocial conduct, the American Civil Liberties Union will oppose this type of act and urge that it not be adopted.

Mr. DENT. I thank you for your testimony, and I do believe that if it is not too great an inconvenience, the committee would like to have you return Wednesday at 10 o'clock in the morning.

Mr. SPEISER. I would be happy to.

Mr. DENT. While you are gone, I might ask you to do me a favor. It seems to me on page 2 the whole basis of the construction of your opposition to this type of legislation might well be summed up where, after you cite the *Butler v. Michigan* case, you say, and I quote:

Beyond that, we hold the constitutional guarantees of free speech and press apply to all expression, and that there is no special category of "obscenity" or "pornography" to which different constitutional tests apply.

Between now and Wednesday, try to get us some evidence as to when the Founding Fathers, in drafting our Constitution, had a case or an occasion to have this type of obscenity, as we believe it to be, or pornography, as it is described by witnesses before them upon which they could construe a constitution restrictive covenant or whether or not in the intervening years this was something not known to the Founding Fathers, and is one of our generation.

Mr. MEEDS. May I make a statement on this of the witness and also of the chairman: Could we have Mr. Speiser read the two books to which I referred so we could have his personal observations on these when he testifies? Do we have permission that he can take them with him?

Mr. DENT. That is up to him. This is a personal matter.

Mr. MEEDS. Would you please do that so we can talk about the same thing.

Mr. SPEISER. There are two points of view on this.

Mr. DENT. Our point and the other view.

Mr. SPEISER. That is part of it. Also, as Justice Black has said he consistently says he doesn't consider himself as a national censor so he refuses to read materials presented to him, but I will be glad to read this.

Mr. DENT. You might take a look at "Jaybird Safari."

Mr. SPEISER. Are you sure you exhausted the material you want me to look at?

Mr. ANDREWS. Am I to understand what we have in store is for us all to read all of this material?

Mr. DENT. We will leave it up to the individual taste. Myself, I would rather read the catechism.

Mr. MEEDS. I just want to get your observations.

Mr. SPEISER. I will be glad to do it.

Mr. DENT. We are recessed until Wednesday.

(Whereupon, at 12:15 p.m., the committee recessed, to reconvene on Wednesday, September 8, 1965.)

TO CREATE A COMMISSION ON NOXIOUS AND OBSCENE MATTERS AND MATERIALS

WEDNESDAY, SEPTEMBER 8, 1965

HOUSE OF REPRESENTATIVES,
SELECT SUBCOMMITTEE ON EDUCATION
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 9:45 a.m., pursuant to recess, in room 2257, Rayburn House Office Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Present: Representatives Dent, Daniels, Mink, Scheuer, Meeds, and Andrews.

Also present: Representative William D. Ford.

Staff member present: Robert E. Vagley, director of subcommittee.

STATEMENT OF LAWRENCE SPEISER, DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION

Mr. DENT. The Select Subcommittee on Education will now come to order. The first and only witness this morning, unless the Member of Congress who has asked to appear gets here, the only witness this morning is Mr. Lawrence Speiser, director, Washington Office, American Civil Liberties Union.

Mr. Speiser, welcome back to the committee. We will start where we left off. If I remember rightly, you had just completed your statement and had gone through it rather hurriedly because of the length of time we had left.

As I remember it, I started to ask you about your final statement on page 7 where you take the position, as I summarize it, that you oppose the legislation which does nothing more than set up a commission to delve into this situation and the problems before the committee on the grounds it should not be done until there has been conclusively established there is a causal relationship between obscene materials and antisocial conduct. How do we go about establishing conclusively there is such a relationship?

Mr. SPEISER. As I mentioned in my testimony, there had been a proposal in the 86th Congress—and the bill was H.R. 11454—to establish a commission, incidentally, by the same title. We weren't particularly happy with the title, because we still have the problem of what is meant by the term "noxious," and the Commission would have the purpose of making a scientific study to determine whether there was a causal relationship between obscene materials and antisocial conduct. In the hearing on that, hearings on that bill, there was included a number of articles, one by Marie Jahoda, which looked into the literature, and it was conducted with a wide range of indi-

viduals in various scientific fields on what the status was of our knowledge on this question and came up with the conclusion that we just didn't know and there also incidentally was a report to the committee that had held those hearings from the Legislative Reference Service as to what, or whether there had been a causal relationship established between obscene materials and antisocial conduct of adults as well as juveniles, and they came back with the conclusion there had not been any such relationship established, that the authorities were hopelessly confusing and there really had never been the kind of scientific study they felt was necessary in order to get into this field, but, as I indicated, that shortly after the hearings on that bill, this purpose for such a Commission was eliminated, and it seems to me, in reading the bill, which is very similar, there had been some changes, it is very similar to the bill, as changed, in the 86th Congress, and there is the assumption that the causal relationship exists, there is the assumptions there is a morally corrosive effect, and scientific knowledge on this is completely lacking.

Mr. DENT. Well, isn't it true if you want to even attempt to start out on the basis of making a research, that you have to assume somewhere along the line there is some relationship or there is no cause at all to have the study made? Are we to take the inference from your remarks that the Civil Liberties Union doesn't believe there is any relationship between this material and crime or antisocial behavior?

Mr. SPEISER. As I believe I said in my statement, we don't consider ourselves experts to make such a determination. We have not conducted such a study, but we have examined the literature on it, and what we are saying is, there has not been established this relationship and until this relationship is established, the setting up of a commission of this kind has great dangers to the freedom of speech and freedom of the press.

I just mention briefly in my statement the case of *Bantam Books v. Sullivan*, which is a Rhode Island case; the commission had been set up in the State of Rhode Island, the purposes of which sound very similar to the ones for this Commission; and the Supreme Court held that their practices were unconstitutional.

They developed lists of books which they sent to distributors with the implication that if they didn't abide by the judgment of the commission, that criminal action would be forthcoming. And it was this kind of administrative judgment, no hearings, no judicial determination, no standards, that the Supreme Court found offensive to the Constitution and held that their practices should be enjoined.

I believe, in looking at other kinds of commissions of this kind, this is exactly what has happened. They start off with the assumption, Mr. Chairman, that there is a causal relationship and then go on from there.

Mr. DENT. Mr. Speiser, this Commission has a definite instruction from the Congress it will report its findings and recommendations to the President no later than January 31, 1966. Now that would be 1967 on account of the late date of the hearings and it would cease to exist 60 days after it makes its recommendations and findings. There is no curtailment of speech. There is no prohibition against any action of any person. There is no regulation, no criteria, there is no law; they make a report.

Now, this we believe to be the only way that you can establish at least some basic ground from the point of which you may find there is no need for legislation or there is a need for legislation. If you don't have a starting point—and we tried to restrict the Commission in every detail so it cannot become a lawmaking body or a regulatory body; it is nothing but a factfinding body or at least that is what this committee is trying to establish.

Now, I can't see the relationship between this type of commission and your opposition to even creating the Commission, or the assumption—you are talking about "an assumption"; no one is assuming more than the Civil Liberties Union is when it assumes this Commission is going to do exactly what you said happened in Rhode Island.

MR. SPEISER. Well, it is because of the experience we have had in this country with commissions of this kind which many of them have had. Well, their purpose is stated very much in the same language listed here as duties of this Commission and they have all ended up with developing lists of books that they have determined in their judgment, subject to no hearings, no procedures, no nothing, that they felt were obscene and the distribution of those books with the implicit, if not explicit, threat there would be criminal action forthcoming if the distributors and publishers fail to abide by their judgments.

I may point to the fact of the Gathings committee, a committee of this Congress, and it issued a report and had no lawmaking function, it was not supposed to make a law, yet issued a report in which it came to conclusions and listed books in it, including, for example, "The Wayward Bus," by John Steinbeck, as being obscene.

Now, here was a committee of Congress limited perhaps by the judgment noted here.

MR. DENT. What did it do; if they made the recommendations without the point of law behind it, what did it do other than to show the Commission was not functioning under what it was written to govern?

MR. SPEISER. The publication of the name of a book by a committee, an official governmental body, is bound to have an inhibiting effect on the prohibition of speech and press. It need not have a threat of a criminal charge. You are in a sensitive area, as I am sure all of you realize. I don't believe anyone is in favor of censorship if you ask a question in those terms, but I think it must be recognized when you have an official governmental body and it views with displeasure even certain publications, that it is bound to have an inhibiting effect on authors, publishers, and distributors, so they will not run afoul of the law, that local prosecuting attorneys, whether Federal or State, would not take it upon themselves to engage in wholesale prosecutions.

The suggestion was made, the last hearing of this committee, that perhaps one way of suppressing this traffic—and this is my editorializing words—would be indiscriminate prosecutions, that if more were brought even though the prosecuting attorneys did not feel they would be successful, this would have an inhibiting effect. Certainly that would be violative of the spirit of the first amendment, and I am quite sure that injunctions could be obtained against the district attorneys or U.S. attorneys operating in that fashion.

There seems to have been, if I may continue, Mr. Chairman—there seems to have been some puzzlement, and I can understand it, on the part of many of the committee members, how courts came out with conclusions they have on specific pieces of literature or books or magazines or whatever it is that is involved, as to how a judge or a jury could read certain things and come up with conclusions of “obscene.” The material was salacious, went into rather explicit detail, as someone put it, “carnal recreation,” I think, is one of the terms they used, and the reason is, it was not that you have a judiciary filled with evilminded men, and the committee, I wish to make it clear, were not attacking the judiciary, but there was puzzlement as to why there was raping of the constitutional protection around a lot of material that at first blush does not seem to be of any value to society.

I think the answer is that they are aware of the fact that this is a sensitive area, that what you do to one kind of book can be done to others. It is extremely difficult, if not an impossible problem, to try to define what is obscene and not obscene. We have been faced with it for centuries and have not come up with a logical, coherent answer.

MR. DENT. I think the committee, at least one member of the committee, appreciates the very seriousness of the problem, and he is fighting against precensorship of all kinds; however, we are faced with a problem here which seems to be, according to your own testimony, one where we have no place to begin, absolutely no ending, we are asked not to create a commission, do anything about it until we prove there is a causal relationship and yet there is nowhere that we can start to even attempt to show there is a relationship.

There is no way that this committee can in any way recommend other than to forbid a commission the right to publish any list, which would be in the act, I am sure, there would be no publication before the report to the President and the Congress.

Yet, where do we start or just give it up as a job that can't be done and if it can't be done we ought to quit now and save everybody time, or is it, in your opinion, as a learned man in the field of maintaining a person's constitutional rights, that there is no reason whatsoever to hold any hearings in this matter or to look into the matter?

MR. SPEISER. No; as I mentioned, I think there is a need that has not yet been fulfilled and it may be that a governmental financed research program would be very helpful to look into the question of obscenity and see if there is some kind of causal relationship between obscenity and antisocial action of whatever kind we are concerned with here. There has not been anything of this kind.

I think my preference would be that this be done by contract with a university of some kind, nongovernmental, but this is not a major factor. But I think here is where we part, Mr. Chairman, because you are suggesting, you are suggesting there is nothing for you to do and I am suggesting there is something for you to do.

MR. DENT. The alternative is what?

MR. SPEISER. The alternative is to go back to the purpose suggested in the bill in the 86th Congress, to conduct a scientific study to determine if there is a causal relationship between the material you are concerned with and antisocial action. Go back to H.R. 11454 and the purpose that was in that bill.

Mr. MEEDS. Will the chairman yield?

Mr. Dent. Yes.

Mr. MEEDS. I have the same feeling that you do about the establishment of the causal relationship, I am sure, and I am sure the chairman does also. But may I ask, Mr. Speiser, how you would suggest that any research be done and getting down to specifics without, in other words, saying there is a causal relationship between the crime that is committed and book A, if you please. Do you think that any commission doing what you now suggest could publish findings, could make recommendations without referring to something specific?

This seems to be a fear which you have and I understand it.

Mr. SPEISER. Yes. Well, that is a problem and I have grave doubts about a commission in this situation.

Mr. MEEDS. Let's restrict it to research, the question of causal relationship, now, in keeping with your evident desire.

Mr. SPEISER. Well, I think there is a danger of that being done. But it seems to me that would have more validity if they do conduct a study and they publish a report and say there is book A and on the basis of an individual reading book A he went out and committed a certain crime. Then it seems to me there is a valid reason for publishing that and naming book A by name.

This is far different, it seems to me, than the subjective judgment of the commission members making a list of books that they personally find offensive and in most cases in which courts will not sustain their judgment.

Mr. MEEDS. Do you find—if the chairman will yield further?

Mr. DENT. Yes. Go ahead. In fact, I yield you your time this morning.

Mr. MEEDS. Do you find any place—and I wish you would point it out if you do—in this proposed legislation where the commission is empowered or even there is implied in any way that they will do what you just state?

Mr. SPEISER. I come to that conclusion on two bases and one is on the assumption that I find in the findings of fact and declarations of policy which makes the assumption there is such a causal relationship. Secondly, in looking at how commissions of this kind have operated in the past and committees of Congress operated in the past.

The Gathings committee did not, it is true, make a list as long as your arm as some private organizations do, but they did name some books which, in their judgment, were obscene. Now, there was nothing in the bill establishing the Gathings committee which gave it that power. They did it. They wrote a report, and I think you are aware, the congressional committees, although they have purposes which are established and are composed of human beings, there is practically no control over a committee and what is said in a report of the committee.

I don't know if there have been instances where Congress, as a whole, have taken a vote to retract a committee report as a whole. There may be, but I think this is highly unusual.

So that with the purposes I find in here, which, as I say, are similar to purposes of State commissions which have been established which have done this very thing, I think this is a danger and very critical.

Mr. MEEDS. Your great fear is that (1) the Congress presumes that there is a problem, and (2) sets out in a little different way what you feel ought to be done about this to determine what the problem is, the depth of the problem?

Mr. SPEISER. May I modify your statement slightly?

Mr. MEEDS. Yes.

Mr. SPEISER. Congress presumes a problem; I will concede there is a problem.

Mr. MEEDS. OK. Thank you.

Mr. SPEISER. But Congress presumes a relationship which I don't think has been established.

Mr. MEEDS. Well, may I ask what you think the problem is? What do you think the problem is, maybe even speaking personally now? What do you think the problem is?

Mr. SPEISER. I think there is a problem because of the fact that obscenity laws exist, exist in all States but one, and there are Federal obscenity statutes, that there apparently is a social concern about what is called obscene materials. There has been a great deal of difficulty, as I said, if not impossibility of defining what is obscene. There are a great many people who find this material offensive and are constantly attempting to find ways of stopping the material. That is not only for themselves but as far as other people are concerned.

There is undoubtedly a great deal of written, published, printed photographic material that is devoid of literary or artistic merit, that is intended to appeal to salacious interests and is circulated for commercial purposes.

Mr. MEEDS. Now if I may interrupt you right there, why is this a problem?

Mr. SPEISER. It is a problem because we have this situation.

Mr. MEEDS. Why is this a problem that exists?

Mr. SPEISER. It is a problem because in our society, people are offended that this material exists and is distributed. There is a basic uneasiness perhaps within our society, that maybe our own culture, a product within its heritage, there may be a great many things responsible for this uneasiness, and it is not a new one; it is something that existed throughout our history. And it varies, I might suggest, in the causes for concern.

For example, the general cause for concern when censors first arose in England, it was not obscene but seditious material, blasphemous material; so there has been, at various times in human life, concern about written material.

Mr. SCHEUER. Would you yield?

Mr. MEEDS. Just one moment on this line of questioning. Would you concede there is a possibility, sir, there is a causal relationship between some crimes and certain types of literature which you just described that are bare of literary or artistic value?

Mr. SPEISER. Certainly I will have to concede.

Mr. MEEDS. Then if one of the purposes of the Commission was to look into this question also, would it make you feel better?

Mr. SPEISER. To determine if there is such a causal relationship, it would undoubtedly make me feel better but not eliminate my concern about where you might go on from there and what other commissions might do and other commissions which had similar purposes is another thing.

Mr. MEEDS. I will direct your attention to No. 3 of section 9 and ask you if you don't feel this is a mandate to the committee to look into this very question with which you are concerned.

Mr. SPEISER. There may be an interpretation of that in that fashion; however, I have grave doubt it is going to be considered for that purpose. I don't believe, with the witnesses that appeared before the committee and some of the exchanges I have heard, there has really been any serious consideration that a scientific committee would be established in order to consider the causal relationships.

Mr. MEEDS. The word is "effects."

Mr. SPEISER. The word is "effects." Starting from the beginning, I hate to pick out words when I look at the bill as a whole and, as I say, looking at the bill as a whole, in my view it seems to me to indicate an assumption that there is a causal relationship that traffic in these materials should be suppressed, and we are going to develop plans for coordination of Federal, State, and local law enforcement officers to suppress it.

All of this seems to me to indicate a much broader scope than you indicated.

Mr. MEEDS. Would you feel better about the bill if the duty of the Commission was made more clear in this respect?

Mr. SPEISER. I would like to see again the purpose that was written out in fairly explicit terms for this bill for this Congress to discuss setting up a scientific study. That does not, however, in my view, eliminate the problem, for example, in the findings of fact and declaration of policy in which there is a statement that this matter, to paraphrase, "has a morally corrosive effect." There is an assumption of finding of fact here already before you set up the Commission, "has a morally corrosive effect," assuming we can define what those terms are.

Mr. MEEDS. Don't you think Congress has a duty of legislating the areas in which they feel there is a public interest, a matter of public concern?

Mr. SPEISER. Unquestionably they do but at the same time Congress also has a responsibility in getting into an area, a very sensitive area, that they step very gently, that whatever they do is not done with a broad sweep. I might suggest a similar kind of situation, where you have gotten into other first amendment problems, there has been great concern, great agitation about what your powers were that would be given by congressional legislation.

But a commission of this kind, it seems to me, you are giving them fairly broad powers and, as I say, again, we can look at this, in the way commissions of this kind have operated on a State level, and we can also look at congressional committees and the kinds of hearings and kinds of reports they have issued, and it seems to me that my dangers are not unrealistic, that my fears are not unrealistic as to what a commission of this kind might do.

Mr. MEEDS. You were present when the postal people testified?

Mr. SPEISER. Yes.

Mr. MEEDS. And testified about laws dealing with obscenity and we have now Supreme Court decisions defining "obscenity" as a matter of law or as a matter of findings of facts by a jury. Isn't it quite proper that the Congress be concerned about the distribution of material that might fit this category?

Mr. SPEISER. Well, what Congress does is to, and I might suggest here is where I think members of the committee run astray, what Congress does is to bring before it members of the executive department and cause them to explain why they didn't prosecute certain publications, or what happened when they did prosecute, and it is true that the Congress has this general overseeing power, but that can quickly be perverted, it seems to me, to clubbing.

Mr. MEEDS. To witch hunting?

Mr. SPEISER. Yes. And I emphasize again I note you are in a very sensitive area and any Congressman on the committee who finds a particular piece to be offensive has a great power over members of the Post Office Department and Department of Justice in saying, "Why didn't you prosecute?" or "Why aren't you prosecuting this particular publisher and distributor of this particular publication," and it is his judgment. And members of the executive department are not notoriously courageous in fighting off Congressmen.

Mr. DENT. May I say I was not concerned generally about not prosecuting on this printed material where they knew they had so much background on the law and decisions to overcome and where it was not conducive to a successful prosecution of a case, personal prosecution, whatever way you want to look at it; but the thing that astounded me was this noxious material which had nothing to do with art and was violating all concepts of what you do with the human body and this artificial machinery they were selling through the mails and taking the position that it was not obscene was what astounded me.

I was not a bit surprised they refused to prosecute the book "Candy"; after the Supreme Court refused, it was not a surprise, but they said it was obscene with samples in their hands, and, believe me, I cannot understand that, can you?

Mr. SPEISER. I didn't hear the particular exchange, but I understand again that the Post Office Department tried to prosecute.

Mr. DENT. Tried to prosecute, yes. There have been 40,000 advertisements, which were the greatest descriptions I think you might have ever heard of in your life, and yet the Justice Department said "no obscenity connected with it."

Mr. SPEISER. Well, the Post Office and Justice Department, of course, I can see are not great protectors of obscenity. They have prosecuted cases that I don't think they should have, so I don't think their judgment is because they have any protective attitude other than the attitude it seems to me that court decisions are setting down standards that have been made for them. Now, I was not here, I believe, on that particular statement. I came in in the middle of the testimony of the two Post Office Department witnesses.

Mr. DENT. Continue, Mr. Meeds.

Mr. MEEDS. By following up what we discussed at the last meeting, and I assume you have read the two books?

Mr. SPEISER. Yes, I considered the committee request for me to read the two pocket books and nudist magazines as a reading assignment and I attempted to complete the assignment.

Mr. MEEDS. I didn't read the nudist magazine, but of course looked through these in a cursory manner and I would like to ask you, and perhaps you would just like to speak on a personal plane here, if you felt that either one of these books which I referred to you had artistic

value or would come within your personal definition of the *Roth* inhibition.

Mr. SPEISER. Well, you have two factors there. As far as the *Roth* criterion is concerned, I don't think that either of them do violate the *Roth* standards. As far as my own personal judgment is concerned, I consider the material you gave me as trash. But there is a lot of material I consider trash that I don't want the Government suppressing because I don't know how you can, in any way, distinguish, in some kind of language, the difference between these books with rather explicit descriptions of sexual activity on a wide range and the sexual descriptions that are included in what are conceded to be great works of literature.

In one of the books I even found what might be considered a moral that might have some social value.

Mr. MEEDS. Redeeming social value? There was a moral?

Mr. SPEISER. There was a moral.

Mr. DENT. This fellow recommended to you in the last page, that you shouldn't distribute or give this book to anybody but so and so.

Mr. SPEISER. This book was anything but moral. She was horrified by discovering her lover engaged in an affair with someone else and on the basis of this she broke off with him but virtue has its own reward and in the end they were married.

Mr. MEEDS. You, then, personally, would feel that neither of these books would be. Now, you have dealt with literature, I am sure, and it would be your personal observation either one of these would not fall within the prohibition or criterion established in the *Roth* case?

Mr. SPEISER. As a matter of law, I am not so sure that the jury might not convict purveyors of both of the books, but I think on appeal the court of appeals deciding the question as a matter of law would reverse based on the standards that have been set out in the *Roth* case, the "*Manual Enterprise*" and "*Jacobellis*" cases and others the Supreme Court decided.

You may be interested in the fact that both of the books are completely devoid of four-letter words, Anglo-Saxon four-letter words, there is a kind of puritanical streak that runs through the authors of some of these books in that they do not use Anglo-Saxon four-letter words.

Mr. MEEDS. Don't you find the more sophisticated books of this day and age devoid in many instances of four-letter words? In fact, the books with some artistic value use them quite frequently?

Mr. SPEISER. Yes. All I am saying is, there used to be a criterion as to how you determine what is obscene, the four-letter words, but the back of the argument is broken in the *Ulysses* case. It involved these words, but all I am saying, it is sort of peculiar in books of this kind, in my view they are trash, that they have a strange kind of standard which involves not using four-letter words that you will find used in pieces of great literature that also go into explicit sexual descriptions.

Mr. DENT. That reminds me when I was a youngster I sneaked in one time to one of these hoochy-kooch shows and there was a fellow who was drunk—you know what these shows are; I think you ought to—he was thrown out because he used obscene language. That reminded me it is good language to describe bad deeds.

Mr. SPEISER. There was an article in the New York Times within this past week on this question and there was a horrified response by the author of one of these books as to whether he would use language of that kind and he was horrified it would be improper to do so.

Mr. MEEDS. I think those are all the questions I have. It was good to have your testimony. Thank you very much.

Mr. DENT. Mr. Andrews.

Mr. ANDREWS. I am very interested in your testimony. I was about ready to wrap this thing up and go ahead with this committee's appointment for the job. I think this is kind of unloading it on another group. Although I do not feel that one could ever arrive at a national consensus of what was or what was not pornographic.

I am aware that most everybody I find hesitates, even the highest courts, to take a position one way or another with the exception of each of us as individuals expressing our tastes but particularly now if you object to this turning it over to a group of experts rather than this committee, and I am not inquiring as to why you should object to the group of experts coming up with a political opinion on what is pornography or not, but you would prefer there be some clinical study showing a causal relationship between so-called or alleged pornography and antisocial behavior.

Do you really believe this subject will lend itself to a clinical study with cause and effect finally arrived at in concrete terms that you could put your hands on?

Mr. SPEISER. I don't know.

Mr. ANDREWS. Won't you inevitably run into, when you talk about antisocial behavior produced by this literature, won't you inevitably run into the question of what is antisocial behavior and what isn't? This indefinable quality of the thing you are fooling with now with everybody throwing up their hands and saying, "I have my personal taste but I will not prescribe standards except in the vaguest terms," even the highest court, you would take that indefinable area and run it into something you really don't know would come up with any answer whatsoever or you know couldn't?

Mr. SPEISER. No; it is the last part I would disagree with, Mr. Andrews. For the term "antisocial behavior," you may use another term, "criminal activity," or some action which has been made a crime; the reason for the term "antisocial behavior" is because you and others are concerned about the effect on children and generally we have gotten away from the idea of children committing crimes and we use much broader terms in trying to determine what kind of activities by children should be proscribed.

Let me go back to whether I am sincere in suggesting that a Commission would have a valid function. This is not just my idea, but I would like to suggest that the committee go back and read the hearings of the committee in 1960 to establish a Commission of this kind that were under the chairmanship of Congressman Elliott, I believe, in which there was a study made by Marie Jahoda in which she suggests what she thought would be fruitful areas of research and which we do not know the answers and on which no studies at that time, and I must confess I don't know what has been done since then, had been conducted, and it is that kind of activities, it seems to me, that could be fruitful.

Now, you ask me whether I thought there would be a definitive answer and I can only say I don't know, I can't prejudge what a

study of that kind would come up with. I don't think I could give you any other answers.

Mr. ANDREWS. Would you regard medical research as itself being more tangible than going into thought?

Mr. SPEISER. There is a great deal of difficulty here and it may well be that even a well-financed extensive research program may not come up with definitive answers. I think this is quite possible.

Mr. ANDREWS. On the other hand, do not we arrive at a certain amount of understanding of the truth when we consider the propaganda ministry with Mr. Goebbels at the head of it who stated, with the acceptance of most all of us, "the repetition of a lie again and again and again has the force of thought behind it and will be finally translated into action?" Would you accept this or is it still just a nebulous cliché or anti-Germany conception?

Mr. SPEISER. Well, I think as a generality there may be a good deal of truth in that. I don't accept it entirely.

Mr. ANDREWS. Don't you think advertising it itself illustrates the force of an idea? Isn't that clinical, to have gotten a result from advertising, the exposing of thought?

Mr. SPEISER. I might suggest the same kind of argument can be made about the fact there is a causal relationship. That has been said again and again. Most of the witnesses appearing before the committee stated it as a fact. Now, the argument can be made both ways, Mr. Andrews, that if you accept that as a fact, that a causal relationship does exist, you are accepting something said not based on scientific evidence but said again and again by enough people to the extent that there is general belief by the people.

The same thing might be true as far as advertising is concerned, but we know in a democracy and in fact the truth in some fashion will bubble to the surface and the way it will occur in the area is very sensitive in arousing areas of emotion.

Mr. ANDREWS. In other words, you disapprove the setting up of the Commission because you feel like until a causal relationship is established, that no experts are ready to study this thing and presumably the Commission will have no causal relationship expert or technical clinical experts on it, but you wish the Commission ought not be established until the causal relationship is set up and then you say you really have no knowledge of whether such a casual relationship would ever be examined with a degree of finiteness or concreteness. Well, do you have faith that it can?

Mr. SPEISER. I have faith it can or I wouldn't have suggested it. I am not suggesting that Congress waste my money and your money on a wild goose chase but it seems to me that we do need a good deal more knowledge about this very sensitive area than we have right now and that establishing a Commission such as this does not help add to this knowledge and that we do need something, we do need more facts to discuss this.

Congress has been agitated about this many times in the past and there has been nothing that I believe that was done by the Gathings committee or the Granahan committee that really helped in getting into this area. It may have satisfied the emotional stirrings of a lot of people agitated and rightly so perhaps by a lot of material that has been circulated, but it got not one step further in understanding the problem of obscenity and why we are concerned about it and whether

there is a causal relationship and what the effect is; we have no knowledge of that, of that kind, by both the Gathings committee and Granahan committee.

I still couple it with my fears, and I think they are reasonable fears, that a Commission of this kind had been established, plus the Granahan and Gathings committees, and have inevitably resulted in the committees, in informal kinds of judgments made on a wide range of this material that I think is dangerous to the concept of freedom of the press and speech.

Mr. ANDREWS. Thank you. That is all, Mr. Chairman.

Mr. DENT. Mrs. Mink.

Mrs. MINK. No questions.

Mr. DENT. Mr. Scheuer.

Mr. SCHEUER. Off the record.

(Discussion off the record.)

Mr. SCHEUER. On the record. Would you have any specific suggestions to give us when you referred before to a report or set of recommendations by Marie Jahoda, as to how this Commission could be structured so as to produce the kind of scholarly research necessary to establish, if it is humanly possible to establish, whether there is any causal effect and relationship between this perhaps inflammatory literature, you might say, and antisocial conduct, and by that I mean very specifically criminal conduct?

Secondly, do you think, assuming arguendo were established beyond a peradventure, that there is a direct causal link between this kind of prurient literature and antisocial action, and by that I mean specifically criminal action, that then there would be an obligation on the part of Congress, or challenge on the part of Congress, to enter into this sensitive field, as you rightly describe it, and legislate some kind of prior restraint?

Do you, in other words, from the point of view of the classic civil libertarian, do you feel that the proof of a causal relationship between the literature and criminal action is sufficient to justify prior restraint and wouldn't it in effect be comparable to the limitation on the right of freedom of speech we find where the Supreme Court says we can't holler "fire" in a movie theater?

Mr. SPEISER. Answering your questions in order, my preference would be, as far as the research is concerned, would be the financing of a research program by something other than the Commission. I will accept the Commission if you are willing to conduct the research on that basis, but I would think that the kind of research that should be done, there should be new finances so that a good job could be done and preferably with a university, perhaps one of the agencies of the Department of Health, Education, and Welfare, Institute of Mental Health perhaps, Institute of Health; I would think that this would divorce the research from the question as to whether there is any political ramifications in the setting up of the Commission.

With regard to your second question, assuming a causal relationship can be established, this does not necessarily follow that prior restraint is desirable or necessary or constitutional and by prior restraint I would mean the judgment of the administrative officers or executive officers in stopping material before it is sent.

I don't think that that satisfies the problem of how you attack material even assuming a causal relationship is established. It may

be that all that can be done is criminal penalties. There does seem to be some way.

Mr. SCHEUER. You mean to establish criminal penalties on the publishing and distribution of this material which, in fact, does stimulate criminal action?

Mr. SPEISER. Yes, but this is not, in the classical terms, a prior restraint.

Mr. SCHEUER. That is right. But as to such criminal action in a particular case you would feel that Congress would have no role to play in legislating control or suppression of this material absent a criminal act which could be proven to have been directly stimulated by the material itself?

Mr. SPEISER. Yes. We feel there should not be a different standard other than the clear and present danger doctrine which lies in other fields of freedom of speech and press.

Mr. SCHEUER. Under some circumstances, I take it, you feel that if this Commission were properly structured to have some responsibility for the research being carried out by a reputable educational institution—medical school, perhaps, or one of the governmental institutions involved—you would think that the results of that kind of investigation would be productive and interesting?

Mr. SPEISER. Yes. As I said, in my testimony I referred to the purpose which was in a prior bill, the 86th Congress, H.R. 11454, which discussed setting up a study of this kind, and I would suggest this would be a legitimate and useful purpose if you are going to establish a Commission of this kind.

Again, my preference is that the research be done not by such a Commission or under its agents necessarily, but with some educational or group which would cross over a wide range of scientific disciplines. It seems to me this would be proper.

Mr. SCHEUER. Of course, many agencies of Government now call upon private groups like the Rand Corp. and educational institutions, our colleges and universities, for an infinite variety of research projects and there is no reason why this Commission could not contract with another university that could carry out the responsibility for the research.

Mr. SPEISER. I think that is possible, which is why I haven't eliminated entirely the concept of the Commission. I think it is possible if it were framed in this fashion and this was specifically set out as a purpose of such a commission.

Mr. DENT. Mr. Meeds.

Mr. MEEDS. Do you know of any reputable and specific research report or finding that has tied down a causal relationship between the use of intoxicants by people under 21 and crime, specific criminal activity?

Mr. SPEISER. No, I don't. There may very well be. I don't know.

Mr. MEEDS. Yet we legislate quite stringently in this area, don't we?

Mr. SPEISER. Well, I don't take your analogy, Mr. Meeds, on the effect of alcohol, as being the same as the effect of printed material on the mind. I know this analogy is often used and it doesn't seem to be a valid one. We argue, as Mr. Andrews said, with thoughts and we are having some difficulty in what it is that we are concerned with. Just, for example, the fact that you gave me the reading assignment

that you did, you may have been thinking of grave danger, that my reading of that material might have resulted in antisocial conduct on my part. It did not.

Mr. MEEDS. Well, this leads me to a further question.

Mr. DENT. By the same token, you are allowed to walk into a bar.

Mr. MEEDS. That is what I was thinking of.

Mr. SPEISER. I would not have had congressional immunity.

Mr. MEEDS. Do you feel, and again we may be dealing in an area where I will call on your personal thought, feel there is any distinction or should be any distinction as to whom certain types of literature might be available? In other words, could we be dealing in an area in which the clear and present danger doctrine ought to apply to people over 21 and perhaps the *Roth* criterion to people under 21?

Mr. SPEISER. This has been suggested and I think, as a matter of fact, it is our own position at the present time in raising this question, if you show that certain material is aimed at a certain target group then you use that target group in determining the clear and present danger, it would engender some kind of antisocial conduct, and this has been suggested to desk writers who, I feel, who are close to the Minnesota Law Review on the question of the law as to censorship, perhaps a variable standard might be used on the use of obscenity. The danger, of course, that exists is something that should be reported and discussed, and in *Butler v. Michigan*, you have to be concerned as to whether you are bringing what is available down to what is the level of the target which you are trying to protect. There is that kind of danger.

I think almost everybody seems to think that we can't have a free society if we are going to restrict the publication of material based on that chance that it may get into the hands of children or some others.

Mr. DENT. I don't think anyone is interested in the possibility of a restrictive covenant on publication. We wouldn't stop, as was indicated, the sale of liquor. We tried that. But we don't leave it as an open invitation. Anyone knows that.

But we do have cigarettes, there is always the storekeeper who violates, sells cigarettes to a 14-year-old or 16-year-old, but he does it at a risk, and we don't have to lower the level of the publication; if they want this kind of tripe, if grownups want to read it that is all right, but if the storekeeper or the distributor has some kind of problem, if we can determine it, and I don't say we can determine it, but if we can determine that some of this stuff should not be peddled promiscuously to kids of school age, and the testimony we receive, whether it is right or wrong we don't know, but it has been testified here that it is aimed at reaching this immature group and if we have a prohibition against the sale of it to minors, what do you stop selling them, anything that has this kind of suggestiveness in it, and if a grownup wants to read, it is perfectly all right. If he wants to get drunk, it is only the crimes he commits after he gets drunk that present the problem, not getting drunk.

It is a question of trying to find some way to keep this out of the hands of the children, buying these mailing lists and mailing it out to unwanted addresses, persons who get national magazines, or something of that nature. We don't know.

Mr. SPEISER. You are right and you still have the problem of defining what it is that should not go to these particular target

groups. It does not solve the problem to say, "All right, we are going to restrict the scope of what we are going to do to minors in trying to see that certain materials do not get into their hands." You still have the problem of defining that and we have this situation.

Mr. DENT. Is there any answer to that?

Mr. SPEISER. I don't know.

Mr. DENT. Now how do we find out?

Mr. SPEISER. Well, it seems to me that this also is a question that should be researched. I don't know if you will come up with an answer, but it seems to me there is a necessity for researching this rather than setting up another of the same kind of commission we had in the past.

Mr. DENT. I think we disagree on that. This Commission that is being established is completely different than any other commission that has been established, and if it would aid in the search that we are bent upon to specifically spell out the Commission does nothing but supervise or to act as a trustee board, a governing board, and that they will, under the act, be compelled to give out research contracts to those bodies which are recognized as being properly constituted committees to make a subject-matter study, would that in any way help us to try to reach this matter?

From the testimony I get from—we get to the street, but when we get there, we end up at a blind end, and we can't get anything to do when we get up there. We get up there, but we have to turn back. There is nowhere we can go.

Mr. SPEISER. I am not suggesting that but I am suggesting before you start walking up the street, you ought to try to find out what we don't know about this whole matter which is a causal relationship and it seems to me you have to start off with that. Then beyond that after you find out, if you do find out there is such a causal relationship, then it seems to me you can go on then to look at what else may or can be done or should be done.

Mr. DENT. Let's take a practical view. Supposing somebody says to you at the end of this lane there is a three-eyed cow. First of all, you don't believe there is such a thing and you say, "Don't go up the street and find out." You have to find out first it is up there, if there is a three-eyed cow, before you go up the street; how do you do it? Are you going to spend the rest of your life wondering if there is a three-eyed cow?

Mr. SPEISER. I wondered about a lot of things but not that.

Mr. Chairman, the commissions that have been established, and may I suggest that we look at these articles I mentioned in the Minnesota Law Review which have talked about the commissions, and you look at the purposes and most of them state purposes which are very similar to the purposes suggested here and they all have gone astray. They have all gone astray.

Mr. DENT. Well, we will try to find the language and see what we can do with it.

Mrs. Mink.

Mrs. MINK. I am very much confused about what I thought I understood to be the American Civil Liberties Union point of view with regard to the entire question of matters of definition of what constitutes obscenity and the matter of trying to prevent its distribution in the general community. I am even more confused by your

suggestion that research ought to be the avenue that we channel our energy to for the time being in order to establish a causal relationship, because I don't personally feel that whatever the finding may be, and even if we assume that a causal relationship is established, that it is going to, in any way, solve the problem of defining exactly what constitutes obscene literature. This is really the dilemma that law-enforcement agencies and the Post Office Department, and Justice, find themselves in; the inability to determine what is an obscene book or obscene publication.

Any amount of research that we might engage in, in trying to find that there is a causal relationship between reading this material and going out and committing a murder, does not establish that the book is in fact obscene, only that it incited a criminal act on the part of the reader.

I don't think that has any relevance really on the necessity for legislation in this area, or am I mistaken in my analysis of what you said?

Mr. SPEISER. I think we have a different view as to what kind of research is necessary. I think that an inevitable part of trying to establish this causal relationship is attempting to define what it is that commences the incitement that causes this act.

Mrs. MINK. Do you mean to say that if someone reads a book that describes in detail how to commit the perfect crime and then goes out and tries to commit such a crime as has been suggested by a book, that this relationship renders that book obscene?

Mr. SPEISER. Not in the least. Again, I believe that you are putting a pretty limited view on what the research is that is necessary. If a book has been published which tells people how to commit murder and one person after reading it commits a murder doesn't necessarily mean that it should be banned under what you want to call it, obscenity or anything else. There are obviously many other factors that would cause some person to commit an action and not all others, and this is involved in research, and merely to find that a person has read a book and he commits an act doesn't necessarily end the problem. That is only the beginning of it.

You have to go back and find out what he was like and what prompted him, what kicked him off, and this is the problem. I look on it as a much broader research problem than what you suggested as far as definition. It seems to me what they have to look for is some kind of statistical census in looking on how it operates.

There has been one research project that some of you may have heard of. That was conducted by Sheldon and Eleanor Cook of Harvard Law School, trying to find the factors that influence juvenile delinquents. They came up with the conclusion that on the scale of factors that they could find of written material, that written material was down to about 20th of all the factors, that in their study of a selected number of juveniles, only about 10 percent of them read anything.

So I can't really say, really spell out the full scope of the research, but, as I suggested before, when the hearings were held in 1960, there was, in the hearings, this memorandum by Marie Jahoda suggesting fruitful areas of research. I think before you talk about what you are going to do, after that, you ought to get that done first, and it is interesting that we really haven't gone into this. It didn't first come

up in 1960 and I think there has been a concern about obscenity through the ages and we are yet no further along, I think, in understanding it or abhorrence of it, variations of judgment about it, than they were a hundred years ago.

Mr. DENT. But it isn't always a question of shock of obscenity that may create criminal action, is it? Isn't it a question of a moral evaluation on the part of some?

Mr. SPEISER. There is a question as to what effect it has. What makes the censors immune? They read the material; why don't they become immoral?

Mr. DENT. Off the record.

(Discussion off the record.)

Mr. DENT. We get to the point where everybody throws their hands up. There must be some value in this kind of a study because if the witnesses knew anything about what they were talking about they claimed that the vast increase in this type of material has been of late origin, very late origin, within years, that the number of publications has increased a hundredfold in the last 2- or 1-year period. If that is true, then there ought to be some value in a study.

Now, why all of a sudden do we have this situation? We know there was a supply of this literature for those who were looking for it a few years ago, but this is not a question of having to look for it, it is shoved at you, everything is brought to you.

And how about the question of a tie-in sale where a decent fellow complains to the committee that he rents a news and tries to run a decent newstand and he doesn't want this material, but if he does not take it he does not get the Reader's Digest or Life magazine, or anything else. He takes in the bundle, whole bundle, or nothing. What about his civil liberties and constitutional rights?

Mr. SPEISER. I don't think tie-in sales are proper in this area and this may well be a field for Congress to legislate.

Mr. DENT. That is exactly what we are inclined to look into.

Mr. SPEISER. Except, as I said, the Commission with the broad duties it has, I don't think it is going to be solely concerned with tie-in sales. The usual kind of legislation I would suggest in a field of this kind, which I shall go on and tell you about, is so sensitive if you are going to have a piece of legislation on tie-in sales, put in a piece of legislation on that and hold a hearing on it, but to give the Commission the broad scope to develop plans, to suppress such traffic, which is one of this, is not the thing.

Mr. DENT. And then distribute it and that takes in the tie-in sales?

Mr. SPEISER. I know; but suppress what traffic "obscene and noxious matters and materials," and what do you mean by that, and we are back again to this kind of problem. The Commission is going to start off with undefined and perhaps undefinable standards, and it is going to help develop plans to suppress the material.

Mr. DENT. The Commission can't come up with a definition required by Congress on any of the phases of research and study. How can a Congress, with all its other duties to perform, come up with a definition?

Mr. SPEISER. I am not suggesting it can.

Mr. DENT. You are saying we should put specific bills in for specific subjects. Frankly, we don't know. That is why we are trying to get research to be made or a study. We don't know any

areas which ought to be covered. Maybe the whole thing ought to be put into the ash can, but maybe there is some "kernel" we can crack in this nut that surrounds us and find out that maybe there is someplace we can put our finger on.

Mr. SPEISER. I don't read the bill as written as having this kind of exploratory kind of duties.

Mr. DENT. If it doesn't have, we will try to write it that way.

Mr. SPEISER. It seems to me it has affirmative duties, imposed the kind of affirmative duties misused in the past and which have resulted in a runaway commission I find here in the bill.

Mr. DENT. We have with us another member of our full committee, Mr. Ford, of Michigan, and if he has any questions now I think maybe we ought to allow him to ask them.

Mr. FORD. I really shouldn't ask this, but Mr. Speiser and I have disagreed so frequently on occasions I think I ought to ask him a question at least to let him know I didn't come here just to disagree with him, but I am curious to ask you, as a person that I believe to be one with greater than average experience with the question of constitutional liberties and legislation coming before this Congress, as to whether or not you detect in this bill any limitation on the activities of the Commission with respect to directing its investigation of what is obscene to those things which are obscene in the sense of committing a person to commit a crime connected in some way with sex?

For example, would the bill, in your opinion, as a person who has studied it, forbid the study of literature put out by such groups as the Birch Society and White Citizens Council, and others, which some persons of our society might consider to be obscene in their content, or would the bill permit the examination of the writings and utterances of a group that, in other words, was writing against a particular religion whether it was anti-Catholic, was anti-Semitic, was anti-Negro, Anglo-Saxon, Protestant, or anti anything else, would the Commission have the authority, for example, to go into the question of mixed marriages between races and religions, and would it have the authority to go into the question of whether birth control per se or birth control financed with public funds that this Commission would deal with, local, State, and Federal Government, and other responsibilities that might be a matter of obscenity; in other words, is the word "obscene" defined in this bill in any way such that would tie it to the literature before this committee or the examination of what effect that literature might have on the welfare of society, or would this be wide open for investigation of all avenues of thought that might be the opinion of any citizen who found himself on that Commission to be potentially obscene?

That is a pretty long question, but I think it is a package.

Mr. SPEISER. Well, I don't know, but I think there is a danger it might. My fears on that score are raised to some extent by the testimony of the prior witness, Mr. George E. Davis, in which, at the end of his testimony he read a lengthy statement of the San Francisco Examiner of January 18 which included a wide range of things that appeared to him and to the Examiner to be destructive of national morals which he felt the Commission was designed to protect.

Among the things he mentioned, for example, that were in this editorial was such things as this:

TV shows and TV commercials pour out a flood of sick, sadistic, and suggestive sex situations. A campaign is launched.

Mr. FORD. May I interrupt you at that point. It has been a matter of curiosity to me as a lawyer both prosecuting and defending matters of this kind and for a short time in discussing TV programs with people with similar interests, it seems acceptable to our society to depict the removal of the women's blouse by force as a prelude to a forcible rape. This, I have seen on TV in the company of my family in my own living room, but it would be considered extremely improper and probably result in turning the show off the air if the blouse was removed by a husband from his wife as a prelude to the normal activities that go on between husbands and wives.

I only point this out to point out what I consider to be the one of the supreme examples of the censorship that we now foolishly as parents rely on in the television industry.

Mr. SPEISER. I quite agree. I don't think there is logic to much of what we have at the present time. Let me go on to mention some of the other items listed here:

A campaign is launched to bring acceptance to homosexuality.

Radio broadcasts present discussions for and against promiscuity.

Magazines and newspapers publish pictures and articles that flagrantly violate the bounds of good taste.

Four-letter words, once heard only in barroom brawls, now appear in publications of general distribution.

Birth control counsel is urged for high school girls.

Look around you. These things are happening in your America.

Prayer was banned from the schoolroom and the traditional schoolbooks that taught moral precepts, as well as reading, were replaced.

These are matters of concern to Mr. Davis and I understand his feeling and I appreciate his sincerity, but in his view it seems to me he was implying that the Commission would have the right to go into matters of this kind and not just obscenity, assuming you can find the proper definition for it.

On the question of what the Commission should go through in, say, the political field, I don't know. In this study by Lockhart & McClure they mention effect on community moral standards which discuss the question of sin as a standard and what advocates sin. In some of the views, the promotion of the idea of equality of the races, to oppose that principle is considered sinful.

Now this may very well fall within the purview of such a commission. For example—and I believe this was in the Gathings committee—it made a point of discussing some of the books it looked at in making a point of the fact it had interracial sexual activity. This was a point that was raised, so I don't know whether that kind of question might be considered within the purview of the committee.

The answer to your question, Congressman Ford, is: "I don't know." I think there is a danger of that occurring. Some of the commissions that have existed on the State and local levels have gone off on forays of that kind. As I say, many of those commissions had duties and purposes which were very similar to ones set out in the bill before us.

Mr. FORD. Thank you, Mr. Chairman. I just like to make it clear on the record that by using the names of organizations a few moments ago I didn't mean to single them out. I used them by way of illustration rather than by way of definition, and they certainly won't be either at the top or bottom of the list, and they would have plenty of company as groups that do from time to time write or say things that, to a part of the society at least, are obnoxious. That includes groups to which I belong as well, so I don't throw any stones at anybody by mentioning of the particular groups.

Mr. DENT. The chairman will see that the stones don't bounce.

Mr. Daniels.

Mr. DANIELS. Mr. Speiser, on page 1 of the testimony, you state: "Members of the American Civil Liberties Union are deeply aware of the problem of obscenity in our society."

You acknowledge by that statement we have a problem and yet you oppose an examination and study of this problem. How do you square your belief?

Mr. SPEISER. Well, I acknowledge there is a problem because of the disquiet of Americans concerning the problem. As far as the study is concerned, but I have said before, Mr. Daniels, we feel that what is necessary is a scientific study of the causal relationship perhaps to allay the concern about the problem or eliminate it or seek new directions to take care of it. But the Commission which has been proposed in your bill doesn't seem to me to be this kind of study. It starts off on an assumption, which is where we part company, that there is a morally corrosive affect of obscene materials, assuming that you can define it, and you use the term "noxious" as well, and I don't know what that means, and then goes on from there to discuss doing a wide range of things.

It doesn't seem to me this is a very research kind of study. This starts off with an assumption and builds on that.

Mr. DANIELS. I do not like to engage in personalities. I do not know if you are a married man or not, but you are an attorney and you apparently have given a great deal of attention to this question from time to time over the years. Do you or do you not admit that we have a great deal more hard-core pornography today in our midst than we have had before?

Mr. SPEISER. I think that is true.

Mr. DANIELS. Now, if that is so and you have examined some of the books which were deemed as pornography and I don't think we need a court or commission to determine that for us.

Mr. SPEISER. I am not so sure, Mr. Daniels.

Mr. DANIELS. You are not so sure?

Mr. SPEISER. No.

Mr. DANIELS. Well, on hard-core pornography would you permit your children to read it?

Mr. SPEISER. No, but there is a lot of things I would not permit my children—may I continue?

Mr. DANIELS. Let me go on, first. Would you permit that type of material to come into your home unsolicited?

Mr. SPEISER. Yes.

Mr. DANIELS. You would?

Mr. SPEISER. Yes.

Mr. DANIELS. Would you permit your minor children to read it?

Mr. SPEISER. No, but there are lots of things I would prefer my minor children not to read. For one thing, I don't think they would read it.

Mr. DANIELS. If they did what then?

Mr. SPEISER. Well, let me get back. The mere fact that I, as a parent, have a preference as to what my children should read, my children should see, and my children should do, does not mean I want the Government to come into the picture on what may be printed and what may be distributed. I think these are two different questions.

Mr. DANIELS. What are the duties of a parent?

Mr. SPEISER. Those are the duties of a parent, I assume.

Mr. DANIELS. And you feel there should not be any laws to regulate it, it should be merely left up to the individual parent to either prescribe or not prescribe what printed matter should be read by the children, but we should not have laws on this subject, is that what you are trying to tell me?

Mr. SPEISER. At the present time, under our present state of knowledge, I don't think that the laws that we have should exist until we establish this antisocial matter.

Mr. DANIELS. You didn't answer the question.

Mr. SPEISER. Would you please repeat the question?

Mr. DANIELS. I will let the reporter repeat it.

(The following question was read by the reporter:)

And you feel there should not be any laws to regulate it, it should be merely left up to the individual parent to either prescribe or not prescribe what printed matter should be read by the children, but we should not have laws on this subject, is that what you are trying to tell me?

Mr. SPEISER. I am saying there are laws that we have on the subject, as I say, in 49 out of the 50 States, and the Federal laws should have, in their enforcement, as part of their proof, a showing that there is some clear and present danger which is going to result in antisocial conduct, and as far as what my children get, if you have a combination of individuals, for example, giving written material to my children directly, I think that there can be laws framed, perhaps, and I am not sure, I think this could be done.

Mr. DANIELS. Well, may I ask what your reaction would be if this should take place, and I might say that since your appearance here last Thursday I happened to run into this situation, which is a matter of fact situation, on my return to my district, when it was brought to my attention, that a 14-year-old child, through the mails, unsolicited, received a letter enclosing a photograph of two nude women and—off the record.

(Discussion off the record.)

Mr. DANIELS. Now, this was sent to a 14-year-old child. The parent apparently was made aware of the receipt of this letter through the mail. Do you feel, as a parent, that you have no right to oppose this situation, that this type of material unsolicited should come into your home?

Mr. SPEISER. No. I would not like material of that kind to come into my home. There is, as mentioned by the two representatives of the Post Office Department, a law presently in effect by which you can put a stop order in to prevent material from certain mailers

to come into the home. That does exist. I am not sure how effective it is, but it does exist in the law.

Mr. DANIELS. I take it from what you have said here in both of your appearances that a commission should not be established to study this problem, that first there should be a scientific study between the causal relationship of the reading of this type of material and the commission of a crime, its effect upon the human mind, whether it be a minor child or adult, is that right?

Mr. SPEISER. That is right.

Mr. DANIELS. In other words, there has to be a scientific study and without a scientific study we cannot resolve the problem?

Mr. SPEISER. I don't think you can resolve the problem unless you know more than you know at the present time, Mr. Daniels.

Mr. DANIELS. Why cannot society establish certain rules and regulations as to what it deems a proper course of conduct and what is not a proper course of conduct?

Mr. SPEISER. It can, but when you are getting into the first amendment area you have a difficult problem in a free society and you cannot control it by talking about course of conduct.

Mr. DANIELS. As an attorney member of the Civil Liberties Union, does it present a question for the courts to determine?

Mr. SPEISER. Yes.

Mr. DANIELS. And, unquestionably, you would be bringing the matter to the court?

Mr. SCHEUER. Will you yield?

Mr. DANIELS. Yes.

Mr. SCHEUER. Do you see a distinction between having laws that regulate criminal activity and laws that regulate distasteful or unusual activity? I am concerned by the question my colleague just asked and it seems to me that a law regulating activity, say, as to the "beatniks," the guitar players, harmonica players, guys that walk the streets in their blue jeans, it would tend to preclude unusual activity rather than activity that was defined as being criminal by statute, and I would be very concerned about that kind of regulation.

Mr. SPEISER. I am concerned about the distinction you have just drawn, Mr. Scheuer, as well as a third distinction, laws or governmental action, and this is the problem for a commission of this kind, which affect the flow of written material. I think there are those three distinctions, three to be drawn, and they cannot all be lumped into the same basket.

Mr. SCHEUER. Who can define what proper activity is?

Mr. SPEISER. I don't know. You are running into a vacant question in that area and in this area as well. How do you define what we are talking about so that an individual should know they should not engage in it and how you can engage in prohibiting people, since you are in a free speech and press area? How do you prevent people from inhibiting themselves from what they say because of apprehension of what might be done?

Mr. DENT. Have we ever decided anywhere at any time what obscene language is so that you can eject a person from a conversation or group of persons if he is using obscene language? Is there such a thing as obscene language?

Mr. SPEISER. I think there is, but you have an additional factor in that situation. I think there is a difference between someone in a

public gathering using language that is not ordinarily used and it may be obscene or it may be a wide range of things.

Mr. DENT. I am talking about the word "obscene." That seems to be the word here.

Mr. SPEISER. Well, the usual way of handling it is to use a number of synonyms which explains nothing. It is "talkological."

Mr. DENT. Do you see any difference between a word expressed orally that describes an immoral relationship between two persons and then having that same word printed in a book?

Mr. SPEISER. I can see a great deal of difference.

Mr. DENT. You do?

Mr. SPEISER. Yes. I think especially the court was saying, in the whole free speech and press field, they talk about current and present danger. You look at all the factors, the language you might use with a group of men may be entirely inappropriate in a public forum. The language may be different than that used in certain books. I think you have to look at a wide range of factors.

Mr. DENT. I agree with you except you go to an Elks smoker, for instance, you might have a moving picture that was made in some shack some place and have distasteful acting presentation, and if that is held at a smoker there is no person that would see it except those there, but would you say that same picture would have the same standing if you show it to a group of girls in a sorority?

Mr. SPEISER. I think not. My personal view is I think we may be going to a variable standard of obscenity which might be very well true.

Mr. DENT. That is correct. That is what I was driving at awhile ago. There was variables. Of course, we know when a person is reaching maturity if he wants to buy this magazine and look at it that is his business, but if he takes the same magazine and gets three or four youngsters around and shows them the magazine, then I say there is room for law.

Mr. SPEISER. That is right.

Mr. DENT. There may not be, but I think there is.

Mr. SPEISER. That may well be, but what I am saying is, what you don't know is what kind of reaction the children are going to have. They may be repulsed; they may consider it an annoyance or not anything.

Mr. DENT. But that is not the point. The point is if a person buys candy that is not a crime, but if he takes the candy to get some 7-year-old girl in an automobile to commit a crime with, then the buying of the candy itself was not a crime to begin with, but you can't prove it in court and I won't want to call it a crime, but do you know there is no rule here to draw some kind of barrier about how to disseminate the stuff and where it goes to and who has it, like the pictures he is talking about?

Mr. SPEISER. I have to be able to define what we are talking about and it seems to me when you are trying to define these barriers you have to know what the results are going to be, and that is something you don't know.

Mr. DANIELS. At that point, Mr. Chairman, why can't we say that it would be the effect that it would have upon the ordinary and reasonably prudent individual as we so often say in the law?

Mr. SPEISER. Prudent individual. A child or adult?

Mr. DANIELS. Let us take adults now at the present time.

Mr. SPEISER. Because we don't know what the effect is.

Mr. DANIELS. We believe that is a jury question, that is a jury question, because, as you see a point, and we can be looking at the very, very same object, you can draw one conclusion and I, as an ordinary, reasonably prudent person, which I think I am, may come to a different conclusion and therefore we leave it to a jury of 12 persons to determine what effect it has upon them.

Mr. SPEISER. Well, the trouble with that is, and there are two answers, and one is that the Supreme Court said, in trying to determine, even using the *Roth* test, you use a national standard.

Mr. DANIELS. What is a national standard? Can you define it?

Mr. SPEISER. I can't define it, no.

Mr. DANIELS. That case had led to more confusion in the law and to less vigorous prosecution in these cases than anything else.

Mr. DENT. Justice Warren said there is no provable national standard.

Mr. SPEISER. I quite agree, but all I am saying is that your suggestion of having the 12-man standard which is presumably a local community standard is also unacceptable.

Mr. DENT. You look for every other activity in the United States?

Mr. SPEISER. But, Mr. Dent, we are in a free speech area, we are in a free speech area. You have a prohibition.

Mr. DENT. But you can't use that free speech where you want to.

Mr. SPEISER. There may well be places where you can.

Mr. DENT. You can't walk into this room and start lewd and loud talk.

Mr. SPEISER. Or unlewd and loud.

Mr. DENT. Yes, you could if the chairman says so, but if it is lewd you could stop him. Yes, he has the right of free speech and in his opinion it is not bad, he is limited in his vocabulary, he only knows these words.

Mr. SPEISER. But if someone walked in and started using loud language you could have him arrested for disturbing the peace, disturbing a committee of Congress. Lewdness may be more horrendous, but the fact is it is disturbing, it is something that is being done, but we are not talking about that, but written material not involving contact with human beings.

Mr. DENT. It is not only written, we are talking about the whole field and a lot of this stuff is not written at all but it just gives pictures and stuff of this nature and the availability of it is a problem. It is increasing in availability. It is getting worse and if it will multiply 10 times in the next 6 months, if so, where will it reach, who will it reach? The adults? They are not reaching the adults. The sale of this material is not to the adults.

Mr. SPEISER. Here the material is produced for commercial purposes that you're most concerned about and adults have the money to buy it. Children, in general, do not have the money and as far as any free material, I think, think this is a very spotty kind of phenomenon and in general we are talking about a commercial enterprise.

Mr. DENT. Getting away from that, records are made for commercial distribution but who buys most of them? Don't tell me adults buy most of the records. I haven't bought one in 5 years, but my kids have bought hundreds. Where they get the money, of course, is another question. I pay for them.

Mr. MEEDS. Mr. Chairman, may I ask a question?

Mr. DENT. Yes.

Mr. MEEDS. You said awhile ago, admitted that under certain circumstances a person could be arrested for obscenity, for uttering obscene words in public. So that we talk about the same thing, let us make an example. Say that a person is cursing violently on the street, I don't mean shouting but just cursing in a crowd on the street, under those circumstances and using the four-letter words, I won't use, but I think we are referring to the same thing, do you think that person would be subject to being arrested for uttering obscene words?

Mr. SPEISER. I think he could be. I think the Supreme Court has had something like this in *Chaplinsky v. New Hampshire* in which there is a factor different than the whole area of written material, which is the personal contact where you have the expression of "fighting words," I think was the term the Supreme Court used, that when you say things publicly to two individuals and it is sort of a person-to-person contact, there is a chance of physical contact breaking out. This is an additional factor that can be held, it seems to me, by the present laws that we have.

Mr. MEEDS. Is this based on the clear and present danger doctrine?

Mr. SPEISER. Yes; the assumption that words spoken by one individual to another that are insulting to that individual, whether they happen to be lewd or have a sexual connotation or fighting words or insulting words, may end up in operating on that basis, by looking at the circumstances and what is said and who says it and who hears it, you determine there is a clear and present danger.

Mr. MEEDS. Ultimately, to come back to your main thesis of your testimony, it is necessary to establish a clear and present danger of inciting to commit a crime and unless this Commission can do this you would be opposed to it, unless that is the main function of this Commission, you would be opposed to it, am I summing up your testimony?

Mr. SPEISER. Yes, you are and I am grateful for your doing it because I think what I have presented has not been stated in such succinct fashion.

Mr. MEEDS. That does not deal at all with the laws we have on the books where we have definitions of obscenity and have, as Mr. Daniels brought out, the question of fact decided by a jury as to whether it is obscene, does it? It doesn't even touch those things?

Mr. SPEISER. It may not, but I am not sure we have definitions of obscenity and I think if you are getting into study of the laws that we presently have on the books they are in need of study but the study is such that we have this situation.

Mr. MEEDS. The laws of obscenity?

Mr. SPEISER. Yes.

Mr. MEEDS. I agree with you wholeheartedly and I hope the committee can make some suggestions.

Mr. SPEISER. But the purport of the bill is study in order to make them stronger to suppress traffic, as far as I read your purpose, and I am suggesting there is a necessity for studying laws to see if they have a desirable affect on the society or a causal relationship that exists between the laws and what they are trying to do or the question of whether they are defined in such terms so a man can understand them.

Mr. ANDREWS. Will the gentleman yield?

Mr. MEEDS. Yes.

Mr. ANDREWS. The Commission itself, even if it has recommendations that it will pass no laws or will not make an effective law, whether it is instructive or not, it certainly may lead to some new thought. You don't have to get one of these committees to do anything as far as the national law is concerned. Is your primary concern that this will ultimately end up in sort of an attempt to define really national consensus of what is obscene and what is not, or would it be strictly an arbitrary one as all national consensuses are, with one extreme and the other, that you arrive at something right in the middle it would be ineffective?

Mr. SPEISER. My concern is that if you pattern the Commission, that with a Commission of this kind with the stated purpose, there is no indication it won't end up as a kind of censorship in which they are going to examine written materials and other kinds of communications and expressions and make determinations that those are obscene and should be suppressed and to try to coordinate governmental agencies in suppressing the material, and this Commission will engage in activities of this kind.

Mr. ANDREWS. You are afraid this Commission will develop an idea which will lend its weight to an authority and finally be converted into law?

Mr. SPEISER. Like informal procedures, and this is the way many of these commissions or most of the commissions which have been established with purposes of this kind which have ended up in this fashion, all with informal procedures, with no hearings or rights or anything, have ended up that way, and I feel justified in having the fears I have about this Commission with the purposes it has.

Mr. DENT. Will the gentleman yield? I would propose legislation immediately if I thought for one minute this Commission had, anywhere in its creation, the right or that it would end up in the manner that you suggest with informal, formal, or any other method of approach, establish any kind of censorship. The only thing this Commission is created to do is to make a study and report to the President of the United States on whether there is an increase in this particular type of material, whether it ought to be suppressed, in their opinion, because of the nature of it, but only to the President and to the Congress, and before any law is passed, any regulation is passed, the President himself cannot regulate without a law of Congress so your Civil Liberties Union would have a crack at it, the publishers would have a crack at it, everybody would have their opportunity to appear before the congressional committees to oppose, and I am sure Congress, as it usually does, would be acceptable to the vast majority of the people and write only what is acceptable to the majority of the people.

I don't believe the Commission will do what you say and if it does we are going to change the language.

Mr. SPEISER. Mr. Chairman, I read the Granahan committee record and the Gathings report, and they ended up the way I have suggested and if you can suggest language which would prevent that kind of thing from happening, then I think you will have accomplished a great deal, almost as much as defining "obscenity."

Mr. SCHEUER. Can you suggest such language for us?

Mr. SPEISER. I did suggest the language utilized in the prior bill which it seems to me would be the necessary or desirable thing in

establishing the Commission to investigate the causal relationship. I gave to the reporter the language of the bill, H.R. 11454, the 86th Congress. I might suggest that language.

Mr. SCHEUER. Let me go one step further. Apart from the causal relationship and apart from the question of clear and present danger, and considering the reference you made to the variable standard, would you consider that we have enough knowledge now that you can take this, or that a normal person could peruse the material we have here and we can establish some kind of judicial knowledge that this material is not tasteful for minors and would you consider that we might rest with the present standards of our knowledge, without any regard to a cause-and-effect relationship, whether the distribution of this material could be limited so far as making it available to minors is concerned, would you consider that a freedom of speech problem is here?

Mr. SPEISER. Yes.

Mr. SCHEUER. A serious one?

Mr. SPEISER. Yes, I think so, because you are going to have to, in some fashion, define what it is you don't want the minors to have, and I think you do have a problem on that. Your judgment may differ from mine or it may differ from the court's or jury's or it may differ from the national standard. You still have that problem even though you are talking in terms of only being concerned about distribution to minors.

You still have to determine in some fashion what it is you are talking about you are not going to do.

Mr. SCHEUER. That is all.

Mr. DANIELS. According to what you have just said, there is no clear-cut definition on what may be described as pornography or obscenity?

Mr. SPEISER. I think that is right.

Dr. DANIELS. Now, representatives of the Post Office Department were here and presented certain statistics to the effect that they conducted so many prosecutions and had obtained a certain number of convictions. How do you justify convictions in these cases if you do not have any definitions or descriptions of what is obscenity?

Mr. SPEISER. Mr. Daniels, at the moment we happen to have the definition that the Supreme Court made in the *Roth* case and substitute cases which you yourself felt was unsatisfactory, but it is the definition being utilized now for the prosecutions.

Mr. DANIELS. The point I am getting at is, there have been some convictions in handling cases dealing with the question of pornography or obscenity.

Mr. SPEISER. Yes, but the proof of the difficulty in applying the definition is shown by the fact that the same book may be found nonobscene in one jurisdiction and obscene in another. This has been true for the "Tropic of Cancer," for example, until the Supreme Court decided by 5 to 4 it was not obscene, and "Fanny Hill," and "Ulysses," and I can name any number of them.

Mr. DENT. Is it not also true one other person, take the fifth person, if he felt the other way we would have accepted it as being obscene? That is important.

Mr. SPEISER. Yes, but the point there is here you define something as being obscene by the vote of one person. You can read it if it goes one way and you can't read it if it goes the other way.

Mr. DENT. And tomorrow if another person is named to the Supreme Court and is tried, as we have had with the *AAA* and *Dred Scott* case, and many cases, the Supreme Court changes its opinion. Here is the thing that is strong in my mind, the very people who publish it have an awareness themselves of something wrong in the idea of publishing it for this reason: It is very simple. Here they have the outside picture and they cover the person here with these words, you notice that across certain parts of the person they put the printed matter.

Here, they do the same thing. Evidently, there must be some kind of a reaction on their own as to this display which made them do this. Until you get inside the book you don't see the real thing. Why didn't they just leave this uncovered here and put it on the newsstands that way? Why, if they felt this was a proper thing for everybody to see and read, why didn't they put it up bare as it is shown on the inside?

Mr. SPEISER. Because not everything is proper for everyone to read. There is a wide range.

Mr. DENT. Well, it is only improper on the outside but it is proper on the inside. I am just saying this.

Mr. SPEISER. That may or may not be.

Mr. SCHEUER. This may be the one slim example we have seen of some wisp of good taste on the part of publishers. If anybody wants the prurient stuff they buy it but the people passing the newspaper stands, including minors, don't have to be exposed to it. I am sure our chairman doesn't want to accuse these people of even the faintest glimmer of good taste of what is appropriate, but that may be some beginning of ethics.

Mr. DENT. Well, this is applicable to the sales.

Mr. SCHEUER. It is quite true on the inside pages they do not cover the bodies at all, and if it has to be exhibited on the stands I think it is more appropriate that it be exhibited that way than in the fashion that it is shown, and the inside pages.

Mr. SPEISER. Yet, there are other magazines that don't have the blank parts, which are nonobscene, and have been determined to be so by judicial determination, that the human body, as such, is not obscene.

Mr. DENT. No; it is not obscene. I agree it is not obscene. It is a question as to whether or not we have this situation. I don't know whether it is obscene or not. I know in my house we all go around the place dressed up.

Mr. SCHEUER. In my house, we don't. Maybe that is the nature of the problem.

Mr. DENT. I don't know. It is a problem everybody has to face. The only thing is if we can look into the matter and see if there is something that should be done and, if it should, can it be done? If it can't be done, it won't be done, and if it shouldn't be done, we won't try it. At least we ought to try with the number of complaints coming in on the subject, we ought to try; it shows there is a definite feeling on the part of some people. If some are fanatics, religious bugs, maybe it is so, but even so they have rights. Their right is just as strong a

right as the right of petition of a person who is not considered to be a nut or a fanatic and I think an official should have the responsibility of looking into all the complaints. Congress felt that way on prohibition, that just because people felt a certain way about intemperance, it should not be forced on all and eventually this straightened itself out, but you have to keep after them because of people who glory in money and who, it has been proven throughout history, have no inhibitions.

If this is a \$2 billion business, it ought to be looked into, and I want to thank you for coming. I do thank you and, I think, you have added a lot to our deliberations. I know you have given us a tremendous amount of room for thought, I know you have given me a great deal of room for thought and certainly it will be helpful to us in our deliberations in a review of the testimony, and we expect to have the Department of Justice and they probably will give us other reasons to look into it more carefully.

Mr. SPEISER. Thank you very much for your time.

Mr. DENT. Thank you, we are in recess.

(Whereupon, at 12:05 p.m., the committee adjourned, subject to the call of the Chair.)

TO CREATE A COMMISSION ON NOXIOUS AND OBSCENE MATTERS AND MATERIALS

TUESDAY, SEPTEMBER 14, 1965

HOUSE OF REPRESENTATIVES,
SELECT SUBCOMMITTEE ON EDUCATION
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2175, Rayburn House Office Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Present: Representatives Dent, Daniels, Hawkins, Mink, Meeds, and Andrews.

Staff members present: Robert E. Vagley, director of subcommittee, and Charles Radcliffe, special education counsel for minority.

Mr. DENT. The Select Subcommittee on Education will now come to order for hearings to be held on H.R. 7465. The first witness this morning is Mr. Fred M. Vinson, of the U.S. Department of Justice. Fred, we are glad to have you and hope we can get the necessary information to help us in our study of this particular subject.

STATEMENT OF FRED M. VINSON, JR., ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. VINSON. Thank you, Mr. Chairman and gentlemen. I am very pleased to be with you this morning. I have filed with the clerk a statement and, with the chairman's and the committee's permission, I would like to highlight that statement, if I may.

Mr. DENT. We want you to proceed in any fashion that you think would give us the best benefit.

(The statement referred to follows:)

STATEMENT BY FRED M. VINSON, JR., ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. Chairman, H.R. 7465 would create a commission consisting of 16 members appointed by the President. The duties of the Commission would be to explore methods for combating obscenity at the various levels of Government responsibility; to improve coordination among Federal, State, and local authorities; to awaken the public to the problem; to secure the voluntary cooperation of leaders in each of the mass media; to make recommendations for legislative, administrative or other desirable forms of action; and lastly, to analyze existing statutes and recommend appropriate revisions for congressional consideration. The Commission is to complete its work and report its findings by January 31, 1966.

The authority of the Federal Government to regulate obscene materials is based upon the Federal power over the mails and over interstate and foreign commerce. Federal criminal statutes proscribe the mailing, importation, and interstate transportation of obscene matter. The Justice Department operates within this framework in the fight against obscenity.

The Department has no authority to restrain the possession, sale, or promotion of obscene material by local retailers. While we can and do act against individual and corporate distributors, we have no direct control over their publications. A successful criminal prosecution does not prevent local outlets from selling inventory on hand. It does not always promptly cut off the stream of obscenity that flows from the publisher's presses through the channels of distribution and into the marketplace. Criminal process can be relatively slow. Cases against large, well-financed distributors usually involve extensive grand jury investigations, pretrial motions, interlocutory review, continuances, lengthy trials, and time-consuming appeals. The entire process can take 3 years or longer. In fact, by the time the defendant's conviction is affirmed—if it is affirmed—the materials named in his indictment may even be out of print.

I do not mean to suggest that Federal criminal prosecution is ineffective. In the majority of minor cases it yields relatively rapid results. Moreover, if large commercial distributors are to be ultimately restrained, Federal criminal prosecution provides the most direct means of doing the job. What I do wish to suggest is that Federal action is only one weapon in the arsenal available to us. The Justice Department's efforts must be supplemented by efforts at State and local levels.

State authority in the area of obscenity control is based upon the State's relatively broad power to protect the health and morals of its citizens. Consequently, State and local governments are best able to tailor civil and criminal forms of action which are effective to combat the local sale of obscene materials. In addition, localized law enforcement is apt to be far more rapid than Federal criminal action. Therefore, it is more immediately effective in keeping obscene matter out of the hands of youngsters.

For these reasons there should be an appropriate division of effort among Federal, State, and local authorities. Mass producers and distributors of obscenity can be effectively combated only through the exercise of Federal power. Recognizing this, the Department of Justice has directed most of its attention to this nationwide traffic. At the present time, for example, we have six cases pending against leading distributors of pocket book pornography. A seventh case, now before the Supreme Court, involves a large magazine publisher. Investigations of other major distributors are currently underway.

Supplementing these major efforts are continuing prosecutions of smaller dealers and less consequential offenders. In the 4 fiscal years from 1961 to 1964 the number of obscenity cases concluded by the Department more than doubled. I would like to present for the record a schedule of performance by the Department of Justice showing prosecutions and convictions of individual defendants from fiscal 1961 through fiscal 1964:

Fiscal year	Total	Not convicted				Convicted and sentenced			
		Total	Dis- missed	Acquitted by—		Total	Plea	Convicted by—	
				Court	Jury			Court	Jury
1961.....	159	24	19	3	2	135	125	5	5
1962.....	224	26	17	3	6	198	174	12	12
1963.....	321	42	34	6	2	279	259	13	7
1964.....	333	50	46	1	3	283	261	11	11

Whatever our efforts in prosecuting pornographers, there will always be those who take issue with our prosecutive decisions. To them I would say: "We, as prosecutors, must work with what we are given by the Congress and by the courts." We are aware that there is much in the marketplace which many find offensive. But only if material meets the strict constitutional standards of obscenity may criminal action ensue.

There are many ways of combating obscenity. Probably the best of these is effective action by local authorities. The possibilities for local involvement have always existed but they have not always been realized.

Regardless of what methods of attack are available for combating obscenity, there can be no effective control unless there is effective enforcement. We, who are engaged in restraining obscene material, have to be sensitive to the constitutional guarantees of free speech and press which we are bound to uphold. It is true that obscenity is not protected by the Constitution but until there is a

judicial determination that material is obscene, it must be afforded all the constitutional safeguards to which protected speech is entitled. Supreme Court decisions on obscenity have laid down stringent procedural requirements governing enforcement activities. These procedures can and must be followed if abortive prosecutions are to be avoided. As Chief Justice Warren has observed:

"* * * [C]ourts are often presented with procedurally bad cases and, in dealing with them, appear to be acquiescing in the dissemination of obscenity. But if cases were well prepared and were conducted with appropriate concern for constitutional safeguards, courts would not hesitate to enforce laws against obscenity" (*Jacobellis v. Ohio*, 378 U.S. 184, 202).

Within the Justice Department, we have utilized intradepartmental publications to alert U.S. attorneys to the procedural and substantive difficulties which abound in the law of obscenity. We also render extensive assistance, where necessary, in individual cases. There should be some comparable program of assistance at State and local levels.

In *Roth v. United States*, the Supreme Court held that obscenity was not within the area of constitutionally protected speech or press and that it could, therefore, be proscribed. Our obscenity laws are premised upon the belief that obscenity is harmful. But there is no consensus as to the nature of that harm. Nor do we possess scientific data telling us how the harm occurs.

Operating in this factual vacuum, the Supreme Court defined obscenity as best it could. Its definition is the now famous *Roth* test: Whether to the average man, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.

The judgments required by the *Roth* test are qualitative judgments; and since legal obscenity is a matter of degree, they are difficult judgments. Their difficulty is reflected in the number of ambiguous judicial opinions which have been handed down since *Roth*. Mr. Justice Stewart must have had these in mind when he conceded that it is possible to read the *Roth* decision in a number of ways. For its part, the Supreme Court has recognized that the present test is not perfect; but it believes that any substitute would raise equally difficult problems.

As prosecutors, we in the Department of Justice have continually had to cope with the vagaries of the law of obscenity. Out of our work has grown the conviction that society needs to develop scientific data measuring the effects of obscene matter. Such data would clarify the premises underlying our obscenity laws. It would also enable us to accurately describe what it is we are prohibiting. The impact of these two contributions on our thinking on obscenity would be tremendous.

I am pleased to say that the Department of Justice has done more than merely perceive a need. At the present time, we are exploring with the Department of Health, Education, and Welfare a proposal for conducting a scientific study on the effects of obscenity. It is our hope and our intention that this joint exploration will lead to a thorough consideration of the problem; for we recognize that only through painstaking research can we obtain useful scientific results. The study we are planning will be a long-term effort, but a necessary one.

So long as the Commission's activities comport with existing constitutional standards for the identification and proscription of obscenity, we believe that its work could be in the public interest. However, it is too late in the session to expect enactment of H.R. 7465. In view of the scientific study now being considered in the executive branch, this subcommittee may wish to consider deferring action on H.R. 7465 until the next session of Congress convenes. By that time we should be able to inform this subcommittee of the scope of the proposed study and of our progress in implementing it.

Mr. VINSON. As the committee knows, the authority of the Federal Government to regulate obscene materials is based on the Federal power over the mails and over interstate and foreign commerce. The Federal criminal statutes proscribe the mailing, importation, and interstate transportation of obscene matter. The Justice Department of necessity operates within this framework in the fight against obscenity.

The Department has no authority to restrain the possession, sale, or promotion of obscene material by local retailers. While we can and do act against individual and corporate distributors, we have no direct control over their publications. A successful

criminal prosecution does not prevent local outlets from selling inventory on hand.

It does not always promptly cut off the stream of obscenity that flows from the publisher's presses, through the channels of distribution and into the marketplace. As we all know, criminal process can be relatively slow. Cases against large, well-financed distributors usually involve extensive grand jury investigations, pretrial motions, interlocutory review, continuances, lengthy trials, and time-consuming appeals. The entire process can take 3 years or longer. In fact, by the time the defendant's conviction is affirmed, the materials named in his indictment may even be out of print.

I do not mean to suggest that Federal criminal prosecution is ineffective. In the majority of minor cases it yields relatively rapid results. Moreover, if large commercial distributors, as opposed to your fly-by-night distributors, are to be ultimately restrained, Federal criminal prosecution provides the most direct means of doing the job. What I do wish to suggest is that Federal action is only one weapon in the arsenal available to us. The Justice Department's efforts must be supplemented by efforts at State and local levels.

State authority in the area of obscenity control is based upon the State's relatively broad power to protect the health and morals of its citizens. Consequently, State and local governments are best able to tailor civil and criminal forms of action which are effective to combat the local sale of obscene materials. In addition, localized law enforcement is apt to be far more rapid than Federal action. Therefore, it is more immediately effective in keeping obscene matter out of the hands of youngsters and others.

For these reasons there should be, and I believe there is to some extent, an appropriate division of effort among Federal, State, and local authorities. Mass producers and distributors of obscenity can be effectively combated, however, only through the exercise of Federal power.

Recognizing this, the Department of Justice has directed most of its attention to this nationwide traffic. At the present time, for example, we have six cases pending against leading distributors of pocket book pornography. A seventh case, now before the Supreme Court, involves one of the large magazine publishers. This case, incidentally, is calendared for October. Cases are underway against other publishers also.

It was interesting for me to note that one of your witnesses on September 2 was asked to identify the largest publishers and distributors of pornography, and I am pleased to say that all but one of those identified are currently under indictment.

Supplementing these major efforts are continuing prosecutions of smaller dealers and less consequential offenders. In the last 4 fiscal years from 1961 to 1964 the number of obscenity cases concluded by the Department has more than doubled. I would like to present for the record a schedule of performance by the Department of Justice showing prosecutions and convictions of individual defendants from fiscal 1961 through fiscal 1964.

I shall not read this chart for the committee, but I would like to point out that, in 1961, there were 159 prosecutions as opposed to 333 in 1964. The number convicted in 1961 was 135. The number convicted in 1964 was 283.

Whatever our efforts in prosecuting pornographers, there will always be those who take issue with our prosecutive decisions. To them I would say—we, as prosecutors, must of necessity work with what we are given by the Congress and by the courts. We are aware, greatly aware, that there is much in the marketplace which many find offensive. However, you must also remember that only if material meets the strict constitutional standards of obscenity may criminal action ensue.

Regardless of what methods of attack are available for combating obscenity, there can be no effective control unless there is effective enforcement. We who are engaged in restraining obscene material have to be sensitive to the principles by which we are bound and which, when we take our oath, we are bound to uphold. It is true that obscenity is not protected by the Constitution but until there is a judicial determination that material is obscene, it must be afforded all the constitutional safeguards to which protected speech is entitled. Supreme Court decisions on obscenity have laid down stringent procedural requirements governing enforcement activities. These procedures can and must be followed if abortive prosecutions are to be avoided.

Within the Justice Department we have utilized interdepartmental publications to alert U.S. attorneys to the procedural and substantive difficulties which abound in the law of obscenity. We also render extensive assistance, where necessary, in individual cases. There should be some comparable program of assistance at State and local levels.

In *Roth v. United States*, the Supreme Court held that obscenity was not within the area of constitutionally protected speech or press and that it could, therefore, be proscribed. Our obscenity laws are premised upon the belief that obscenity is harmful. But there is no consensus as to the nature of that harm. Nor do we possess scientific data telling us how and when the harm occurs.

Operating in this factual vacuum, the Supreme Court defined obscenity as best it could, and, in later decisions, the Court has recognized that its definition is not perfect, but its definition expressed in the famous *Roth* case is: Whether to the average man, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.

The judgments that this test requires are qualitative judgments; and since legal obscenity is a matter of degree, they are difficult judgments. Their difficulty is reflected in the leading Supreme Court decisions. I don't know of any leading Supreme Court obscenity case in which more than three justices concurred in any one opinion. Mr. Justice Stewart must have had these cases in mind when he conceded that it is possible to read the *Roth* decision in a number of ways. For its part, the Supreme Court has recognized, as I said, that the present test is not perfect; but it believes that any substitute would raise equally difficult problems.

As prosecutors, we in the Department of Justice have continually had to cope with the vagaries of the law of obscenity. Out of our work has grown the conviction that society needs to develop scientific data measuring the effects of obscene matter. Such data would clarify the very premises which underlie our obscenity laws. It would also enable us to accurately describe what it is we are prohibit-

ing. The impact of these two contributions, if they are possible, would be tremendous.

I am pleased to say that the Department of Justice has done more than merely perceive a need. At the present time, we are exploring with the Department of Health, Education, and Welfare a proposal for conducting a scientific study on the effects of obscenity. It is our hope and it is also our intention that this joint exploration will lead to a thorough consideration of the problem; for we recognize that only through painstaking research can we obtain truly useful scientific results. The study we are planning will be a long-term effort, but a necessary one.

In summary and with particular respect to H.R. 7465, so long as the Commission's activities comport with existing constitutional standards for the identification and proscription of obscenity, we believe that its work could be in the public interest. However, it may very well be that it is too late in the session to expect enactment this fall. In view of the study now being considered in the executive branch, this subcommittee may wish to consider deferring action on H.R. 7465 until the next session of Congress convenes. By that time we should be able and would be most happy to inform this subcommittee of the scope of the proposed study and of our progress in implementing it.

Thank you, Mr. Chairman,

Mr. DENT. Thank you, Mr. Vinson. I would like to start off by saying that the main reason for asking the Department to have a witness here this morning was because, throughout the hearings to date from the record of previous considerations of this particular study, we find that the problem seems to always end up in a matter of prosecution.

There appears to be little doubt that there is a mass of obscene literature and material available for any person wanting it. In fact, in your own testimony when you say that the Department of Health, Education, and Welfare, in conjunction with your Department is conducting a scientific study on the effects of obscenity, evidently there must be obscenity or you would not be able to conduct a study on the effects of obscenity.

Then don't you go right back to the situation where you have to have a problem to decide in the beginning of what you are going to study the effects of? If it is difficult, as all witnesses say, to define obscenity, how then do you study the result of something that you cannot define? What is obscenity?

Now, you also say that, so long as the Commission's activities comport with the existing constitutional standards for the identification and proscription of obscenity, there is hardly any reason for the Commission to exist because it is so proscribed that the convictions you note and the many cases the Department has had to have proven that something new has to come into the matter of prosecution unless we have to admit that we have reached the state of affairs where, in all of our advanced studies and intelligence and advancement in the progress of human relations, we have to give up on this particular subject, not through the fact that we will not admit that it is wrong but from the fact that we cannot describe it.

As you know from your own experience, the minute that you get into this, those who may be well-wishers but sometimes are crackpots

flood you with a lot of material just causing you to wonder where is the source of all this.

Here is an advertisement right here in Washington, D.C.: "Summer Reading From G.B.S." It is "A Beginner's Guide to Cruising." I thought it was yachting, but I find from the picture on it that it is a little far away from fishing or hunting or the other kind of cruising that we think about. This is a complete invitation to some person to buy a book for \$3 on how to become one of these cruisers.

From a very quick reading of the thing, it is something that would arouse in a person the idea of, What is this? What are we into? What can we do about that?

Mr. VINSON. Well, obviously, I cannot say because I haven't seen it, Mr. Chairman.

Mr. DENT. Take a look at it. Here is this public advertising. You buy it through the mail, order the book through the mail.

We are just trying to find out whether or not there is anything that can be done under existing law. If there is not, we want to know whether or not the Department has any idea of what kind of law we ought to have.

Mr. VINSON. Well, as the chairman realizes, I am sure, this is not a very good forum for making prosecutive decisions.

Mr. DENT. But we have to depend on the Departments. When we want advice on education, we go to HEW. When we want advice on labor, we go to the Department of Labor. Now we are trying to find out if there is such a thing as a menace from obscenity and, if there is a menace, what do we do by legislative action to curtail it. We have to go to the Department of Justice. We have no place else to go.

Mr. VINSON. Let me point out one of the principal problems in something like this. The *Hornick* case some years ago enunciated the view that you could prosecute an advertisement that leered and winked and promised something obscene. However, that doctrine has been eroded to the extent that it is no longer the law.

To get at something like this, you would have to get the underlying material, the book that it advertises. If we felt the book was obscene, then we could certainly prosecute the advertiser.

In other words, Mr. Chairman, we find that we also get a great deal of material like this and we are always careful to investigate the underlying material. We find that in most cases the underlying material does not live up to the leer and the wink in the advertisement.

Mr. DENT. But does not the advertisement itself appear to be the culprit in the case and not the material offered for sale? Here is another. This came through the mail to a very fine contractor that lives on Mockingbird Hill in Irwin, Pa., and was sent to me by the police of the township of North Huntingdon, by the sergeant in the criminal division.

He asks a very important question. He says, "Our department would appreciate your assistance, suggestions, or guidance in how this type of thing can be further prosecuted or arrested."

Now, Members of Congress get many inquiries like this. We have no answers.

Now, as to this particular thing, I do not know what it is but it is sent to Crump, Inc., a contractor that was working on a high school, building a high school. He took it in and gave it to the school board and they turned it over to the police.

This offer will sell five films. From the descriptions given of the films, they would appear to be something pornographic. How is it possible to transport these films? What would he have to do? What do I tell this policeman? Do I advise him to have Mr. Crump send for the films? After he gets them, what does he do with them?

Mr. VINSON. Obviously, as I explained, I think someone does have to examine the underlying material before a prosecutive decision can actually be made.

Mr. DENT. He is waiting for word of what to do. They are waiting to do it because this is a residential community only. There is no industry there. The descriptions of the films are pretty bad to begin with. Suppose he orders one and turns it over to the police. Does he go to a local court? I notice that part of your testimony said that it may be the best place to prosecute.

Mr. VINSON. Yes. I am not so sure of that, with this kind of material, it would be the best place. I would suggest that something of this sort be sent to us. I think that we would have better facilities for looking into the underlying material.

Mr. DENT. That is my next question. When the individual sends for it and then has possession of it, would he be in jeopardy under the law of having in his possession this particular type of material?

Mr. VINSON. Assuming the material to be obscene, he would, in my judgement, have technically violated the law by taking the material from the mails. I think something like that is best left to law enforcement.

Mr. DENT. Then we are in a very peculiar situation. Here are local policemen who say they want to do something about it. I discussed it with our local district attorney. He said:

We have given up on the matter. We pick up things in stores from the merchandisers and the first thing you know the biggest and most expensive law firm in town is employed to defend the fellow and he doesn't try the case on the merits of pornography or obscenity, or the absence or presence of it. He tries it on the basis that they come into court under the wrong section of the law.

Of course, it is thrown out and the fellow is scot free and away we go again.

For instance, here is a sheaf of identical letters. This committee has sent out invitations to publishing companies who are the publishers of books and materials that were handed in as testimony. All of these are from one law office representing all different publishers, all in the area of Hollywood, Calif., and we cannot even get them in as witnesses because we have one man to deal with.

Mr. VINSON. I suspect you might not get them as witnesses because we have them under indictment, too. They might not be disposed to talk to you.

Mr. DENT. But, according to the record of indictments and according to your own testimony, by the time we get around to doing something about it their supply of the book that is in question will have been dissipated and put out into the bloodstream of the reading public, and then a new one would be up and you can't try him on the case that he had before because no evidence is available and, if it is available, he has already stopped publishing and a new publication is out.

Mr. VINSON. Mr. Chairman, that is true, but you must remember that when I speak of these people being indicted we are not speaking of seizures or taking the publications off the newsstand. We are

speaking of criminal indictments. For instance, two gentlemen who are among the largest publishers and distributors were convicted in Grand Rapids, Mich., some months ago.

Their case is now on appeal to the sixth circuit. The judge who sentenced them sentenced them to 25 years and 10 years, respectively, in addition to fines. I do not want to discuss the case in detail because it is on appeal and is still, in our context, an open case. But, assuming that the judgment of the court is affirmed, two of the largest disseminators of this trash will be unable to publish for a considerable length of time.

Mr. DENT. If these men were making bootleg whisky and you tried them for making bootleg whisky and they were guilty, would their product then be allowed to flow freely into the channels of distribution when you send them to jail?

Mr. VINSON. As the chairman is aware, bootleg whisky is confiscated and destroyed.

Mr. DENT. Why is it confiscated?

Mr. VINSON. Bootleg whisky is not protected by the first amendment.

Mr. DENT. Then, if it is protected by the first amendment, if this material is protected, how can you get indictments against these people that the material is in violation?

Mr. VINSON. It is a chicken or egg situation, I suppose, Mr. Chairman. Obscenity, obviously, is not protected by the first amendment but, in the area of free speech and free press the court has repeatedly held that there could be no prior restraints. There must first be an adjudication.

Mr. DENT. Maybe I am going into it in completely the wrong fashion. I am trying to say that these two men were convicted for violating some law.

Mr. VINSON. Yes, sir.

Mr. DENT. They were arrested first for producing or distributing, disseminating obscenity, in some fashion or form.

Mr. VINSON. But, Mr. Chairman, although they are indicted, they are still entitled to a trial and an adjudication.

Mr. DENT. We are satisfied with that but, now that you have convicted them, they were convicted because of a product they produced. If that product they produced was obscene, do you mean to tell me that we have no law that then confiscates and makes the illegal possession of this a matter of law?

Unless we are completely backward in our thinking, the men then go scot free because the material that they produced made them liable for indictment and conviction. You indicted and convicted them because they produced something that was, in the eyes of the law, bad, but the bad stuff still flows into the channels.

Mr. VINSON. You must realize that we have 49 different local laws on obscenity, but in many States I would imagine that under local laws, local authorities could confiscate material that had been adjudicated obscene.

Under title 39, section 4001 of our postal laws, I think the Postmaster could seize material adjudged to be obscene if that material was placed in the mail after the adjudication. However, as the chairman is aware, most of this trash moves by common carrier and not by mail.

Mr. DENT. This is from Winnetka, Calif. If this producer out in Winnetka, Calif., is arrested on complaint of producing pornographic materials and he is convicted and his material is found in Irwin, Pa., why would that be a matter of local confiscation and local prosecution? Why would it not be a matter for the Federal Government since it crossed State lines? It is not a local product. It is not a matter of local jurisdiction. It is a matter of Federal jurisdiction once it gets over State lines no matter how it got over.

Mr. VINSON. I am not aware of any statutory authority under which the Federal Government could go into Pennsylvania and seize such material.

Mr. DENT. Would it help in the prosecution of this stuff after the fact, not prior censorship or determination but after conviction, if we had statutory law to that effect?

Mr. VINSON. It is certainly a matter that should be explored, Mr. Chairman. As a matter of fact, I welcome the stimulation the committee affords in the area of statutory reform. We are not perfectly satisfied with the statutes that we administer.

They have some ambiguities. For instance, 1461 does not read exactly like 1465 and 1462. As a matter of fact, some months ago I assigned a project within the Criminal Division to take a look at our obscenity laws and see if we couldn't beef them up a little bit.

We get a great deal of mail, too, Mr. Chairman. I am aware of the sort of mail that you gentlemen receive daily.

Mr. DENT. I do not think anybody on this committee is a person with a closed mind in this field by all past history and records, but there comes a time when even the stoutest hearted amongst us has to realize that there is something amiss when so many thousands of our citizens are writing compelling letters and inquiries, and when police departments say that they are at a loss as to what to do, they have complaints from their teachers and school principals and complaints from the citizens, and they look to Congress to do something about it.

We have had many cities and investigations and none of them have gone too far in doing anything about it. It is difficult.

Here is the Washington Post, the weekly Sunday supplement. They advertise the "Illustrated Encyclopedia of Sex" and techniques of bringing complete gratification to the sex relationships, and things of that sort. Here is another where they advertise for sale a book of pictures of a boy in all poses, and it says, "provocative poses."

Then in this same magazine you find all kinds of advertising for materials that maybe, as you say, are nothing to amount to anything. Here is one on "Secrets of Sex and Marriage." That is right here in a supplement that goes into every home.

All we are trying to do is to find out if there is anything that can be done within the law to put the arm of the Federal Government into this area where so many citizens are becoming more aware of it than ever in the history of our country simply because there are more of us probably and it is easier to get this material.

We are not faulting any department. We are not faulting any of our local courts. We are not faulting the courts themselves but, if there is some manner in which we can add the weight of the Federal Government to what is admitted by both witnesses to be a very serious matter, that is all we are here for; and, if your Department as you say

has been taking a look at the obscenities statutes and will work with this committee in evolving some kind of a law that can be lived with on an even basis to help the local authorities work on this, that will be at least a step in the direction that we are aiming for.

Mr. VINSON. I agree with the chairman but I would also have to point out that we must always keep in mind the problems that are pointed out in the court decisions involving the first amendment guarantees. The chairman's remarks prompt a thought on my part. Obviously, the thrust of your remarks is that the Federal Government may be able to do more in this area.

I would also like to point out that in this area we should not have to rely solely upon Federal, State, or local governments because parents, teachers, and community institutions have a duty in this area, too.

I can say personally that there is a great deal that is not obscene by anyone's definition that I personally find offensive and that I don't wish to have in my home. I am sure that we all might have different standards in that regard. However, I don't think we can overlook the fact that communities and business institutions and parents and teachers have a distinct responsibility, too.

When I was in the private practice of law, I had a refreshing experience with a business client who had several hundred stores in which pocket books were sold. They became aware of this situation generally through complaints of parents and PTA groups, and they took steps themselves. They just told all of the distributors: "No more. Before you send anything into our stores, we want you to send us the cover of the book and a brief description of the book." They policed themselves.

However, in fairness to others, it takes a fairly large outfit to adopt that approach and to have the time and manpower to use that approach.

Mr. DENT. You know, the first amendment, unless I am in complete error, is designed to protect in a democracy particularly the fundamental freedom of speech, of expression, of the printed word, but I do not believe that some of the stuff that has been passed over to this committee for the perusal of the committee was ever seen, in the minds of the Founding Fathers, as coming under the protective covenants of the first amendment, and we have in the past amended constitutional provisions, when we found that they were to the detriment of the greater number, for the common good.

Are we going to hold forever with the clever law interpretations by the very clever lawyers? This man, Stanley Fleischman, must be the best in the United States since he represents about 90 percent of the publishers of these pornographic books and can command a price on twisting the first amendment beyond any reasonable approach to it and what it was intended for. That is where the Justice Department has to give us guidance.

Is there no law that can be written once we have determined that there is something that needs to be done? Suppose we all agree that something is obscene except one judge in the whole United States? Would it be to the common good to protect that one judge's opinion?

Mr. VINSON. Well, sir, obviously someone has to decide what is obscene and, for my part, I would rather that the courts decide it in an institutional manner than have myself decide it.

Mr. DENT. We speak of the courts as if it were an entity. A court is not an entity because there are different jurisdictions. Today you are a lawyer. Tomorrow you are the court. If today you would hesitate to do it, what would give you the courage to do it when you are on the court?

Mr. VINSON. Mr. Chairman, I don't think courage has much to do with it. It probably takes more courage to say that some of the trash is not obscene.

Mr. DENT. There is a difference between obscenity and ordinary trash. Trash does not appeal to anybody. Some of this stuff is no longer normal trash that we saw when we were kids. I do not think any of us went through our lives without running into this material. This today is put out in high-priced, high-educated forms. The language is the best in the king's alphabet, and it is without a question of doubt something that is aimed at doing the job.

It is not the funny comic book caricatures, the crude pencil sketches and things. Some of these things are without a doubt some of the best prepared material that there is in any bookstore in the United States, from the greatest classics on down. If that is what we are getting into with the intelligent people of the United States of America becoming involved, what are we to do?

Some of the best respected distributors of magazines in the United States are in this area of distribution. In fact, they have strangleholds in some areas on distribution of all magazines. We have information where distributors tell us that they have to take this material or they don't get the normal common magazines like Life and Time and the Post and all the rest of the magazines that we buy at the stands. Unless they take material like this, they do not get anything for their stands.

Mr. MEEDS. Would the chairman yield for a question right on that point, if I may?

Mr. DENT. I yield.

Mr. MEEDS. Do we not have laws which would make it a criminal offense, perhaps a violation of the Fair Trade Act, to require tie-in sales? You are aware of the tie-in sales?

Mr. VINSON. Yes. The Federal Trade Commission interests itself in tie-in sales, and so does the Antitrust Division.

Mr. MEEDS. So that, if a publisher or a distributor required, say, a local drugstore to take a certain amount of copies of a book so that they could get Time and Life, would this not be a violation of either the Antitrust or Fair Trade Act?

Mr. VINSON. I am not an expert in those matters, Mr. Meeds, but it would be my thought that the Federal Trade Commission could interest itself in that area.

Mr. DENT. Mr. Daniels, the author of the legislation before us.

Mr. DANIELS. Thank you, Mr. Chairman.

I draw the implication, Mr. Vinson, from your testimony that you feel that the present laws are inadequate; is that correct?

Mr. VINSON. Mr. Chairman, it is my belief that the present laws can be improved upon. However, I am not sure that they can be changed in a manner to accomplish your ultimate objective.

Mr. DANIELS. In what area do you think the present laws may be improved?

Mr. VINSON. Chairman Dent pointed up one area, the problem of lack of Federal power to seize after an adjudication. However, we

must always remember that we act in an area of due process. Assuming you had the power to seize and a case was on appeal, I would imagine that the appellant could file a supersedeas bond.

Mr. DANIELS. Why don't you have the power to seize? Where, in your opinion or in the opinion of the Justice Department, a crime is deemed to have been committed and in the commission of that crime certain material is used as in the prosecution of people under the obscenity laws the materials involved are the books, the hard-core pornography, why don't you have the right to seize that material?

Mr. VINSON. Congressman Daniels, most of our prosecutions are brought because of interstate transportation. Our law does not say that it is illegal to sell this book or to publish this book. Our law, the law with which we operate most, says it is illegal to transport this book in interstate commerce.

In order to make a criminal case under that law, we have to take that book and prove an interstate transportation.

Mr. DANIELS. Well now, you have indicated in your statement that the Federal Government has authority based upon the fact that the mails are used for the transportation of this material and also upon the interstate and foreign commerce laws, is that correct?

Mr. VINSON. That is correct, sir.

Mr. ANDREWS. Would the gentleman yield for a question?

Mr. DANIELS. Yes, I yield.

Mr. ANDREWS. You say you have to prove interstate transportation. Is not the publisher's name in a lot of these books and would that not within itself prove interstate transportation? It does not point out who is guilty of it but certainly, if the acknowledgment of the publisher is in the book as being in California and the book is in Alabama is that not admitted?

Mr. VINSON. Sir, I think it is very seldom that a book says where it was published.

Mr. ANDREWS. We had some the other day.

Mr. VINSON. It might show the publisher's name and address as San Diego, but he might print it in Chicago.

Mr. ANDREWS. Thank you.

Mr. DANIELS. Your authority is based on your authority over the mails and over interstate and foreign commerce. You indicated that in 1961, you had 159 prosecutions, 125 pleas of guilty, 5 convicted by the court, and 5 by the jury. In 1962, you had 224 prosecutions, 174 pleas of guilty, 12 convicted by the court, and 12 convicted by the jury. In 1963, you had 321 prosecutions, 259 pleas of guilty, 15 convicted by the court, and 7 convicted by the jury.

In 1964, you had 333 prosecutions, 261 pleas of guilty, 11 convicted by the court, and 11 convicted by the jury. Your Department has had sufficient experience in the prosecution and handling of these cases to know what is obscene in the court's opinion and what is not. You should know by your own experience. Therefore, I do not agree with you that you do not have the power to seize this material.

If a murder is committed and a revolver is used in the commission of that murder, the prosecution seizes the weapon, does it not, and holds it as evidence to present to the court?

Mr. VINSON. That is correct.

Mr. DANIELS. Why cannot the same thing be done here?

Mr. VINSON. Well, take the prosecution in this case: We got an indictment last Friday in Houston where two of the largest publishers were indicted. The material presented to that grand jury was purchased in Texas and we proved that it was shipped from out of Texas. I am confident we did not seize it. That case arose by postal inspectors making purchases or by FBI agents making purchases.

To go into the possibly hundreds of thousands of newsstands over the country to make seizures just is not within our law.

Mr. DANIELS. Well, I am making that suggestion for a very good reason. The only way the publishers can make money here is by this material being sold. Now if you have them by arrests and also by seizures, you are putting a double expense upon them.

First, you are putting the cost of defending themselves, furnishing the money for bail and hiring high-priced lawyers that must necessarily be employed and have been employed in the defense of these cases and, second, you are withdrawing from the marketplace the very object of the prosecution. You are taking away from them their profits.

Mr. VINSON. But that smacks of a civil proceeding, Congressman Daniels, as for example an injunctive proceeding or a libel, analogous to FDA proceedings where they seize drugs that they find to be harmful.

Mr. DANIELS. May I make another suggestion to the Justice Department? Why can't you indict these fellows on both ends of the road? In other words, your jurisdiction is based upon interstate commerce. If you have evidence that pornographic material is being shipped, if they come from Los Angeles, Calif., to Chicago—and I have noticed from other witnesses' testimony appearing before this committee that the Justice Department has not been so successful in its prosecution of these cases in Los Angeles. If they are indicted in Los Angeles and also indicted at the other end of the road in Chicago, then you are hitting them with a double-barreled shotgun.

Mr. VINSON. Mr. Congressman, under the 1958 venue statute, of course, we can indict at either end of the road and, of course, every lawyer picks the forum he thinks he has the best chance in. However, it is our policy not to have multiple prosecutions.

Mr. DANIELS. If the law so provides, what is wrong with it?

Mr. VINSON. Well, it is against Department policy. It also does not comport with my personal ideas of due process. I noted that one witness before the committee suggested that his organization would suggest or would try to establish a campaign to bring 20 simultaneous prosecutions against a publisher in 20 separate corners of the land. His thought, I suppose, was that they would harass the publisher and that the expenses of defending 20 actions would be so great that it would bankrupt the publisher.

Mr. VINSON. If that could be done, Mr. Congressman, that group of men would, in effect, be a board of censors. I don't quarrel with the motivation of those gentlemen or their objectives. Personally, even if I knew them well enough to respect them, I am not sure I would want to constitute them a board of censors for this Nation.

Mr. DANIELS. On September 1 we had a witness appear here who was a former special assistant district attorney in Los Angeles and, on the evening part of the day that he appeared here to testify, he

stated that he went to a number of book stores in the District of Columbia, that he had spent the sum of \$45, and he came here with a bundle of magazines and paper-covered story books, and I think there is no doubt in the mind of any member of this committee that that stuff was the dirtiest and the filthiest type of writing that you could lay your eyes upon; that it was hard-core pornography.

That stuff is being sold within 1 block of the White House. Is there not any law existing on the books here in the District of Columbia to eliminate the sale of this trash, this filthy material?

Mr. VINSON. It is a matter over which, of course, we have limited control in the local Corporation Counsel's Office, but I understand they are currently engaged in a very widespread investigation and have been for some time.

Mr. DANIELS. I understood from the witness that this stuff is on open display and there are racks of it.

Mr. VINSON. I am aware of that testimony, Mr. Congressman, and I am pleased to say, for whatever comfort it might be, that many of those materials are materials that were recently presented to Federal grand juries that returned indictments for us.

Mr. DANIELS. Have you given this committee any recommendations as to plugging up any loopholes that may presently exist?

Mr. VINSON. Congressman Daniels, I am not prepared to at this time. As the committee is aware, I have been in the Department approximately 5 months. This is an area that came to my attention early because of several grand jury inquiries, and I would hope that we could furnish some very constructive suggestions after the first of the year.

Mr. DANIELS. You are postponing submitting this material until after this committee submits its report?

Mr. VINSON. We have suggested to HEW that they make a study and we are in the process now of discussing what the study should cover and how it should be done.

Mr. DANIELS. You are not sure that HEW is proceeding with the study?

Mr. VINSON. They have indicated that it is acceptable to them. It is just a matter of staff work, as I understand it.

Mr. DANIELS. How long ago was it that you suggested that?

Mr. VINSON. My predecessor suggested it sometime in, I believe, the late winter. The initial correspondence that went out from Justice, I believe, was in March or early April.

Mr. DANIELS. Of this year?

Mr. VINSON. Yes, sir.

Mr. DANIELS. That was after the date that this bill was introduced.

Mr. VINSON. I am not aware of the date of introduction, Mr. Congressman.

Mr. DANIELS. What time was it suggested that HEW would submit its report?

Mr. VINSON. We have not traveled that far, sir.

Mr. DANIELS. Can you furnish this committee with a summary of the laws upon which you handled these prosecutions?

Mr. VINSON. Certainly.

Mr. DANIELS. Mr. Chairman, I request that the witness furnish the committee a summary of the laws upon which they prosecuted these cases.

Mr. DENT. If the witness can make that available, it might be very helpful.

Mr. DANIELS. We had a witness here on September 1 by the name of James J. Clancy. He was hired as a special deputy by the District Attorney of Los Angeles County, Calif., and he stated that the major difficulty in these cases is not that the laws are not adequate but rather it is that the laws are not being adequately enforced. Do you agree with that statement, sir?

Mr. VINSON. No, sir. As I read Mr. Clancy's testimony, I thought the thrust of it was that those enforcing the laws on the police end and the prosecutory levels were not familiar enough with the laws and with the procedural pitfalls, and that the cases were not adequately prepared, rather than that there was any lack of diligence. I could be wrong.

Mr. DENT. I think Mr. Clancy made a point of that very fact of the case not just being prepared in a manner to assure the best prosecution.

Mr. VINSON. This is true in the State area where they are operating with boards of censors and civil authorities. Boards of censors are not in as great use in the criminal area. In the criminal area you have the element of scienter and the knowledge and willfulness that must be proven, but your greater procedural pitfalls in my judgment are in your areas of civil rights.

Mr. DANIELS. The House this year enacted a bill with respect to pornography coming into one's home unsolicited, being mailed to minor children. A parent of a minor child in such case would under this bill have the right to complain to the Postmaster General requesting that he advise the distributor of that material to delete the addressee's name from the list and, if he failed to do so, then the Postmaster General could recommend to the Federal authorities the revocation of the second- or third-class mailing privilege of the mail. Have you had any experience with that?

Mr. VINSON. No, I haven't. However, I recognize several very basic difficulties with it. In the first place, I doubt that the Postmaster could take any such civil action in the absence of an adjudication and judicial determination of obscenity.

Mr. DANIELS. That bill has passed the House. As a matter of fact, I served on the Post Office and Civil Service Committee which gave a great deal of study to the drafting of that bill with the assistance of your Department. I was wondering if you would be good enough to look at that bill, which has been already approved by the committee and passed by the House, and give us your comments on the constitutionality of that legislation.

Mr. VINSON. Certainly. Do you have the bill number?

Mr. DANIELS. No. I believe we have an associate in this room who did work with this committee and I am sure that he can advise you of the number of the bill.

Mr. VINSON. I will ask him to draft the comments on the opinion.

Mr. DANIELS. I want to be fair to my colleagues. They might want to ask some questions, too.

I would like to have your opinion on the right of the parent to object to his minor children receiving in the mail unsolicited material which, in the mind of a parent, is obscene.

Mr. VINSON. Well, any parent has a right to object to anything that his children do or anything that they receive.

Mr. DANIELS. Last week it was brought to my attention after these hearings opened that there was a case where a 14-year-old boy received in the mail, absolutely unsolicited, a picture of two nude women. The boy either turned it over to his mother or the mother happened to open up this letter, and she sent it to the postal authorities.

Do you think, in a situation like that, that a parent has any right to object to that material and to stop the flow of that type of material coming into her home without any solicitation on the part of any member of that household?

Mr. VINSON. Well now, there are about three questions presented there, I believe. Certainly, she has a right to object. The mechanism by which she would stop unsolicited material coming into the home is something else again.

Mr. DANIELS. It is proper?

Mr. VINSON. Yes, it is.

Mr. DENT. You said awhile ago that the Federal, State, and local laws have only a certain responsibility.

Mr. VINSON. No, sir. I said they have to share the burden.

Mr. DENT. Suppose that a parent wants to share the burden and somebody sends to the home of a minor something that the parents feel in their own mind is obscene. As you say, describing obscenity is very hard. If you think it is obscene, isn't it obscene insofar as you are concerned?

Mr. VINSON. Certainly.

Mr. DENT. Would it not follow then that, if the parent thought it was obscene and should not be seen by his children or at least not at that age, that there should be a law for him to prosecute the person who sent it to the child?

Mr. VINSON. Mr. Chairman, there is a problem there.

Mr. DENT. I want to know the answer. I am not advocating the law. That is the question the parents ask me, "How do I stop it?"

Mr. VINSON. I guess there may be a hundred million parents, each of them probably with different ideas qualitatively of what constitutes obscenity.

Mr. DENT. Suppose 90 million of them do not think it was obscene. Isn't that toward first amendment protection for the 10 million that do?

Mr. VINSON. I imagine that if 90 million of them do not think it obscene, the material would come within the protection of that amendment.

Mr. DENT. Even if it is sent to you without solicitation. Can there be a law, in your opinion, drafted that would give a parent the right to stop unsolicited material from coming into the home?

Mr. VINSON. You are asking me to shoot from the hip so I will shoot from the hip. I think it would be virtually impossible to draft such a law.

Mr. DENT. OK. That is what you are here for, to give us expert testimony. I have no further questions. Mr. Andrews.

Mr. ANDREWS. Mr. Vinson, I received a letter from you very recently and I am very grateful to you for explaining where we stand with the courts and enabling me to answer one of my constituents, if you remember. It was a guideline for the discussions, coincidentally, in this committee. If I misunderstand the author and if I misunder-

stand the chairman, forgive me, but I think this is trying to do what we are trying to appoint 16 members to do.

I have quite an interest in this subject because it involves the first amendment and I see present in this room today a national consensus, starting with the committee, of going off of the first amendment, which I regret, and I wonder if you recommend the establishment of this Commission to make this study?

Mr. VINSON. We have no opposition to the establishment of the Commission. We think that it could serve a useful purpose, but we feel that to serve that purpose it must always bear in mind the provisions of the first amendment to the Constitution. Because of that, of course, the composition of the Commission and its staff is vitally important.

Mr. ANDREWS. From a reading of the bill, would you suggest that a change in the composition of the Commission we propose to establish?

Mr. VINSON. I think there is some discussion that we could come forth with. Some has already been pointed out: The variance between where it either says 15 members and names 16 or says 16 and names 15. I think it is the former. We notice some discrepancies between this bill and some prior similar bills that were introduced.

For instance, I think bills in the 86th and 87th Congresses provided for a local enforcement man or prosecutor. That might be helpful.

Mr. ANDREWS. The chairman has suggested, and I concur with him, that in looking over the bill perhaps you would be good enough with your experience to make suggestions, and I think you have had 5 months of very interesting experience and you impress me a great deal by your devotion to the first amendment and its protection.

I will say roughly speaking, along this line, that a sizable and indignant majority in many communities in Massachusetts at one time were bent on destroying witches. Oftentimes in this area, whereas I might agree with the consensus of this body or the consensus of the 16 if something was objectionable, that there might be areas where this material should have a causal effect on crime, still I hold above all else, as you seem to, that this national consensus in taste cannot properly be arrived at.

This essentially in many areas is a matter of taste. The witnesses that appeared here have thought certain parts of the literature that they brought up here were obscene and to me they were not obscene at all.

If I may say so, it is my opinion that a more definitive law upon what is obscenity and what is not would inevitably, as the evidence of the experience of 3 days' hearings in this court shows, arrive at nothing but a consensus of taste in a very indefinable area, and that is not a subject for constriction of the press and freedom of speech.

I would agree with my colleagues and I have not found anyone here on this committee yet whose taste in literature or in pornography I would disagree with. I have found some of the witnesses who appeared here who, in their desire or zeal for doing away with those things which all of us will agree were bad, come into areas where they thought something was bad where I did not.

Let me ask you this question. Would you say that you think a definition could, by the national consensus, be arrived at which would help out in this area?

Mr. VINSON. I think that it is possible to come up with a better definition of "obscenity" than we now have.

Mr. ANDREWS. The one we have is very liberal, is it not? This business of whether, to a member in the community, in the *Roth* case, expressing the community taste, it appeals to prurient interests is very broad within itself really, and is an attempt to turn it entirely over to the community, that you might possibly get out of that a witch hunt; couldn't you?

Mr. VINSON. That is the danger of any board of censorship or commission, and that is why I have reiterated on a number of occasions that I think the only body that can be helpful in this area is one that is fully aware of the benefits and the philosophy underlying the first amendment, and is also fully aware of the real magnitude of the problem.

As I said before, the Supreme Court has said itself that it is not satisfied with its definition; that it is not a perfect definition.

Mr. ANDREWS. It is almost undefinable; is it not?

Mr. VINSON. You mentioned one matter of interest to me, the causal connection between pornography and crime. I am sure witnesses before you have developed the fact that there is no consensus in this area. Some feel that there is no connection. Others feel that there has to be a connection. That is something that we would hope would come out of our HEW study and, if something definitive came out of that, it would either be helpful or we could lay the question to rest.

Mr. ANDREWS. It is true that certain areas in which we are investigating at this point, sort of appointing ourselves as the committee, I think our areas of the subject that have been of tremendous significance in politics, the matter of homosexuality which the book revolved upon, the fact that it was the greatest weapon in the world in politics—and particularly in the *Jenkins* case it was so effective, that in itself is a debatable question as to whether or not a fuller knowledge on this subject would not do away with that tremendous vicious consensus which would use this matter in politics as a wedge for the most gigantic matters. That is an area of fear that a more positive definition would perhaps be in error to the public good.

Do you agree or do you not? Of course, I am asking for an expression of taste. Obviously, you always get back into this thing and I should not put that on you. At any rate, I should like to spend a month or two myself on the subject to explore it further.

My curiosity and interest have been piqued by something that to me involves what I am devoted to, and that is our Constitution. I am rather caught in a trap where a freedom that I seem to dislike seems to be at odds with the fundamental document. However, I think that we are in an area, and I think you have expressed it, where we deal with caution rather than have the consensus of the great number of people whose testimony we have enjoyed in the last few months.

Mr. VINSON. I would like to associate myself with your remarks with respect to the danger of the Commission just establishing a consensus of taste, and I would add to that that I have serious doubts about the usefulness of a commission. However, if it is the will of the Congress that a commission be established, we would be just as helpful as we could possibly be to the working of the Commission.

Mr. DENT. We know how laws are created. We do not know even whether a good majority of the committee wishes a commission to be established, let alone all the Members of Congress, but we all know that all laws start in the backwoods; we get a request and there is a proposal such as is before us now.

Perhaps the Congress in its wisdom or the subcommittee or the full committee in its wisdom may determine that there is no need to have a commission. We must go along until some other method is devised or we admit there is nothing wrong. Mr. Meeds.

Mr. MEEDS. Thank you, Mr. Chairman.

Mr. VINSON, perhaps we could go to the question, just momentarily, of the distinction between seizure of materials as evidence and confiscation. Is it not true that, if you do have power under present law to use and to seize at least a reasonable amount of material which you could use as evidence—

Mr. VINSON. Under a search warrant.

Mr. MEEDS. This is a far cry from confiscation of material; is it not?

Mr. VINSON. That is correct, Mr. Congressman. However, our powers are somewhat limited in this area of a search warrant because, again, of the first amendment. Before a search warrant can issue to search a publisher's place of business or a newsstand and to grab hold of the evidence, there first must be a determination by a judicial officer, a commissioner, or a judge—and this is just a one-man, preliminary determination—that the material is obscene.

Mr. MEEDS. Assuming, however, that you obtained a conviction in Federal district court against the publisher for a specific publication, would it not be then helpful to the Justice Department to have the authority by law after that to confiscate that particular edition or publication, and would this not be certainly within the constitutional bounds of the right of Congress to legislate in this field?

Mr. VINSON. That is not as simple a question as it sounds, because the right of seizure is generally predicated upon the police power of the State to protect the morals and the health of the people.

Mr. MEEDS. I am assuming your convictions in Federal district court would come under either the interstate transportation, under a customs violation, or under a violation of mailing of obscene matter.

Mr. VINSON. The conviction itself would, but I thought your question was directed to the conviction of a publisher because of a book, followed by a seizure in other localities of that same book.

Mr. MEEDS. That would be my question.

Mr. VINSON. I think we would have problems there because the Federal jurisdiction would not attach unless the book seized had also been sent through the mails, in interstate commerce, et cetera. You see, the power of the State to seize is based upon the police power.

Mr. MEEDS. In other words, the jurisdiction is based on the interstate transportation?

Mr. VINSON. That is correct.

Mr. MEEDS. And you would have to prove in each instance that this specific book was sent in interstate commerce or through the mail or was in violation of some statute?

Mr. VINSON. That is my "off the top of the head" opinion.

Mr. MEEDS. I see. I am particularly interested in your statement on page 2 and direct you to the second paragraph where you talk about the State's relatively broad power to check the health and morals

of its citizens. While I certainly recognize that the Federal Government has no police power as such, is it not true that the State's police power is ultimately measured against the first amendment and that all of these cases in the final determination are judged, if carried high enough, by the Supreme Court, and we are presently faced with a question of "obscenity" as measured against the first amendment?

Mr. VINSON. That is correct, Mr. Congressman. I think, perhaps, I did not make the thrust of these remarks clear enough. I understood the desire of the committee and sponsors of the bill to be to get this stuff off of the newsstands, to get it out of the channels of commerce, and to keep it away from minors.

The thrust of my remarks was that the States, through the police power, are better equipped to handle these particular problems than is the Federal Government, but, of course, that does not mean that ultimately they would be upheld in the exercise of that power.

You are quite correct in pointing out that they still must overcome the thrust and philosophy of the first amendment.

Mr. MEEDS. So that, in the final analysis, the question of who may be better prepared to deal with the question of obscenity is one where it does not really make much difference, does it?

Mr. VINSON. In the final analysis, no. In the final analysis, there must be a judicial determination.

Mr. MEEDS. Now, you are acquainted with and aware of the *Jacobellis* case, I assume. In this case the Court, or at least two of the Justices, indicated a willingness to recognize a distinction between publications which are available to minors and publications which are available solely to the adult population.

I understand that you have just been there 5 months, but has there been any determination or any effort by the Justice Department to look into the question of making a distinction and applying it to how we might legislate in this area?

Mr. VINSON. I think the state of the law now, Mr. Congressman, supported by a case in the Supreme Court, establishes that if something might be offensive to a minor but is not to an adult, it could not be the subject of restraint.

Mr. MEEDS. This is my problem, the 1956 *Butler v. Michigan* case, and I will refer you to certain language in the *Jacobellis* case in which they say:

State and local authorities might well consider whether their objectives in this area would be better served by laws aimed specifically at preventing distribution of objectionable materials to children rather than totally prohibiting its dissemination.

This is in the opinion by Justice Brennan, which is the majority opinion.

Mr. VINSON. I believe there were just two judges.

Mr. MEEDS. However, his is the prevailing opinion.

Mr. VINSON. It is difficult in this area to tell what is the prevailing opinion. As the Congressman knows, taking the question of national versus local community standards, those who have expressed themselves on the Court, I believe, are divided 3 to 1 on that question.

Mr. MEEDS. What I want to say, Mr. Vinson, is that I have some concern that a proper or at least a concerted effort is being made by any department of Government and I think that is one of the reasons that we are sitting right here considering this legislation, to make

some definitions, to make some demarcations if they need to be made, to make some investigations to arrive at some findings about cause and effect.

People come and testify here as you have testified, and I say this without certainly casting any aspersion on you but, since you have come to the Justice Department, you have determined that there will be some kind of an investigation. When you are asked, "When do you feel that you will get underway?" you cannot tell.

Mr. VINSON. Well, our examination of the statutes is underway now, Mr. Congressman. I cannot say when the study we are seeking will get underway.

Mr. MEEDS. Because of what you mentioned in your testimony, you cannot say when it will start?

Mr. VINSON. I am sorry. I cannot.

Mr. MEEDS. It has not been passed upon by the U.S. attorney, the Attorney General?

Mr. VINSON. Oh, yes.

Mr. MEEDS. As to whether it can or should be started?

Mr. VINSON. No; the Department of Justice wants it started. We obviously cannot conduct such a study. We are seeking to have it sponsored by HEW.

Mr. MEEDS. Have you met with any of your immediate superiors with regard to establishing some policy within the Department of Justice regarding obscene matters? In other words, you and I both know that there can be emphasis placed on this thing or that.

For instance, some time ago we had a crackdown on organized crime, and this was the drive of Senator Kennedy when he became Attorney General in desiring to do this. Is there any policy regarding obscene literature?

Mr. VINSON. That is still the drive of the present administration, Mr. Congressman.

Mr. MEEDS. To crack down on organized crime?

Mr. VINSON. Yes, sir.

Mr. MEEDS. I hope so. I am asking you, additionally, has there been any policy statement with emphasis on the field of work in the neighborhood of obscene literature or materials?

Mr. VINSON. I am not aware of a formal declaration, but I can tell you what our policy is and I touched on it in my statement. Our policy is to prosecute vigorously the large publishers and disseminators of this material. As I indicated, of the six largest distributors of paper book pornography, we have five under indictment right now.

Mr. MEEDS. One last question with regard to the Commission. I will assume that, if this Commission were created by the law, the Justice Department would be very willing to cooperate to provide the sitting members which, as I recall, by the legislation would be allotted?

Mr. VINSON. Two members, one of whom is from the Federal Bureau of Investigation and one from the Department.

Mr. MEEDS. And would the resources and the materials of the Justice Department be available?

Mr. VINSON. Certainly.

Mr. MEEDS. Thank you very much.

Mr. DENT. Mrs. Mink.

Mrs. MINK. Thank you, Mr. Chairman.

I quite well realize the difficulty of balancing the right of the community and the constitutional guarantees under free speech against the rights of individuals, and it is impossible to place an individual standard of what is objectionable and obscene and carry it forth as a general prohibition against the distribution of the material; but, getting back to Congressman Daniels' question on the receipt of unsolicited material which a parent finds, what is the constitutional impediment toward the enforcement of a law which would protect from violence a parent in the case of the receipt of unsolicited material which that parent considers obscene, assuming that the publishers and distributors of the material have been given adequate notice that this particular parent does not desire to receive such material in his household?

Mr. VINSON. That is a slightly different question, I believe, than Congressman Daniels posed. I suppose you visualize a procedure whereby the parent would notify the publisher and say, "Don't send any more of this stuff to my home," and then you visualize additional material being sent.

Mrs. MINK. That is correct.

Mr. VINSON. I think you are right back to the same problem of an adjudication of obscenity before any criminal sanctions could be imposed. Congressman Daniels is more familiar with postal laws than I, but I believe there are some decisions that give individuals and business concerns a right to the use of the postal service.

Mrs. MINK. In your opinion, Mr. Vinson, a statute such as that could not be upheld if it were not based upon the finding by a court that the community standard with relation to that particular item which was received unsolicited was obscene?

Mr. VINSON. I would not like to make a definitive statement in answer to that question. I have some doubts about it. It is entirely possible that my doubts are wrong.

Mrs. MINK. Would your doubts be diminished somewhat if the statute were limited to receipt by a minor of unsolicited material where the parent has notified the publisher and distributor that they do not wish the unsolicited material to be sent?

Mr. VINSON. If I were the advocate in court, I think I would appreciate that additional handle to argue on.

Mr. DENT. Of course, if you ever try that, you would have to have a prior law which would make it, as the gentlemen from Alabama was saying to me, mandatory that anything that goes through the mails or any publication offered for public sale would have to show clearly its source.

Otherwise, as you say, one of these fly-by-nights would say, "Don't send these any more," and would just leap across the street and find another means of sending it.

Mr. VINSON. Or change their minds.

Mr. DENT. If a book is objectionable, you can reach them, but with most of this stuff you do not know where to reach them. So, to whom would you explain? Would that law be unconstitutional?

Mr. VINSON. A law which stated that unsolicited material must contain a public address.

Mr. DENT. Anything that is offered for sale or offered for publication are put through the mail in public distribution would have to show its source.

Mr. ANDREWS. Its authenticity.

Mr. VINSON. As a condition to the use of the mails?

Mr. DENT. That is right.

Mr. VINSON. I do not have any problem with that. Many of them, as you know, operate under three or four different names.

Mr. DENT. I think they all belong to one person. How are you going to get through to him? If you get something through the mail and object to it, to whom would you object? We had a witness the other day who said he would not want it stopped but he objected strenuously to it coming into his home.

Mrs. MINK. I will yield to Mr. Daniels.

Mr. DANIELS. Mr. Vinson, do you feel that a parent has a constitutional right as to what is proper socially or morally for his minor children to read or view or listen to?

Mr. VINSON. He certainly has a right. Whether it reaches the level of constitutional rights, I don't know and I suppose it is academic.

Mr. DANIELS. If the publishers have a constitutional right to publish, why does not a parent have a constitutional right to protect his children as to what he thinks is morally offensive?

Mr. VINSON. You have the right of not being compelled to read anything you don't want to read and, applying the laws of minors to that situation, the parent could well have such a right.

Mr. DANIELS. The parent is responsible to support, maintain, and educate his children under our laws.

Mr. VINSON. Yes.

Mr. DANIELS. He is responsible for their well-being. If that is not the case, why doesn't the parent have a right to object to what he considers to be offensive to his well-being; socially, morally, and ethically, and also to his children?

Mr. DENT. You did not answer the question.

Mr. VINSON. The question answers itself. Obviously, the parent does have such a right.

Mr. DANIELS. How do we protect that right?

Mr. VINSON. As a parent, I don't seek assistance.

Mrs. MINK. Mr. Chairman, may I proceed with my line of questioning?

Mr. DENT. Yes.

Mrs. MINK. I am very vitally interested in this one area because I think, pursuing my line of questioning, that trying to give an individual parent the right to screen and to decide what kind of literature the children are to receive in that household can skirt the difficulties of defining exactly what is obscene literature and preserve the right of the parent to decide what kind of unsolicited mail is in fact coming into the household. If we tie the prohibitions that I am thinking of at the moment to the exclusive use of the mails, is there in your opinion a constitutional right of a publisher and distributor of books to use the means which cannot be legislated against?

Mr. VINSON. I am very sorry that I cannot answer that question. Congressman Daniels is probably better equipped to answer that than I.

Mrs. MINK. It would seem to me, as my observation, Mr. Chairman, that there is really no right to use the mails which is protected by the Constitution. They may publish. They may distribute it on the streets, but, when it comes to the use of the mails, I think that

this is strictly within the Federal prerogative to regulate the use of the mails and, if the Congress should decide that they would wish to give parents the further guarantee of protecting their household by deciding what kind of literature or what kind of materials are to be received by their children, this would be within the legitimate area of congressional action within the normal purview of postal regulations.

Mr. VINSON. One thing puzzles me. Our criminal laws in this area require scienter, knowledge that matter might be obscene. I am not now talking about criminal sanctions the Post Office Department might impose. You might have difficulty establishing scienter. Would the person making the mailing know that he was mailing to a minor and therefore violating the law?

Mrs. MINK. We would presume in the statute that there would have to be proof of notice to the publisher that the material is not desired by that particular parent and his offspring. Assuming that that could be proved that notice was given and still the mail continued to come to that particular house, would this not be a proper area for criminal penalties?

That was brought out in some of the hearings that we had on this matter previously, that perhaps one of the best ways to curb the distribution of this material would be many, many multiple suits by individuals which would place upon these distributors a tremendous financial burden of defending in each court every instance of a parent who has filed such notice and who is now before the court as a complainant against that particular publisher for failing to adhere to their individual requests that they not receive such material in their homes.

Mr. VINSON. As I said, the concept of multiple prosecutions gives me a great deal of trouble. I think that is absolutely violative of due process and I would not wish to entrust to any group, no matter how well motivated, the mechanism by which they could bring these multiple prosecutions.

They might bring them against many publishers whom all of us here agree do not deserve to be bankrupted.

Mr. DENT. Would you yield?

Mrs. MINK. I yield; yes.

Mr. DENT. There are those who make talk of what they think is obscene. We know that, over the years, most of the complaints are people who say, "Some people might want this. Some people might not want to talk about it. That is their business. All I want to know is, does it prevent it being in my home?" They have no complaint except to some of the stuff shown you this morning. Can they be protected? Some people have problems with their children.

In spite of what we think, there are some children that are not on a par with others.

Mr. VINSON. Mr. Chairman, isn't the receipt of unsolicited mailings a drop in the bucket in this area?

Mr. DANIELS. No.

Mr. DENT. He is on the Post Office Committee. That is where we get this information.

Mr. ANDREWS. One of my colleagues, Mr. Cunningham, who is the father of five children, is very upset over this problem of the fact that mail came to the minor children unsolicited. How did the sender get the name of the child? Very simple. His child subscribed at one time for a tie, I believe a 25-cent tie, and the party from whom it

was purchased took the name of Mr. Cunningham's child together with hundreds of names of other children and sold the list of names in the marketplace.

Now these distributors of pornographic literature purchased these lists and they know that these children are right susceptible to purchasing their wares. The child is an easy mark for them until the parents become aware of it, so that it is a problem.

Mr. VINSON. I am not for a minute missing the problem of mass mailings. I am speaking here merely of the relative quantity of this sort of distribution as opposed to other types of distributions.

Mrs. MINK. Mr. Chairman, may I just make one more comment? Some of the discussion on this matter of obscene literature and the effect upon young people centers on what we feel to be parental responsibility and, in many of the discussions I have had in my own State about this problem, there is a constant reference made: "Parents ought to control their children more," that the parents have a tremendous responsibility and that this is a dual role that must be shared with the parent in their community.

Yet we do not provide a mechanism whereby the parent can effectively control the receipt of material in his own household and, while I recognize that this is only a small segment of the problem, it would seem to me that, if we could legislate promptly in this area, it would give the parents at least the satisfaction of knowing that they did have the power to stop this material within their own home and avoid the difficulties of having to go to court and prove this standard of obscenity which is so difficult to prove.

Mr. VINSON. I appreciate the problem, Mrs. Mink.

Mrs. MINK. I have no further questions, Mr. Chairman.

Mr. DENT. Are there any further questions?

Mr. Vinson, thank you very kindly for coming. We hope that all of us will gain something to work with. The committee will consider your very sound advice about the problem of the makeup, and so forth, of the legislation itself.

Mr. ANDREWS. That is what I wanted to ask. Will you comment particularly about the composition of the committee itself? You may have some recommendations for changes, and the proposed bill is very simple. It is not very complicated. The only thing involved is whether or not it will be effective and maybe a change in composition is in order.

We would appreciate it, or at least I would.

Mr. DENT. Consider this in your thoughts about this matter. It has been suggested that the Commission be given authority as well as necessary funds and, if in their judgment they should employ a research team from some university or nonprofit organization of some kind to make a study along a certain line of the matter of criminal connections, when it makes its report, with the making of the report the Commission will go out of existence so that it does not become an entity which becomes a censorship by the fact that it is in existence.

None of us want that.

Mr. VINSON. As I believe some previous witnesses pointed out, that is a distinct danger in this area.

Mr. DENT. That has been the trap in the whole procedural philosophy of trying to find some answer to this, that they take unto themselves powers that were not intended by the formation of the Commission.

We want to have an executive meeting this next week to find out whether we want to proceed with this this year or just drop it. Whatever we decide to do, we appreciate having the summarization of your position.

Of course, the summary will be helpful so that the experts can look at it.

The committee thanks you kindly for your very frank observations this morning and the benefit of your testimony.

Mr. VINSON. I enjoyed a hearing before you very much.

Mr. DENT. Thank you.

(Whereupon, at 11:55 a.m., the subcommittee recessed, subject to the call of the Chair.)

(The following material was submitted for the record:)

STATEMENT OF HON. MICHAEL A. FEIGHAN, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF OHIO

Mr. Chairman, I appear here to urge favorable consideration of my bill, H.R. 6892, to establish a Commission to known as the Commission for Elimination of Pornographic Materials.

My bill calls for the appointment by the President of 25 members from various stations in life to study the problem created by the publication and dissemination of pornographic materials and to recommend remedial measures. This study is most necessary. We are faced with a billion dollar business in depravity at all levels of Government—Federal, State, and local. The real reason that this study is mandatory is that more than a law or laws is necessary. Our experience with national prohibition taught us that you cannot legislate morality. We did learn, however, that our laws are only as good as the people who enforce them. National prohibition created grave problems of corruption and morality among our law enforcement officials particularly, and solved no problem of consequence. The illicit liquor industry thrived during prohibition because the general public was ready, willing, and able to pay handsomely for a dubious and noxious product. Corruption promotes corruption and spreads more rapidly than most infectious diseases.

Mr. Chairman, restraints on the dissemination of pornographic literature usually impinge on the guarantees of freedom of expression afforded by the first amendment to our Federal Constitution in one way or another. The 1957 *Roth* case in the U.S. Supreme Court is the modern problem case on this point. However, at this time, I shall not indulge in extensive treatment of Supreme Court cases as other witnesses have treated the leading cases capably and extensively.

But, I should like to point out that our first amendment guarantees freedom of expression so long as it does not present a clear and present danger to our institutions. For example, it is well established legally that there is no right to yell fire in a crowded theater. In my opinion the present state of distribution of pornographic literature creates a clear and present danger to the youth of America. The net result of this flood of pornographic literature has been to leave the youth of America virtually unprotected against this depraved, perverted, and nauseating influence.

Members of Congress have received overwhelming evidence that something must be done to stop the sewers from spilling over onto Main Street, America. Some years ago, the Senate Subcommittee on Juvenile Delinquency released a report that pornography was a lucrative \$500 million a year business at that time. The estimates have doubled since that time. Success has been assured for these peddlers of smut by successful wholesale invasion of the playground, the schoolyard, and the newsstand. There is a growing conviction among law enforcement officers that the flood of pornographic material that has been circulating among our young people is a major factor in today's rapidly increasing rate of sex crime. J. Edgar Hoover has stated, "It seems to me that the peddler who assaults our children's minds is as clearly a sexual offender as a man who molests a child's body."

As the pusher of narcotics tends to destroy the body, the purveyors of pornography tend to corrupt the minds of children, destroy their moral values, and seriously affect the moral fiber of our country.

This study, provided for by my bill, is urgently needed and needed now. It provides the best means for taking an educated look at this, perhaps our most serious problem, by some of the best trained minds available to our society before we emulate too successfully the path of the Roman Empire.

In conclusion, Mr. Chairman, I should like to submit for the record four excellent articles from the Chicago Tribune published from July 25, 1965 to July 28, 1965. These articles demonstrate what can be done at the local community level when the will to do exists.

Thank you.

[From the Chicago Tribune, July 25, 1965]

SMUT SELLS HERE OPENLY AND CHEAPLY—RULINGS OF COURT HAMPER CITY

[First article in a series describing the traffic in obscene and smutty books and magazines in Chicago.]

(By William Kling)

Publications detailing the full range of sexual perversion and deviation—subjects once handled only in under-the-counter and privately published pornography—are being openly and inexpensively sold in the Chicago area today.

Officials have been nearly hamstrung by adverse court rulings, devious publishing practices, and public apathy in their attempts to thwart the get-rich-quick schemes of the smut peddlers.

The material, mainly paperbacks and magazines available in bookstores, newsstands, candy shops, and drugstores, goes so far in depicting erotic practices that Chicago police report it has cut into the distribution of hard core pornography in the city.

FEW BESTSELLERS

And because of their low cost and a proliferation of sales outlets, these paperbacks and magazines are more readily available to young people than the higher priced, hard-bound editions of sexually frank novels sold only in bookstores.

Few of the objectionable publications have first appeared as hard-bound books. Still fewer have made the so-called bestseller lists.

Most were written by the smut profiteers solely for publication as paperbacks and magazines.

In an effort to define the problem posed by these publications, to learn what the effects of the problem are, and to determine what is being done about it, the Tribune interviewed a number of authorities on obscenity.

GETTING MORE OBSCENE

These authorities agreed that some progress has been made in tackling the smut problem, but they also agreed that the material being sold through respectable outlets in Chicago is becoming more and more obscene.

The progress apparently has had an effect, causing some frustration for smut dealers. On July 25, 1963, a California distributor of paperbacks and magazines complained to a Chicago area dealer in a letter:

"The city of Chicago is open only at the seller's own risk. It seems that when the city needs a scapegoat, the books and magazines catch the arrests.

"We would be more than pleased if you circled a common road map, covering the area you are serving. We could then point out our problem areas, and from there you could go on your own. For all we know, you might end up the largest distributor in Chicago, and we feel that the city needs one, but one with intestinal fortitude.

YOU ARE THE BEST

"Anyhow, once we get the area mapped out for you, we will send you another letter with our views. You may not be the biggest distributor we have, but you are the best."

The letterwriter noted that his Chicago business had been good, but then "there were censorship problems in the big city and (another local dealer) was forced to withdraw from many publications." That Chicago firm "was our largest national account before this trouble," he wrote, adding:

"The trouble cost us a small fortune before it was over and we would not want that expense again, nor do we ask them (local dealers) to risk our lives in that peculiar city. We would not be able to withstand another setback of that type."

MATERIAL IS DIRTIER

Experts contend that the bulk of sales of objectionable material has been cut in Chicago, but the material itself, in their view, is dirtier. Abnormal sex is the rule.

On November 18, 1963, 4 months after the distributor's letter, a publisher wrote the following letter to an author:

"The paperback picture has been changing by the month, and we need tough, strong, hard-hitting, sex-action-filled books, geared to the demands of today's and tomorrow's highly competitive market, rather than to the standards of even a few months ago.

"What we basically seek is offbeat sex * * *.

"Plot is secondary. We do not want complicated plots, naive sex adventure stories, detective stories 'spiced' with sex—nor pages of rambling, pointless dialog. What we want is detailed, vivid sex action, scenes every few pages; the more the better."

"GOOD TASTE" SOUGHT

"Naturally, the sex must be done in good taste by today's standards; we don't want four-letter words or too clinical descriptions. But within these limits, it must be as strong and as offbeat as possible."

There is a hint at the beginning of the letter that the publisher had spotted a way to make a quick profit by cashing in on the smut trend. He noted that his firm was "currently starting a brandnew line of paperbacks."

Several months later the author sent the publisher a manuscript entitled "Lust Unleashed" and written to the specifications of the letter. The book was published and distributed under another title.

[From the Chicago Tribune, July 26, 1965]

SUPREME COURT'S LIBERALITY PAVES WAY FOR PEDDLERS OF SMUT—IT BEGAN WITH 1957 RULING ON WHAT'S OBSCENE

[Second article in a series describing the traffic in obscene and smutty books and magazines in Chicago.]

(By William Kling)

Why are smutty paperbacks and magazines inundating the Chicago area even though it is against the law to publish and circulate obscenity in Illinois?

Organizations seeking decency in literature say an answer to that question is in a series of U.S. Supreme Court decisions that began in 1957 and fitted "hand in glove" with the plans of the smut profiteers.

Until 1957, the legal term "obscenity" had an imprecise meaning for officials who wanted to stamp out what was a persistent community problem, but which, compared to today, was of relatively meager proportions.

HISTORIC DECISION

Convictions under various antiobscenity statutes and ordinances were overturned by higher courts on the grounds that publishers and distributors had no way of knowing what was obscene, because the meaning of the term in the laws was obscure.

Then the Supreme Court, in a historic decision upholding the conviction of a California distributor, gave its first clear-cut definition of obscenity, and, without changing a word, rewrote nearly every antismut statute and ordinance in the Nation.

It also created legal problems by making it necessary to define further some parts of the new definition.

The Court held that material is obscene if it "deals with sex in a manner appealing to prurient interest," defining "prurient interest" as "having a tendency to excite lustful thoughts."

"NEW LIFE" FOR PEDDLER

This was to be judged on the basis of whether "to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest."

This liberalizing of the obscenity definition, according to Edward Rekruciak, president of the Chicago unit of the Citizens for Decent Literature and Motion Pictures, was followed by a steadily increasing frequency in the number of books and magazines that depict sexual misconduct as normal and acceptable behavior.

Later Court decisions involving the new obscenity definition "gave the smut peddler new life so that we find today that the material has gone from portraying normal sex to a point that it portrays perverted sex, with the maximum effort toward lesbianism," Rekruciak said.

One problem with the definition, he said, is that the "dominant theme of the material taken as a whole" must be interpreted according to another Supreme Court ruling of 30 years before.

This means that prosecutors cannot use just a suggestive cover or selected passages of a book or magazine to prove that the material is obscene because courts and juries must consider it as a single, indivisible unit, he explained.

EXCERPTS NOT ENOUGH

If all the smutty passages were lifted from a book and printed by themselves, their publication might fit the obscenity of definition, he said, while the book "taken as a whole" might escape the definition.

A greater difficulty posed by the Supreme Court's ruling is the determining of "contemporary community standards," according to Frank J. McGarr, a former first assistant U.S. attorney in Chicago, who has battled smut for years.

"The courts are applying their own concept of 'contemporary community standards,' while the average member of the community looks on in bewilderment and wonders what the courts are up to," McGarr said.

COURTS OUT OF TOUCH

"The courts, from the Supreme Court on down, are hopelessly out of touch with 'contemporary community standards' because they are hopelessly out of touch with the contemporary community.

"The courts are listening to the misguided few, and mistakenly assuming from the loud noises they make that they are average men and represent the thinking of the community."

New to the Chicago smut market since the court decisions are nudist and "girlie" magazines that go far beyond the type of publications that were around before the rulings, McGarr said.

SEES NUDIST, "GIRLIE" LINK

"It was practically impossible to find a nudist magazine in Chicago before, but now there are about 50 of them on the market, all with unretouched photographs of nude men and women," he said. "And a lot of magazines have sprung up that have a direct appeal for homosexuals."

Rekruciak said a survey showed that a number of models whose pictures appear in "girlie" magazines also show up in nudist publications. He said this indicates a tie-in between the two types of publications and hints that the nudist magazines are not really aimed at persons who are interested in nude sunbathing clubs.

Prosecutors contend that local juries and trial judges—not appeals courts—are the best able to determine contemporary community standards.

Nearly every Chicago jury that has considered the nature of publications against which the city has taken court action, has returned a verdict that the book or magazine is obscene.

Ironically, the Supreme Court itself is split on the subject of community standards on obscenity.

Chief Justice Earl Warren, in a 1964 opinion, wrote that the community standards should be determined on a local basis. The Supreme Court's only task, he said, is to decide if there is sufficient evidence to support convictions.

KNOWS WHEN HE SEES IT

Justice William J. Brennan, in the same opinion, said obscenity standards should be judged on a national basis, with the Supreme Court making an independent constitutional appraisal of whether a publication is obscene.

But in another 1964 decision, Justice Potter Stewart said obscenity cases put the Supreme Court in the position of "trying to define the indefinable."

"I have reached the conclusion, which I think is confirmed at least by negative implication in the Court's decision * * * that under the 1st and 14th amendments, criminal laws in this area are constitutionally limited to hard-core pornography," he said.

"I shall not * * * attempt further to define the kinds of material I understand to be embraced within that shorthand description, and perhaps I could never succeed in intelligibly doing so. But I know it when I see it * * *."

[From the Chicago Tribune, July 27, 1965]

CHICAGO GAINS IN ITS WAR ON SMUTTY BOOKS—CITY BUILDS UP RECORD OF CONVICTIONS

[Third article in a series describing the traffic in obscene and smutty books and magazines in Chicago, and what is being done to curb it.]

(By William Kling)

Some progress is being made in Chicago's "war against smut," but the path has been arduous and the warriors face being called "book burners," "censors," "fascists," and "kooks."

Some Chicago area distributors and vendors of paperback books and magazines are developing a social conscience, refusing to handle publications which may violate State and municipal obscenity laws.

Voluntary compliance with ordinances and statutes is the aim of law enforcement officials and prosecutors.

FIVE YEARS—ONE ARREST

Until early 1962, there was no organized police effort to curb dissemination of obscene publications in Chicago. Only two policemen were assigned to the surveillance of smut. They worked on a part-time basis and covered the entire city. Their sole concern was hard-core pornography.

In 5 years, they had made only one arrest involving an obscene paperback.

Pressure from decent literature groups goaded Police Superintendent O. W. Wilson into inaugurating an antismut program within his department. It has become a model for other police departments throughout the Nation.

District commanders were made coresponsible with the vice control division for ridding news stands of printed filth. Beat patrolmen were used as the key of the attack. A series of training bulletins was distributed, defining the problem and explaining what police action could be taken.

ALL BUT EIGHT CONVICTED

In the first 20 months of the program, 115 smut peddlers were arrested. All but eight were convicted; seven were freed on technicalities. Only one was found not guilty.

Manuel L. Port, an assistant corporation counsel in charge of prosecuting cases under the city's obscenity ordinance, said the hesitant start of the crackdown on smut was not a matter of choice. There was a defect in the law.

The courts had ruled that a dealer was not guilty unless it were proved that he knew the material was obscene. The Chicago ordinance as well as the State statute did not contain this provision—known legally as "scinter"—until 1960.

In February 1961, the city obtained its first conviction under the revised ordinance. The finding was upheld by the Illinois Supreme Court, and the drive was on.

"From that point on, we got convictions on quite a number of publications," Port said. "The rate has been nearly 99 percent on magazines and nearly 75 percent on paperbacks."

Since 1961, Port has successfully prosecuted nearly 100 smut cases. Most of the convictions have been upheld by the Illinois Supreme Court. But, under the city ordinance, the maximum penalty is only a \$200 fine.

The State law is tougher. A person convicted under its provisions is liable for a maximum penalty of a \$1,000 fine and a year in jail for the first offense, and a \$5,000 fine and 3 years' imprisonment for subsequent violations.

TURNOVER IS RAPID

Daniel J. Leahy, an assistant State's attorney who prosecutes smut cases in criminal court, has a conviction rate against filth peddlers that rivals Port's record, although it is not as extensive.

Two extralegal problems confront prosecutors in smut cases: publishers usually pay vendors' defense costs to protect their own profiteering interest, and the turnover in obscene material is so rapid that a publication often is out of print within several weeks, making it difficult for law enforcement officials to keep up with the market.

"By the time action is taken, a title is sold out and the publisher and the dealer have made their profits and are putting other filthy titles up for sale," one observer said. "It's like a merry-go-round."

[From the Chicago Tribune, July 28, 1965]

SMUT IS FEARED AS A PERIL TO SOCIAL BELIEFS—PROSECUTOR FORESEES EFFECT ON IDEALS

(By William Kling)

[Last article in a series]

"Unless someway is found to eradicate obscene paperbacks and magazines in our community, they eventually will cause so many changes in our attitudes that our society will be torn apart at its seams."

The speaker was Manuel L. Ports, assistant corporation counsel and Chicago's chief prosecutor in the "war against smut."

"If there is any merit to our contention that education and reading have merit, and that good reading habits will indoctrinate a person with good ideas and a broader outlook on life, then it can be properly reasoned that bad reading material, such as pornography, would have the opposite effect," Port said.

PEOPLE FOLLOW TRENDS

"People judge their own actions by society's present mores, by what their fellow men do in the community. People tend to do what is acceptable.

"If our literature shows deviation as conduct in which decent members of society regularly indulge, it can cease to be regarded as deviant conduct and become acceptable."

Msgr. Joseph J. Howard, executive director of the National Office for Decent Literature, an arm of the Catholic bishops of the United States, put it more succinctly:

"If good books have some influence, then bad books have some influence. The choice seems clear.

"HITS 'LITERATURE' LABEL

"We spend billions of dollars for education and then let our youth read this junk [smut]. It's a waste of the taxpayers' money. Nobody who enjoys a good book can call this literature. Why should the so-called good people call this literature? It's all lesbianism, masochism, beating, and bondage."

Edward Rekruciak, president of the Chicago unit of the Citizens for Decent Literature and Motion Pictures, said objectionable paperbacks and magazines can become habit forming, causing the reader to ignore good literature and perhaps even lead him into a life of socially unacceptable sexual behavior.

"Smut is a bridge between hard-core pornography and the person," Rekruciak said. "Where a person might be repelled initially by what he might find in pornography, the smutty paperbacks and magazines can develop a habit and so inure him to perversion and deviation that soon these publications become tame and may not satisfy him.

"ONCE ON THE LIST

"If this happens, he might soon turn to the pornography that he previously found offensive—and perhaps even worse."

A survey of advertisements in smut magazines recently found that the mail-order purchase of an innocent item could cause the buyer headaches. His name would wind up on a mailing list that would make him the target of further solicita-

tions using "every thoughtfully conceived sex pitch in the book," according to a survey report.

In the project, the survey group bought a deck of playing cards in answer to one of the advertisements, and in a short while it had a 4-inch-thick scrapbook filled with "teasers" that use sex as an angle to sell other "merchandise."

One company using this device often operates under a variety of names, using the same mailing list for all.

"A total of 21 separate ads [were] in one magazine * * * [with] a total of 16 different company names accompanying the same department number and postal zone number," the report said. "All were apparently from the same source."

The advertisements hawked such products as "delightfully enticing" cartoon books, "pen pal" clubs, lewd movies and records, police badges, revolvers, undergarments, medication for skin blemishes, "oneway" glass, and books purporting to present sex education.

An advertisement for the Adonis Male Club, an international "pen pal" organization that was operated by an Oak Park couple who published two magazines, *Vim* and *Gym*, led to the indictment January 16, 1961, by the Federal grand jury in Chicago of 53 persons for mailing, or conspiring to mail, obscenity.

APPEAL TO PERVERTS

The publications appeal to homosexuals. Among the 750 club members were college professors, schoolteachers, students, a minister, and a former legislative assistant to a U.S. Senator.

During the investigation by postal inspectors, several members committed suicide rather than face prosecution. Many pleaded guilty to the charges and testified for the Government in the trial before Judge Richard B. Austin in Federal district court.

They told how they bought copies of the magazines, noticed the advertisement, and joined, not knowing the nature of the group.

Oddly, few of those indicted had any police records of morals charges against them.

STATEMENT OF HON. PETER W. RODINO, JR., A REPRESENTATIVE FROM THE STATE OF NEW JERSEY

Mr. Chairman, I appreciate greatly this opportunity to present testimony in support of the legislation introduced by my distinguished colleague from New Jersey, Mr. Daniels, to create a commission on noxious and obscene matters and materials.

The problem of controlling the insidious traffic in pornography has plagued us for years. Despite growing awareness of the danger it presents, and despite efforts by local, State, and Federal Governments, as well as concerned organizations and individuals, a solution has thus far escaped us. The dissemination of obscene "literature" and materials has become a billion-dollar industry.

I need not, and certainly do not wish to, discuss the nature of the obscene and lewd books, for example, that any citizen can see displayed at newsstands, drug-store and variety store counters throughout the country. Even worse, I understand, are the vile items offered for sale to young people who have had the misfortune to have their names placed on the mailing lists of purveyors of obscenity because they innocently ordered, perhaps, a kit of materials for the construction of model airplanes.

Witnesses with practical experience in fighting the distribution of obscenity have given ample testimony to this committee of the very dangerous impact of such materials on young and impressionable minds. And the Director of the Federal Bureau of Investigation has officially reported that this filthy commerce is a major factor in the frightening growth of juvenile delinquency and crime.

Thus far, a feasible solution to this problem has not been found.

We face, first, the question of making sure there is no breach of our constitutional guarantees of freedom of speech and freedom of the press. We know from the history of legislative proposals and the conflicting judicial decisions in this area that this is an incredibly complex situation.

And second, there is the difficulty of determining exactly what is obscene. Here, as we know, those who distribute pornography fall back readily on the claim of artistic merit. Undoubtedly this is a valid point for consideration, for in the past genuine works of art have been banned as obscene. As Representative

Daniels has pointed out, at times Walt Whitman's "Leaves of Grass" and some of the plays of Eugene O'Neill were considered obscene.

I have long been concerned about the problem, and have myself introduced legislation to increase the criminal penalties now on the statutes for the mailing, importing, and transporting of obscene matter. This, I believe, would be one way to help wipe out this rotten traffic.

In H.R. 7465 we have, in my judgment, a feasible and basic attack on the problem. The Commission to be established has broad authority to study all aspects of the problem, including definitions of obscenity, and develop recommendations for action in both the areas of legislation and efforts for enforcement at all levels of government.

Mr. Chairman, the continued distribution of pornography is pollution, and pollution of the worst sort. Each day the availability of obscene materials is polluting the most priceless human resource we have—the minds of the young people who are America's future hope. We have acted, and are continuing to act, to curb water and air pollution. It is time we took action to eliminate the pollution of the minds of our boys and girls. I urge the committee's favorable consideration of H.R. 7465.

TESTIMONY BY HON. JOHN V. LINDSAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, almost everyone opposes obscenity, but almost no one knows what legally can be done about it.

I am among those who are repelled and angered by the widespread circulation of pornography. I, too, hope that lawful steps can be taken to wipe out the venal traffic in filth.

For these reasons, I strongly support the establishment of a Presidential Commission on Noxious and Obscene Matters and Materials to explore all constitutional means of controlling the distribution of lewd and degenerate materials.

The Commission represents a new, sensible, and responsible approach to the national problem of pornography.

Heretofore, Congress and the executive branch have tried—usually without success—to suppress allegedly obscene mailings and materials by shotgun techniques that clearly violated the Bill of Rights.

I have opposed legislative and administrative efforts to eliminate one evil—pornography—by paying the price of another—the subversion of individual liberties—and will continue to do so. I can endorse this bill in good conscience, however, because it attacks the pornography problem in an infinitely wiser manner.

H.R. 7465 recognizes that pornography cannot be eliminated at any one level of government. The bill calls for a coordinated attack upon obscenity by Federal, State, and local governments and through private groups and organizations.

The Commission is directed to develop ways of informing the public about the growing commerce in pornography and enlist the help of mass media in the publicity effort. The bill, finally, directs the Commission to study existing laws on obscenity, to suggest definitions of what is obscene and what is not and to recommend revision in Federal laws to effectively regulate the distribution of lascivious materials.

I am gratified that the bill states explicitly that any recommended regulations be drawn up "without in any way interfering with constitutional safeguards of freedom of speech or freedom of the press."

The language goes to the heart of the matter: Can we place legal restrictions on the printed word—no matter how offensive or salacious—without abridging our fundamental right to freedom of expression?

I hope that we can fight obscenity without in any way relenting upon or repudiating the fight Americans undertook many years ago for individual liberties. I believe there is a real basis for that hope.

The controlling decisions on obscenity by the U.S. Supreme Court are *Roth v. the United States* (1957) and *Jacobellis v. Ohio* (1964). In the *Roth* decision the Court in effect defined obscenity as a matter "utterly without redeeming social importance." All other matter, said the Court, is protected by the first amendment to the Constitution guaranteeing free speech and a free press.

The Court added in deciding the *Jacobellis* case: "It follows that materials dealing with sex in a manner that advocates ideas, or that has literary or scientific or artistic value or any other form of social importance may not be branded as obscenity and denied the constitutional protection."

Accordingly, the Commission will find it has a very narrow ground to work upon in formulating its legislative recommendations. The ground, nonetheless, is there, and the Commission may make very valuable use of it.

I have two other observations on the bill:

First, I find it disturbing and somewhat illogical that neither the bar nor the judiciary is to be represented on the 15-member Commission appointed by the President. Members are to be selected from carefully defined fields, e.g., three from the clergy, one from the motion picture industry, one from the Post Office Department, etc.

It seems to me that since the law and the courts are basic to the Commission assignment they should be represented. It is true that two members are to be chosen from the Department of Justice and a third is to be a city or county prosecutor, all of whom presumably will be lawyers. From the nature of their occupations, however, I think it highly unlikely that any of the three will be wholly objective on the vital matter of individual rights. I therefore recommend that one Commission member be selected from the American Bar Association.

The arguments for a judicial representative, perhaps a retired judge, should be self-evident: With the courts so deeply involved in obscenity cases, a judge's advice would be invaluable, particularly in drafting legislation.

Second, the bill directs the Commission to "establish suggested definitions of noxious and obscene matters and materials." I think that key directive might be broadened to include descriptions.

A case in point is the Hecht-Bernstein law that took effect in New York State last July 1. The law makes it a misdemeanor to sell or give to minors photographs or literature "posed or presented to exploit lust for commercial gain."

The law then undertakes to describe, specifically and precisely, what constitutes obscenity within the context of the legislation. The objective is to prevent the law from being overturned because of vagueness of definition or, as the Supreme Court has stated, for lack of a "provable national standard" of obscenity.

I suggest, then, that the Commission may find the best definition in this area to be descriptive.

As the father of four children, I share the understandable concern of all parents who have been shocked by the mindless, degenerate material in public and private circulation today. The pornography problem is particularly acute in New York City and I am deeply sympathetic to the pleas I have received from constituents asking—in some cases demanding—that something be done.

I continue to stand by the principle, however, that the Bill of Rights is our most sacred document, and its investiture of freedom and liberty in all America should not be vitiated by efforts to curtail the circulation of far lesser documents.

I believe now, as I did in 1964, when I spoke against a clearly unconstitutional bill in the House, that:

"Every citizen in this country has within himself the power to exercise personal censorship.

"If an idea is expressed on a streetcorner which he rejects or finds offensive, he may walk away.

"If it be expressed on radio or television, he may turn it off.

"If it be in a letter, he may tear it up.

"But he may not constitutionally compel the U.S. Government to do this for him, or to penalize the speaker with whom he is in disagreement."

In conclusion, I hope that we can find a way to protect freedom of speech at the same time we combat an onslaught of smut.

AMERICAN LIBRARY ASSOCIATION,
Chicago, Ill., September 24, 1965.

HON. JOHN DENT,
Chairman, Select Subcommittee on Education of the House Committee on Education and Labor, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Having learned of the hearings conducted by your committee on H.R. 7465, may I request that the following statement on behalf of the American Library Association be accepted for the record.

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."

Librarians must count themselves among those Americans most concerned with the "problem" of sex literature. The librarian probably does not exist who has not been requested or compelled to remove this or that book from his shelves, because it was obscene or pornographic or noxious—in someone's or some group's opinion. And, being human, librarians are tempted to welcome the relief from such censorship problems which an authoritative commission on noxious and obscene materials would seem to offer. The trouble, however, is that in our democracy and under our free way of life, it is impossible to constitute any such authoritative commission. Our society does not believe that any single group of men or women can authoritatively establish rules applicable to all reading matter, defining what is noxious or obscene, and our Constitution forbids any governmental interference with expression which may seem noxious or obscene to any such group or commission.

There are private groups in the United States today who seem to be much concerned about the traffic in "obscene" and "noxious" material, who use every means at their disposal to restrain and suppress that traffic. Some of the means are legitimate, even desirable, but others are not. In 1963, the U.S. Supreme Court found that the "Rhode Island Commission To Encourage Morality in Youth," involved "a scheme of State censorship," and invalidated the law under which the commission was created, although that commission had no power to seize or ban books, nor to prosecute persons for violating its standards. The action of the Supreme Court suggests that, in selecting means to combat traffic in obscenity, the Federal Government too, must "scrupulously embody the most rigorous procedural safeguards" so as to avoid creating a system of prior restraint upon expression, abhorrent to the first amendment. It would seem most difficult, if not impossible, for any governmental commission, no matter how fair, conscientious, and enlightened its membership might be, to avoid becoming involved in practices tantamount to censorship, and this must be especially true when officials of the Government, including some charged with enforcing laws against obscene materials, would sit upon the commission—as proposed under this bill. And so the commission might inevitably run afoul of its own proposed mandate to operate "without in any way interfering with constitutional safeguards of freedom of speech or freedom of the press."

In addition to these problems, there is also the overriding question, already raised in the course of the hearings, concerning the validity of the basic premise upon which the proposed legislation is based. The bill assumes and states that the material which the Commission would be established and empowered to investigate is "morally corrosive" and "pernicious." Yet, as has been repeatedly observed, there is very little evidence, of any sort, concerning the impact upon behavior of printed and visual material, and no data at all showing "corrosive" or "pernicious" effects upon behavior, much less any to indicate that crimes are committed as a result of reading or viewing "obscene" or "noxious" material. There is a noticeable tendency, in some quarters, which the Congress should studiously avoid, to confuse fact with fiction, and to try to improve upon harsh reality by legislating against "obnoxious" fantasy.

Prof. Lee A. Burgess, Jr., chairman of the English Department at Wisconsin State College, reminded us recently at a Southern Wisconsin Education Association meeting that: "There is no evidence that bad literature is an important or significant cause of delinquency. Although many persons have offered their opinion that literature causes delinquency, there is little evidence that is acceptable by legal or medical standards that literature contributes to juvenile delinquency. In fact, delinquents tend to be nonreaders. They are rarely found in libraries. They tend to be school dropouts—little acquainted with libraries and books. If we are to risk the dangers of censorship, we should be sure that evidence is shown to us that it is necessary."

I understand that the U.S. Department of Justice and the Office of Education are considering means to conduct a study which would "develop scientific data measuring the effects of obscene matter," and "clarify the premises underlying obscenity laws." Certainly, before any Presidential or other National Commission on Obscene and Noxious Material were to be created, some such careful study of the nature of the evil which the Commission is to uncover, should be carried out. Of course, when the study is carried out, it would need to be done under unimpeachable auspices, outside the influence of Government, at, for example, one or more of our better universities or research institutions, or by a consortium of them.

In addition, it may seem equally important for scientific studies to be made of the impact which the enforcement of censorship laws have upon the persons who conduct our institutions of free expression, including the mass media of communication. The American Library Association might, in such an event, be in a position to offer additional suggestions or advice.

In conclusion, it is the position of the American Library Association that H.R. 7465 should not be enacted at this time, pending careful study of the type discussed above.

Sincerely yours,

ROBERT VOSPER, *President.*

[Telegram]

CONGRESSMAN J. H. DENT,
*Chairman of Select Subcommittee on Education,
U.S. House of Representatives, Washington, D.C.:*

GREENSBURG, PA.

Wish to advise you that I am very much in favor of good measures to combat obscene matters and materials. I am aware of harmful affect on maturing minds, definitive standards in legislations are needed to suppress this traffic. Have had difficulty making prosecutions in this field stick in our county because of this lack. I offer any cooperation and assistance needed by your committee.

RICHARD E. MCCORMICK,
District Attorney of Westmoreland County.

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A.,
New York, N.Y., August 31, 1965.

HON. JOHN H. DENT,
*Chairman, Select Subcommittee on Education,
U.S. House of Representatives, Washington, D.C.*

DEAR SIR: We have been advised of hearings to be held in early September by the Select Subcommittee on Education on the question of establishing a Federal Commission to study and coordinate State and local studies to deal with the problem of indecent literature.

The National Council of Churches is very much concerned about this problem. Additional research and better exchange of experience among States and communities could be very helpful. The information which a Federal Study Commission could gather on a nationwide basis could be of real help to all of us in developing new policy and program judgments on this problem.

The National Council of Churches will follow your progress in this matter with interest.

Sincerely,

SHELDON L. RAHN,
Commission on Social Welfare.

DIOCESAN UNION OF HOLY NAME SOCIETIES,
Greensburg, Pa., August 30, 1965.

HON. JOHN H. DENT,
*Committee on Education, House of Representatives,
House Office Building, Washington, D.C.*

DEAR SIR: We respectfully and earnestly solicit your attention to, and consideration of, the many voices of private citizens, raised in protest against the flood of obscene and indecent literature that is inundating this Nation.

From our own personal experiences and observations, we are witnessing the sometimes tragic results of this evil.

Passage of the above-captioned bill, in establishing a Commission on Noxious and Obscene Matters and Materials, will do much to stem this tide.

Any effort on your part, as well as those of your colleagues, to effect passage of this bill, will be most gratefully appreciated.

Be it resolved therefore, that the Diocesan Union of Holy Name Societies, diocese of Greensburg, Pa., of the four counties of Fayette, Westmoreland, Armstrong, and Indiana, comprised of 132 parish units, representing some 12,000 men and their families, stand on record in support of this bill, as an effective instrument to bring about the cessation of the flood of obscene matters and materials that is endangering the moral, spiritual, and physical welfare of the people of these United States of America.

(Signed) ALFRED PUGLIA, *President.*

THE AMERICAN LEGION,
Washington, D.C., September 17, 1965.

HON. JOHN H. DENT,
Chairman, Select Subcommittee on Education, House Committee on Education and Labor, House Office Building, Washington, D.C.

DEAR CHAIRMAN DENT: Please be advised that the American Legion supports H.R. 7465, a bill to create a Commission on Noxious and Obscene Matters and Materials which is presently pending before your subcommittee.

Enclosed is a copy of Resolution No. 227 adopted at the 1965 National Convention of the American Legion in Portland, Oreg., which is in agreement with the objectives of the above legislation.

The American Legion does not wish to appear personally in support of this bill but we would appreciate it very much if you would have this letter and the resolution incorporated in the printed record of the hearings of your subcommittee.

With best wishes, I am,
Sincerely yours,

HERALD E. STRINGER, *Director.*

FORTY-SEVENTH ANNUAL NATIONAL CONVENTION OF THE AMERICAN LEGION,
PORTLAND, OREG., AUGUST 24-26, 1965

Resolution: No. 227.

Committee: Child Welfare.

Subject: Eliminate the dissemination of obscene and pornographic literature to youth.

Whereas in the opinion of some psychiatrists, salacious literature may have an especially detrimental effect on disturbed adolescents; and

Whereas along with such libidinous literature now available, and socially unacceptable conduct, there has been a resurgence of venereal disease among teenagers and an appalling upswing in the rate of illegitimacy; and

Whereas it is difficult, if not impossible, for private individuals and agencies to obtain hard facts on the source channels of distribution and magnitude of the problem because of lack of legal power. Much of such material comes from abroad to youths who innocently get on the mailing lists of smut literature and purveyors thereof often work behind legitimate mail-order fronts offering merchandise; and

Whereas a necessary first step in a nationwide antismut drive is the gathering of information on all the sources and channels of distribution of this literature: Now, therefore, be it

Resolved, by the American Legion in national convention assembled in Portland, Oreg., August 24-26, 1945. That the President of the United States is respectfully urged that he direct the Department of Justice to: (1) undertake a thorough inquiry of those who produce salacious literature; (2) compile full and complete information thereon, and (3) coordinate a fight against smut through all available Federal, State, and local agencies; and be it further

Resolved, That all American Legion posts and auxiliary units, parents, and the general public be encouraged to report to local postal authorities instances where youth have received literature through the U.S. mails which appears to be obscene or pornographic.



The results of the present study are in agreement with those of other workers in this field. It is well known that the effects of vitamin and mineral deficiency are often similar, and it is difficult to distinguish between the two. In the present study, the effects of vitamin and mineral deficiency were compared in a group of subjects who were deficient in both. The results showed that the effects of vitamin deficiency were more pronounced than those of mineral deficiency. This is in agreement with the findings of other workers, who have shown that vitamin deficiency is more likely to cause severe symptoms than mineral deficiency. The present study also showed that the effects of vitamin and mineral deficiency were additive, and that the combined deficiency was more severe than either deficiency alone. This is also in agreement with the findings of other workers, who have shown that the combined deficiency of vitamin and mineral can lead to severe symptoms.