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CREATING A COMMISSION ON OBSCENITY AND PORNOGRAPHY

HEARING

BEFORE THE

SELECT SUBCOMMITTEE ON EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

FIRST SESSION

ON

H.R. 2525

A BILL CREATING A COMMISSION TO BE KNOWN AS
THE COMMISSION ON OBSCENITY
AND PORNOGRAPHY

HEARINGS HELD IN WASHINGTON, D.C., APRIL 20 AND 24, 1967

Printed for the use of the Committee on Education and Labor

CARL D. PERKINS, *Chairman*

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CREATING A COMMISSION ON OBSCENITY AND PORNOGRAPHY

THURSDAY APRIL 20, 1967

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

The subcommittee met at 10 a.m., pursuant to call, in room 2257, Rayburn House Office Building, Hon. Dominick V. Daniels (chairman of the subcommittee) presiding.

Present: Representatives Daniels, Mink, Meeds, Albert, Erlenborn, Scherle, and Steiger.

Also present: Representative Roman C. Pucinski and Daniel Krivit, counsel.

Mr. DANIELS. The Select Subcommittee on Education will come to order. We are meeting this morning for the express purpose of considering H.R. 2525 and related bills. Hearings will be held today and on April 24. The bill under consideration is a bill to create a commission on obscenity and pornography.

In the 89th Congress the Senate passed similar legislation. Last year a related House bill was favorably reported in subcommittee, but due to the lateness of the session, it was not possible for the bill to be considered by the full committee.

Many Americans are deeply aware of the problems of obscenity in our modern society. In our common desire to meet the challenge posed by this billion-dollar big business, many of us tend to gravitate toward simple panaceas, or try to pinpoint vague, causal relationships. Yet careful reflection must tell us that there is no quick or easy solution.

Some of the problems of obscenity regulation raise complex questions which penetrate deeply into the roots of our sacred first amendment principles. But as discussion and debate continue over meaningful legal definitions, the inexorable flow of noxious, hard-core pornography continues to fill our newsstands, pours unsolicited into our homes, and threatens to contaminate young and impressionable minds.

The principal bill to be considered provides for a National Commission, composed of 16 members, eight to be appointed by the President, four by the Speaker of the House, and four by the President Pro Tempore of the Senate. Following a thorough study of the problem, to last about 1 year, the Commission will be asked to recommend appropriate and effective constitutional means for dealing with traffic in pornography.

Under the provisions of H.R. 2525, the Commission would be charged with the following duties: (1) with the aid of leading con-

stitutional law authorities, to analyze the laws pertaining to the control of obscenity and pornography; (2) to ascertain the methods employed in the distribution of obscene and pornographic materials and to explore the nature and traffic in such materials; (3) to study the effect of obscenity and pornography upon the public—and particularly minors—and its relationship to crime and other antisocial behavior; (4) to recommend such legislative, administrative, or other advisable and appropriate action as the Commission deems necessary, to regulate effectively the flow of such traffic, without interfering with constitutional rights.

I envision that this proposed Commission will be composed of representatives from all segments of our society and, therefore, will truly reflect the diverse views of our national community. It must be understood that this Commission is not intended to serve as a national board of censorship, nor is this Commission, directly or indirectly, to stimulate indiscriminate prosecutions without due process of law. There should be absolutely no doubt that the purposes and duties as set forth in H.R. 2525 are to be carried on without any interference with constitutional freedoms of speech and press.

I am not unmindful of the deep shame that befalls a nation, or a community, when overzealous public officials with honest motives suppress great works of art and literature. Thankfully, truly great ideas can seldom be obliterated.

It was not until 1957 that the U.S. Supreme Court, for the first time in its history, squarely faced the unresolved problem of official censorship of obscenity. In the now famous *Roth* case, the Supreme Court stated that obscenity was not protected by the first amendment. Our highest court rejected its former *Hicklin* rule as too restrictive under the first amendment because it judged obscenity "by the effect of isolated passages upon the most susceptible persons." The Court then proceeded to raise the constitutional standard by establishing the following test:

Whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interests.

Since 1957 there have been many Federal and State court decisions trying to further delineate this classic definition of obscenity.

We all recognize the strong public interest in encouraging the dissemination of nonobscene literature. Coequally, there is our imperative obligation to deal effectively with hard-core pornography. Somewhere between these two extremes is an area of obscenity that experts agree also needs thoughtful analysis. This is the problem of variable obscenity.

Variable obscenity is judged by its appeal to, and effect upon, the audience to which the material is primarily directed. This may explain why some believe that material is never inherently obscene, but obscenity varies with the circumstances of its dissemination. This proposed Commission could make an outstanding contribution in a study of this most difficult area. I have been informed that the practical difficulties of variable obscenity become most apparent when law enforcement officials and magistrates at preliminary hearings are forced to make legal judgments.

Last year, in an effort to set forth a comprehensive definition of obscenity, the New Jersey State Legislature grappled with the

problem and finally passed legislation to establish several specific tests for obscenity against which publications and other materials would be measured. The purpose and intent of this bill was to bring an element of certainty to an area of law which, admittedly, is most uncertain.

Governor Hughes, one of our Nation's finest governors, reluctantly vetoed this legislation declaring—

Thus, what started out to be a simple measure of obscenity, necessarily developed into a formula of extreme complexity. And, it is this union of the simple on the one hand, with the undeniably complex on the other, that creates much of the difficulty about this bill.

Governor Hughes then recommended that a commission be established forthwith—

Which would undertake a careful review of the existing obscenity statute, and of the most recent court decisions concerning this subject, with a view to developing such additional legislation as may be required.

I am confident that other States which have shared similar experiences, and dedicated Federal agencies, would welcome a national commission on obscenity and pornography.

In discussing this very subject—obscenity—the late, great Justice Felix Frankfurter declared: "We should not burn the house down to roast the pig." I would like to add the following as a postscript: "Nor should we let that pig run wild."

By enactment of this important legislation, we would be putting that "pig" right in the oven where it properly belongs.

(Text of H.R. 2525 follows:)

[H.R. 2525, 90th Cong., 1st sess.]

A BILL Creating a Commission to be known as the Commission on Obscenity and Pornography

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

FINDING OF FACT AND DECLARATION OF POLICY

SECTION 1. The Congress finds that the traffic in obscenity and pornography is a matter of national concern. The Federal Government has a responsibility to investigate the gravity of this situation and to determine whether more effective methods might and ought to be devised to control the transmission of materials which are morally and culturally corrosive and otherwise harmful to the public, and particularly minors, through instrumentalities which are constitutionally subject to Federal regulation. It is the purpose of this Act to establish an advisory commission whose purpose shall be, after a thorough study, to recommend advisable, appropriate, effective, and constitutional means to deal effectively with such traffic in obscenity and pornography.

COMMISSION ON OBSCENITY AND PORNOGRAPHY

SEC. 2. (a) ESTABLISHMENT.—For the purpose of carrying out the provisions of this Act, there is hereby created a commission to be known as the Commission on Obscenity and Pornography (hereinafter referred to as the "Commission").

(b) MEMBERSHIP OF THE COMMISSION.—The Commission shall be composed of sixteen members, appointed as follows:

- (1) Eight by the President;
- (2) Four by the Speaker of the House of Representatives; and
- (3) Four by the President pro tempore of the Senate.

(c) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment was made.

(d) ORGANIZATION OF COMMISSION.—The Commission shall elect a Chairman and a Vice Chairman from among its members.

(e) QUORUM.—Nine members of the Commission shall constitute a quorum, but three members shall be sufficient for the purpose of taking testimony or interrogating witnesses.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 3. (a) MEMBERS EMPLOYED BY UNITED STATES.—Members of the Commission who are officers or full-time employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States; but they shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b-2) for persons in the Government service employed intermittently.

(b) OTHER MEMBERS.—Members of the Commission who are not officers or full-time employees of the United States shall each receive \$75 per diem when engaged in the actual performance of duties vested in the Commission. In addition, they shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b-2) for persons in the Government service employed intermittently.

STAFF OF THE COMMISSION

SEC. 4. The Commission shall have the 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.

DUTIES OF THE COMMISSION

SEC. 5. (a) INVESTIGATION AND RECOMMENDATIONS.—It shall be the duty of the Commission—

(1) with the aid of leading constitutional law authorities, to analyze the laws pertaining to the control of obscenity and pornography; and to evaluate and recommend definitions of obscenity and pornography;

(2) to ascertain the methods employed in the distribution of obscene and pornographic materials and to explore the nature and volume of traffic in such materials;

(3) to study the effect of obscenity and pornography upon the public, and particularly minors, and its relationship to crime and other antisocial behavior; and

(4) to recommend such legislative, administrative, or other advisable and appropriate action as the Commission deems necessary to regulate effectively the flow of such traffic, without in any way interfering with constitutional rights.

(b) REPORT.—The Commission shall report to the President and the Congress its findings and recommendations as such as practicable and in no event later than January 31, 1967. The Commission shall cease to exist ten days following the submission of its final report.

POWERS OF THE COMMISSION

SEC. 6. (a) HEARINGS AND SESSIONS.—The Commission or, on the authorization of the Commission, any committee or member thereof, may, for the purpose of carrying out the provisions of the Act, hold such hearings and sit and act at such times and such places within the United States as the Commission or such committee or members may deem advisable.

(b) CONSULTATION.—In carrying out its duties under the Act, the Commission may consult with Governors, attorneys general, and other representatives of State and local government and private organizations, as it deems advisable.

(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. Our first witness this morning is a gentleman who has shown a great deal of interest in the subject matter that we are con-

sidering. He is the senior Senator from the State of South Dakota. I welcome Senator Karl E. Mundt to this hearing. I understand you have a short statement, Senator.

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

Senator MUNDT. Thank you, Mr. Chairman and members of the committee. I have just a brief statement.

May I say, first of all, that I am very happy again to make the trek from the Senate to the House to testify before a committee dealing with the subject of obscenity, and I think this is the third time I have been over here, and being a great believer in the game of baseball, I hope that this is the last, because I believe we are going to succeed this time in getting the legislation passed.

I recall the pleasant experience the day this bill was introduced jointly in the Senate and the House, when your distinguished chairman came over and we had our picture taken, and I have seen it, Mr. Chairman, in a few papers around the country. I listened to your opening statement with great approval and I am convinced that this committee, with your vast knowledge accumulated through previous hearings on this subject, and the growing nature of the problem, under the dynamic and aggressive leadership of your chairman, is going to get some action this time.

We have, as you know, passed this bill three times in the Senate, the same general commission approach. We are poised and ready to pass it for a fourth time. I think it would be wonderful if the House would beat us to the draw, but you are going to have to move pretty fast and we have no pride in authorship; we are just eager to get something done.

I was impressed by the Chairman's use of the Justice's statement about the pig and the barn. It is so true that we should not just let this dirty, filthy animal of obscenity run loose up and down the streets and into the homes of America any longer when everything else, it appears, has been exhausted, so I am very happy to appear before you in support of your bill, which is a companion bill with the bill in the Senate.

It is identical, as you know, with a few little minor modifications, which one House or the other writes in, but the formula for writing is the same.

The question we face is, can we do something about this filth that clutters our mail and appears on the newsstands and fills the screens of our movie houses? It will never come out in the open, but it is always operating and understandably so, because this has developed into almost a billion-dollar business.

A lot of people are getting filthy rich by sending filthy material through the mail and only you, or rather only we, can stop it.

I want to tell you what my experience has been since I have become involved in this effort to pass this legislation. My mail has been filled with pleas, as I assume your mail is, Congressman Daniels, from people who read about it, and know that we are trying to do something. And they write us eager, desperate letters from all parts of the country—"please do something to get action on this legislation."

People complain of the audacity of the peddler of filth. South Dakota has been a dumping ground this very year since I introduced

the bill. I suspect that half of my mail comes from mothers who are frantic because mail pours into their home and there is no way to stop it. I have sent down bushel baskets to the other end of the avenue, and they have tried, but their hands are powerless because we have not given them legislative tools to handle it.

This has become a legislative responsibility. Either we do something or filth continues to permeate the people. I hear from members of religious orders, ministers, students, housewives, businessmen, all the targets of this objectionable material through the mails. Most of it is just plain dirt. It reeks of filth, it is lurid and suggestive and comes under a classification of mail that you and I are guilty of subsidizing. It doesn't even pay its way through the mail.

It goes first class. It goes in the kind of mail that has been subsidized down through the years because it was thought this was a good way to stimulate business, but it is difficult for me to realize how we can look at ourselves in the mirror in the morning, realizing that we are helping to subsidize the filth with the taxpayers' money, because that is the way it comes through—that kind of mail.

So I urge you to report the legislation favorably—I hope promptly. To those who would try to deter action by the claim that this bill provides for censorship, let me say simply to them, please read the bill. Creation of a commission provided for in this bill is really the only way to avoid censorship, but I have the feeling that those who raise the plaintive cry of censorship, do it for purposes other than to guarantee constitutional rights.

I hope you disregard those arguments. It is the false shield placed in front of people who refused to come out and argue for filth on its merits, so they raise the false entirely fictitious cry of censorship. They try to hide behind those noble arguments as they go down in the mire and continue to try to enhance and increase juvenile delinquency in this country.

Others write me, as I am sure they have written you, that there is no definition of obscenity. I listened to the chairman's opening statement. It is true; I can understand what the Governor had in mind. Here is a chance to define it.

Are we going to stand handcuffed, unable to meet this because nobody defines it? At least we can set the mechanism in motion that will come up with a definition.

Others say this has no appeal to normal people, and abnormal people have a perfect right to get through the mail what they want. But they send it to the normal children of normal families all over this country, without any request from these normal families to change normal human beings into abnormal people.

I sometimes think I am getting oldfashioned, but it seems to me we have already moved very rapidly toward acceptance of loose moral standards in our society. You can make quite a case of it when you find the Federal Government and the Congress subsidizing the purveyance of filth, which exactly is what happens so long as we permit it to go through the mail at a class that doesn't pay its own freight.

I am sure that some of the attitudes have been fostered and encouraged by the muck and the filth in this country and we are be-

ginning to reap some rather bitter dividends in what we see around the country at the present time.

A movie critic said the other day she was tired of bosoms and buttocks, which seem to dominate many of the films that are put on the market today. Parents must be very wary of the movies which they permit their children to attend.

I wonder sometimes if you are as curious as I am about the fact that so-called Oscar Award films these days very frequently have been prohibited from being shown on television. I believe that speaks rather eloquently about the morals of the country and what has been happening. The award winners in the estimation of whoever picks them contain so much sex and filth that they will not permit them, under the television code, to be shown on a television station.

It seems to me this is an interesting situation for study. We apparently have one standard for motion pictures and another for television.

So I say that while maybe I am out of line and maybe we ought to do something to correct this kind of smut peddling, I do think that at least the best we can do is to have a commission to analyze it and get the records from all around the country.

I think there is real need for Congress to act. There has been enough public outcry for support of this legislation for a long time to demonstrate its importance. The fact that it has three times passed the Senate would indicate that is true, and so a study by an impartial body of experts would be of great benefit in clearing away some of the legal cobwebs.

The chairman mentioned those good Governors, good police forces, good attorneys, who try to do something about it, but they are confronted with a maelstrom of complexity and indecision and lack a definition.

This Commission is charged with the responsibility of providing this needed information on what action can be taken at local levels of government, by individuals, and by and with the assistance of the Federal Government. The power of the individual is almost unlimited. It only needs to have some direction and stimulation. Most of the problem could be solved in many communities if people knew what they could do and how they should react. Information of this kind should be made available.

Again I want to express my appreciation to you, Congressman Daniels, and to all the others in the House who have persistently pushed for this legislation. The fact that you have such an admirable attendance at your committee this morning indicates, surely, the interest of the individual members and Members of the House.

I come from a body where, if we have a committee meeting, we are lucky to have the chairman there. If you get the chairman and the ranking minority there, that is good. To find this kind of diligent attention on a matter of this kind is good.

Let me add that I only hope your constructive action can be passed as soon as possible.

Mr. DANIELS. Thank you for coming here and taking time out of your very, very busy schedule.

(Senator Mundt's bill follows:)

[S. 188, 90th 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 twenty members, appointed by the President, as follows:

- (1) One from the Senate;
- (2) One from the House of Representatives;
- (3) Two 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;
- (7) One who shall be a prominent educator in the field of secondary education;
- (8) One who shall be a prominent educator in the field of higher education;
- (9) One who shall be a prominent librarian;
- (10) One who shall be a prominent representative of the book publishing industry;
- (11) One who shall be a prominent representative of the newspaper, magazine, and periodical publishing industry;
- (12) One who shall be a prominent representative of the motion picture industry;
- (13) One who shall be a prominent representative of the radio and television industries;
- (14) One from among the attorneys general of the several States;
- (15) One who shall be a chief prosecutor of a city or county government; and
- (16) One who shall be a chief law enforcing officer of a city or county government.

(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. Eleven members of the Commission shall constitute a quorum.

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 \$100 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 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) to analyze the laws pertaining to traffic in 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.

(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, 1967. 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. In my haste to get started this morning, I neglected to introduce the members of this important committee.

To my right, the distinguished Congresswoman from Hawaii, Mrs. Patsy Mink.

Senator MUNDT. She was one I had no difficulty in recognizing. [Laughter.]

Mr. DANIELS. To her right is our distinguished Member from the State of Washington, Lloyd Meeds. And we also have the honor to have serving on this committee, the distinguished majority leader of the House, Carl Albert.

Senator MUNDT. An old friend.

Mr. DANIELS. I am sure you are well acquainted with each other.

On the minority side we have John N. Erlenborn of Illinois and we have two freshmen members, William J. Scherle of the State of Iowa, and William Steiger from the great State of Wisconsin, where we get all our fine dairy products.

Senator MUNDT. May I say I spoke the other day in his Congressional district. They all allege he is the youngest Member of the House and they are all proud of him. Looking at him this morning, I believe that is correct—that he is the youngest Member.

Mr. DANIELS. And immediately to my left is counsel to the committee, Daniel Krivit.

Mrs. Mink, any questions?

Mrs. MINK. Thank you very much, Mr. Chairman. I want to compliment the chairman for his very fine and comprehensive statement. I think that we all recognize the difficulty of the problem of trying to define obscenity so that the statutes that do exist can be meaningfully enforced.

All of the members of this committee as a result of the hearings we had last year are fully aware of this problem.

I have only one question, Senator, and I wanted to address myself to the makeup of this Commission.

Do you have any comments as to how this Commission should be set up?

Senator MUNDT. Not particularly. We set it out in the Senate bill. One time, for example, we had it without the library association

represented. They showed a very definite interest in it, so we amended it and put it in. It is to get a cross-section, really, of national, Federal, local people not only law enforcement people, but people of the film industry, people in the library industry, the respectable elements of this country, to grapple with the problem.

We don't come out with any presupposition as the conclusion of the Commission, or any effort to pack the Commission in any way, we want to make it fair and honest. And I think any commission so composed would be highly successful.

Mrs. MINK. In the bill that you have introduced in the Senate, are all members appointed by the President?

Senator MUNDT. Yes.

Mrs. MINK. Thank you very much, Mr. Chairman.

Senator MUNDT. May I say the reason we do that—I think I can speak with some authority, because I don't usually try to encourage enhancing the power of the President—is because it seems better to have them appointed by a single source, otherwise you are apt to get it lopsided.

We said, certainly the President is as interested as anybody in correcting this. We set out the guidelines, we think he would appoint a good Commission.

Mr. DANIELS. Last year my bill provided for a 15- or 16-member Commission, all of whom were to be appointed by the President, then I designated the categories or fields of interest from which these members should be selected.

However, in marking up the bill, we took a different approach, and it is the approach set forth in the bill that I have introduced this year, Senator, H.R. 2525 in which we provide for a 16-member Commission. Eight of them are to be appointed by the President, four by the Speaker of the House, and four by the President Pro Tempore of the Senate.

Do you have any objection to the approach I set forth?

Senator MUNDT. No. As a matter of fact, at one stage of our development over there, we had it that way. As I pointed out, the reason we changed it back to the President is this: We are so desirous of getting balance, and one man who can appoint them all and who puts the Commission together, whether it is 16 or 18 or 19 members can probably get a better balance than if they are appointed by various sources. You might get it overloaded quite accidentally one way or another.

That came up in the Senate the other day with an altogether different type of commission, dealing with a different problem. I like the idea of cranking in the suggestions of the Speaker and the President of the Senate. It would be possible, I suppose, to suggest they come from a panel proposed by those gentlemen, but I think on a Commission of this kind a great part of its success is to demonstrate for the country that it is a fair, objective, balanced Commission, and I just believe that one man trying to put together that kind of panel is more likely to come out in balance than if three men were involved.

But I have no objection.

Mr. DANIELS. If we were to amend my bill to provide for the President to nominate all 16 members, would you then set forth the areas or fields from which these appointments should be made?

Senator MUNDT. Yes, I would.

Mr. DANIELS. In other words, one from the movie industry, one, say, from the book industry, one from the radio, educational field, law, and so forth?

Senator MUNDT. I certainly would, and for this reason, Mr. Chairman. We in Congress who get all of this mail have a better idea than the White House where these troublesome areas are, and by establishing guidelines from which to pick people who have knowledge in these areas, I think would be most helpful.

Mr. DANIELS. Thank you.

Mr. MEEDS?

Mr. MEEDS. Thank you, Mr. Chairman.

I would like to commend the Senator on his presentation before this committee and particularly to take this opportunity to commend the Senator for his long-standing interest in this very troublesome problem.

Senator MUNDT. I have been paddling down this dirty river for a long time, I can assure you.

Mr. MEEDS. I know of your long-standing interest, and I commend you for it. I think the Senator would agree with me that we are dealing here in a very complex area.

Senator MUNDT. Right.

Mr. MEEDS. And an area in which there are a lot of conflicting beliefs.

Would you not further agree, though, sir, that this is a constructive approach to attempting to find some solutions to this complex problem?

Senator MUNDT. Yes, we started out over on the other side early in this business trying to write the answer, trying to write the solution and the deeper we got in, the more we became convinced of the validity of what you have just said. It is complex, there are imponderables, we are not trying to do an injustice to anybody. We are not even suggesting what the Commission should come up with.

Here is a problem, here is the greatest expertise in the country on it, let's not accept the fact nothing can be done. Find something and then we will come back and have hearings on legislation.

Mr. MEEDS. I am sure the Senate has been presented with the same problems we have here of local officials saying this is primarily a Federal problem and a Federal official saying this is primarily a local problem.

Would the Senator agree that under this bill, and particularly under subsection (2) of title V, that when we ascertain the methods used or employed in the distribution of this type of literature, we are going to have at least pinpointed some areas of responsibility?

Senator MUNDT. Precisely. Certain things, obviously, the Federal Government cannot touch and certain things the local people cannot touch. This will help spell out the areas of responsibility. I think more responsibility ultimately has to be exercised by parents themselves, but let the Commission come up with the answer.

Mr. MEEDS. Again, I am sure the Senator has been presented with this problem of experts on one hand saying this type of literature has this effect and experts on the other hand saying it doesn't have any effect at all or it has another effect. And, again, by this bill are we not constructively trying to put together a study into the effect, again not coming up with any conclusion, but a study of the effect? It seems to me that this is perhaps one of the most sensitive areas,

and yet an area in which the least has been done in a constructive manner.

Senator MUNDT. I think that is right and I am sure it is not because of lethargy on the part of the Senate and the House; it is because this is a complex problem. It seems to me we are facing up to the alternative of using the Commission approach or doing nothing.

It is just too complex for us to write legislation with the limited knowledge we have. Because I think we are all—on your side of the Capitol and ours—unalterably opposed to a censorship device, we are trying to find some other program.

Mr. MEEDS. Don't we again, by the very duties of the Commission in establishing it with the aid of leading constitutional law experts, in our attempt to analyze these laws, and present to anybody who should consider this report something constructive in the way of what has been done and what is the law? Nebulous as it is, I agree.

Senator MUNDT. I think you are quite right, Congressman.

Mr. MEEDS. I think that is all the questions I have, Mr. Chairman. Thank you.

Mr. DANIELS. The gentleman from Iowa, Mr. Scherle.

Mr. SCHERLE. Mr. Chairman, only in the form of a compliment to the fine Senator who is also my neighbor to the north in South Dakota.

Senator MUNDT. Indeed I am, and my mother and father were both born in your State.

Mr. SCHERLE. And also from a legal standpoint I am happy to see that the bill contains nothing in the form of proposed legislation other than setting up a Commission. I think it should be their prerogative to set forth these necessary items. And I think other than from the questions asked by my learned colleagues, I have nothing further to add, Mr. Chairman.

Thank you.

Mr. DANIELS. Our distinguished majority leader, Mr. Albert?

Mr. ALBERT. I want to congratulate my old friend, Karl Mundt, on his fine statement. I have no questions or criticisms. I find myself somewhat in the same position as he. I probably have outlived my times.

I was an avid movie fan until World War II and ever since my life has been such that I haven't been able to go to many movies. I went to a couple recently and was not quite prepared for the intervening transitions. So I can appreciate what the Senator had to say.

Senator MUNDT. Very good. Thank you.

May I say, Mr. Chairman, you are most fortunate to have a man of the stature and ability and the persuasive capacity of Carl on your committee. That means you are halfway home once you have got it out of this committee.

Mr. DANIELS. I wholeheartedly agree with you.

Mr. ALBERT. I don't want that cat put on my back. [Laughter.]

Mr. DANIELS. The gentleman from Wisconsin, Mr. Steiger.

Mr. STEIGER. Mr. Chairman, I simply want to congratulate the Senator and welcome him. Everybody in Ripon where he appeared had nothing but praise for him.

No. 3, as to the duties of the Commission—to study the effect of obscenity and pornography on the public and particularly minors and its relationship to crime and other antisocial behavior.

My problem with that is whether or not you can in a year's period of time, with a Commission of 16 members, really do that.

Senator MUNDT. I think you could not if you started de novo, but you have 16 people who have unusual expertise in the beginning, and they can draw on the great number of studies in depth, which have already been made which you and I and members of the Senate and House would not find time to read, perhaps even to locate and identify.

But a great deal of work has been done by sociologists and others in this field and I would hope that with adequate staffing this Commission could come up with a consensus of the findings on this problem. It is not an entirely new problem; it has been going on, it has been aggravated from year to year, but I think by calling upon the best brains in the country, which a blue ribbon Presidential Commission always has the power to do, they can consolidate the findings very rapidly.

Mr. STEIGER. You have in No. 1, it says, with the aid of leading constitutional law authorities—you go on to analyze the laws. Would there be any purpose to be served by strengthening this section to assure that we get the capabilities of the sociologists and others in this field by inserting something in there?

Senator MUNDT. It could be, I think it is implicit there. But anything that strengthens the bill we would surely welcome. So long as we keep the formula in mind that we are not trying to predetermine what they are going to come up with, but rather to strengthen their hand and give them more power and more capacity. We certainly welcome, Congressman Steiger, any ideas that could be incorporated.

Mr. STEIGER. Thank you, Mr. Chairman.

Mr. DANIELS. Again, Senator, on behalf of the entire subcommittee, I want to thank you for coming here today.

Senator MUNDT. Thank you for your very diligent approach and your early approach to this very serious problem. Good to be here.

Mr. DANIELS. I ask unanimous consent that the bill, H.R. 2525 which we have under consideration be inserted in the record immediately following the statement that I made this morning.

We are also honored this morning by another witness from the other body, the honorable Senator from the State of Iowa, the Honorable Jack Miller.

Senator Miller, will you step forward?

We appreciate your being here this morning and also for taking time out to express your views on this important legislation.

STATEMENT OF HON. JACK R. MILLER, A U.S. SENATOR FROM THE STATE OF IOWA

Senator MILLER. Thank you, Mr. Chairman and distinguished members of the subcommittee.

I appreciate the opportunity you have given me to make a statement at these hearings in support of H.R. 2525, which is now the subject of your consideration. May I say I have been interested in this problem and have served on the board of the National Committee on Decent Literature.

This bill is a commendable step toward the solution of a problem which has long thwarted the best efforts of legislators, judges, and laymen alike. May I say I thoroughly subscribe to the remarks of the chairman at the opening of this hearing.

The publication and dissemination of pornographic materials is not a recent phenomenon, of course. It is perhaps as ancient a problem as civilization itself. But the purveyors of these materials have grown bolder in recent years, and they have become shameless in their disrespect for the sensibilities of all decent and thoughtful Americans.

They have increased their traffic in lewdness to such an extent that their final product—the pornographic book, the lewd magazine, picture and film—can scarcely be avoided by anyone who exposes himself or herself to the day-to-day world outside the home. Indeed, the home itself is no longer exempt from the incursions of these peddlers of moral decay, who now freely use the facilities of the Federal Government itself to mail their books, magazines, pictures, and films to our doorsteps in order to make a fast buck,

I do not have to elaborate upon the problem which these people have created in recent years. Each of you members of this committee is as aware of it as I am. It has become a threat to the moral fiber of our society, particularly because of the effect upon young people, whose minds are yet malleable, but whose responsibility it will become to safeguard this society and to pass it on to future generations.

America has a fastidious consideration for the rights of free expression and it is this regard for freedom that has compounded our problem. How can we restrain expression that appeals purely to the prurient interest without risking at the same time undue restraints upon freedom of expression?

So far as the criminal laws are concerned, lawyers and judges, and the Supreme Court of the United States together have failed to formulate a workable definition of pornography that will protect free expression and at the same time proscribe the purely indecent.

That is but one aspect of the problem. Criminal sanctions are, fortunately, but one of the solutions that may be considered. Restrictions upon the free use of the U.S. mails has potential as a solution. Perhaps those whose addresses are the property of mailing list brokers should be given an option to remove their names and addresses from the commerce in mailing lists.

I do not claim to have the answer. Nor do I think any one of us in this room today is confident that he or she has the answer. And for that reason, I advocate that a commission be formed to develop solutions. I am confident that this is the best approach to discover definitive answers and to provide the national leadership needed to spur action at the local level.

I first proposed such a commission on January 26, 1965. My proposal was then known as S. 735. I was pleased to note that the Governor of my State subsequently proposed a bill at the State level. I have introduced a bill in the Senate this year, S. 1584, and I would ask consent that a copy of this bill be included in the record at the conclusion of my remarks.

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

Senator MILLER. May I comment briefly on this bill that a finding of fact and declaration of policy are rather important and I would read from it:

The Congress finds that the publication and dissemination of pornographic materials is a menace to the moral fiber of the American people. All levels of government—Federal, State and local—bear a responsibility in eliminating this menace, although it is recognized that this responsibility can be effectively carried

out only through the cooperative efforts of all citizens. It is the purpose of this Act to establish a national commission to investigate the traffic in pornographic materials, analyze the laws and regulations relating to this traffic, and make recommendations for improved laws and other methods of control and elimination of such materials, and provide information needed to promote a coordinated national effort to eliminate pornographic materials from our society.

I noticed interest of some of the members of the committee over the composition of such a commission. In my bill we would propose a commission of 25 members and I know it is difficult to draw the line, but if you would indulge me, I would just list the composition, and I must say I find it difficult to determine where I would start cutting this list of 25.

There are two from the Senate, one from each of the major political parties; and two from the House, one from each of the political parties; one from the Post Office Department, one from the Department of Justice, one from the Department of Defense, three from the clergy, a medical doctor prominent in the field of psychiatry, representatives of the book publishing industry, magazine and periodical publishing industry, newspaper publishing industry, and motion picture industry, and radio and television industry, one attorney who shall be a chief prosecutor of a city or county government, one attorney who shall be prominent in the practice of law, three educators—one from the primary, one from the secondary, and one from the college level of education—two persons serving actively on a parent-teachers association, two judges from the State or local level.

May I say that the purpose of this commission that I propose would be more than just a study commission. I think perhaps if it did nothing else but achieve three of the six objectives that I have set forth for it, that it would have been well worth the time and trouble.

One of the objectives would be 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. Another would be to secure the active cooperation of leaders in the field of mass media for the accomplishment of the objectives and purposes of this act. Another one would be to formulate—to determine ways and means of informing the public—I already mentioned that.

Another one would be to provide for the development of a plan for improved coordination between Federal, State and local officials in the suppression of such traffic.

These are not study matters; these are active matters. They don't require legislation, but I think that they are calculated to do something about the situation, and that would be effective and helpful.

As you note, this bill differs in some minor respects from the bill that is now before you and also from the bill introduced by my colleague, Senator Mundt, but the details are relatively unimportant, although I suggest that the composition of the commission is important.

What is most important is that we take action now to develop solutions and to do so, we must gather together those who are willing and able to bring their unique talent and experience to bear on this problem. I hope that H.R. 2525 will be favorably reported by this committee, and that it will be promptly passed by the House of Representatives. You may be confident it will receive all of the support I am able to give it when it reaches our side of Congress.

Mr. DANIELS. Thank you, Senator.

Senator, I have listened very attentively to what you have had to say and what was contained in your bill. Your bill is similar to the one I sponsored last year, H.R. 7465, where we set forth in particular the proposed composition of this Commission. However, the bill I have introduced this year was the outgrowth of an executive session on that bill where we decided to eliminate the specific makeup of the Commission and merely provided that the Commission would be composed of 16 members. It would be a Presidential Commission, eight of whom would be appointed by the President, four by the Speaker of the House, and four by the President Pro Tempore of the Senate.

Do you have any objection to proceeding in the manner in which I have outlined in H.R. 2525?

Senator MILLER. Well, of course, I would have no objection, because as I say, what's important is to get moving. But I would suggest that if the composition was stated as a matter of law and if the composition was quite attractive, I think that it would stimulate even more widespread public interest and appeal.

For example, if the parent-teachers associations—thousands of them throughout the United States—know that the Congress has seen fit to provide two members, two active members of a parent-teachers association on this Commission, I think that it would automatically elicit a little more support for this proposal than if nothing was said about it.

I think that if the educators, primary, secondary, and college level, realized that their areas of education had two members on this Commission, then it would elicit a little more support from the education field than perhaps would otherwise be the case.

This might happen anyhow without naming them in the law, but to make sure that we have that kind of widespread support in such an important area as education and in parent-teachers organizations, it would be my thought it might be helpful to have those spelled out in the bill.

Mr. DANIELS. Thank you.

Mrs. Mink, any questions?

Mrs. MINK. Thank you, Mr. Chairman.

I simply want to compliment the Senator for a very fine statement. I quite agree with your comments that in establishing a commission of this kind that the composition of this Commission, I think, is really the key to its success and whether the country itself will respond to their recommendations and the advice that they are able to render.

Did you have any provision in your bill, Senator, as to the length of life that the Commission would have and when it would be required to submit a report, or is your bill a bill which establishes a continuing commission?

Senator MILLER. My bill provides that 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, 1969. The Commission shall cease to exist 60 days following the submission of its final report.

Mrs. MINK. Thank you very much.

Mr. DANIELS. Just one further question along that line. Does your bill also provide for the Commission to establish a staff?

Senator MILLER. Yes.

Mr. DANIELS. To assist in its work?

Senator MILLER. Yes, it does. As I said, I believe these bills are all pretty close together on the mechanics and the composition. The difference in details is minor and the most important thing is that we get moving on this thing and I share Senator Mundt's appreciation of the fact that the distinguished majority leader is a member of this committee. I think it will be helpful in getting action and I am quite sure that once the House takes action on this, that it will receive a favorable response on our side of the Hill.

Mr. DANIELS. The gentleman from Iowa, Mr. Scherle.

Mr. SCHERLE. Thank you, Mr. Chairman.

It is always a pleasure to hear my own Senator from Iowa, the Honorable Jack Miller, testify again at a hearing.

With his past service in the Iowa House and the Senate and now a member of the U.S. Senate, why, I have always looked upon him not only as a Senator, but as a Senator's Senator.

The more you know this man, the more you will appreciate this.

I also, Senator Jack Miller, would like to compliment you on the fine presentation you have made and I also, along with my learned colleague from Hawaii, Mrs. Mink, accept your composition because I think by broadening the interest on this committee or commission, it would certainly bring in more people.

I commend you on a very fine job.

Mr. Chairman, I thank you.

Senator MILLER. Thank you very much, Congressman.

Mr. DANIELS. Our distinguished majority leader, Mr. Albert, any questions?

Mr. ALBERT. I want to commend the Senator. You have obviously put a lot of thought into this and your presentation has been excellent.

Senator MILLER. Thank you, Congressman.

Mr. DANIELS. The distinguished gentleman from Wisconsin, Mr. Steiger.

Mr. STEIGER. Senator Miller, nice to see you. I was interested in the fact you have broadened the duties of the Commission in adding what you call the action features rather than simply the study features.

I will be very interested in looking at your bill and perhaps we can amend this legislation to include a part of or all of those ideas. You did an excellent job.

That is all I have, Mr. Chairman.

Senator MILLER. Thank you, Congressman. I might add a footnote to that. That is that if nothing else comes out of this Commission than some kind of a public relations approach to this problem which will really set on fire the State and local communities, as well as the national scene, I think that this problem can be pretty well resolved.

Now, I would like to see some legislation on it, too. I think that people who try to make a fast buck at the expense of the moral fiber of this country ought to be prosecuted and they ought to suffer penalties, but they would not be making very many fast bucks if there was the right reception to this in the communities and here again a commission such as this can provide the leadership for various action programs to keep people informed and to try to uplift the moral fiber of the people by recognizing the problem and by taking offense at the very fact that these people are trying to do this.

So I think an action program, quite apart from the legislative side of it, is very important and I think the sooner we start on it, the better.

Mr. DANIELS. Senator, again thank you very, very much.

Off the record.

(Bill proposed by Senator Miller follows:)

[S. 1584, 90th Cong., 1st sess.]

A BILL To create a commission to be known as the Commission for Elimination of Pornographic 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 the publication and dissemination of pornographic materials is a menace to the moral fiber of the American people. All levels of government—Federal, State, and local—bear a responsibility in eliminating this menace, although it is recognized that this responsibility can be effectively carried out only through the cooperative efforts of all citizens. It is the purpose of this Act to establish a national commission to investigate the traffic in pornographic materials, analyze the laws and regulations relating to this traffic, and make recommendations for improved laws and other methods of control and elimination of such materials, and provide information needed to promote a coordinated national effort to eliminate pornographic materials from our society.

ESTABLISHMENT OF THE COMMISSION FOR ELIMINATION OF PORNOGRAPHIC 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 for Elimination of Pornographic 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 twenty-five members, appointed by the President, as follows:

- (1) Two from the Senate (one from each major political party);
- (2) Two from the House of Representatives (one from each major political party);
- (3) One from the Post Office Department;
- (4) One from the Department of Justice;
- (5) One from the Department of Defense;
- (6) Three from the clergy;
- (7) One medical doctor who shall be prominent in the field of psychiatry;
- (8) One who shall be a prominent representative of the book publishing industry;
- (9) One who shall be a prominent representative of the magazine and periodical publishing industry;
- (10) One who shall be a prominent representative of the newspaper publishing industry;
- (11) One who shall be a prominent representative of the motion picture industry;
- (12) One who shall be a prominent representative of the radio and television industry;
- (13) One attorney who shall be a chief prosecutor of a city or county government;
- (14) One attorney who shall be prominent in the practice of law;
- (15) Three educators (one who shall be prominent in the field of primary education, one who shall be prominent in the field of secondary education, and one who shall be prominent in the field of higher education);

(16) Two parents serving actively in a parent-teacher association; and

(17) Two judges from the State or local benches.

(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. Thirteen members of the Commission shall constitute a quorum.

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 \$100 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 pornographic 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 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) to analyze the laws pertaining to traffic in pornographic 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.

(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, 1969. 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. Subpoenas may be issued over the signature of the Chairman of the Commission, or 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. Our next witness is Mr. James J. Kilpatrick, editor of the Richmond News Leader. He is also writing a nationally syndicated column, "A Conservative View," that appears in the Washington Evening Star.

Mr. Kilpatrick is the author of some half-dozen books that deal in part with constitutional law, among them, "The Smut Peddlers," published by Doubleday in 1960. This is both a study of pornography and review of the laws governing obscenity in the United States.

He has lectured upon the conflicts between obscenity and the first amendment freedoms before the University of Richmond and the University of Virginia Law Schools.

Mr. Kilpatrick is currently serving on the Virginia Commission on Constitutional Government, as he has since 1958. He is one of the very few nonlawyers ever invited to address the Virginia Judicial Council.

In 1962 he played a prominent part in drafting Virginia's revised laws on obscene material.

In 1965 he was awarded the annual Liberty Bell Award of the Richmond Bar for his writing on legal matters.

On occasions Mr. Kilpatrick has testified as an expert witness for both the prosecution and defense in obscenity trials.

In 1967 he was named an honorary member of the Virginia Bar Association.

We will now hear from Mr. James J. Kilpatrick.

STATEMENT OF JAMES J. KILPATRICK, EDITOR, THE RICHMOND
NEWS LEADER

Mr. KILPATRICK. Thank you, Mr. Chairman, Mr. Albert, Mrs. Mink, gentlemen:

I doubt very much that I can be of assistance to the committee in its inquiry, largely because I approach this whole subject of obscenity with so many doubts in my mind. My feeling is that some of the questions of constitutional law and legislative policy that are implicit in your study are very likely unanswerable questions, or at least they are questions that defy enduring answers.

In my own view, the very word "obscenity" is incapable of accurate statutory or judicial definition. The wisest minds of the U.S. Supreme Court have been struggling with a definition for close to a hundred years. Mr. Justice Brennan thought he had it nailed at last in the *Roth* case, but his definition wiggled away.

Later on, in the *Jacobellis* case, he was to concede that his lexicography of *Roth* was not perfect, and he was to acknowledge that the boundaries of pornography lie along "a fine and uncertain line." The closest a member of the court has come in recent years was in the statement by Mr. Justice Stewart that he knew pornography when he saw it, but this wasn't it. He was then talking about the movie "The Lovers."

From the standpoint of criminal law, which demands at the very least that the essence of a crime be spelled out, the problem of defining obscenity is devilishly difficult. What was legally obscene yesterday is not legally obscene today, and no man can say whether it will be legally obscene tomorrow. In the past 10 years alone, we have seen the works of the Marquis de Sade, and the novels of Lawrence, Joyce, and Miller emerge from the dark shadows of Paris and into the bright lights of Brentano's.

A decade ago, as a matter of law, these works were obscene. Today, as a matter of law, they are not obscene. Questions of law to one side, one is inclined to ask: Were they ever "obscene"? Or are they still "obscene"? I myself do not profess to know, because the truth is that obscenity, like beauty, lies in the eye of the beholder.

From the standpoint of legislative policy, the problem of barring obscenity is made dangerously difficult, of course, by the flat commandment of the first amendment that Congress shall make "no law abridging the freedom of speech, or of the press."

I should like to interpolate enough to say that so long as Mr. Justice Black and Mr. Justice Douglas are sitting on the U.S. Supreme Court, it seems to me highly unlikely that any statute that might be recommended by your proposed study commission is likely to be upheld, because, as Mr. Justice Black has said time after time, he reads "no law abridging" to mean "no law abridging."

But over a period of many years, to be sure, the courts have held that a man's freedom of speech gives him no freedom to speak obscenely. Thus obscenity has been carved out, like "fighting words," as an area not subject to constitutional protection. But if such an area is to be carved out through general law, rather than through the case law of particular facts, a statutory definition must be found. And this means presumably that you must find something more than mere adjectives—lewd, lascivious, prurient, corrosive, harmful, and

the like, because these also are slippery fish in the sea of language. You cannot net them.

I am a working newspaperman. I have made my living as a writer for nearly 30 years. And whenever I see you gentlemen beginning to fiddle around with statutes that undertake to define classes of speech which are prohibited speech, I become acutely uneasy.

Taking one thing with another, and put on my choice between dirt and censorship, I would opt for the dirt. The dirt, at least, can be seen; and I can avoid it, or sweep it up, or paint over it, or accept it as one of the smelly irritants of a free society. But you cannot always see censorship in action; you may not know of its silent exercise. Those of us who believe in a free society, and all of us are committed to it, ought to believe in a society that is free for ideas that are offensive to us.

But to say this is to say nothing especially new or helpful. For I am equally sobered by the conviction that obscenity does exist, whether or not I can define it or you can define it or the courts can define it. It exists like radio waves, which are in the air outside this room. It exists like smog, which I can feel but not see. In better images, because they go to the law of the matter, obscenity exists as surely as beauty, ugliness, disorderly conduct, common nuisances, and incitement to riot exist.

None of these is subject to precise definition either; but my impression is that courts have upheld various ordinances regulating exterior architecture, billboards, outside signs, and the like, predicated solely upon esthetic considerations.

The antilitter laws have nothing to do with public health, safety or welfare; they are concerned with public ugliness. It is commonplace for a city to condemn and remove a dilapidated structure because the structure is an "eyesore"—and someone must define what is meant by an eyesore.

By the same token, it is in most cities a criminal offense to create a "noise" or a "raucous noise" during certain hours, and surely there is involved in all of these antinoise ordinances a first amendment question, but the courts have found no reason to set them aside.

Closer to the subject at hand, the offense of indecent exposure has a long history of legislative and judicial support.

To suggest that it is impossible to write a valid law on obscenity or pornography, because these are subjective terms susceptible to transitory meanings, seems to me plainly wrong. If juries and judges are competent to determine what is noise, what is raucous noise, what is disorderly, what is indecent, what is ugly, and what are the obligations of that mythical being known at law as the "prudent man," they are equally competent, in a given case, to determine when a defendant is trafficking in obscenity.

And there is no question in my mind that Congress has the constitutional power, under its power to regulate commerce and its power to establish post roads, to legislate in this field. I interpolate again a comment on the present Supreme Court. That a Federal power exists has been the view, as I read the cases, of seven of the present nine members of the Court; only Justices Black and Douglas have dissented from that particular aspect of the legal problem.

To be sure, tainted meat and tainted ideas cannot be viewed as equally subject to regulation under the commerce clause. The first

amendment stands in the way. There is not a complete parallel between congressional regulation of automotive design, in the interests of public safety, and congressional regulation of stag movies, in the interests of public morals.

It is a good deal easier for rational men to agree on what is dangerous than to agree on what is immoral. Yet the Mann Act has withstood court attack for a good many years, on the commonsense finding that the transportation of women for purposes of prostitution is not the sort of freedom of travel that is protected by the Constitution.

The power to legislate does not necessarily mean that the power ought to be exercised. In my old-fashioned view of a free society—and I suspect I am as old fashioned in most of my views as Senator Mundt—the fewer sumptuary laws the better. The Congress ought not to police these primrose paths unless it is convinced that the pornography racket is not merely an evil, but is an evil of sufficient magnitude to warrant congressional action.

On this basic question, I can offer you no more than a personal opinion, supported by some years of study and investigation in the field. My feeling is that congressional action should be narrowly and tightly limited to a prohibition upon substantial commerce in hard-core pornography.

I stand on this general subject just about where Mr. Justice Harlan stands, with some overtones of the viewpoint of Mr. Justice Stewart. But I am convinced that this traffic in hard-core pornography is indeed an evil of considerable magnitude. This stuff is pollution, as surely as sewage, and it ought to be equally subject to Federal control through the commerce clause. I cannot prove that it is harmful, even to young people, but I doubt that the contrary can be proved either—that it is not harmful. There are times when reasonable men have to rely upon their instincts and upon their commonsense.

Under our philosophy of government, as I comprehend it, the free-born citizen has individual rights that must be made secure; and the freedoms to read, to think, to write, to form esthetic judgments are among the freedoms we cherish most. Yet rights do not inure to individuals alone. Society has rights, too.

The Constitution was not drafted only to protect individual freedoms; it was drafted as well to insure domestic tranquility and to promote the general welfare. Society's unquestioned power to take collective action toward the preservation of moral values is deeply rooted in both Anglo-Saxon law and in the Judaeo-Christian heritage. Society, as represented by you gentlemen, can indeed make and enforce these judgments.

In the field under study, you ought not to be inhibited by any absolutist views of the first amendment, and you ought not to be overly impressed by the gauzy theorizing of far-out psychiatrists. Theirs is a most imperfect science.

As for H.R. 2525, I express no particular views. It may be that another study in this field would have some value. Since the labors of Mr. Gathings and Mrs. Granahan, the Ginzburg doctrine has been propounded across the street, and the thrust of the law has gone off in a new direction.

I made a few incomplete notes before I came up here on the number of obscenity cases that have come before the Court since *Roth*. By my very rough count, 54 such cases have been disposed of by the

Supreme Court in the nine terms through the 1965-66 term. In 31 of those decisions or disposals, by my count, the effect of the Court's action was to uphold a finding of obscenity; in the other 23, the effect of the Court's action was either to reverse a finding of obscenity or to maintain a finding of nonobscenity.

In just these few years since *Roth* there have been 11 full-dress opinions of the Supreme Court in obscenity cases, but those 11 cases have involved 45 separate opinions by members of the Court. So there has been a great deal of law developing at the Supreme Court level, not to mention the lower court level since *Roth*.

A fresh analysis of these sometimes confusing decisions, and of new State laws pertaining to the control of obscenity and pornography, probably would be useful. I myself doubt that the proposed 16-member commission would learn much that is new about the methods employed by the smut peddlers, or about the nature and volume of traffic in pornographic materials, but if a foundation is to be laid for new Federal legislation, the foundation ought wisely to be laid on up-to-date findings.

The third duty of your proposed commission, as I suggested earlier, seems to me the most difficult, "to study the effect of obscenity and pornography upon the public, and particularly minors, and its relationship to crime and other antisocial behavior."

My guess is that the evidence on this issue, pro and con, will be equally speculative on both sides. For every psychologist, there is an opposing cop.

Doubtless the psychologists are sincere in believing that pornography is healthy, in that it provides an essentially private release for certain antisocial sexual tensions; and doubtless the cops are sincere in believing that the hard-core material sets thoughts in motion that lead to unlawful overt acts. I myself tend to side with the cops.

I have only one or two additional thoughts to suggest.

In my own view, the Supreme Court set off in a most promising direction with the new thrust of *Ginzburg*. It seemed to me that here the Court was looking beyond the merits of the books that Ginzburg sold, and into the deeper question of Ginzburg's purpose in selling them. The Court appeared to be saying that the social evil is not primarily in the particular item that is sold; the social evil lies primarily in the selling of it—in the deliberate, commercialized traffic in prurience for a profit; in the Court's word, the "pandering."

Actually I digress again to say that *Ginzburg* was not an entirely new approach; it was foreshadowed by Warren and Clark in their dissenting opinions in *Jacobellis* in 1964.

It seems to me that this approach has much promise, for it looks to a time when judges can cease to function as literary critics, and can function as judges instead. The courts will not have to grapple with the obscenity of a book; they can grapple with the intentions of a defendant. Here they are on familiar ground, for courts have been determining intent since time immemorial.

After all the tortuous judicial convolutions on defining what is obscene, the *Ginzburg* case was refreshing. The judges said, in effect, that "Eros" looked like an obscene work to them, but never mind that; Ginzburg looked like a man who ought to go to jail. So they

sent him there—or they tried to. I think he's still out on a motion for reduction of sentence.

This is a get-rid-of-the-underbrush approach I suggested in a book I wrote on pornography 7 years ago. It runs through the Virginia obscenity law of 1960. As it happens, I, myself, had a considerable hand in the drafting of that Virginia statute of 1960 and we went to great pains in it to emphasize the commercial aspects of this traffic. Thus the Virginia law provides, after a definition of obscenity taken from *Roth* and from the American Law Institute model definition, that every person who knowingly prepares any obscene item for the purposes of sale or commercial distribution, or prints copies and so forth of any obscene item for purposes of sale or commercial distribution, or publishes, sells or rents same, or transports in interstate commerce, or distributes or exhibits any obscene item or offers to do these things or has within his possession, with offer to sell, rent, lend, transport or commercially distribute any obscene item, shall be guilty of a misdemeanor.

It was our intention to hit the smut peddler, the man who was trafficking in this stuff, so for that reason we dwelt upon the commercial aspects of it.

Thus the primary object of the Virginia statute is not to convict books or photographs or movies, but to convict racketeers engaged in a dirty business. It is hard for me to look judicially upon a book; I sometimes cannot see around the first amendment. But I can see a racketeer, free and clear.

My final thought is to suggest that any rewriting of Federal law in this field ought to be based upon genuinely public considerations. That is the language of section 5(a)(3) of H.R. 2525: The proposed Commission is to study the effect of obscenity and pornography "upon the public."

Over a long period of years, the Post Office and the Department of Justice have sanctioned prosecutions in cases that seem to me essentially private. I think this practice has largely ceased since the Tennessee case of last year; I think it had been dwindling prior to that time. But, if I am not mistaken, at least up until that time, defendants were being indicted and convicted for the mailing of private, first-class letters that were exchanged voluntarily with their recipients. However distasteful these "belles lettres" may be, they are not offenses against the public weal. And I think the massive power of the Federal Government ought not to waste time upon them. The much larger evil of commercialized pornography deserves your attention instead.

Gentlemen, if I could contribute anything further, I would be delighted to do what I might.

Mr. DANIELS. Mr. Kilpatrick, I want to thank you for your very fine presentation and informative statement.

Do you think that this problem of pornography should be dealt with on all three levels of our government—local, State, and the Federal Government?

Mr. KILPATRICK. Yes, sir, I do. On that point I follow Mr. Justice Harlan explicitly. He has gone to great pains in many of his opinions to draw the distinction between Federal regulations and State and local regulations. I believe that there is much wider room for experimentation by the States and the localities than there is for the Federal

Government, which could impose one nationwide ban on a particular book or magazine.

Mr. DANIELS. In your testimony here today you said it was most difficult to define the term "obscenity," that the courts have had a great deal of trouble with it. Do you think that the meaning of "obscenity" as it now stands upon the books ought to remain as it is or do you feel there should be a new definition?

Mr. KILPATRICK. I would be agreeable to seeing your proposed Commission struggle to come up with a better definition than Mr. Justice Brennan came up with in *Roth* with its various refinements.

I myself doubt that they will. Those of us who are interested in this field of statutory drafting accepted *Roth* as the final word on it, but the ink was scarcely dry on new State laws heralding *Roth*, before the *Roth* definition began to be further refined; and as you know, the court itself split wide open in *Jacobellis* as to what it meant by the word "community."

Mr. DANIELS. Originally, *Roth* established this test—whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.

Then, in a subsequent decision, the Court said that when we referred to "community standards," we did not mean any community or region. We meant the community as a whole. We meant the entire Nation.

Now, to my mind what they might think of, say, in Las Vegas as being obscene may not necessarily be obscene in another part of the country.

Mr. KILPATRICK. Precisely, sir. That statement, by Mr. Justice Brennan in *Jacobellis*, came as a great shock, not only to many of us who have been following this subject, but obviously to several of his brothers on the Court.

What Mr. Justice Brennan said there was to this effect—

It has been suggested that the "community standards" aspect of the *Roth* test implies the Constitutionality question of obscenity by the particular local community in which the case arises. This is an incorrect reading of *Roth*.

Mr. Chief Justice Warren came right along after him, dissenting in the same case—and he had concurred in *Roth*—and said—

It is my belief that 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 is sometimes argued.

It is sometimes very difficult for those of us who are laymen to follow the judicial mind at work, but there it was. I myself believe the community standard means community standard, and that it ought to be fixed by the locality, by the judicial circuit, by the State, because only in that fashion, sir, do I think you ever get any place on this.

Mr. DANIELS. Do you think this confusion dealing with that definition by the Supreme Court has had anything to do with the growth of this business of pornographic material?

Mr. KILPATRICK. Yes, sir; I think it is unquestioned that since the ruling of the Court in *Jacobellis*, the lid is almost off; because, as Warren said in dissenting in that case, it is virtually impossible to prove by any sort of evidentiary standards what is a national standard of morality. It cannot be done.

In the case of a community standard, you could call in the local editor, or the minister, or the mayor, or others from the community and get some sort of testimony that would have value, but if the standard truly is to be as Brennan said, a national standard, I doubt that there would be very many convictions thereafter.

Mr. DANIELS. I am inclined to agree with your view on that.

The gentlewoman from Hawaii.

Mrs. MINK. Thank you, Mr. Chairman.

I want to thank the gentleman for a most thought-provoking statement.

Having worked on the drafting of the Virginia statute and the portion of the statute that you read to the committee, I wonder if you could advise us on the number of convictions that have resulted from this new statute which directs its attention primarily to the peddlers of the smut and obscene literature.

Mr. KILPATRICK. Mrs. Mink, I don't know how many there have been. There have been several, and in one interesting case in Fairfax County, I think it was, a section of the law was tested which provides for an *in rem* proceeding against a book itself, to determine the obscenity of the book. The purpose of this *in rem* proceeding is to establish publicly that this particular book is obscene, to make the legal point of *scienter* in it.

The law so far as I know has been upheld since its adoption by the Virginia General Assembly in 1960. It was not widely praised, but it received some favorable word even from the American Book Publishers Council, whose spokesman said if there were to be any laws on obscenity at all, the new Virginia law of 1960 was as model an act as could be found.

I think there have probably been 15 or 20 convictions under it since that time.

Mrs. MINK. Have these convictions gone to the U.S. Supreme Court for test by the Supreme Court?

Mr. KILPATRICK. Only one of them, I believe, and in that case the conviction below was sustained. That was a case involving some nudist magazines. I have it in my notes somewhere. It was *Goldstein v. Virginia*, certiorari denied in 1962-63.

Mrs. MINK. I am having difficulty in trying to reconcile the point of view that perhaps the chief difficulty in this area is defining that which constitutes obscenity.

Now, I am just wondering in the reading of the statute that you presented, recently adopted by Virginia, how do they avoid having to define that which is obscene before they can convict a peddler for commercializing in its distribution?

Mr. KILPATRICK. The statute does define obscenity precisely in the words of the *Roth* decision, coupled with the language recommended by the American Law Institute in the model bill that it was pushing at the time.

I have it here somewhere. It was chapter 233 of the acts of 1960. The Virginia act begins—

The word obscene where it appears in this act shall mean that which considered as a whole has as its dominant theme or purpose an appeal to prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters.

This was the best we could do at that time. This was the very definition that the Supreme Court had given us. Since that time, the definition has been enlarged by the Court, and the standard has been added to it of that which is "patently offensive." A further standard has been added that obscene material must be "utterly without redeeming social value."

In the most recent case in Virginia, it happened to be a Richmond case involving some movies that were being exhibited at a local theater the whole defense rested upon this new requirement of "utterly without redeeming social value."

That case has not yet been appealed, but I expect it will be.

Mrs. MINK. I have no further questions, Mr. Chairman.

Mr. DANIELS. The gentleman from Iowa, Mr. Scherle.

Mr. SCHERLE. Thank you, Mr. Chairman. I also would like to compliment the gentleman on the fine presentation. I think also there might be quite a bit of controversy in trying to decide which route to take in this bill, but I think your presentation was highly beneficial to this committee and I certainly thank you for your presentation.

Mr. KILPATRICK. Thank you.

Mr. DANIELS. The gentleman from Wisconsin, Mr. Steiger.

Mr. STEIGER. Mr. Chairman, thank you.

Mr. Kilpatrick, I concur with the gentlewoman from Hawaii's praise as well as note of what is an extremely learned and very thought provoking statement. I have read you for a good number of years and it is a pleasure to see you.

Mr. KILPATRICK. Thank you, Congressman.

Mr. STEIGER. Would you have any comment at all on Senator Miller's additions that were in his Senate bill which are not in H.R. 2525? The so-called action formula?

Mr. KILPATRICK. Sitting where I was, I could not hear Senator Miller's testimony and I have not studied his bill. Does this deal with the composition of a study commission?

Mr. STEIGER. Yes; there were two basic differences: One was the composition, 25 versus 16; and the specification of the membership.

Mr. KILPATRICK. Yes, sir. I, myself, am inclined to oppose the business of specifying areas of interest which should be represented by members of a commission. My feeling is that such commissions, so appointed, tend to bring together people who have prefrozen ideas and they never let them thaw in the course of a commission's studies.

That is to say, if you provide for a representative from the American Civil Liberties Union, you know from the very beginning what that spokesman's viewpoint is going to be. If you ask for someone to come in from the PTA, the same thing is true. And so on.

I think it is an artificial way of beginning a study. Mind you, I don't know where you could find objective, unbiased people, but I myself prefer the approach that is in H.R. 2525 as introduced.

Mr. STEIGER. The other point that Senator Miller was making was that he had, if I remember the testimony correctly, approximately three purposes of the Commission which were not related to a study of the problem for the purpose of defining legislation, but rather were an attempt to, I think, mobilize local and State communities and leaders as to a greater concern for the problem.

This doesn't touch necessarily on hard-core pornography. I wonder whether or not that is proper. Is this something that we should be trying to do through this vehicle—mobilizing attention and concern?

Mr. KILPATRICK. No, sir. In my own view, since you asked me, I think this would be very improper on the part of the Congress. I object to the Congress of the United States trying to set national standards of behavior, or to foment public sentiment in this direction or that.

It seems to me an unwise thing for the Congress to embark upon. The type of study proposed in H.R. 2525, as I say, might have considerable value, but for Congress to try to persuade public opinion to move in a certain direction, I think, is not a very sound idea.

Mr. STEIGER. In your statement you touched upon 5(a)(3), which goes to the same problem that I have, I guess, in this study of the effect of obscenity and pornography upon the public and particularly its effect on minors and others in crime and other antisocial behavior.

I think there is a need to differentiate between public and private. Do you have any suggestions or have you any ideas or thoughts you can give to the committee about what you can do to make more studyable, if that is the right word, this problem?

Mr. KILPATRICK. No, sir; I confess I cannot offer any advice or suggestions at all. This was an aspect of the thing that occupied me especially during the research that I did on my book, because this is basic.

If this stuff is not really harmful, then we ought not to legislate against it. This seems to me elementary. If it is harmful, then you begin to discuss what form the legislation should take.

I don't know how you get at it. The courts have heard expert witnesses over the years—psychiatrists, psychologists, sociologists on one side, and police officials, J. Edgar Hoover, and competing psychologists on the other side; and I have obtained the records of these various trials and hearings and have read them, and find them utterly in conflict. I think, sir, that you simply have to resolve the problem legislatively through what I have referred to in my statement as "commonsense."

I think, myself, that I can look at this hard-core material and say, certainly this is harmful. I can look at one of these stag movies and say that certainly this is a vile and harmful business, that it does harm those who see it and taints them; and this kind of traffic ought to be stopped.

But as for proving psychological damage; no, sir. I don't think you can get proof of that.

Mr. STEIGER. Thank you, Mr. Chairman. I thank the witness.

Mr. SCHERLE. Mr. Chairman, may I ask one further question?

Mr. DANIELS. Surely.

Mr. SCHERLE. We are talking about legislating now and your interest has taken you into the field of legislation in the State of Virginia; is that correct?

Mr. KILPATRICK. Yes, sir.

Mr. SCHERLE. Do you feel that this should be more a State matter, based on the own individual legislatures, or do you think this should be a problem faced by the Congress to make it uniform rather than to set up 50 specific, individual guidelines?

Mr. KILPATRICK. I think there is room for both approaches, sir. I think there is room for a uniform national approach, both under the commerce clause and under the power to establish post offices, that would be very narrow and very tight in its application to the hard-core pornography.

Beyond that, sir, I would leave it open to the 50 States to interpret just as widely as they can, subject, of course, to the overriding commandment of the first amendment, in various forms of regulation and control. It would not bother me a particle if a book were held obscene in Iowa and not obscene in South Dakota, so long as the customer could order the thing through the mail anyhow or buy it when he went to New York or the coast. I see no great objection to State prosecutions, sir, so long as the conduits of interstate commerce and of the mail are generally open for material that is pretty far out for you and me.

Let the States go ahead.

Mr. SCHERLE. One more question. Do you feel in your own mind, with your past experience in this field, that H.R. 2525 would be the kind of legislation that you would advocate and support on a national level and let the other States take care of the problems on a broader field at a State level?

Mr. KILPATRICK. Yes, sir. I would certainly support H.R. 2525, because I think the findings of the proposed study commission might be useful to the States in fashioning their own legislation. I would hope that the findings of this proposed Commission also would be helpful in drafting the kind of Federal law that then would be upheld by the Supreme Court, and that once again we could have from the Court some sort of guidance at the State level on how to write such laws.

Mr. SCHERLE. Thank you very much.

Thank you, Mr. Chairman.

Mr. DANIELS. Our distinguished majority leader, Mr. Albert.

Mr. ALBERT. I want to commend you and your statement. It is obviously well thought out, well presented.

Mr. KILPATRICK. Thank you.

Mr. DANIELS. We have another Member of Congress who is not a member of this committee, but who has a sincere and intense interest in this subject matter and he would like to ask you a question or two.

My good friend, the distinguished member in Congress from the State of Illinois, Mr. Pucinski.

Mr. PUCINSKI. Mr. Chairman, I would first like to congratulate you for starting these hearings. We reported a bill from the committee last year and in the press of other duties the bill never came to the floor for final action. I have introduced similar legislation since coming to Congress because this is a problem of national concern.

There is no question about it, Mr. Kilpatrick, that what 10 years ago were stag films, produced in some hideaway place and confiscated by the police when they came to public attention, today are being peddled all over America, under the guise of art.

Mr. KILPATRICK. Yes, sir.

Mr. PUCINSKI. They put an "adult only" sign on the theater marquee and some of the filthiest things are shown.

Mr. KILPATRICK. I recently had occasion to testify for the prosecution in a trial in Hustings Court in the city of Richmond of a movie exhibitor whose contribution to our local culture was a film called, if I am not mistaken, "The Hot Touch of Erotic Skin."

He was convicted.

Mr. PUCINSKI. The courts have taken notice of this. It is one of the biggest industries today, the production of these pornographic films. I believe we have a responsibility to see whether the interstate commerce laws should apply to the distribution of these films.

I would like to congratulate you on your statement here and point out that it is entirely possible that this Commission, if the Congress should approve H.R. 2525, might indeed come back a year from now and conclude that we cannot legislate on a Federal level in this field. It is entirely possible.

Mr. KILPATRICK. Yes, sir; but, I would certainly think it unlikely and would hope such a conclusion would be unlikely. After all, you have a hundred years of precedent that the Congress does have authority to do it.

Mr. PUCINSKI. In urging enactment of H.R. 2525, we do not want to create the impression that this is an effort to set up some sort of a national censorship system.

Mr. KILPATRICK. Yes sir, I understand that.

Mr. PUCINSKI. Or a national censorship board. What we are recommending in H.R. 2525 is an intelligent, systematic approach to a study of this problem, to a very careful review of all of the most recent Supreme Court decisions in this field, to a review of local legislation and local decisions. We wish to see whether from this intensive study by a competent group of Americans we cannot reap some intelligent guidelines and suggestions within the basic structure of the Constitution and all its guaranteed freedoms to deal with this subject.

This seems to me an extremely logical way of doing this. Right now, your own testimony reflects the myriad opinions on this subject. I am sure that there are people all over the country who hold very intense views on this matter. This proposed Commission would try to correlate these dissenting views and see if we cannot find some common ground towards solving this problem. I am very happy to have your support of H.R. 2525.

Your distinguished background and your record certainly are going to carry a great deal of weight in the full committee making decisions as to whether or not this Commission shall be established.

Mr. KILPATRICK. Thank you, sir.

Mr. PUCINSKI. I would like to congratulate you on your testimony this morning, and I would like to congratulate the author of the bill for taking on what I know is a difficult assignment. I know when I introduced a bill like this several years ago, my mail contained some pretty irate letters. There are some people, who, without knowing the facts, come to the conclusion that the Government is trying to set up some monolithic, huge censorship board that is going to stifle free thought in this country.

Mr. KILPATRICK. Of course I do not want to impose upon your time further, but there is some basis, sir, for that apprehension in the proceedings of the Postmaster General in the past. Many times he did undertake to operate in that fashion as a censor of the mails.

But I am confident H.R. 2525 effectively disposes of any notion that any such body as that is proposed here.

Mr. PUCINSKI. As I say, the important thing to remember here is that in creating this Commission (and last year in the legislation that we reported out of my committee), we specifically provide language by which the Commission may, indeed, after a very careful analysis and study of the whole subject, conclude that Federal standards are impractical and unworkable.

I am not going to prejudge the work of this Commission. That is the only point I want to make here and I wonder if you would agree with it, that that is the framework in which this Commission ought to operate.

Mr. KILPATRICK. I agree with you entirely, and it is because I feel that way, in part at least, that I have suggested that you not specify particular people to serve on a study commission; because I think when you set that up in advance, you are almost in effect prejudging the report that the Commission is going to bring in.

I much prefer the approach that is in the bill as drafted.

Mr. PUCINSKI. Thank you very much.

Mr. DANIELS. Mrs. Mink desires to ask another question, if you would forbear with us for a moment.

Mr. KILPATRICK. Yes, sir.

Mrs. MINK. Just a final question. I realize that you have done a great deal more study in this field than I have had the time to devote to it, and I just want to be certain that I understand your position with reference to the kinds of legislation that might be suggested, because I think that that is a very important aspect of this legislation, although we are only creating a Commission to study this.

As I understand the response that you made to the gentleman's question in terms of the prospects of constructive legislation being recommended by this Commission, your response was in the affirmative. Did I understand that correctly?

Mr. KILPATRICK. Yes, ma'am.

Mrs. MINK. Now, I have difficulty in reconciling that statement with the theme which I seem to gather from your statement that you found that the primary difficulty in this area is the definition of the word "obscenity," and that in each one of these statutes, of course, we must get back to this definition. If we are not really going to establish a national concept of what we think is proper nationally, how do we avoid this problem in terms of congressional legislation of establishing precise standards as to what constitutes obscenity?

And this is the difficulty I had in the final response you made to the gentleman's question.

Mr. KILPATRICK. Mrs. Mink, I opened my statement by saying I am full of doubts and just as full of doubts as I leave the stand. I think it is a very, very difficult thing.

Now, Mr. Justice Stewart remarked in *Jacobellis* in that short little dissenting opinion that he could not define "hard-core pornography," but he knew it when he saw it.

A couple of years later he attempted to define in a footnote what is hard-core pornography. I don't have it with me, but it is in the Court record.

Mr. Justice Stewart would limit any Federal legislation to prohibition of that material which is gross—which grossly depicts the

sexual act, which is so patently offensive as to shock the conscience of the average person.

He did struggle to come up with a definition of hard-core pornography, and my thought is that if there is to be new Federal legislation revising and redefining the old Comstock Act, section 1461 of the Code, it ought to go in that direction in terms of a definition. That is, it should restrict itself to hard-core pornography. But I also like very much the idea of Federal legislation that would capitalize upon the suggestions that were implicit in the Supreme Court's opinions in *Mishkin* and *Ginzburg*.

That is to say, not to worry too much about a definition, but rather to go at the traffic, at the commercialization of it, and to see if Federal legislation cannot be drafted that will hit in that direction—at the commercial exploitation of prurience; because there I think you catch the evil.

That is the new thrust of the Post Office Department. In January it got a major conviction of people who were really bigtime smut peddlers, merchants, because it was going after the commercialized interest.

Now, your Federal legislation could go in that direction. I would not be inclined to worry so much about the precise definition of "obscenity" or "pornography," because I don't think it can be defined in the first place. But I think you would then go after the offenders which you want to catch.

Mrs. MINK. If I understand your response to my inquiry, then you feel that the major thrust is in certain legislation which would go to penalties for commercializing this kind of literature and leaving to the independent judgments of the courts the refinement and definition and finding of obscenity?

Mr. KILPATRICK. Precisely; you phrase it much better than I do. That is exactly the idea I had in mind.

Mrs. MINK. Thank you very much.

Mr. PUCINSKI. Of course, Mr. Chairman, Mr. Kilpatrick will readily, I am sure, agree that with this new wrinkle in judging one by the nature and manner in which he exploits a work of art rather than the work of art itself, we have opened up a real Pandora's box. I don't think we have seen the end of it. While we can always applaud the removal from the market of some particularly obnoxious pornography, I am sure there are those of us who would be deeply concerned about that decision.

Mr. KILPATRICK. Yes, sir. And I have to confess I thought there was much merit in the dissenting opinions last year, where Harlan and the others said that Ginzburg was convicted of a crime that was not a crime when he did it.

The Court simply fashioned new law. I regret that; I am inclined to criticize the Court when it does that in other areas, but here I think they were on sound ground. I believe it is possible to determine the intent of the merchant. This gets you away from some of the vain efforts at definition, such as the depiction of pubic hairs—D. H. Lawrence once called that the splitting of pubic hairs. Some great works of art depict pubic hair. They depict genitalia. But are these always obscene?

My thought is that if you go after the merchant who is peddling, and get at his intentions and his commercial traffic, you build a case that a jury can get at pretty quickly.

Mr. PUCINSKI. Your testimony this morning in its entirety certainly makes a good case in support of this legislation. All of these questions that we have discussed here very briefly this morning would then be dealt with in considerable depth throughout a whole year by this commission of experts and I for one would be very interested in seeing the end result of their work.

Mr. KILPATRICK. I would, too.

Mr. PUCINSKI. I am sure this is the way to do it. As far as I know, this would be the first time we have tried to convene a panel of experts to take a hard and objective and impartial look at the whole structure of this problem, and come up with some recommendations.

Mr. DANIELS. Thank you very much.

Mr. KILPATRICK. Thank you, Mr. Chairman.

Mr. DANIELS. I appreciate your coming.

Our next witness is Mr. Timothy J. May, General Counsel of the U.S. Post Office Department, accompanied by Mr. William F. Lawrence, also of the Post Office staff.

STATEMENT OF TIMOTHY J. MAY, GENERAL COUNSEL OF THE U.S. POST OFFICE DEPARTMENT, ACCOMPANIED BY CHARLES A. MILLER, DIRECTOR, FRAUD AND MAILABILITY DIVISION, AND WILLIAM F. LAWRENCE, OFFICE OF THE GENERAL COUNSEL, U.S. POST OFFICE DEPARTMENT

Mr. MAY. And also Mr. Charles A. Miller is here, and if the committee desires information and specific cases, they will be glad to help.

Mr. Chairman, Chief Inspector Henry Montague has prepared a statement which I would like to submit for the record, if I may.

Mr. DANIELS. Without objection, Mr. Montague's statement will be placed at this point in the record.

(The statement referred to follows:)

PREPARED STATEMENT OF HENRY B. MONTAGUE, CHIEF POSTAL INSPECTOR

Mr. Chairman and members of the subcommittee: It is a privilege for me to testify with respect to H.R. 2525.

As the Subcommittee knows, the basic statutory authority available to the Post Office Department in curbing the distribution of obscene material through the mails is Section 1461, Title 18, of the United States Code. Convictions for first offenders may result in fines up to \$5,000 and/or imprisonment up to 5 years. Fines and prison terms of up to \$10,000 and/or 10 years may be imposed on recidivists.

The Postal Inspection Service as the investigating arm of the Postmaster General is responsible by law for investigations of postal crimes. Inspectors are required by statute to present evidence to United States Attorneys, and, when prosecution is authorized, to effect arrests. We assist these officials in all phases of the ensuing court proceedings. We also cooperate closely with local authorities, and in applicable cases, present evidence of related state violations to district attorneys.

Essentially, this Bill proposes the creation of a Commission on Obscenity and Pornography—the Commission to be broadly based so as to fairly represent all segments of the nation's life. Its purpose would be to analyze the obscenity laws—evaluate and recommend definitions of obscenity—study its effect upon the public, and particularly minors—explore the nature and volume of traffic in such materials—and finally, to recommend such legislative or other appropriate action which would effectively regulate the flow of such material, yet in no way interfere with constitutional rights.

It should be difficult indeed to oppose with any degree of logic the establishment of an advisory commission as contemplated by this Bill. Certainly the premise

on which the Bill is founded is incontrovertible. The traffic in obscenity and pornography is a matter of national concern, and the Federal Government has a responsibility to determine whether more effective methods might be devised to control the transmission of such materials through instrumentalities which are constitutionally subject to Federal regulation.

It is not strange that the Postal Service should find itself an instrumentality by which such traffic takes place. What other conduit can provide the smut merchant with a cheaper or more convenient means of placing his offerings before the public? What artery can provide the dealer with a greater degree of personal anonymity, a feature understandably much desired by many of those who traffic in this material? This was true as far back as 1865, the year in which Congress first felt constrained to enact legislation banning obscene matter from the mails. It is no less true today.

During the past 100 years the Postal Inspection Service has worked earnestly to fulfill its enforcement responsibility in this difficult area. In the nature of this problem, it is impossible to establish precise and fixed boundaries by which obscene matter may be clearly discerned, from that which is not, by each reader or viewer alike. The variations and gradations which are possible in the material itself are limitless as commercial promoters probe and test in an effort to skirt the law while still titillating the prurient interest of their audience.

The ultimate decision as to what is or is not legally obscene, of course, rests solidly with the courts. Numerous Supreme Court decisions of a landmark nature have resulted over the years from our investigations in this area. In 1957, in *Roth v. U.S.* (354 U.S. 476), the Supreme Court set forth the community standards guideline in judging obscenity. It cautioned, however, that all ideas having even the slightest redeeming social importance are constitutionally protected. Subsequently, in *Manuel Enterprises Inc. v. J. Edward Day* (370 U.S. 478), 1962, the Court held that to be legally obscene, material must be patently offensive as well as appealing to the prurient interest.

In the ten years that have intervened since *Roth*, postal inspectors have made over 100,000 investigations into questionable use of the mails in the obscenity context. Evidence supporting conviction under legal guidelines has been obtained in over 4000 instances.

The bulk of all complaints stems from the indiscriminate and unsolicited direct mail advertising of a relatively few dealers offering material in the grey or borderline category. They are mailing an estimated volume of possibly 20 million pieces of such advertising each year. By keeping both their advertisements and their products hopefully within the legally safe, grey, borderline area of obscenity, they try to titillate the interests of those susceptible. Desire for profit, coupled with the knowledge that profits increase in direct proportion to the degree of prurient interest appeal that can be injected into the material, causes them to risk prosecution.

These dealers employ many guises in exploiting the erotic market place. It may take the form of publications falsely purported to be those of bona fide nudist organizations; books which, although devoted solely to genitalia sex and stressing the most depraved deviant type practices, are thinly cloaked as a serious medical or cultural study; paperback books and other writings detailing the most intimate descriptions of sexual promiscuity and perversion but relying on the faint suggestion of a plot to escape court condemnation. Possibly most shocking of all to postal patrons are lurid advertisements of so-called "sex aids" presented as being of bona fide medical value.

It is the indiscriminate mailing of such offensive material that so arouses the mail receiving public. The operations of one dealer alone has resulted in over 100,000 complaints to the Department during the past four years. Some persons have individually received as many as thirty lurid unsolicited advertisements from the same promoter. Repeated mailings have been made clearly addressed to persons of both sexes—to prison addresses—to churches and seminaries—to students as well as instructors at boys and girls schools—to military personnel at bases here and abroad—to physicians and staff at hospitals—to business offices—and to Government personnel at their official offices.

The trend in commercialized mail order pornography has been towards books, magazines, and other publications rather than towards photographs and film. This results from two principal causes. Pornography in photo form is more readily distinguished as such by the courts than is that cloaked in printed form. Consequently, the mail order dealer in hard core pornography of the photo type can generally anticipate a fairly short freedom expectancy. With printed matter however, he can claim refuge in the constitutional guarantee of freedom of expres-

sion as pointed out in *Roth* with respect to ideas of even the slightest redeeming social importance. Additionally, the advent of the instant photo developing camera has made pornographic photos somewhat more available to those who care to make and possess them. They need no longer respond to mail order offerings to obtain such material. This is not to say that the mails are no longer used in the covert distribution of hard core pornographic pictures. Rather, we have found that most large dealers find it less chancy to deal in material less susceptible to a clear condemnation as obscenity.

Possibly the most far reaching conviction in this area since *Roth* was that of *Ginzburg* whose nation-wide mailing activities brought conviction under the postal obscenity statute in 1963. Subsequent review by the Supreme Court—*Ralph Ginzburg et al. Petitioners v. United States* (383 U.S. 463), 1966,—upheld the verdict and introduced the further yardstick of “pandering” in the legal determination of obscenity. Essentially the Court ruled that where the purveyor’s sole advertising emphasis is on the sexually provocative aspect of the material, that fact may be decisive in the determination of otherwise borderline cases.

Convictions rose 26.8% from Fiscal Year 1962 to Fiscal Year 1966, yet complaints from the mail receiving public increased well over 300% during the same period. Some 197,000 mail patrons complained to the Department in Fiscal Year 1966 regarding the intrusion of offensive advertisements into their homes by virtue of the mail box.

As indicated the bulk of these complaints stem from saturation type mailings of sex-oriented material presented in a manner designed to take full advantage of all possible constitutional questions. We are concentrating our investigative emphasis, in line with the “pandering” theme laid down in *Ginzburg* towards these large dealers. The five year prison sentence and \$99,000.00 fine meted out to Milton Luros and his four publishing and distributing corporations on January 6, 1967, demonstrates that this approach can bear results. More recently, three promoters were indicted in the mid-west following a three year investigation into their nation-wide distribution of allegedly pornographic material.

The Post Office Department will continue to do its best to enforce the postal obscenity statute. At the same time we feel that a definitive study by such an objective and widely representative group as envisioned under H.R. 2525 would go far towards placing the problem in proper perspective and dispelling the fears of censorship held by some.

The Subcommittee may be sure that this Service will be more than pleased to furnish any Commission so created with all appropriate information and materials helpful in accomplishing its objective.

Thank you.

Mr. MAY. Mr. Chairman, we are pleased to have this opportunity to present the views of the Department on H.R. 2525, a bill to create a Commission on Obscenity and Pornography.

The broad purpose of H.R. 2525 is to effect a coordinated effort at the various governmental levels, and by public and private groups, to study the scope and effects of the traffic in obscene matters and materials, and recommend constitutional means to deal with the findings of the Commission.

At present, the principal Federal control over the traffic in obscenity is the prohibition against use of the mails to transport obscene materials. The Post Office Department’s responsibilities in the area derive from the statutory provisions for criminal prosecution, 18 U.S.C. section 4006, which authorizes the Postmaster General to issue an “unlawful” order against those using the mails to advertise and furnish obscenity.

As a practical matter, however, we are limited to the criminal statute in our enforcement efforts. In the case of *Manuel Enterprises v. Day*, the Supreme Court questioned the authority of the Postmaster General to engage in administrative censorship, and it has been the policy of the Department under Postmaster General O’Brien and his two immediate predecessors to avoid such censorship activities

by the Department, leaving it to the courts to decide the issue in cases brought before them under the criminal statute.

The administrative proceeding, however, has been an effective device for curtailing the flow of pornography from foreign countries. The constitutional questions raised in the *Manuel* case do not obtain with respect to mail from foreign countries.

In *Roth v. U.S.*, 354 U.S. 476 (1957), the basic test for obscenity was laid down by the Supreme Court in terms of that which to the average person, applying contemporary community standards, predominantly appeals to prurient interest. The judgment as to standards of the community can best be made by the members of the jury in each case, and the benefit of a jury is provided the accused when we resort to criminal prosecution rather than the administrative process.

The Founding Fathers of our Nation wisely protected the citizen in the privacy of his home by the constitutional protection against unreasonable searches and seizures. A stranger may not enter one's home uninvited. But the stranger may inject himself into one's home by using the postal system.

If he uses the outside of the mailing piece to record his defamatory, scurrilous or indecent expressions, the postmaster may observe this and withhold it from delivery as a violation of either the defamatory statute, section 1718 of title 18, U.S.C., or of the law which prohibits indecent matter on the outside cover of mail, section 1463 of title 18.

However, if the writing is sent in an envelope under seal as first-class matter, the postmaster has no opportunity or authority to examine the contents, and must deliver the mail without delay. More to the point, however, is the fact that most of the advertising material complained of, although quite offensive in itself, does not meet the tests for obscenity laid down by the Supreme Court.

That being the case, the Department is powerless to move against the purveyors of the overwhelming majority of materials about which there is complaint. So the Department is in the uncomfortable position of assisting the advertiser in reaching into the homes of many citizens who are affronted by the advertising which they see once the mail is delivered to them.

The question that faces us then is whether, short of criminal prosecution for mailings of obscenity, there is anything that the Post Office Department can do to eliminate or at least reduce the traffic in objectionable but nonobscene materials. In any legislative attempt to impede the free circulation of printed matter, particularly in the area of sex-related materials, we are confronted with the strict constitutional limitations laid down by the Supreme Court in the series of cases running from *Roth* down through *Ginzburg* in March of last year.

Ginzburg v. U.S. was one of three obscenity cases decided by the Supreme Court on the same day last year. Another was *Mishkin v. New York*, and the third was *Memoirs v. Massachusetts*. In *Memoirs*, the Court emphasized once more the constitutional requirement of proof that the offending material is "utterly without redeeming social value" before it can be declared obscene under the law.

The book in this case "*Memoirs of a Woman of Pleasure*" (also known as "*Fanny Hill*") was found to appeal predominantly to a prurient interest in sex, and to be patently offensive because it affronts contemporary standards relating to the description or representation

of sexual matters; but the lower court was reversed because it had failed to find that the book was, also, utterly without redeeming social value. The Supreme Court said—

A book cannot be proscribed unless it is found to be *utterly* without redeeming social value. This is so even though the book is found to possess the requisite prurient appeal and to be patently offensive. Each of the three Federal constitutional criteria is applied independently; the social value of the book can neither be weighed against nor cancelled by its prurient appeal or patent offensiveness. Hence, even on the view of the court below that *Memoirs* possessed only a *modicum* of social value, its judgement must be reversed as being found on an erroneous interpretation of a Federal Constitutional standard. (*Italics supplied*)

I would like to say at this point, Mr. Chairman, that I tend somewhat to disagree with some of the witnesses this morning who suggest that the meaning of obscenity as defined by the Supreme Court is in a hopeless state of confusion.

I agree that it is very, very difficult to predict what the Courts will find to be obscene because inevitably they must impose their own subjective standards when they review the material. But I think they have laid down, in the collection of decisions that we have, a rather precise statement, as precise a statement as you are going to get on this subject, as to what constitutes obscenity. I think the various decisions have not altered that definition of obscenity. I disagree that the *Ginzburg* case was a case where Ginzburg was convicted because of the way he advertised and not because his materials were obscene.

The way I read the *Ginzburg* case, and, of course, I suppose it is possible to read it differently, but I think what the Supreme Court did was to take Ginzburg's advertising and use it as evidence in meeting one of the three tests, of whether or not there was any socially redeeming value, to the works that Ginzburg was selling.

They pointed out that in Ginzburg's own advertisements he made no claim for his material except that it appealed to prurient interests. This was the claim that Ginzburg himself made for his material. And the Court said that we are entitled to take Ginzburg at his own word when he advertises in this fashion and says that this material has no other value; we are entitled to take him at his word and use that as evidence to prove the fact that the materials that he was selling were utterly without redeeming social value.

This was after the Court had found that, additionally, his works were designed to appeal predominantly to prurient interests and that they were patently offensive.

One of the most difficult tests to meet in any prosecution for obscenity is to prove that a work is utterly without redeeming social value. This is easy, of course, if all you have is a pornographic photograph without text; but the minute you have textual material attached you have problems, whether there is any literary value to it or any social commentary that has some value to a free society; so you have this very difficult problem when you have anything that has pretensions to a serious literary effort, and it is quite easy to sandwich fairly serious classical works in between some rather pointedly pornographic material in a publication and create this difficult situation.

I think what the Supreme Court did was helpful and useful to those who are concerned with the traffic in obscenity, the commercial traffic in obscenity. The court provided an evidentiary means of establishing one of their three tests.

Perhaps the most difficult one to meet where you have any textual material, is that it is utterly without any redeeming social value.

At the same time, the Supreme Court decided the *Mishkin* case—the *Mishkin* case involved material that was deviate material. Obviously, that is not going to appeal to the prurient interests of a normal person. So the Supreme Court did make a qualification there, but again it was a qualification in favor of those who were trying to prosecute for obscenity.

The qualification made was that the prurient interest is of the group for which this material is designed. If it is a group of deviates, then the question is; Does it appeal to the prurient interest of those deviates? So, I think the Supreme Court, rather than further restricting the definition of obscenity as has been suggested here this morning, at least in the several cases that were handed down last year, the Supreme Court articulated some clarifications of their original definition of obscenity that accommodated some of the practical difficulties of a prosecution for obscenity.

Mr. DANIELS. In your opinion then, Mr. May, do you think there are sufficient Federal laws to deal with the problem?

Mr. MAY. I think that if you accept the Supreme Court's definition of obscenity then certainly the Post Office Department has adequate powers presently to deal with commercial traffic in obscenity. The problem is that most people are not willing to accept, or most people who are concerned about this are not willing to accept the Supreme Court's definition of obscenity.

Now, I just think that it would be rather foolish for any of us to believe that any State legislature or the Congress of the United States can redefine obscenity and make it a broader prohibition than the Supreme Court has indicated is tolerable under the Constitution.

Now, it is possible that the courts will go along with attempts to clarify the definition, to illuminate what it means; I think the Supreme Court has rather definitively suggested what is the very small area of speech that they will permit to be restrained in light of the Constitutional guarantees of freedom of speech and press.

I don't think you can widen that area through legislation or any other efforts that may be made at the State level.

Many of the cases, incidentally, that the Supreme Court is said to have sustained convictions in, they did *not* sustain convictions in those cases; they merely denied *certiorari*. In other words, the Supreme Court declined to review the conviction, and the denial of a right of *certiorari* to the Supreme Court carries with it no implication at all that the Court approves of the decision of the lower court. It simply means that the Court did not find that there is a sufficient national interest or public interest in reviewing that particular case.

So just to put this in perspective, as to full dress hearings that were presented to the Supreme Court, you did have a rather long period, some 9 years, between the *Roth* decision and the *Ginzburg* decision in which the Supreme Court did not sustain, as it were, a conviction for obscenity. And I don't imply any criticism when I say that.

What happened was that after the *Roth* decision was laid down a lot of people around the country, a lot of States, felt that they finally had something that they could use to go after material that they think is obscene; and I think Mr. Kilpatrick is right; everybody pretty

much has his own definition of obscenity as a private person but the only one we can use to send people to prison is the one that the courts laid down.

I can have my own private opinion about what I am going to let my children read or about what movies I will patronize; that is my prerogative. I may be perfectly all wet, but I am exercising my freedom of choice; but when you are going to send a man to prison there is only one standard and that is the one the courts have laid down and I don't believe the courts are going to let anybody tamper with that if it means that it is going to result in a greater repression of people's freedom of expression.

The Post Office Department has a very sensitive problem because we deliver mail into people's homes, which is a fairly intimate thing, and they have children in these homes who open this mail. We deliver millions of pieces of mail a year that are about sex-related matters, really, advertising circulars offering to sell what would appear to be salacious material.

Now, these advertising circulars which we would call a pandering advertisement are not obscene in themselves; they don't meet all the different tests of the Supreme Court. But I think it is understandably offensive to many of the millions of people who get this mail; they did not ask for it and their children are opening it in their homes; they get extremely excited about it and, so far as they are concerned, they think it is obscene and they write to the Department and they expect some relief; they can't believe that this is not obscene, they can't believe we cannot do anything about it.

So we have been working with the House Post Office and Civil Service Committee and we have been working with several of the committees in the Senate to try to see if we cannot plug that rather limited area—where a person who has already received material such as this has indicated to us that he does not want to get any further material like that from the person who mailed it to him—to see whether or not there is not something we can do in that area, given the fact that what we are talking about are materials that are not obscene under the Court standards.

Mr. DANIELS. Is not the Postal Operations Committee conducting hearings at the present time in that area?

Mr. MAY. They are; we have endorsed a bill that Congressman Olsen has introduced and we think it will take care of that very limited problem, but I think—

Mr. DANIELS. Unsolicited mail?

Mr. MAY. That is right. Now, I think this committee and this Commission is concerned with a much larger problem—this is the traffic, through whatever means the transportation may be effected, of obscene and pornographic material. I know that the title of the bill and the title of the Commission talks about obscenity and pornography which suggests that there is a distinction.

I suppose that anything that is obscene would be pornographic, but it is possible then that some pornographic material would not be obscene, which I think is a fairly realistic distinction, because in the minds of most people there probably is a lot of sex-related material that is treated in such a way that to the ordinary person they would find this was pornographic and the courts would not say, on the other hand, that it is obscene.

So I take it, Mr. Chairman, that the concern of this committee and this Commission would be broader than just obscene material because if it is not broader than that then you have no problem. As you heard Mr. Kilpatrick say, two members of the Supreme Court don't believe that there is any restraint permissible on freedom of speech, including hard-core pornography. Two more Justices of the Supreme Court believe that the only thing that can be restrained is hard-core pornography; and I might point out, so far as I am concerned, none of the things that Ginzburg was selling constituted hard-core pornography, although it was obscene within the Supreme Court's definition. Hard-core pornography is easy. There are thousands of convictions each year in this country for obscenity and they are basically on hard-core pornography; nobody even tries to appeal these decisions; they are photographs of the sexual act in various aberrated positions.

This is hard-core pornography. Two members of the Supreme Court say that is the only thing they would permit to be restrained and they cannot define it. I think Justice Stewart said, "I don't know what hard core pornography is but I know it when I see it. I can't define it, but I know it when I see it." Which is probably a reaction we all have.

We all think if we saw it we could identify it. You get a different question however when you get into materials such as Ginzburg was selling, and the public impact of a Ginzburg is the sort of thing that makes legislation in this area legitimate, that legitimizes the congressional and the public concern about it, because when you have a large-scale commercialized operator like Ginzburg, who flooded the country with 20 million to 40 million advertisements for his product, you then have a public impact.

This is quite different than the case of a person who writes a letter to a friend of his and puts in an obscene photograph. I suppose there were days in the past when the Post Office Department did prosecute for that. I can assure this committee, that certainly has not been the case in the last several years, and the Post Office Department would not think of entertaining a prosecution for the transmission of merely private correspondence, although the statute itself prohibits that, along with commercialized traffic in obscenity.

Mr. DANIELS. Mr. May, the hour is growing a little late. I would like you to comment, if you would, on the bill we have before us, H.R. 2525, and also give us your opinion as to whether or not you favor the composition of the Commission, as provided in the bill, of 16 members, eight to be appointed by the President, four by the Speaker of the House, and four by the President pro tempore of the Senate. Or would you prefer the other type of legislation that was recommended this morning by Senator Mundt and Senator Miller? The Commission they propose would be composed of representatives from various areas of the public such as the motion picture industry, newspapers, psychologists, psychiatrists, PTA, and other civic leaders.

Mr. MAY. Mr. Chairman, with your permission I would like to submit the remainder of my statement for the record and I will address myself to the question you posed.

Mr. DANIELS. Without objection, your entire statement will be printed in the record, following your testimony.

Mr. MAY. I would, on behalf of the Department, endorse the legislation that you propose, Mr. Chairman, and think that in some areas it can perform a very useful function. One of the areas is the whole problem of contemporary community standards.

As I said, I don't think anybody is going to get the Supreme Court to change that as one of the criteria, but the illumination of what a community standard is and the methodology for determining community standards is something, I think, that is one of the darker areas, and the work of this Commission could considerably enlighten that area.

I think one of the very important things that the Commission could do is to assemble and try to synthesize the conflicting views of psychologists and sociologists and ministers on the question of the amount of harm, if any, that pornographic material has upon individuals and upon society.

In this I agree with Mr. Kilpatrick, that if there is not a measurable harm then Congress should not legislate because there is no question about it, any legislation in this area impinges upon freedom of expression; and if there is no measurable harm that is felt by society from the free dissemination of pornographic materials, then there should not be legislation.

It is not conclusively established in my mind that the case has been proven that there is this harm. I am in somewhat of a state of confusion because there is so much conflicting evidence on the subject. A husband and wife team at Harvard who are both lawyers and sociologists have done the most exhaustive study on this subject and have concluded that pornography has no injurious social effect on juveniles at all and it has no traceable connection with juvenile delinquency.

I can summon on the other hand equally persuasive testimony from law enforcement officials, ministers, and priests who work with juveniles, and who are perhaps even on a more intimate basis than a sociologist can establish, who will say just the opposite, that it does have an antisocial and a delinquent effect upon the behavior of juveniles.

A lot of it, I suppose, is what society wants to pre-establish as the kind of society it wants. Is it desirable to have a society that has a very casual attitude about sexual matters? If that is all right, and you establish that the wide dissemination of pornographic material will simply lead to that, and not necessarily to antisocial behavior, but will simply lead to a society of fairly loose morality on the subject of sex; if you are prepared to accept that kind of society then you have already defined what harm is and you have said there is no harm.

If, on the other hand, you go to the other extreme and you want to adopt a Victorian standard for your society, one where people will not freely discuss the subject of sex, where everybody will maintain a complete attitude of restraint publicly and perhaps react almost shamefully to the suggestion of sex, then obviously you can prove, I think, that the wide dissemination of pornographic material, or frankly any kind of sexual material, is going to erode that standard.

But one of the things that you have to establish is what kind of standards does our society demand today? And I think this Commission can do some very effective work, if not original research, at least

a very helpful job in evaluating and synthesizing the existing body of opinion on that subject.

Mr. DANIELS. What is your opinion concerning the composition of the Commission?

Mr. MAY. Again, I tend to believe that Mr. Kilpatrick has a point, that if you do pick the president of the Parent-Teachers Association you can predict with 100 percent accuracy what her conclusion about this subject will be; if you pick the director of the American Civil Liberties Union you can predict with 100 percent accuracy what his conclusions will be; and I don't mean to imply any criticism of either group, but they have very pronounced views on the subject; they are strong, practically institutional, views that I doubt any of them are going to change. Therefore, you probably could get a more objective study performed by not preselecting from different groups those who would serve on this Commission.

Mr. DANIELS. May I assume from your testimony then that you favor the manner of selection as set forth in H.R. 2525?

Mr. MAY. Yes, Mr. Chairman. We would hope, of course, that the Post Office Department would be represented; since we have such a rather close interest in the subject we would hope that we would be represented on the Commission, but I am sure that would probably be taken care of.

Mr. DANIELS. I am afraid the bells may ring for a quorum in a moment. I do not want to monopolize all of the time for questions, so, therefore, I call on my colleague, Mr. Steiger for questions.

Mr. STEIGER. Thank you, Mr. Chairman.

Do we take, Mr. May, from your desire to be included on the Commission that you do not have institutionalized views?

Mr. MAY. Touché. [Laughter.]

Mr. STEIGER. I am fascinated and somewhat amazed. I will be very honest with you, you have done a very good job and you have raised some exceedingly valuable points which I think it is important to have for the benefit of the committee's thinking. I am somewhat at a loss to understand quite how you come to the conclusion when you are all said and done, which at times seems to be a bit conflicting. On the one hand you made the statement during your presentation that you really thought that there were sufficient laws on the books insofar as your Department is concerned in this problem, based on the court decisions, that we have a relatively clear definition, and if that is the case that the purposes set forth in H.R. 2525 are not really necessary purposes; and yet you have added another one by your testimony, which is that the Commission should cull together the acceptable community standards.

Now, I would be very interested in just how you want to cull together community standards and why you think that is something the Commission really ought to do?

Mr. MAY. Well, let me first say, Mr. Steiger, that the Post Office Department has only part of this problem that the Commission would be concerned with—that is, that which goes through the mail; and I would suggest to you that there is probably very little traffic in obscenity in the mails today, particularly since the *Ginzburg* case. I see very little instance of it.

On the other hand, there are just millions of mailings of sex-related material that you could call borderline, but not obscene. If all you

are talking about is obscene material, as defined, the Post Office Department has adequate legislative authority to control that problem, its own problem, in that area.

I suggest to you that I can walk down the street to the corner drugstore and find far more salacious material right on the newsstand than is going through the mails. Obviously, most of this material does have to be transported in interstate commerce, but it is not shipped through the mails, so that is not a problem of ours.

However, it is a problem and a concern to this committee and it would be to this Commission, so I don't wish to suggest that the problem does not exist. I am suggesting that the problem as to obscene material does not exist in the same measure for the Post Office Department. Bear in mind that the Ginzburg conviction was a prosecution initiated by the Post Office Department.

In fact, all the landmark decisions in this area came as a result of prosecutions initiated by the Post Office Department.

Mr. STEIGER. In your statement you say, I quote it on page 6—

The Commission could be of estimable help in developing acceptable evidence of community thinking and limits of tolerance on such matters.

I really don't know, Mr. May, how do you propose that the Commission go about trying to determine that?

Mr. MAY. Well, the present situation is that when you have a prosecution you are fairly stumbling around, trying to determine a way of establishing a body of evidence that will constitute evidence of community standards. Now, this is not to change the definition; the Supreme Court's test is there; but then it is our problem to establish the evidence showing what the community standards are and showing how this material transgresses those community standards.

What I am suggesting is that this Commission, through the various hearing procedures that are available to it, could offer some body of judgment about what community standards are and how you can establish community standards, and that its findings of themselves would be entitled to a certain amount of weight.

Mr. STEIGER. Can you give the committee any indication as to how many prosecutions, if any, you have at this point going under the laws under which you now operate?

Mr. MAY. I should preface my statistics by saying that many of the cases we have, we work jointly on with local law enforcement officers, and the prosecution quite often is undertaken by the local law enforcement officer rather than the Federal authorities.

Now, with that preface, Mr. Miller, I think you have the statistics on that, don't you?

Mr. MILLER. Congressman, if you are referring specifically to—I think the type of material we are thinking about here—that is commercial dealer-type material, we would have probably 20 large dealers, directors of large quantities of circulars through the mail, we would have probably 20 of those under investigation.

I think there are three indictments that are already pending. Of those 20, possibly six cases are in the hands of U.S. attorneys, bear in mind—really the Post Office Department does not prosecute, we merely investigate and turn the evidence over to the U.S. attorneys and they determine whether the facts are such that it should be prosecuted, so I would say that maybe to answer your question, 20,

and these would be the principal disseminators of this literature about which Mr. May is talking, about which the public is complaining so much, about which we are receiving so many thousands of complaints in the Department.

The principal ones are all under investigation and a number of them have been indicted, the investigation is pretty well completed on another quantity of that number.

Mr. STEIGER. You indicated in the testimony that last year, I assume that is 1966, the Department alone received approximately a quarter of a million complaints from people throughout the United States?

Mr. MAY. Yes, that is a quarter of a million complaints, and with rare exception those were complaints about pandering advertisements, which advertisements taken by themselves were not obscene. However, coupling those advertisements with the product that is being sold, we may be able, as was the case with *Ginzburg*, to make out a case of obscenity by using the pandering advertisement to establish the fact that the merchant made no claim for his material other than that it was titillating or appealing to prurient interests, and then finding that the product of itself meets all of the tests.

Now, this is what the inspection service is presently engaged in and what Mr. Miller has referred to as the perhaps 20 large-scale commercial operators in this area.

Mr. STEIGER. Can I interject to ask if you have any breakdown at all as to what the proportion is, of the quarter of a million complaints that you received, what proportion stems from the 20 largest suppliers of this material?

Mr. MILLER. I would say fully 90 percent—maybe even higher than that, possibly 95 percent—would pertain to the advertising activities of this group of 20 large dealers in the country. They are nationwide dealers and it is a saturation type mailing activity, and it would be possibly even higher, very close to a hundred percent of the complaints we get would stem from the activities of that relatively small group.

Mr. STEIGER. And this is third-class?

Mr. MAY. Both.

Mr. STEIGER. Both first and third?

Mr. MILLER. I might say principally first class. They pay 5 cents postage, they put the word "Personal" on the outside of the envelope; it's that type of thing.

Mr. STEIGER. Let's take this a step further, Mr. Chairman. The Olsen bill, Mr. May, that you indicated the Department supports, what is its relationship here with what we have just talked about—what, let's say, these 20 largest suppliers?

Mr. MAY. Well, it would provide that if a postal patron receives, unsolicited, such a pandering circular in his mail that he would be able to complain to the Post Office Department and request the Postmaster General to insure that he did not receive a further such pandering advertisement from that particular mailer.

This would set in motion a procedure whereby the Postmaster General would issue an order upon that mailer, noticing the mailer that the patron had complained and had asked that no more such pandering advertisements be made to him, and would put the mailer on notice that 30 days after receipt of the notice if he made such a

mailing of a further pandering advertisement to that patron he would be subject to criminal prosecution.

It would furthermore require that mailer to delete that patron's name from any mailing list over which it had control and would prohibit that mailer from selling or exchanging any mailing lists that contained the name of that postal patron.

Mr. STEIGER. This relates solely then to pandering?

Mr. MAY. Advertisements.

Mr. STEIGER. Solicitation through the mail?

Mr. MAY. That is correct. And, of course, this means that anybody who wants to get such material is free to get it; there is no prohibition against that. This would apply only in those instances where a patron has written in. We would also have to make a judgment, incidentally, a tentative judgment when we reviewed the material that we agreed it was a pandering advertisement. If somebody sent in a soap advertisement and said they didn't want to get any more of those, we might have some sympathy with them but that would not be covered under this statutory scheme.

Mr. STEIGER. Have you given any thought in the Department or can you give the committee any judgments or anything that you have on this whole question of what the relationship is between the advertisement that appears in the comic book, cases that you can think of or that people talk with you about, where the kid sends in his nickel or dime to get a book on water sports or whatever it is, and suddenly he has found himself on I suspect one of these 20 mailers' lists.

Is there any relationship or do you have any figures on relationship, if any, does exist in this area?

Mr. MAY. Well, obviously these large-scale mailers have to get their names from list brokers; either that, or compile the lists themselves, and I suspect that it is a combination of both; but anybody who wants to is free to purchase practically any kind of list of names in the country. I am sure all of our names are on a thousand different lists that are commercially available to anybody who wants to buy them.

The reputable list brokers insist that they do not knowingly or will not knowingly sell or rent one of their lists to an unscrupulous operator who would be using it for these purposes, but the reality is that in most instances they simply don't know what the purpose of the renter of the list is, and for very practical reasons they don't take any real steps to find out what the use is that is going to be made; after all, this is a commercial business and they are renting thousands and thousands of lists; it is practically impossible for them to investigate the purposes and the uses to which the rental list will be put.

I don't know frankly, and I have given a lot of thought to this, I don't know of any practical way of controlling the mailing list business that would not at the same time impose a most widespread type of restriction and restraint upon the direct mail advertising business, and would constitute, I think, a wholesale repression of the mail and a rigid control of the mailers.

Mr. STEIGER. Thank you, Mr. Chairman.

Mr. DANIELS. Mr. May, in answer to the question put to you by Congressman Steiger, you said that most of the obscene correspondence flows through the mail as first-class, that is first-class mail?

Mr. MILLER. Yes.

Mr. DANIELS. That seemed to be different from the statement presented to this committee by Chief Postal Inspector, Mr. Montague. Reading at the bottom of page 3, he says—

Since the Roth case ten years ago postal inspectors have made over 100,000 investigations into questionable use of mails for obscenity context. Evidence supporting conviction under legal guidelines has been obtained in over 4,000 instances.

Then on the top of page 4, and I quote—

The bulk of all complaints stems from the indiscriminate and unsolicited direct mail advertising of a relatively few dealers offering material in the grey or borderline category. They are mailing an estimated volume of possibly 20 million pieces of such advertising each year.

Now, can you reconcile your statement with that?

Mr. MILLER. Yes, this is an advertising in the sense of postal rates. These are advertising circulars that are enclosed in first-class envelopes. I have quite a quantity of them here that are typical of the type of material that is causing so much complaint and invariably, they pay 5 cents postage, this is sold material. It is a printed type—it is not a handwritten letter as we think of as first-class mail, and it is mailed in bulk.

There are, of course, thousands of them printed of the same type. There is no conflict.

Mr. MAY. What Mr. Miller is saying, Mr. Chairman, is if these people wanted to put only a third-class stamp on it and not seal it, they could; but they realize that people pay more attention to a sealed envelope that has "personal" on the outside with a 5-cent stamp on it; they are less likely to throw that in the wastebasket, more likely to open it and accept the contents.

They are willing to pay that additional 2 cents in order to get that kind of treatment.

Mr. DANIELS. If we eliminate that obscene matter from the mail we are going to further contribute to the postal deficit, are we not? [Laughter.]

Mr. DANIELS. Any further questions, Mr. Steiger?

Mr. STEIGER. No questions.

Mr. DANIELS. Gentlemen, my special thanks to you for coming here today and giving us your views. We appreciate it very much.

Mr. MAY. Thank you, Mr. Chairman.

(The statement referred to follows:)

STATEMENT OF TIMOTHY J. MAY, GENERAL COUNSEL, POST OFFICE DEPARTMENT

We are pleased to have this opportunity to present the views of the Post Office Department on H.R. 2525, a bill to create a Commission on Obscenity and Pornography.

The broad purpose of H.R. 2525 is to effect a coordinated effort at the various Governmental levels, and by public and private groups, to study the scope and effects of the traffic in obscene matters and materials, and recommend constitutional means to deal with the findings of the Commission.

At present, the only federal control over the traffic in obscenity is the prohibition against use of the mails to transport obscene materials. The Post Office Department's responsibilities in the area derive from the statutory provisions for criminal prosecution, 18 U.S.C. §1461, and for administrative proceedings, 39 U.S.C. §4006, which authorizes the Postmaster General to issue an "unlawful" order against those using the mails to advertise and furnish obscenity. As a practical matter, however, we are limited to the criminal statute in our enforcement efforts.

In the case of *Manuel Enterprises v. Day*, 370 U.S. 478 (1962), the Supreme Court questioned the authority of the Postmaster General to engage in administrative censorship, and it has been the policy of the Department under Postmaster General O'Brien and his two immediate predecessors to avoid such censorship activities by the Department, leaving it to the courts to decide the issue in cases brought before them under the criminal statute. The administrative proceeding, however, has been an effective device for curtailing the flow of pornography from foreign countries. The constitutional questions raised in the *Manuel* case do not obtain with respect to mail from foreign countries.

In *Roth v. U.S.*, 354 U.S. 476 (1957), the basic test for obscenity was laid down by the Supreme Court in terms of that which to the average person, applying contemporary community standards, predominantly appeals to the prurient interest. The judgment as to standards of the community can best be made by the members of the jury in each case, and the benefit of a jury is provided the accused when we resort to criminal prosecution rather than the administrative process.

The Founding Fathers of our Nation wisely protected the citizen in the privacy of his home by the constitutional protection against unreasonable searches and seizures. A stranger may not enter one's home uninvited. But the stranger may inject himself into one's home by using the postal system. If he uses the outside of the mailing piece to record his defamatory, scurrilous or indecent expressions, the postmaster may observe this and withhold it from delivery as a violation of either the defamatory statute, § 1718 of Title 18, U.S.C., or of the law which prohibits indecent matter on the outside cover of mail, § 1463 of Title 18. However, if the writing is sent in an envelope under seal as first-class matter, the postmaster has no opportunity or authority to examine the contents, and must deliver the mail without delay. More to the point, however, is the fact that most of the advertising material complained of, although quite offensive in itself, does not meet the tests for obscenity laid down by the Supreme Court. That being the case, the Department is powerless to move against the purveyors of the overwhelming majority of materials about which there is complaint. So the Department is in the uncomfortable position of assisting the advertiser in reaching into the homes of many citizens who are affronted by the advertising which they see once the mail is delivered to them.

The question that faces us then is whether, short of criminal prosecution for mailings of obscenity, there is anything that the Post Office Department can do to eliminate or at least reduce the traffic in objectionable but non-obscene materials. In any legislative attempt to impede the free circulation of printed matter, particularly in the area of sex-related materials, we are confronted with the strict constitutional limitations laid down by the Supreme Court in the series of cases running from *Roth v. U.S.*, in 1957, down through *Ginzburg v. U.S.* in March of last year.

Ginzburg v. U.S. was one of three obscenity cases decided by the Supreme Court on the same day last year. Another was *Mishkin v. New York*, 383 U.S. 502, and the third was *Memoirs v. Massachusetts*, 383 U.S. 413. In *Memoirs*, the Court emphasized once more the constitutional requirement of proof that the offending material is "utterly without redeeming social value" before it can be declared obscene under the law. The book in this case "Memoirs of a Woman of Pleasure" (also known as "Fanny Hill") was found to appeal predominantly to a prurient interest in sex, and to be patently offensive because it affronts contemporary standards relating to the description or representation of sexual matters; but the lower court was reversed because it had failed to find that the book was, also, *utterly* without redeeming social value. The Supreme Court said:

"A book cannot be proscribed unless it is found to be *utterly* without redeeming social value. This is so even though the book is found to possess the requisite prurient appeal and to be patently offensive. Each of the three Federal constitutional criteria is applied independently; the social value of the book can neither be weighed against nor cancelled by its prurient appeal or patent offensiveness. Hence, even on the view of the court below that *Memoirs* possessed only a *modicum* of social value, its judgement must be reversed as being found on an erroneous interpretation of a federal constitutional standard." [Italic supplied.]

I cite this language of the Court to demonstrate the lengths to which we must go before excluding offensive sex materials from the mails. One of our most treasured rights under the Constitution is the right of free speech and free press. What is objectionable to some may be acceptable to others; the clear teaching of these obscenity cases in the Supreme Court is that we may not legally prohibit publications merely because they offend the general populace. It is necessary to

establish that the materials are completely devoid of redeeming social value. In meeting that test, the Supreme Court in the *Ginzburg* case provided a useful tool by holding that the presence or absence of a social value may be determined according to the style of advertising employed by the seller. In so ruling the Supreme Court showed concern for those who are exposed to objectionable advertising. At page 470, it made the following observations on this point:

"* * * The deliberate representation of petitioner's publications as erotically arousing for example, stimulated the reader to accept them as prurient; he looks for titillation, not for saving intellectual content. Similarly, such representation would tend to force public confrontation with the potentially offensive aspects of the work; the brazenness of such an appeal heightens the offensiveness of the publications to those who are offended by such material. And the circumstances of presentation and dissemination of material are equally relevant to determining whether social importance claimed for material in the courtroom was, in the circumstances, pretense or reality—whether it was the basis upon which it was traded in the marketplace or a spurious claim for litigation purposes. * * *

We share the concern of this Committee in the significant increase in distribution of sex-oriented matter during the past several years. For example, during the past year the Post Office Department alone received approximately a quarter of a million complaints from people throughout the United States bitterly protesting the receipt of sex-oriented advertising matter in the mails. This is an increase of about two hundred thousand complaints over the figure of five years ago. And many of these complaints are from parents of minor children. Needless to say, we cannot devise our own ground rules as to what constitutes obscenity, but necessarily must apply the various tests laid down by the courts.

The ultimate decisions as to what constitutes obscenity must, therefore, 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, notwithstanding the added tool given us under the *Ginzburg* case. *Ginzburg* does not disturb the three-pronged test of *Roth* in determining violations of the postal obscenity law, and that is (1) patently offensiveness, (2) no redeeming social value, and (3) appeal to prurient interest. Essentially, these tests give recognition to the community consensus of tolerance with respect to sex-oriented materials.

We believe that in this area the Commission could perform a valuable service. The Commission could be of estimable help in developing acceptable evidence of community thinking and limits of tolerance on such matters. Furthermore, we believe the Commission might well marshal the necessary information from communities across the United States from which to arrive at a reliable determination of community standards acceptable to the courts.

Additionally, an objective study by such an impartial Commission may very well provide the foundation upon which to build a program to dispel the fears of censorship. Hopefully, the Commission could make a real contribution toward determining the relationship between the availability of pornographic materials and antisocial behavior, particularly as it relates to juveniles. The charge is often made that pornography is a direct danger to public morals, most particularly as a contributor to juvenile delinquency. However, these charges need to be supported by concrete evidence, utilizing the research and opinion of experts in the field of criminology, psychology, and sociology, as well as the experience of religious workers, who often have the most intimate and immediate knowledge of the effects of pornography on adolescent conduct and development.

We are hopeful the contemplated 16-member 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.

Mr. DANIELS. The committee will stand adjourned until Monday morning, April 24th, when the hearings will continue.

(Whereupon, at 12:30 p.m., the committee adjourned, to reconvene at 10 a.m., Monday, April 24, 1967.)

CREATING A COMMISSION ON OBSCENITY AND PORNOGRAPHY

MONDAY, APRIL 24, 1967

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

The subcommittee met at 9:30 a.m., pursuant to recess, in room 2257, Rayburn House Office Building, Hon. Dominick V. Daniels (chairman of the subcommittee) presiding.

Present: Representative Daniels, Representative Albert.

Mr. DANIELS. The Subcommittee on Education will come to order to continue with hearings on H.R. 2525 and related bills to create a Commission on Obscenity and Pornography.

Last Thursday, the subcommittee was fortunate in hearing from some very well qualified and knowledgeable witnesses. This morning we are very grateful for the presence of some other distinguished guests who are here to give us the benefit of their valuable experience and knowledge in this area. I know that we are about to receive further important information from these gentlemen.

STATEMENT OF FRED M. VINSON, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. DANIELS. We are fortunate this morning to have with us the Assistant Attorney General of the Criminal Division of Department of Justice, Mr. Fred M. Vinson.

Mr. Vinson, will you step forward to the witness table. If you have associates with you this morning, they may sit alongside of you.

Mr. VINSON. I have with me Mr. Kleinman and Mr. Anderson, but I think they can sit where they are.

Mr. DANIELS. I notice you have a prepared statement. You may either read the prepared statement or if you wish, you may submit your statement for the record and testify orally. You may proceed in any manner you think will be most beneficial to the committee.

Mr. VINSON. Fine. If I may, Mr. Chairman, I will submit the prepared statement for the record and attempt to highlight it orally, if that is satisfactory to the committee.

Mr. DANIELS. It is. Without objection, the statement of Mr. Vinson will follow his oral testimony in the record.

Mr. VINSON. Thank you, Mr. Chairman. It is a pleasure to be back before this committee. I last appeared before you to discuss this same subject, control of obscenity, in the fall of 1965. Since that time there has been one very significant development and refinement in the law.

Last spring, the Supreme Court handed down its publicized decision in *Ginzburg* versus *United States*. This decision is noteworthy to those of us in law enforcement because it develops the concept of pandering as a factor and aid in criminal obscenity determinations.

"Pandering" is defined by the Court as "the business of purveying textual or graphic matter openly advertised to appeal to the prurient interests of customers." Where evidence of pandering exists, it can support the determination that material is obscene even though in other contexts the material would escape condemnation.

Thus, a distributor of borderline obscenity, who represents his materials as erotically arousing, can, for the first time, be taken at his word. By making evidence of pandering a decisive consideration in these close criminal cases, we feel that the Supreme Court has provided Federal prosecutors and local prosecutors with a very useful tool. For some time now, the focus of our Federal prosecutive attention has been on the mass-producers and the nationwide distributors of commercial obscenity. These are the people who try to walk the line between obscene and protected speech and consequently, it is in prosecutions involving these people that the close cases have generally arisen. It is also here that we believe the pandering concept enunciated by the Court will have its greatest usefulness.

Because of the generally protracted nature of major obscenity cases, the effects of the *Ginzburg* decision will be seen only gradually. In the meantime, I know that the committee will be interested in what the Department of Justice has been doing.

Since I last spoke to you, we have had several major prosecutive successes both in the district courts and at the appellate level. Two Federal cases are now before the Supreme Court and another is on appeal to the eighth circuit. Four other major cases are awaiting trial in Cleveland, Ohio; in Houston, Tex.; in Minneapolis, Minn.; and in San Diego, Calif. All but one of the cases I have named are against large nationwide publishers and distributors. In addition, we have a number of other mass producers and mass distributors under investigation.

Our recent investigations have shown us that a relatively small number of distributors are responsible for the great bulk of the nationwide traffic in commercial obscenity. These commercial operators are large and they are well financed. They appear to accept the risks and the large expense of criminal prosecution as a normal incident of their business operations. They employ competent and experienced counsel and major Federal obscenity prosecutions are therefore long and hard fought.

As a consequence, where large commercial distributors are concerned, obscenity control has been a slow business. This is particularly so because conviction and sentence at the trial level seldom deter the large distributor from continuing to distribute materials similar to those adjudged obscene. As a result, we must generally wait until a convicted defendant has exhausted his appeals before we can expect any halt in his offensive distributions.

Thanks to the Supreme Court's decision in *Ginzburg*, the focus of judicial attention has turned squarely upon the conduct of those who traffic in offensive materials. Prosecutors are just now beginning to experience the benefits of this change in emphasis. As more of our prosecutions are passed on by appellate courts and as the impact of

Ginzburg becomes more manifest, I believe that the risks of trafficking in commercial obscenity will become increasingly unacceptable.

I have attempted to highlight the recent developments in the law of obscenity as well as to point out the areas in which I see some hope for the future. Now let me turn to the bill before the committee, H.R. 2525. H.R. 2525 creates a 16-member Commission on Obscenity and Pornography. Eight of the members are to be appointed by the President, four by the Speaker of the House and four by the President pro tempore of the Senate.

The duties of the Commission are fourfold. The Commission's mandate is first to analyze present laws pertaining to obscenity and to evaluate and recommend definitions of "obscenity." Secondly, it is to ascertain the methods employed in distributing obscenity and the volume of traffic in obscene materials. Thirdly, it is charged with studying the effect of obscenity upon the public and its relationship to crime and other antisocial behavior, with special emphasis on minors. Lastly, it is to recommend any needed legislative, administrative action or other appropriate action.

Unlike past commission bills, H.R. 2525 contains no specific language emphasizing the importance of participation by State and local authorities, nor does it provide for the study of State and local law-enforcement problems.

Mr. DANIELS. At that point, Mr. Attorney General, have you taken a look at section 6, subparagraph (b) in the bill?

Mr. VINSON. Section 6?

Mr. DANIELS. Yes, on page 5 of the bill.

Mr. VINSON. Yes, sir, the consulting powers of the Commission. I actually had reference to section 5. I suppose that you could read section 5(a)(1) broadly enough to include among the Commission's duties an analysis of State and local legislative approaches to the problem of obscenity control. I would certainly recommend, however, Mr. Chairman, that in addition to considering possible State and local legislative reforms, the Commission also study other methods for improving the effectiveness of State and local enforcement efforts.

Mr. DANIELS. Well, of course, the bill does provide that the Commission, in carrying out its duties under the Act, may consult with Governors, Attorneys General, and other representatives of State and local governments and private organizations as it deems advisable. It is permissive.

Mr. VINSON. Yes, sir. I merely state that in view of the importance of State and local participation in any effective enforcement program I would recommend that specific language be included in the bill directing the Commission to study how such participation can best be achieved. In this way I hope we can get a really coordinated approach to the problem.

We recognize that major distributors of obscenity can best be dealt with through the exercise of Federal power. It is for that reason that we have focused our attention upon these major nationwide operators. At the same time, we do know that the State and local governments have capabilities, through the exercise of their police powers, that the Federal Government does not possess in this area. They can tailor efficient forms of action for controlling the local sale of obscene materials. Local law enforcement also has the virtue of being swifter than Federal criminal action.

Getting back to the thought of a coordinated approach, I note that the report of the President's National Crime Commission has emphasized the importance of coordinating Federal, State, and local crime prevention efforts. I believe that such a joint approach is essential if we are to deal effectively with the problem before this committee today.

Another major problem which the Commission might profitably explore is the problem of offensive mailings sent into the homes of private citizens. Many of the major producers of commercial obscenity rely upon mass mailings of advertisements in their search for new customers. In many cases these advertisements may not in themselves be obscene but, as the committee knows, they are highly objectionable to many who receive them.

At present, there is no effective method for shielding addressees from unsolicited and unwanted advertisements. Legislation has been introduced in recent sessions of the Congress addressing itself to this problem, but unfortunately, the method of approach which has been adopted by this legislation has raised in our minds very serious constitutional doubts. Nevertheless, the Department of Justice is very sympathetic to the end toward which this legislation is directed, and we are seeking an alternative approach which will either resolve or minimize the constitutional difficulties.

The third of the Commission's proposed duties is to study the relationship between obscenity and antisocial behavior. We believe if a reliable scientific study is to be undertaken, it will require painstaking research conducted over a relatively long period of time. Because of the nature of such a study and the length of time which it would require, we have serious doubts that anything meaningful could be accomplished by the Commission in this area within its short life span.

If the Congress decides that a commission in this area is a desirable supplement to the efforts of the Federal Government and the states in dealing with obscenity, we would welcome the opportunity to work with the Commission toward our common goal—the control of offensive material and obscenity.

Thank you, Mr. Chairman.

Mr. DANIELS. Thank you, Mr. Vinson, for your fine statement.

Mr. Vinson, I note you have failed to state the Department's position with regard to either supporting the bill or being opposed to it. Has the Department taken a position?

Mr. VINSON. Yes, sir. We are not opposed to the bill, Mr. Chairman.

Mr. DANIELS. But are you for it?

Mr. VINSON. We are mildly for it, sir.

Mr. DANIELS. Why mildly? In your statement, you refer to the fact that this business of mailing offensive pornographic material is a gigantic business and that the Government has a number of these mailing organizations involved in this business under prosecution, that it is a serious matter, but then you fail to take a position on this bill. Do you think this bill will be helpful in eradicating these smut-peddlers?

Mr. VINSON. I think a commission would be very helpful in certain areas. I think a commission could be very helpful in gathering data and a commission could also be very helpful educationally.

Of course, as we all recognize, any efforts we make to deal with the problem of obscenity control must take into account the protec-

tions of the first amendment. This is a limitation which must be respected by the Commission even though it makes the work of the Commission more difficult.

Mr. DANIELS. As the author of H.R. 2525, I have already announced it was not the intent for this Commission to act as a board of censors, that, in essence, it is a factual Commission created to determine the actual situation in this area and to report back to the Congress.

Now, inasmuch as you said you believed a commission that could go out and get the facts would be helpful, then would you care to endorse this bill?

Mr. VINSON. Yes, sir. I do endorse the bill on that basis. Indeed, that is the intent of my statement. I might add that we will be in touch with the staff of the committee regarding several very technical comments on the bill. One of these comments is directly related to our discussion in that it points up the lack of any provision in the bill for providing the Commission with a subpoena power. I believe if the Commission is to make a meaningful study and to collect data it may well require a subpoena power.

Mr. DANIELS. Thank you, sir, for your suggestion.

I see you have observed one of the proposed duties is to study the relationship between obscenity and antisocial behavior.

Mr. VINSON. Yes.

Mr. DANIELS. You appeared here before, I recall, when this subcommittee was conducting hearings similar to the one we are holding today. At that time you mentioned that your department and the Department of Health, Education, and Welfare were collaborating on a study concerning the causal relationship between pornography and antisocial behavior. Can you tell me if such a study has been made, whether or not a report has been filed, and, if so, with whom?

Mr. VINSON. No, sir, no study has been made; no such study has been commenced. When I testified here in September of 1965, I reported to the committee that we had requested HEW to consider such a study. Prior to my testimony, the Department of Health, Education, and Welfare had indicated that they felt that such a study would be feasible and they wanted to explore the scope of such a study with our staff people. Initial contacts were made, and at a subsequent date—the actual date escapes me—HEW advised us that they felt such a study was not feasible.

Mr. DANIELS. Did they give you a reason why it was particularly not feasible?

Mr. VINSON. Not really, Mr. Chairman. They indicated that they felt you could not have any such study on a crash basis and that where you were dealing with the behavioral sciences, you were talking about a long-range proposition. I got the feeling they just felt they didn't want to commit themselves to any such long-range study in this area.

Mr. DANIELS. You mentioned that a commission would be advisable provided it had sufficient time to conduct this study. What, in your judgment, would be a fair and reasonable time for the life or existence of such a commission?

Mr. VINSON. What would be the length of time required to complete such a study?

Mr. DANIELS. What lifetime would you recommend for this Commission before it reports back to the Congress?

Mr. VINSON. Mr. Chairman, I am not sure that the Commission itself could conduct such a study. It would have to be done by professionals in the behavioral sciences, and I think you are talking about a matter of years if anything meaningful is to be accomplished. By meaningful accomplishment I mean any development of meaningful data with respect to the causal relationship between obscenity and antisocial behavior.

Mr. DANIELS. Within the framework of the objectives set out in H.R. 2525, how long a period of time would you recommend that this Commission exist in order to carry out the study?

Mr. VINSON. You have four principal duties enunciated in the bill. One has to do with an analysis of present laws and evaluating and recommending definitions of obscenity. I would hope out of that perhaps could come a draft of a model law that might be tendered to the commissioners on uniform State laws. That job could be done within a year.

The Commission's second duty is to ascertain the methods employed in the distribution of obscene and pornographic materials and to explore the volume of the traffic itself. I think with an adequate staff and the subpoena power that that job could be completed within a year. Duty No. 4 is to recommend legislative, administrative, or other advisable or appropriate action which the Commission deems necessary effectively to regulate the flow of traffic in obscenity. That job could probably also be completed within a year.

But it is duty No. 3 in section 5(a): "to study the effect of obscenity and pornography upon the public and particularly minors and its relationship to crime and other antisocial behavior" that will take time. I don't believe that this sort of a job can be done on any crash basis or in any such short period of time as a year or two.

Mr. DANIELS. The Commission, however, could go out and study the problem and if it found that the life of the Commission was not sufficient to complete its study, it could so file a report to the Congress?

Mr. VINSON. Certainly. There is a substantial bibliography in this area that the Commission could develop and accumulate and obviously the Commission could take testimony from those disciplines that are interested in this problem. But, actually, to conduct a study or to subcontract an independent study is something else again.

I think you have other witnesses following me this morning and later in the session who are better able to estimate the amount of time required for making such studies than I am.

Mr. DANIELS. Mr. VINSON, have you formulated any opinion as to whether or not the definition of "obscenity" as spelled out by the U.S. Supreme Court in the *Roth* case and subsequently expanded in the *Jacobellis* decision is sufficient, or does it need further clarification?

Mr. VINSON. I am not sure that the Court itself is fully satisfied with its definition. We have wrestled with the problem of definition for years, but we have been unable to come up with a definition that we consider to be more satisfactory than the present one.

We are inclined to be satisfied with the latest definition of obscenity because the *Ginzburg* decision makes a very substantial difference in our enforcement efforts.

Mr. DANIELS. It is a substantial help to law-enforcing authorities?

Mr. VINSON. That is correct, Mr. Chairman.

Mr. DANIELS. But that deals with pandering?

Mr. VINSON. That is right.

Mr. DANIELS. But the *Ginzburg* decision, as you stated today, does not deal necessarily with hard-core pornography but matters that might be in the gray area, and in that respect it is very, very helpful to the Federal prosecuting attorneys?

Mr. VINSON. That is right, sir. It deals with conduct, the conduct of the panderer, rather than with any "*in rem*" concept of pornography.

Mr. DANIELS. Have you noted any increase in the sale by these commercial panders of pornographic material?

Mr. VINSON. We really are ill equipped to make a determination of that sort. Our investigations are usually oriented to one or a group of producers. We have made no attempt, ourselves, to get into the measurement of the total problem. That is why I feel that a quantitative analysis of the traffic in obscenity is one of the helpful duties the commission can perform.

Mr. DANIELS. Well, Mr. Vinson, in recent years, increased quantities of obscene paperback books have appeared on the newsstands in every large city, even here in the District of Columbia, at the railroad stations, and you will find there is constantly more and more of this erotic, pornographic material being made available to minors. It seems that the business has increased by leaps and bounds.

Mr. VINSON. Or at least these materials are being distributed more overtly.

One thing we have noticed that I think will interest you, Mr. Chairman, is that while the *Ginzburg* decision may not have affected the contents of these pornographic books, it has affected the advertising, the blurbs and the jacket covers.

Mr. DANIELS. I have one further question. If this bill were to be enacted into law, would you have any comment as to the makeup of the proposed 16-man Commission? Do you think we should specify the type and character of person who may serve or should we leave this entirely to the appointing authorities? This bill differs from the previous bill in that respect.

Mr. VINSON. Yes, on balance I like the approach of your bill, the current bill better than the other bill. The other bill was so rigid that I was not sure that the Commission's membership would include people who themselves can make a contribution to the work of the Commission. I think there are certain areas of interest that should definitely be represented on the Commission, but I personally prefer the flexible approach adopted by your bill. Perhaps your committee hearings will develop some of the areas of interest that should be represented on the Commission so that those appointing the Commission can take the transcript of these hearings into consideration in making their appointments.

Mr. DANIELS. Thank you very much.
(The prepared statement follows:)

PREPARED STATEMENT BY ASSISTANT ATTORNEY GENERAL FRED M. VINSON, JR.,
CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Subcommittee I last appeared before you to discuss the subject of obscenity control in September of 1965. Since that time there has been a major refinement in the law. In March of 1966, the Supreme Court

handed down its well publicized decision in *Ginzburg v. United States*, 383 U.S. 463. The decision is noteworthy because it develops the concept of pandering as an aid in criminal obscenity determinations. Pandering is defined by the Court as "the business of purveying textual or graphic matter openly advertised to appeal to the erotic interest of . . . [prospective] customers." 383 U.S. at 467. Where evidence of pandering exists, it may support the determination that material is obscene even though in other contexts the material would escape condemnation. Thus, a distributor of borderline commercial obscenity who represents his materials as erotically arousing, may now, for the first time, be taken at his word.

By making evidence of pandering a decisive consideration in "close" criminal obscenity cases, the Supreme Court has provided federal prosecutors with a needed and useful tool. For some time now, the focus of federal prosecutive attention has been on the mass producers and nationwide distributors of commercial obscenity. These are the people who attempt to walk the line between obscene and protected speech and consequently, this is the area in which the "close cases" have generally arisen. It is here that we believe the pandering concept will find its greatest use.

Because of the protracted nature of major obscenity cases, the effects of the *Ginzburg* decision will be seen only gradually. In the meantime, you will be interested in what the Department of Justice has been doing. Since I last spoke to you, we have had several major prosecutive successes both in the district courts and at the appellate level. Two major federal cases are now before the Supreme Court. Another is on appeal to the Eighth Circuit Court of Appeals. Four other major cases are now awaiting trial in Cleveland, Ohio, Houston, Texas, Minneapolis, Minnesota and San Diego, California. All but one of these are against large nationwide publishers and distributors. In addition, a number of other mass producers and distributors are now under investigation.

Recent investigations have revealed that a comparatively small number of distributors are responsible for the bulk of the nationwide traffic in commercial obscenity. These commercial operators are large and well financed. They appear to have accepted the risks and expenses of criminal prosecution as a normal incident of their business operations. They employ competent and experienced counsel. As a consequence, major federal obscenity prosecutions are long and hard fought.

Let me illustrate the demands that these prosecutions place on our resources by telling you a little about a prosecution that was recently concluded successfully in Sioux City, Iowa. The investigation which developed this case began in November, 1963. An indictment was not returned until March of 1965. Extensive pretrial motions were then filed and heard. Several continuances were also granted. As a result, the case did not go to trial until October, 1965, seven months after the defendants had been indicted. The actual trial of the case consumed three months and required the full time efforts of four government prosecutors. Following return of the verdict, a number of post trial motions were made, briefed and argued. Other delays followed, so that it was not until January, 1967, that the defendants were finally sentenced. Their conviction is now being appealed.

While the case I have just described is perhaps one of the more protracted ones, it is by no means unique. As a consequence, where large commercial distributors are concerned, obscenity control has been a slow business. This is particularly so because conviction and sentence at the trial level seldom deter the large distributor from continuing his distributions. Thus, we must generally wait until a convicted defendant has exhausted his appeals before we can expect any halt in his offensive distributions.

Because of the difficulties I have just outlined, the results of the federal government's efforts to control obscenity will only gradually become apparent. Thanks to the Supreme Court's decision in the *Ginzburg* case, the focus of judicial attention has now turned squarely upon the conduct of those who traffic in offensive materials. Prosecutors in the trial courts are just now beginning to experience the benefits of this change in the judicial angle of vision. As more of our prosecutions are passed on by appellate courts and as the impact of the *Ginzburg* decision becomes more manifest, I believe that the risks of trafficking in commercial obscenity will become increasingly unacceptable.

I have attempted to highlight the important recent developments in the law of obscenity as well as to point out the areas in which I see promise for the future. Let me now turn to H.R. 2525 and a discussion of those areas in which new approaches are needed.

H.R. 2525 would create a sixteen member Commission on Obscenity and Pornography. Eight of the members are to be appointed by the President, four

by the Speaker of the House and four by the President Pro Tempore of the Senate. The duties of the Commission would be: (1) to analyze present laws pertaining to obscenity and to evaluate and recommend definitions of obscenity; (2) to ascertain the methods employed in distributing obscenity and the volume of traffic in obscene materials; (3) to study the effect of obscenity upon the public and its relationship to crime and other antisocial behavior, with special emphasis on minors; and (4) to recommend any needed legislative, administrative or other appropriate action.

Unlike past Commission bills, H.R. 2525 contains no specific language emphasizing the importance of participation by state and local authorities. Nor does it provide for the study of state and local enforcement problems.

Because we recognize that major distributors of obscenity can best be combated through the exercise of federal power, the Department of Justice has focused its attention on these major nationwide operators. At the same time, we know that state and local governments have capabilities that the federal government does not possess. For one thing, they can tailor efficient civil and criminal forms of action for controlling the local sale of obscene materials. Localized law enforcement also has the virtue of being far more rapid than federal criminal action.

The Report of the President's Commission on Law Enforcement and the Administration of Justice and the Department of Justice, through its programs of assistance to state and local law enforcement authorities, have emphasized the importance of coordinating federal, state and local crime prevention efforts. We believe this sort of cooperation is just as important in the area of obscenity control as it is elsewhere. In short, if an obscenity commission is established, we think it important that it study the possibilities for increased state and local involvement in the battle to control obscenity and that it suggest methods for coordinating federal and state enforcement efforts.

Another major problem area which the Commission might profitably explore is the problem of offensive mailings sent into the homes of private citizens. Many of the major producers of commercial obscenity rely on mass mailing of advertisements in their search for new customers. In many cases, these advertisements, though not in themselves obscene, are highly objectionable to many who receive them. This is particularly so when, as sometimes happens, these solicitations fall into the hands of children. At present there is no effective method for shielding addressees from these unsolicited and unwanted advertisements. Legislation attempting to deal with this problem has been introduced in each of the last three Congresses. Unfortunately, the method of approach adopted by this legislation has raised in our minds serious constitutional doubts. The Department of Justice is sympathetic to the end toward which this legislation is directed and we are seeking an alternative approach which would resolve the constitutional difficulties encountered in past bills.

The third of the Commission's proposed duties is to study the relationship between obscenity and antisocial behavior. We believe that if a reliable scientific study is to be undertaken, it will require painstaking research conducted over a relatively long period of time. Because of the nature of such a study and the length of time which it would require, we do not believe that it could be accomplished by the Commission within its short life span.

In my testimony I have tried to point out areas where problems now exist and where help is needed. At the same time, I want you to know that we are working on solutions to these problems. If you decide that a Commission study is a desirable supplement, we would welcome the opportunity to work with the Commission toward our common goal—control of obscenity.

STATEMENT OF HON. MICHAEL A. FEIGHAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. DANIELS. Our next witness is another distinguished personage who needs no introduction. He is a gentleman who has served in Congress for many years and has performed outstandingly and is a highly respected member of our congressional delegation. He is also an important member of the House Judiciary Committee, and I indeed welcome to the witness stand my distinguished colleague from the State of Ohio, Congressman Feighan.

Mr. FEIGHAN. Thank you, Mr. Chairman, and members of the subcommittee. I appreciate very much this opportunity to appear

before you today to urge favorable consideration of my bill, H.R. 559, to establish a commission to be known as the Commission for Elimination of Pornographic Materials.

My bill calls for the appointment of 25 members, appointed by the President. They will be representatives of Congress, Federal agencies, the clergy, medicine, law, publishing, broadcasting, motion pictures, education, parents, plus State and local judges. This Commission will be charged with the duty of investigating the traffic in pornographic materials, analyzing the laws and regulations relating to this traffic, and making recommendations for improving laws and developing other methods of control. This study is urgently needed. It provides the best means for taking an educated look at this serious problem by some of the best trained minds available to our society.

Legislators on the Federal, State, and local levels have had difficulty in drafting legislation which will curb the spread of obscene material and yet not interfere on the constitutionally guaranteed rights relating to search and seizure of the fourth amendment, or the right of due process of the 14th amendment.

There is no question that pornography does exist in considerable quantity. Experience convinces us that the availability of lewd and suggestive material is one of the major contributing factors to the increase in crime.

Recently, James J. Clancey, the legal counsel for the Citizens for Decent Literature, Inc. (CDL), stated in Sandusky, Ohio, that there were approximately 1 million off-color books distributed in Ohio each month, many of which are printed in Sandusky. Clancey warned that obscene publications can gradually seduce their readers into sexual excesses, homosexuality, and rape. One publisher of these books, Stephens Printing Co., which also produces children's books, faces trial next month in Houston, Tex., on a Federal obscenity charge.

This is a national problem as is evidenced by a study by California's attorney general Thomas Lynch which indicated that State has a \$19 million a year smut center. Fortunately, only last week the California State Senate passed two bills aimed at tightening restrictions on smut traffic.

Mr. Chairman, 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.

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 more than doubled since then. There is a growing conviction among law-enforcement officers that the flood of pornographic material which has been circulating among our young people is a major factor in today's rapidly increasing rate of sex crime.

The President's Crime Commission report has called for "a more complete assessment of the volume, nature, and causes of crime," stating that "change need not wait upon the gaining of such knowledge, only through innovation and evaluation of operations can most of it be obtained." The report further states that "Such efforts are especially crucial for those youths, now too often overlooked, who have

demonstrated delinquent tendencies. The community must not wait until such tendencies manifest themselves in serious criminal acts."

I most certainly believe that we must write into the laws provisions, with firm standards and guidelines, to meet this crisis that faces the young people who depend on us for help and protection. Their moral, cultural, and social futures should not suffer destruction because of the thousand differing views as to what is and what is not obscene matter when it is directed at youngsters whose well-being is in our care.

Can we afford to let history say that there was not enough moral spirit in the minds and hearts of men living today to produce a fair definition and moral yardstick by which to judge and measure the degree of utter filth that now seems to be inundating the youth of our great country? I say "No."

Thank you.

Mr. Chairman, I certainly feel confident that in your wisdom in this, and in your judgment in this, you will act favorably on the creation of a commission to perform the functions that I have just enumerated. It seems to me, in this confusing time, that this Commission may well be the answer and that it could bring forth a solution to this very aggravating problem.

Mr. DANIELS. Thank you, Mr. Congressman. I want to congratulate you for a very, very fine statement. I note, Mr. Feighan, there is a substantial difference between the bill you have sponsored and my bill, H.R. 2525. My bill provides for the appointment of a commission consisting of 16 members, eight of whom will be appointed by the President, four by the Speaker of the House, and four by the President pro tempore of the Senate, without specifying from what areas, professions, or industries they should come.

Do you have any objection to the Commission I have proposed in my bill?

Mr. FEIGHAN. No, indeed. I think, in fact, the important issue is to obtain the best available brains for this particular important job to be done.

Mr. DANIELS. Do you think, then, we could leave it to the President, the Speaker of the House, and President pro tempore of the Senate to select well-qualified and able individuals to do the job?

Mr. FEIGHAN. Yes. I have no question they would seek out the best available persons. It was my idea that certain phases and facets of our life should be represented. For that reason, I set forth the 25, and enumerated their particular status in life which I thought would be a contributing factor to the report which I hope would bring a solution to this problem.

Mr. DANIELS. I have no further questions, and I again want to thank you on behalf of the committee for coming here and giving us the benefit of your views on this important subject.

Mr. FEIGHAN. Thank you very much.

Mr. ALBERT. I would like to join in congratulating our distinguished colleague. He always make a fine contribution when he speaks on any subject. I thank you very much.

Mr. FEIGHAN. Thank you, Mr. Albert, our very able majority leader.

Mr. DANIELS. We have no further questions.

STATEMENT OF DR. LAWRENCE KUBIE, PSYCHIATRIST

Mr. DANIELS. Our next witness is Dr. Lawrence Kubie, a world-renowned psychiatrist. Will you step forward to the witness stand, please?

Dr. KUBIE. Mr. Chairman and gentlemen of this committee, I am grateful for the opportunity to be here. I hope that what I have to say may be helpful. I have been interested in this problem for well over 20 years. Actually as long ago as 1947 I made a recommendation to the film industries that they start an investigation of their own of the impact of films first on individuals and then on our culture as a whole. This seemed to me to be a reasonable suggestion; but like many other seemingly reasonable ideas, it dropped like a pebble into a bottomless well. In fact, it was not heard of again until this moment. So I am glad to bring it up again, not, of course, as an alternative to this bill. I am wholeheartedly in favor of the bill, and welcome it eagerly and will make only a few suggestions as to the makeup of the Commission and on how to plan the sequence of steps in the studies which they will undertake.

I am talking here only as a physician who has spent most of his life in the practice of psychiatry, in medical and psychiatric education, and in psychiatric research. I brought with me a prepared statement which I gave to your secretary; but what I will say here may be of more use than that prepared statement.

In the first place there should be no conflict between the need for a long-run scientific study of this problem, and the need to deal promptly with the emergency that has been described and which we now face. We do not wait to put out fires until we have finished the study of arson. Nor do we wait to arrest criminals until we have solved all the problems of criminology. Similarly, we must do something at once about the current flood of pornographic and violent "entertainment;" but in addition we should carry on a longrun study of their effects. There are practical and scientific reasons why this should be done by the Federal Government, in addition to any local studies which State governments might undertake. I will refer below to these reasons.

In any study of this problem it will become apparent that it is not possible or realistic to make a sharp distinction between the portrayal of sexual activity on the one hand and the portrayal of destructive physical violence on the other. Anyone who has looked over the paperback books and magazines of this nature, and who has seen this type of movie and TV will realize that there is a constant interweaving of the portrayal of diseased and uncontrolled sexual behavior and the portrayal of body destruction, hate, torture, and mutilation. Therefore any effort to study one part of the problem without studying the other will be incomplete. Both effects and their control must be studied together. Therefore I would like to ask whether the wording of the bill can be broadened to include both, since they are in fact inseparable.

Mr. DANIELS. How long have you been engaged in psychiatry and with which institutions have you been associated?

Dr. KUBIE. I went to the Johns Hopkins Medical School in 1917 after graduating from Harvard and received my training in psychiatry

under the late Dr. Adolf Meyer, who was head of psychiatry at Hopkins. I started with him in 1920 and I have been involved in this challenging field ever since, both here and abroad; and in special studies for the U.S.A. Surgeon General and for the Army Air Surgeon. I have taught psychiatry and neurology and psychoanalysis at Hopkins, Columbia, Yale, and the New York Psychoanalytic Institute, at the University of Maryland, and at Jefferson Medical College of Philadelphia. I retired from practice in New York in 1959 to spend my remaining years teaching and writing. Since 1959 I have lived first in Towson, then in Baltimore, and now in Sparks, Md.

Mr. DANIELS. Have you written anything on this particular subject of pornography?

Dr. KUBIE. An article called "Psychiatry and the Films," published in 1947, not in a technical psychiatric journal but in the Hollywood Bulletin in California. I will send your committee reprints of this article and of some others.

I would like to suggest that the Commission should try to answer certain specific questions concerning the psychological and social effects of all mass media and of all forms of so-called entertainment.

The first of these questions concerns their effects on mental illness. Do they make such illness more or less severe? Do they increase the incidence of mental illness? Do they influence their duration? Do they influence the age at which mental illness and neuroses appear? These questions must, of course, be investigated for all ages and for people from widely varied racial, national, educational, cultural and economic backgrounds.

The next question is: Whether mass media of this kind incite people to impulsive action? We know that human beings, from infancy on, have unruly impulses: sexual, violent, damaging, mutilating, and gory. I think of the small daughter of a well-known painter, at an exhibition in the Metropolitan Museum of Art, in New York, who kept coming back to a certain group of pictures. When her mother asked: "Why do you like those pictures?" the child replied, "They are naked and bloody." Clearly, these interests are latent or dormant in all of us. What, then, is the effect of the portrayal of violence and pornography on these buried impulses at different ages and in different cultural groups? Does it bring them into open action? Does it incite latent tendencies to impulsive expression? These questions must be investigated without preconceptions, if we are going to find accurate answers.

The third question concerns the forms that antisocial actions may take. About this we already have some preliminary data. Only a few decades ago the youngster who rebelled against authority (and every youngster worth his salt is a rebel against adult authority) would push over a peddler's cart, or steal an apple, or, if he were really angry, pick up a brick and break a pane of glass. But he did not draw blood. Today he does. This is the big change that has happened. I think of a youngster in New York in a gang which set upon a cripple and killed him. The boy then turned to the leader of the gang with blood on his dagger and tears on his cheeks to thank him for allowing him the privilege of being the one to strike the final blow with a knife. This is something new and something awful.

But the Commission must ask itself what are all the forces which have led to this extraordinary increase in the goriness of youthful

crime and the violence of rape? The Commission cannot assume that it is only one force which has done this.

As I consider these problems I am not too worried about "censorship" and the fear of interfering with human liberty. As the world becomes more densely populated, men cannot even survive without interfering with human liberty. The question of how to interfere is a question for lawyers on which I will not try to pass judgment, except to say that we must not duck the issue. We cannot survive together unless we do something to control population density and to prevent the pollution of water, of air, and of minds.

When police first started in England, people had similar fears; that is, that the policeman would deprive everyone of his liberties (and not criminals alone). This did not happen. Such an abuse of police power is rare, and we have learned that liberty itself cannot survive unless we restrict its abuse. Therefore, what you are planning to have this Commission study is the application of police power to the misuse of liberty by the media of mass communication. Some of my colleagues have been fearful lest restricting license might lead to the restriction of legitimate liberties. I do not share their fear. As a rationalization of their position, some of them argue that this kind of literature, movies, and TV do no harm. Here, again, I do not concur in their effort to put their heads in sand. Sometimes they add another argument, which is based on a false analogy to the treatment of sick people. They argue that since everyone harbors such impulses, you cannot implant them by mass media, and that, consequently, it is better to bring them out into the open. One can admit part of this but not the conclusion they reach. Of course such impulses are universal; and of course it is wise to help people to realize this fact. Yet their conclusion is fallacious in two respects.

(a) The fact of the matter is that melodramatic and exaggerated dramatizations of hidden erotic and bloodthirsty impulses never make people aware of their own subtler versions of similar impulses. Instead, they can sit back and relish these violent presentations precisely because they seem to have nothing to do with them. These melodramatic outrages seem to the audience to apply only to others.

(b) The second critical question is whether such dramatizations of sex and violence discharge similar latent feelings and impulses or stir and increase them into defiant action with secondary guilt, fear, and horror. That such sequences occur cannot be denied. Their frequency and their special circumstances are something for the Commission to ascertain, and without being misled by a false analogy to treatment. It is true that in treatment it sometimes is essential to bring out into the open the violent and lustful impulses that a patient may be struggling to hide. This may, in fact, be a necessary step toward health. But useful as this maneuver may be in therapy, it is never a sound excuse for dismissing the effects of mass media on mass misconduct. It is a natural mistake to carry over this principle because of its validity in therapy; but it has led to much confusion, even among some colleagues. For these reasons I have been distressed at the position some of them have taken on this issue.

You will note that I have said nothing about definitions of the dramatization of pornography, obscenity, or brutality. Frankly, this is because even if you will need definitions for legal purposes ultimately they would only mislead you at this point. Certainly those forms of

representation of erotic behavior and feelings and those forms of representation of bloodthirsty feelings and brutal action which tend to precipitate illness and/or antisocial behavior would be socially undesirable and individually destructive. Only after you have found out what forms of these cause illness and/or impulsive action, will you be ready to propose socially useful, pragmatic definitions of what should be made illegal.

To find out what kinds of literature, movies, TV, and so forth do damage is precisely why we need research. Definitions will be useful to you only after you have answered these basic questions as one of the fruits of your investigations. The definitions will be found by studying the effects on people. If we propose definitions before we have completed our research, we will only express and reinforce biased preconceptions, thus closing our minds ahead of time to the implications of these studies. This is another reason why I think it is vitally important to carry on the investigations envisaged by this bill, and to launch a national study of this problem.

How can we explore these questions, where can it be done, and who can do it? I urge that the initial investigation should be as objective and scientific an investigation as is possible. Therefore the investigators should not be members of any law enforcement agency of the Government. No one can do objective research if he is challenged to apply his findings prematurely, with others breathing down his neck, urging speed, and demanding conclusive results before these are possible, and worst of all demanding results to confirm preconceived convictions. Clearly therefore the investigators must be allowed to make their observations spread out over the time which it takes for the impact of such literature, movies, TV, and so forth, to have effect on human development.

This is no job for a man in a hurry for quickie answers. Growth and change take time; and the Commission will have to study the influence of these things on the psychological growth and change of youth and age over a period of 5, 10, 15, or even 20 years. The Commission must provide for a continuing longrun, longitudinal study.

Mr. DANIELS. Would it not be the work of this Commission to make a recommendation to that effect?

Dr. KUBIE. Certainly. It must also be understood that the work has to be done by men who have had a lot of experience making investigations of this kind. Behavioral and social scientists, cultural anthropologists, opinion pollsters, et cetera, must be free to carry on their investigations as objectively and freely as possible and at their own pace.

They will have to study the effects on people at different age periods, on sick children and sick adults, as well as healthy adults and children, on people from different nationalities, colors, races, and educational and economic groups, from different parts of the country. They must study their influence on the privileged as well as the underprivileged, if you want to discover what this is doing to all of us. This will challenge them with a difficult problem of sampling.

This is a large order, but the problem has importance for our whole culture. The enormous power of mass media is changing many aspects of our society. It is turning us into passive spectators. No one has studied the extent of this or its consequences; yet this change alone can alter the whole future of our country, apart from its specific

effects on our sexual mores and on crime. This is another reason why such a study should be a Federal responsibility and should explore the whole Nation and look far into the future. This is another reason why I welcome this bill. If such a broad and farsighted study is made, it may be able to save our whole culture from destruction.

Before I stop, I must ask what will your scientists study? Obviously the effects of mass media on general behavior, on the symptoms of mental patients and also of patients with organic diseases; their effects on impulsivity in general; and of special erotic and violent kinds; their effects on fantasies and dreams. Clearly they will be dredging up material which human beings hardly allow themselves to think about to themselves even when alone, and almost never discuss with anyone else unless they already have a high degree of confidence in this person. Therefore the investigators will have to establish confidential relationships with the individuals questioned. All of us have fantasies which we do not like to acknowledge and in all of these areas. Indeed as I have said, we do not often acknowledge these even to ourselves, much less to someone else. Therefore unless a special relationship is created to make it possible for men to talk their hearts out, nothing will come of the study. Furthermore, this means that the investigation will have to assure to each individual the absolute confidentiality of his disclosures. Otherwise no one will talk, even if the use of any such information in any criminal proceedings is excluded.

Your investigators would be drawn from scientists at the NIMH, and from major universities with scientists in all of the relevant areas, but widely scattered so as to sample the whole country and not just one weighted sample.

Mr. DANIELS. Dr. Kubie, do you feel, as I do and as some of my colleagues do, that this problem of pornography is big business and presents a serious problem to the United States of America?

Dr. KUBIE. I do indeed.

Mr. DANIELS. Do you believe that we should undertake some steps to see what can be done to remedy this situation?

Dr. KUBIE. I do.

Mr. DANIELS. Is it your opinion that there is a causal relationship between pornography and antisocial behavior, particularly in children?

Dr. KUBIE. Yes. As I said before it has an enormous influence on the forms of antisocial behavior. Yet of course it does not operate alone. There are also the effects of two destructive wars. These also play a role in people's fantasies and also in what people feel that they have a right to do. I have no doubt that there is a destructive influence from the portrayal of destruction in movies and TV, perhaps particularly in TV, since it comes into the home itself with the child's parents sitting by, seemingly enjoying it. By their silent acceptance or even enjoyment they give permissive encouragement to the behavior portrayed on the TV screen. I have no doubt that together with excessive population density, which carries an important share of responsibility for this, and along with the influence of wars, the influence of our modern mass media has been profoundly destructive.

Mr. DANIELS. One further question with respect to the composition of the Commission to which you made reference in your remarks. Do you have any ideas as to how this Commission should be composed? The bill provides for a 16-member Commission, but it does not outline the qualifications or background of the particular members.

Dr. KUBIE. I think that the Commission should represent all of those divisions of Government which would be responsible for the use of information gathered by the investigating group; and that the investigators who do the actual fact gathering should be highly trained specialists. The Commission would also need some experienced scientific administrators to maintain liaison between the scientists on the one hand and on the other the Commission which represents the purpose of the Congress. Certainly it would be important that the research unit, which would be employed by and empowered by the Commission to make the study, should also be in close communication with the Government representatives.

Mr. DANIELS. I take it from your testimony that the life of the Commission should be for an extended period of time?

Dr. KUBIE. Yes, indeed. Otherwise your research group may find itself in the midst of a slow but productive investigation of enormous importance to the country, which would take 15 or 20 years to complete, only to find that the Commission it was serving had gone out of existence. If the Commission were to disappear, the foundation of the whole structure would go.

Mr. DANIELS. I want to thank you for your very enlightening and informative testimony. We have with us the distinguished majority leader of the House, Mr. Carl Albert, who may care to ask a question.

Mr. ALBERT. I have no question, but I understand Dr. Kubie has sent a written statement. While it may repeat some of the things he said this morning. I should think it would be very valuable because his oral testimony certainly has been interesting and, I am sure, valuable, and I ask unanimous consent that his statement be made part of the record and follow immediately his oral testimony.

Mr. DANIELS. Without objection, it is so ordered. Thank you very much, we appreciate your coming.

Dr. KUBIE. May I add one more word?

Unless the Commission which is sponsored and supported by this committee succeeds in establishing clear, definite, and unquestionable criteria of the kinds of literature and programs which do concrete damage of the kind described here, any limitations imposed by legislative action will almost certainly be judged to violate the constitutional guarantees of free speech. This is the practical reason why the investigation is an absolute necessity.

(Dr. Kubie's prepared statement follows:)

PREPARED STATEMENT OF DR. LAWRENCE KUBIE, PSYCHIATRIST

DOES THE VIVID PORTRAYAL OF SEX AND VIOLENCE CONTRIBUTE TO VIOLENCE AND SEXUAL MISCONDUCT?

There are two dangers to consider: the danger of precipitating major psychological illnesses, and the danger of inciting people to act out impulses that might otherwise lie dormant. That these dangers exist, no one can doubt. Yet it is equally true that no one has measured the degrees of these dangers. This has been tried, and it can be done. But the appropriate tests must be carried out on different groups in our population at different age periods, from different national, racial, and color groups and from different economic and educational and religious backgrounds. This will be a long and expensive but immensely valuable study. Until it is made, no generalizations can have more than an accidental relationship to truth. It will require the assistance of all the best minds in the N.I.M.H. and in major universities scattered through the land.

We must briefly compare the impact of books, pictorial images and the stage, screen and TV.

Neither sex nor violence was invented by modern techniques of book-production and distribution, of entertainment or of advertising. They have always played a role in literature both good and bad, from the Greeks to Shakespeare to Mickey Spillane, as well as in art and sculpture. But there is a difference between the representation of sex and violence by words on the written page, or in the crude drawings of the old dime-novel or even the modern "comics", and their direct representation on the stage, cinema screen or on TV. These media stir the emotions of an audience with the sound and sight, the color and movement of life itself. The only sense omitted is the sense of smell. They also blur the vital boundaries between fantasy and reality, and between the spectator and the action which he observes. It is this blurring of boundaries which can be most dangerous both psychologically and socially.

There are secondary differences in the audiences at different kinds of entertainment, and in the conditions under which they are reached. The stage sways a relatively small group sitting in dim light. The cinema moves crowds in deeper darkness. TV reaches all, invading the home itself in relative isolation, where fantasy can free itself from all anchorage in reality. There is something of an analogy here to the differences between the convivial and the solitary drinker. Some TV watchers, child or man, are like the habitual reader of the pulps, a solitary addict to a world of make-believe. They retire into secret solitude for their TV ecstasies of rape and violence. Others seek this experience only in groups, watching TV in dark and crowded bars, or going to the movies to share vicariously the performances on the screen. These are merely different ways to lessen the limits imposed by fear and guilt.

There are other differences among these various media with respect to the intensity of the identifications with the action and of the responses which are stirred. The passive audiences of cinema and TV are called upon for little participant imagination: whereas the capacity to invest written words with feeling demands an active contribution of which only few readers are capable. Most people use words to hold feelings at arm's length. The readers of the written word who respond with full-bodied participation are rare and atypical.

Nor can the written word blur as effectively the boundaries between fantasy and reality. Just as the visual images of a child's nightmare have the disturbing power of actual experience, so the visual and auditory images of the movies and TV make an audience feel as though they had participated in real events. The closer to real life the reproduction, the more disturbing it can become. Therefore the verisimilitude of the facsimiles of reality which can be produced by modern techniques of stage, film and camera induces in the spectator-audience a high degree of passivity and suggestibility.

Because of these various differences, although the old fashioned sexy magazines or dime-novels had much the same content as a modern TV or film "thriller", they reached fewer people and over this smaller group exercised a less compelling power. Clearly a far greater responsibility now rests on those who use these media; and it is imperative to ask ourselves how large a share of responsibility for the current wave of violence, sexual disorder, and rape is attributable to entertainment and advertising? For reasons which will be discussed later, the responsibility of all of these media is especially heavy for those crimes of violence and rape which are executed by adolescents; and by Negroes.

This confronts us with a problem the solution for which will not be easy to find. No one can deny the box-office appeal of sex and violence. Broadway, Hollywood, commercial TV, and publishers exploit these appeals in an effort to win high audience ratings, to attract advertising sponsors, to achieve box-office hits, and to out-sell all rivals. Together they stimulate people's images of hate and eroticism from childhood to dotage. Lurid posters invite the passer-by even into movies which turn out to be quite tame. Semi-pornographic advertising, illustrations for magazine stories, TV and book jackets bombard the adolescent every day and at every turn. Hitler should have taught us something about the cumulative effects of such repetitions as these.

Those who are psychologically both experienced and mature can maintain a sense of remoteness and detachment from all of this. Unfortunately, however, many men and women never grow up. Therefore this daily bombardment assails immature human beings of all ages.

We accept the fact that Hollywood and Madison Avenue set standards for figures, clothes, possessions, coloring, hair-do and speech. It is hardly likely that they leave uninfluenced the standards of what constitutes "manly" and sexually appealing modes of behavior.

The consequences are predictable. If hungry children were repeatedly tantalized with vividly compelling images, sounds and smells of bakeshop sweets, we would not be surprised if sooner or later one of the children picked up a brick, smashed a window and ran off with a bun. The picturing of scenes of mixed anger and sex constitute an erotic invitation from behind a psychic plate-glass window. By simultaneously stimulating cravings and frustrating them, they say to the young and also to the psychologically immature of all ages, "Isn't this great! But it is not for you. You are too young for it." That this heightens the rebellious fury of the adolescent is transparently obvious. Little wonder that his reply to the adult world is, "Says you! I'll show you."

And how does he "show" us? Where in earlier decades the emotionally hungry, angry, frustrated and rebellious adolescent would steal an apple, upset a peddler's cart, or break a window, he must now express his rage and prove himself by rape and by drawing blood, "just as they do in the movies." The patterns of violence and lust are set by these media, as marks against which to measure manhood and feminine appeal. Even the techniques of violence are taught by them.

The fact that, with rare exceptions, only white women are portrayed in such scenes, implies something additionally humiliating and therefore additionally infuriating to the Negro. Mutely this signals to him, "This can *never* be for you! You are too low for this." It is not strange that this generates an explosive attitude of hate-filled resentment, in which sexual excitement is mixed with sexual envy, sexual scorn and hate! Is it strange that whipping up his cravings and then denying, frustrating, scorning and viewing them with contempt can generate in some few unstable Negroes a tendency to sexual assaults against the white world? In the face of this it is to the immense credit of the Negro race as a whole that they are not involved in crimes of sexual violence more often.

Active behind all of this is another universal human story: the story of excessive crowding which is one of the worst consequences of increasing population density.¹ As long as we permit slum landlords to jam men, women and children into overcrowded quarters, the proximity of the children to the parents' bed and bedroom forces these children to witness and to overhear many exciting, frightening, tantalizing and disturbing sexual experiences. The child's spontaneous impulse is always to participate in anything that is going on around him. In bed or out, the child's natural cry is "Me too! Me next!"

But from these mysterious events he is excluded. In his later imitations of what he has heard and seen and barely understood as a child, hatred and erotic impulses become channeled into one groove. The predictable outcome is the crime of angry passion against a titillating adult world. Our modern media force the adolescent (and especially the adolescent who is buried in the heart of the adult) to witness exciting and distorted re-enactments of these childhood experiences. This inflames even further the enduring residues of conflicts which were bred in earlier years.

A fuzzy-minded defense of the presentation of violence and sex on stage and screen and "comic" books is often attempted, basing itself on a spurious bit of special pleading: to wit, that since people have violent impulses, dreams and fantasies anyhow, their external representation cannot intensify this, and may even "discharge" them "safely." . . . Even acknowledging that sex and violence are hidden in every man, it would be hard to find a defense more devoid of commonsense. In the first place, left to themselves the spontaneous expression of these universal impulses have their built-in boundaries. For most folks the limits are set by the conventions, morals and restraining instruments of the society in which we live. Guilt and fear and love serve our needs for mutual security by holding tight rein on the wild horses within every man. Only in exceptional instances do fantasies go over into action, whether of murder, suicide, robbery, or rape. But their unbridled representation removes these restraints.

Increasing population density increases the need for these internal controls. Otherwise trouble can erupt just as malingering could break out like an epidemic in the congested life of the army. Where people live together in excessive proximity, crime can all too readily become a contagious disease. Yet modern media weaken these controls just when these controls are most necessary by inflating the incitement to defiance. The vivid and life-like portrayal of violent, anti-social eroticism frees the imaginations not only of children but of the child that is in the hearts of all men, leading them to go much further than they would go on their own. Inflamed fantasy leads to inflamed action.

¹ This is one of the many interrelated factors in the well-known correlation between population density and crime rates. (E. H. Sutherland and D. R. Cressey: *Principles of Criminology*, 5th Ed., J. B. Lippincott Co., N. Y. 1955—pp. 646; *ch. 2*, pp. 25-50, *Indices of Crime*, esp. p. 38.)

It is in these ways that the current modes of publishing, of entertainment and of advertising tend to stimulate to extreme forms of direct expression those universal destructive and lustful impulses which usually remain latent or receive only indirect and diluted expression.

No one would claim that this is the whole story. But anyone who pretends that it is not an important part of the story is fooling himself.

We face here one of the many examples of how undisciplined excesses foster and intensify the neurotic potential which is latent in all human nature. The control of this dangerous abuse will require some carefully worked out interference with the right to exploit in varying degrees that which is sick in all of us. To object that such controls are censorship, overlooks the fact that it is also censorship to control the spread of typhoid fever by interfering with a man's right to infect others by unhygienic living.

Mr. DANIELS. Our next witness is Mr. John F. X. Irving, executive director of the National Council of Juvenile Court Judges. The organization which Mr. Irving represents has a membership of more than 1,500 judges.

Mr. Irving, would you step to the witness stand? You are free to testify in any manner you desire.

**STATEMENT OF JOHN F. X. IRVING, EXECUTIVE DIRECTOR,
NATIONAL COUNCIL OF JUVENILE COURT JUDGES, AMERICAN
BAR CENTER, CHICAGO, ILL.**

Mr. IRVING. Mr. Chairman and Mr. Albert, and gentlemen, we are losing the battle against juvenile delinquency. Current statistics on delinquency should sound a warning to every American that the future stability of our Nation—founded as it will be on today's youth population—is at stake.

What a tragedy it would be if our good efforts in strengthening foreign nations and international alliances were to find us paying insufficient heed to the present internal crisis of delinquency.

Statistics issued by the U.S. Children's Bureau indicate that in 1965 nearly 700,000 delinquency cases were handled by the juvenile and family courts in the United States. This represents a 2-percent increase over the previous year and is a continuation of an upward trend that began in 1949.

In the past 10 years delinquency cases have increased by 58 percent. Delinquency is growing faster than the youth population.

This is not the full picture however. There is also a large number of cases handled unofficially each year by the police and community agencies. These cases often are not reported to the courts and the volume of such cases is unknown. In any event, it is now recognized that by the 1970's one out of perhaps every nine children will come in contact with the juvenile courts or law enforcement agencies.

Perhaps 5 percent of the reported cases involve sex offenses including forcible rape. The percentage of sex offenses among girls is higher; 7.9 percent of delinquent behavior by girls 10 to 17 years of age is in the category of sex offenses. In specific numbers this means a total of some 35,000 reported sex offenses each year with an indeterminate but large amount of unreported promiscuity and other sexual activity.

Those of us who work in the juvenile and family courts are disturbed that delinquency is increasing more rapidly than our capacity to handle it. In some cities, the average juvenile court case is heard in

7 minutes allowing little time for the courts to probe the causes for the delinquent behavior.

We are concerned that there already is a crucial shortage of manpower. This shortage includes judges, probation staff, diagnostic personnel, and institutional staff. Unless delinquency is curbed—and curbed soon—the juvenile and family courts may literally break down under the sheer volume of cases.

In this context there is little time for the judge to study the impact of obscene material on the youngsters who come before him. Many youngsters admit their delinquent behavior is a result of something they read. Whether this is a true assessment, we do not know.

We do not know what harmful effects result from sexually stimulating comic books, paperbacks, or magazines; the impact on youngsters of violence or moral laxity seen on television; or the impact of the loose philosophy suggested in some popular songs.

The National Council of Juvenile Court Judges whom I serve as executive director is an organization of more than 1,500 judges with jurisdiction over children and juveniles. At annual conferences they twice passed resolutions deploring the availability of obscene and pornographic material for impressionable youngsters. In 1958, the national council supported the following position:

That the Congress of the United States enact pertinent legislation designed to curtail the production, distribution, sale and possession of indecent, lewd and obscene material in interstate commerce.

I have been impressed with the statements of Dr. Frederic Wertham, psychiatrist, on this subject:

The saturation of children's minds with brutality, violence and sadism has done, and is doing, unquestionable harm, including in the sexual sphere * * * it leads to a demoralization of healthy instincts.

He indicates a relationship exists between violence and sex. "Sadism is contagious," he says. "Anything that fosters this trend is noxious to mental health."

There has been surprisingly little research done to establish whether there is a causal relationship between obscene and pornographic material and antisocial behavior. It is long since time that we ascertain the following information:

First, we need—and by "we" here I mean the judges of the country who have the ultimate responsibility for passing upon antisocial behavior—we need a clearer understanding of obscenity and pornography, an understanding which is intelligible to judges who may not be trained in the law.

We need more intelligible definitions than the working definitions now used by our courts. It seems to me we need a national consensus, a national agreement as to what is obscene material and pornographic literature. With such information we will know if some adult purveyors are contributing to the delinquency of minors.

Bear in mind, if you will, Mr. Chairman, our judges have authority to deal with those individuals who do contribute to the delinquency of children.

Second, we need to know whether a valid study of causal relationships is possible, a study which will link obscene material to antisocial delinquent behavior.

Third, if a valid study is possible, we need a carefully designed, scientifically sound study on whose results the majority of Americans at least can agree.

Fourth—and the previous speakers have made reference to this—we need also to know, as many have suggested, whether there is a relationship between violence and such crimes as arson to sexually stimulating written and visual materials.

Such information will be a valuable concomitant to the Juvenile Delinquency Prevention Act of 1967. That act provides the brick and mortar for new youth facilities and for comprehensive community planning. This bill to study the effect of obscene and pornographic material on the young addresses itself to one possible cause of the delinquent behavior which necessitates these commitment and treatment facilities. The goals of this legislation are therefore timely and significant.

Our national council has not had the opportunity to study this specific bill. I therefore, while referring you to official positions taken at prior occasions, give my personal endorsement to its goals. I think it is tragic that we know so little of the causes of delinquent behavior.

It is tragic that potentially harmful printed and visual materials are so readily available to high school students. After all the cries of woe on this subject over the past decade, pathetically little progress has been made. This bill contains the promise that at long last we may be able to maintain an environment for our young people in which it is feasible to live within the moral and civic law.

Thank you.

Mr. DANIELS. Thank you, Mr. Irving.

I do appreciate your coming from Chicago to the District of Columbia to give us the benefit of your views on the problem of juvenile delinquency.

It is an area in which I have a special interest. I believe, and always have, that the problem of antisocial behavior in our children is something which should be carefully looked into. I thought a study was being conducted by HEW and the Justice Department on this subject; therefore, when we heard one of our witnesses state earlier this morning that no such study was being made, I was surprised to hear it.

I note in your comments you recommend that such a study should be made to determine if there is connection between antisocial behavior in our children and the reading of pornography and the observance of violence in the news media.

Mr. IRVING. Mr. Chairman, may I comment a bit further on that. My plea to you is based on the confusion I see existing in the minds of the juvenile court judges of this country, a confusion based on contradictory statements presented to them, statements which, for example, on the one hand indicate that slum conditions are the cause of delinquency, and the contrary position that a slum condition is not necessarily a cause, that many fine young people come from substandard housing, so that the problem for us is that we pass judgment over a condition that we really don't understand. I at least feel it is long past the time that we should begin to do some intelligent exhaustive studies as to the causes of delinquency, and more importantly with regard to the present proposed legislation, the possible

impact of the written printed word and visual material on young people.

Mr. DANIELS. So, in your opinion, there is a great need for a Commission?

Mr. IRVING. Yes, indeed.

Mr. DANIELS. Mr. Albert. Do you have a question?

Mr. ALBERT. No. Thank you very much.

**STATEMENT OF IRVING FISHMAN, DIRECTOR, DIVISION OF
IMPORT COMPLIANCE, OFFICE OF REGIONAL COMMISSION,
BUREAU OF CUSTOMS**

Mr. DANIELS. Our next witness is Mr. Irving Fishman, Director of the Division of Import Compliance, Office of Regional Commission, Bureau of Customs, New York State. Mr. Fishman has had a long career in the enforcement provisions of law which prohibit the importation of obscene articles. He is well acquainted with, and a recognized authority on, problems arising in connection with such imports.

He has served as a consultant to the Senate Judiciary Committee and worked with committees in both the House and Senate in investigating matters of obscenity and pornography in the United States.

Mr. Irving Fishman.

Mr. FISHMAN. The U.S. Customs Service has a mandate under section 305 of the Tariff Act to enforce the provisions of law which relate to the importation of material which is obscene or immoral.

The statute, in its present form, was enacted in 1950, but the Government's regulation of pornographic material dates back to 1842. The sole function of the Bureau of Customs is to discover material which should be referred to the courts for possible forfeiture. It thus performs a purely ministerial function.

The constitutionality of section 305 has been tested many times and it has been upheld in matters before the U.S. courts as late as last year. We probably are in a better position to talk to the committee regarding foreign material rather than domestic material.

Our concern is in attempting to withhold delivery and prohibit the importation of pornography from abroad, so that our experience perhaps takes in several facets of what the proposed bill intends to do. It intends to search out the methods and channels by which this material is introduced and disseminated in the United States and it also proposes to take a look at the laws under which enforcement agencies operate.

Now, I could talk on indefinitely about some of our problems. I am not sure that the committee wants to hear all of them. We find ourselves with three issues that have to be resolved in connection with the examination of all printed material, motion picture films and so on, and so forth. The first type of material would relate to those things which are similar to material which is domestically distributed in the United States.

This forms perhaps the greatest bulk of the imported material. These things we do not detain. We permit these to come into the United States.

The second type of material we deal with is the hard core pornography which presents a bit of a problem because there is no real defini-

tion of the term "hard-core." "Hard-core," the Supreme Court indicated in one case, was that which it would recognize if it saw it. Perhaps we apply pretty much the same type of reasoning. At any rate, this does not give us as much difficulty as the last category, which is the material in the gray area. Here we have a problem of trying to determine whether such material is obscene according to present interpretations by the courts, because we operate under whatever definition the law gives us and, of course, under the definitions by the courts.

I can perhaps give you some idea of how effective our control is by telling you that we have detained and caused the seizure of, and had libel proceedings prosecuted in, a great number of cases.

Mr. DANIELS. At this point, will you tell us specifically what authority the U.S. Customs Service has with reference to the seizure of pornographic material and obscene pictures and films?

Mr. FISHMAN. All imported merchandise is subject to examination at the port of entry. One of the reasons for examining the material is to determine if it is obscene. If we make such a determination we immediately transmit the material to the U.S. attorney and he in turn presents it to the courts for a final determination as to whether it is obscene.

As I pointed out we merely pick it out, seek it out. Also, ours is probably a more difficult job because we have the primary function of trying to decide that which we shall send to the courts. Naturally, we try to send to the courts only that which we think is obscene according to present definitions.

In 1964, and referring only to pornography in the mails, we detained in New York 98,343 parcels. The number of pieces in each parcel varies. You may have a package containing 30 magazines or 100 photos or two small motion picture films, and so on.

In 1965, this count was reduced to 75,685 pieces. In 1966, it was increased to 77,741 pieces. As I pointed out this is only the material which we found in the mails from abroad. It does not relate to material which comes in by freight or air, and so on.

I would like to say that the effectiveness of our program has caused the decline in the number of cases processed, but some of this decrease stems from new interpretations of the law so that our thinking changes as the court gives us new guidance.

The present definition of obscenity, as has probably been noted before the committee, requires us to examine material to determine whether it meets three tests:

One, whether it has a prurient interest?

Two, whether it is offensive by community standards?

Three, more recently since the Supreme Court has included the test whether it is utterly without social redeeming value?

These standards, these tests which we have to make are a considerable advance over what we had to work with over the past 30 years. But there are still areas which are left to our judgment. We have no real understanding of whose prurient interest must be aroused by the material. There has been talk about the average man but it does not show who the average man is.

Of course, on the subject of community standards, we are not sure which community sets the standards or whether we have to have

different viewpoints, depending on the area in the country to which the material is sought to be imported.

Mr. DANIELS. H.R. 2525 intends to deal with the problem of community standards. It was determined in one case that by "community standards" the Supreme Court meant, not a "local" community, but the "national" community.

Mr. FISHMAN. There is some talk about national standards but I don't know who sets the national standards. Of course, the third test which the material has to meet, is that it has to be utterly without redeeming social value. Even in this case, there was some disagreement in the Supreme Court because the feeling was it had to be without social significance but not "utterly" without social significance.

So as you can appreciate, you find yourself with a problem of examining a motion picture film which deals entirely with hard core pornography but then concludes with a warning to young people not to over-indulge in sex, and so on, and so forth. That would be social redeeming value in a sense and it would not meet the test for obscenity.

This presents a very brief summary perhaps of the problems that confront the Bureau of Customs.

Mr. DANIELS. Well, Mr. Fishman, do you have any recommendations to make as to how we might be helpful to your office in enforcement of the law with reference to pornography?

Mr. FISHMAN. Well, as you know, the Treasury Department and the Bureau of Customs have taken no official position on the proposed bill. Personally, I feel that any light that can be thrown on this subject would be helpful. There is so much to be done, so much to be defined in the way of just what the country will accept and will not accept, so that any activity along the lines of the proposed legislation would be helpful.

Mr. DANIELS. Your testimony indicates that your office seems to be having some difficulty with the definition of the word "obscenity"?

Mr. FISHMAN. Not only our office but the courts have been having difficulty for the past 30 years.

Mr. DANIELS. But nevertheless, in the year 1964, the New York customs office did pick up more than 98,000 pieces or bundles of mail, some of those bundles containing a number of books or pamphlets; is that correct?

Mr. FISHMAN. Yes.

Mr. DANIELS. Were they turned over to the court for consideration as to whether or not they should be confiscated?

Mr. FISHMAN. That is correct.

Mr. DANIELS. From what country did most of this pornography come?

Mr. FISHMAN. This material is sent to the United States from a number of foreign countries including Canada, France, Denmark, Great Britain, Germany, Sweden, Spain, and so on. We estimate the most frequent suppliers on a countrywide basis are Canada and Denmark with Sweden, Great Britain, and Germany next in order. It is interesting to note that the nature of the material has changed considerably in that the purveyors of the material are as fully aware of the interpretations given by the courts as we are.

So our problems are different today than they were when I first entered the Customs Service.

Mr. DANIELS. Have you noticed any diminution of the flow of this pornographic and obscene material since the decision by the U.S. Supreme Court in the *Ginsburg* case?

Mr. FISHMAN. No. As a matter of fact, as a result of the Supreme Court's decisions in the *Ginsburg* case, there was a sudden cessation of this material, it has picked up now, and there are increasing amounts of hard core material coming into the United States.

Mr. DANIELS. There is an increase?

Mr. FISHMAN. Yes. We had to deal at one time with the so-called girly magazines, and the strictly nudist-type magazines. Today, this is a forgotten product.

Mr. DANIELS. Well, I recall, when I served as a member of the Postal Operations Subcommittee, House Post Office and Civil Service Committee, coming into New York with the distinguished chairlady of that committee, Kathryn Granahan, and visiting your office, I did have the opportunity to personally view some of the materials that were flowing in from foreign countries; the girly magazines you refer to, as well as some of the books and films.

Do you get many films today?

Mr. FISHMAN. Yes, sir.

Mr. DANIELS. Is that a serious problem?

Mr. FISHMAN. It definitely is. One of the problems and I am sure that the General Counsel to the Post Office Department has probably already touched on it, is the dissemination of advertising. A great deal of advertising that comes to the United States offers 8 and 16 millimeter films for sale and a great variety of these magazines I talked about portray hard-core pornography.

The difficulty in many cases is that the advertising material itself is not obscene per se. It merely offers obscene materials for sale. Such material does not come under our jurisdiction, but it is a problem for the Post Office Department. We can act against advertising material which includes some examples of what is being offered for sale.

But the traffic in this material increases. It must be very profitable, because so much of it is being detained. We notice from the advertising, for example, that five photos cost \$10. Now, somebody has sent \$10 for five photos. We have taken thousands of those away. Yet, somebody else is continually sending \$10 for more of that material because there has been no halting of it. So there must be a tremendous demand and it must be profitable.

Mr. DANIELS. After you confiscate material, what do you do with it?

Mr. FISHMAN. We are under some very tight wraps, the courts have made it clear if we detain material it must be reported to the U.S. attorney and to the courts within almost 5 days, so we immediately send our report to the U.S. attorney and he in turn files libel proceedings against the material. The court will order it destroyed if there is no opposition, and the U.S. marshal will destroy it.

Mr. DANIELS. How many such proceedings were instituted in 1966?

Mr. FISHMAN. To eliminate some of the expense we combine schedules, we might put 200 or 300 seizures on one schedule and send it to the U.S. attorney and he acts against the entire lot. I would say that over the past year we have perhaps presented 50 schedules to the U.S. attorneys for the eastern and southern districts of New York, New Jersey, and so on.

This, of course, is separate and apart from the situation involving, for example, a commercial motion picture film, where there may be some opposition. These go immediately to the U.S. attorney individually.

Mr. DANIELS. In these 50 cases that were presented to the U.S. attorney, and then presented to the court, was any opposition entered in the cases? Were they contested?

Mr. FISHMAN. None were contested. We get a lot of written protests but that is it.

Mr. DANIELS. In such cases where they are not contested is the material destroyed?

Mr. FISHMAN. Yes.

Mr. DANIELS. But nevertheless, this flow of pornographic and obscene material continues to come into the country?

Mr. FISHMAN. Yes.

Mr. DANIELS. And it continues to flow in as much as if not more than in years gone by?

Mr. FISHMAN. Yes.

Mr. DANIELS. Have you noticed an increase over the past 5 years?

Mr. FISHMAN. Yes. My statistics don't go back that far but it has been my experience, for example, that when a decision is made in the courts, liberalizing the interpretation of obscenity, there will be an immediate reaction in the quantity of material which is then shipped to the United States.

The nature of it and also the volume of it is affected. A great deal of this matter is of course sent to students or young people in the colleges and secondary schools. The method by which these mailings occur, I have an idea from what people have reported, is that anyone who trades in postage stamps, for example, is immediately besieged with offers of pornography.

We have had letters from a great many parents complaining of the influx of this material. The Post Office Department has done a great deal by way of alerting people to this problem. They will prevent the exportation or the sending of orders for these materials abroad when they know the sender and know he is a supplier of this material.

But I have not noticed any abatement. Recently, we have held less, because we find by current standards that the material is not obscene, but the amount of it we have had to deal with has not lessened.

Mr. DANIELS. New York is only one of the ports of entry. I am quite sure some of this material must be coming into the United States through other ports?

Mr. FISHMAN. Yes.

Mr. DANIELS. New Orleans.

Mr. FISHMAN. There are a number of ports which are main distribution ports for the Post Office Department. They would include Los Angeles, San Francisco, Seattle, Chicago, perhaps New Orleans and New York.

Mr. DANIELS. Mr. Fishman, do you recommend the creation of this Commission as outlined in H.R. 2525?

Mr. FISHMAN. Well, my comment, of course, would be as I indicated before, a personal one. I feel that any consideration of these problems would be very helpful to the enforcement agencies. I am not sure I can comment on whether a final definition of "obscenity" can result. As you know, there has been so much difficulty in defining obscenity.

I think if you can bring some light to the problem of the flow of this material into the United States, the quantity of this material which is disseminated into the United States, that in itself would be very helpful.

Mr. DANIELS. On behalf of the committee I want to express our sincere thanks.

We have with us our distinguished majority leader, Carl Albert. Any questions?

Mr. ALBERT. No, thank you.

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

Mr. DANIELS. Our next witness is Mr. Lawrence Speiser, director of the Washington office of the American Civil Liberties Union.

All right, Mr. Speiser, proceed. I notice you have a prepared statement. You may submit the statement for the record and testify orally, summarizing your statement, or proceed in any fashion that you feel will be beneficial to the committee.

Mr. SPEISER. I would like to read the statement. It is really short, Mr. Chairman, and I think it makes the point.

Mr. DANIELS. Proceed as you wish.

Mr. SPEISER. I thank you.

Mr. Chairman, the American Civil Liberties Union supported H.R. 11454 in the 86th Congress, a bill which called for a Commission similar to that involved in H.R. 2525. Congressman Carl Elliott of Alabama in his comments on the opening day of the hearings on that bill on May 24, 1960, said of it—

The purpose of such Commission would be to conduct a scientific investigation to determine if there is a causal relationship between the reading and 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.

The ACLU has long called for just such a scientific study. As far as I know, it has still not been made.

We do not argue that there may not be a causal relationship between printed material and antisocial behavior, but we do insist that in the absence of clearly demonstrable proof, there is no real basis for the assumption that such a relationship exists.

When H.R. 7465 came before this subcommittee, the provision for the study was eliminated. That bill assumed such a relationship between obscene matters and materials, and in a vague, loosely drawn preamble, and a similarly faulty and perhaps questionable preamble and charge, would have had the Commission proceed from there to combat such materials. We opposed that bill.

Now, H.R. 2525 has restored a provision for a study of the causation question. In addition, welcome improvements have been made in the drafting.

We think it wise, for instance, that the incurably vague word, "noxious," has been eliminated from the title, describing the kind of material the Commission will deal with.

We think it wise that the bill no longer refers to the desirability of involving the public and private groups in the suppression of printed material.

Too often, private groups involved in the suppression business have shown little understanding of the first amendment or little inclination to confine their efforts to anything remotely resembling obscenity as the courts have troubled to define it. Pains have been taken to make clear the acknowledgment and respect of the author and sponsors of this bill for the primacy of the first amendment in this delicate area.

I would like to call particular attention to the statement of the chairman in which you indicated this Commission is not intended to serve as a national board of censorship, nor is the Commission to stimulate indiscriminate prosecutions, but the purposes and duties of the Commission are to be carried on without interference with constitutional freedoms of speech and expression as guaranteed by the first amendment, and we applaud the statement of the chairman as you have made it.

In spite of these welcome improvements, the measure of this bill must be the extent to which it provides assurance that there will be undertaken a truly scientific study of the causation question.

While a scientific study is needed, anything less than that is to be feared.

The results of the study will be transmitted to the President and the Congress and presumably will be made public. If the study shows a positive correlation between pornography and antisocial behavior it will undoubtedly lead to new efforts to suppress the materials.

Such suppression inevitably carries with it dangers to freedom of expression. If the evils caused by pornography have been clearly demonstrated and are substantial enough, perhaps such risks to free expressions must be assumed.

To the extent the study is not scientific, to that extent do we run the risk of causing great harm to valued first amendment rights without in any way doing something useful about antisocial behavior.

Considering the language and provisions of this bill, we fear that it is unlikely that a scientific, that is, objective, study would be undertaken.

We have suggested in the past, and we repeat that suggestion now, that a scientific study could best be carried out by contracting with a foundation or with a major university having a particular expertise in this field, to conduct the actual investigation and evaluation. There should be no instructions indicating any preconceived answers, only a general charge to determine whether or not there is a causal relationship between printed material and antisocial behavior.

In the absence of such an approach, we would accept as second best the study carried out within the Commission framework, if maximum safeguards were incorporated to assure objectivity and to guard against a "runaway" Commission.

A primary factor in the acceptability of H.R. 11454 was that it did not give the Commission other duties in addition to the study, which were premised on an assumption of a positive finding of causation. Indeed that bill only assigned its Commission one duty rather than the "scientific investigation," and that was to analyze the law involved and recommend appropriate revisions to Congress.

H.R. 2525, conversely, in listing the duties of its Commission, includes the duty "to recommend such legislative, administrative, or other advisable and appropriate action as the Commission deems necessary to regulate effectively the flow of such traffic, without in any

way interfering with constitutional rights"—(section 5(a)(4). The duty to regulate effectively presumes a finding and existence of causation.

Indeed, H.R. 2525 is replete with language based on the conclusion that there is a causation.

In Section 1: Finding of Fact and Declaration of Policy, the reading materials supposedly the subject of a scientific investigation, are referred to as "morally and culturally corrosive and otherwise harmful to the public."

In the same section, it is stated that the Commission's purpose "shall be, after a thorough study, to recommend * * * means to deal effectively with such traffic." Should a Commission seek to deal effectively, that is, suppress, reading matter if the study shows no causation as far as antisocial behavior?

We would recommend that the duties of the Commission be limited to conducting a scientific investigation of the causation question.

To accomplish this very limited but invaluable purpose, the composition of the Commission must be reevaluated.

In a press release of April 13 announcing these hearings, it was stated that "the Commission * * * would be composed of representatives of different segments of society and would, therefore, reflect the diverse views of our national community."

The bill itself merely provides that the Commission shall be composed of 16 members, eight to be appointed by the President, four by the Speaker of the House and four by the President pro tempore of the Senate.

We must observe that a scientific study is not likely to be achieved by consensus. What is needed is the detachment and specialized skill of the social scientist. We suggest that more thought be given to the composition of the Commission with a view toward the qualifications mentioned above.

Mr. DANIELS. Why can't the appointing authority take that into consideration when he makes the appointments?

Mr. SPEISER. They might, Mr. Chairman. I think this is possible. My fear is that with the fact of no standard set on the appointment of the Commission there would be a desire to put on the Commission individuals who have rather definite views, for example, about the causation factor.

Mr. DANIELS. Well, the President of the United States recently expressed himself about his great concern over the wave of crime and increase in juvenile delinquency in this country, and dispatched a message to Congress asking them to deal with this problem.

Don't you think that he is sufficiently concerned about this problem to obtain the proper representation on the Commission?

Mr. SPEISER. I have two arguments on that, Mr. Chairman: When the President appointed his Commission on Crime and the administration of justice in the country, I must confess I was very much concerned because there was an attempt to bring in a broad range of views, although from the point of view of my organization, it seems there were far more people involved in the prosecuting aspect of the administration of justice than were represented for those who were involved on the defense point of view.

The result was, however, surprising because I thought the result was a clean result. The vast majority of the report of the Commission

on Crime and the administration of justice, I think, was excellent. We don't agree with all of the recommendations.

Mr. DANIELS. That would be very difficult to accomplish anyway?

Mr. SPEISER. I think that is right.

Mr. DANIELS. When the President sent the message down, or any Commission makes a report, we don't suppose it is going to receive unanimous approval of every individual. That cannot be achieved in a democracy.

Mr. SPEISER. I am not suggesting it should be and I think it is desirable to have dissenting points of view in a matter such as a crime problem certainly is. The fact that the matter was worked out in that kind of Commission, the fact it was done without congressional authority, done by the President on his own, and it was an exceedingly important kind of work to discuss the crime problem because I think it is part of the concern that is involved in this area, does not mean it may not happen again.

In other words, I am still apprehensive about the setting up of the Commission in which you set no standards as to who could be on it and it may very well affect the results of the Commission particularly in this first amendment area, which is, as you are well aware, a very sensitive one. I would rather spell out, if the purpose of the Commission is to conduct a scientific study, and I raise that question, that it be spelled out, what the kinds of skills and disciplines are that will be involved in determining who should be appointed on that Commission.

Mr. DANIELS. You may proceed.

Mr. SPEISER. Thank you.

The Commission is also charged with the duty of evaluating and recommending definitions of obscenity and pornography and of ascertaining methods employed in the distribution of the materials and of exploring the nature and volume of the traffic. We question the value or the appropriateness of assigning these tasks to a commission.

I suppose the thought is that perhaps the Commission can come up with a definition of obscenity which would liberalize it and not make it quite as troublesome to obtain prosecutions and otherwise curtail borderline offensive materials. In the final analysis, since we are dealing with the first amendment, it will be for a court to determine. We think it best to leave it that way.

Similarly, the question of the methods employed in the distribution and the nature and volume of the traffic would seem to be peculiarly within the province of appropriate Federal agencies, such as the Post Office, Customs, and Justice. Indeed we assume they are daily dealing with these questions.

Mr. DANIELS. I take it, from your statement, you feel that when a Commission is appointed the Commission should be appointed for one specific purpose and that is to make a scientific study to ascertain if there is any causal relationship between pornography and obscenity and antisocial behavior?

Mr. SPEISER. At the present time, yes, Mr. Chairman.

Mr. DANIELS. And you go no further?

Mr. SPEISER. I have no objection to the analysis that was suggested in the Oliver bill that came up in 1960 of analyzing the laws pertaining to that.

Mr. DANIELS. Why do you want the Commission to be so limited in its scope?

Mr. SPEISER. Because I think that the psychiatrist who was on raised the question about timing and it seemed to me that this is extremely important, that before you can go on to the other questions, the other issues that have been raised and the purposes of this bill, that there ought to be this determination.

It seemed surprising the amount of concern that has arisen in this area. The scientific study that the Justice Department said it would try to get done, has not yet been done. I think that after that has been done, it seems to me, you can go on to the next question. But you may find the Commission engaged in a great deal of spinning of the wheels—if a scientific study were done and it came out with a negative answer, that there was no causal relationship, what would that do to the other kinds of studies that it might be doing contemporaneously with this.

Isn't this the *sine qua non* before you go to the other question?

Mr. DANIELS. You don't think this Commission would be helpful or the information that they might obtain would be helpful with respect to ascertaining the degree and extent of pornography, the manner in which it is distributed in this country; that is, the nature and volume of it?

Mr. SPEISER. I think they might, but I am again apprehensive of the danger problem I raised when I testified before the subcommittee last year and also this year. They are going to have to make determinations as to what they consider to be pornography and obscenity in order to determine the traffic.

Mr. DANIELS. I don't think there would be any question about hard-core pornography. You don't have to be a scientist or psychiatrist to ascertain what is hard-core pornography. If you went to one of the bookstores in the very shadows of the Capitol, you could pick up books, erotic books, with page after page dealing with nothing but sex, and I don't see what social value that would have to any individual that might be reading it.

Mr. SPEISER. Well, I think there is a question as to whether it is hard-core pornography, Mr. Chairman. If it were, there would be prosecutions I think in most cases. I think the fact is there are debatable prosecutions.

Mr. DANIELS. There are prosecutions. The Attorney General was here this morning referring to prosecutions.

Mr. SPEISER. There are prosecutions but the material you are referring to is still being sold and presumably the material that is still being sold is not such.

Mr. DANIELS. Yes, and it will probably continue to be sold, until there are a couple of successful prosecutions of distributors which may curtail their activities. But obscene material is being disseminated by just a few people. That has been the testimony before this committee.

Mr. ALBERT. I have to leave to go to the floor.

Mr. DANIELS. I have one other question.

What harm can come from a commission whose duties shall be to consult with leading constitutional authorities, to analyze the laws pertaining to the control of obscenity and pornography and to evaluate and recommend definitions of obscenity and pornography?

Mr. SPEISER. I have this feeling.

Mr. DANIELS. Why do you object to the Commission?

Mr. SPEISER. The first part I have no objection to. The second part I suppose the problem is whether there is going to be a flavor in trying to evaluate and recommend definitions of obscenity and pornography that would make it easier to obtain prosecutions in this area.

Mr. DANIELS. The purpose of H.R. 2525 is to determine the factual situation. That is the position of the Chair.

Mr. SPEISER. If there is not that flavor that is impressed upon it, I don't see objection to it.

Mr. DANIELS. The third provision is for the scientific study which you have commented about and you support, and the fourth recommendation is to recommend such legislative, administrative, and other advisable and appropriate actions as the Commission deems to regulate effectively the flow of such traffic without in any way interfering with constitutional rights.

Mr. SPEISER. May I go back to No. 3, because No. 3 had its language changed from the committee print that was reported out of the subcommittee to the full committee. It does not state to study if there is an effect, but there is assumption in the way it is phrased "To study the effect." You might say there may be zero effect.

Again, as long as you are in the first amendment area, I would suggest very careful statement of language and I think it should be left in the "if" kind of situation.

Mr. DANIELS. Would it be satisfactory if that section read, "To study what effect, if any?"

Mr. SPEISER. That would make it satisfactory, yes.

Mr. DANIELS. All right, thank you, Mr. Speiser.

The committee stands adjourned at the call of the Chair.

(Whereupon, at 12 o'clock noon, the committee adjourned, subject to the call of the Chair.)

(The following letters and statements were submitted for the record:)

STATEMENT OF HON. WENDELL WYATT, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF OREGON

Mr. Chairman, the increasing problem of pornography and obscene materials is one of pressing importance to me. I receive mail daily from clergymen and laymen alike, deploring the increasing availability of this noxious matter to their children. Even the mails are not sacrosanct. Easily purchased mailing lists are used by purveyors of filth to reach into the very heart of the American home to spread their form of sickness.

Pornography has become a million dollar a year business. Freedom of speech has been twisted to mean freedom to corrupt. Publishers prey on the young, malleable minds of our children. Salacious, lewd, and downright disgusting reading and pictorial matter is available on your neighborhood newsstand, masquerading under the guise of "freedom of the press."

The trend has invaded our colleges, where students protest for the "right" to have nauseating four letter words incorporated into daily language. This business, where unscrupulous businessmen (if they can be called that) corrupt young minds for dimes and dollars spent under and over the counter must be stopped.

I feel this bill, H.R. 2525, establishing a commission to investigate the problem and determine possible methods of attack would be a fine step toward halting the creeping, insidious morass of moral decay that is being hawked by unscrupulous individuals.

A giant industry has been built up on this foundation of filth. We are already late in beginning to fight this crucially profitable perverting influence. A commission such as delineated here would establish guidelines for dealing with this problem. It would show where strong bulwarks could be erected in our society to strike back at this many-tentacled monster.

Because of my concern, I have introduced a bill very similar to the one being considered here, H.R. 1457. A commission of this nature can dig to the very roots of the problem and recommend both legislative and administrative action to cut off the flow of these vile and obscene materials. I once again emphasize the need, the absolute importance of H.R. 2525. I urge positive action on this bill to start reversing the tide of filth that now threatens to engulf our society.

Thank you for allowing me the opportunity to make this statement.

STATEMENT OF HON. E. Y. BERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH DAKOTA

Mr. Chairman, I testify in support of the legislation before this House committee to establish a commission to study the problem of how to effectively deal with obscene and pornographic materials.

As the author of one bill to set up a commission to study these problems, I am sure that I do not need to tell you just how serious the problem has become.

Peddlers of obscene material have come brazenly out into the open because they know that there are no effective federal laws to deal with the problem of distribution through the U.S. mails and in interstate commerce. It has become a multi-million dollar business with no control.

Congress must act wisely. The Courts have stymied a great deal of our efforts to control this flow of filth by eliminating the distinction between filth and art. Therefore, we must set up a responsible commission to study ways to administratively and legislatively stamp out this menace.

Therefore, I urge prompt approval of this legislation. The very least we can do is obtain all the facts in this matter, and attempt to get some idea of the scope of the problem which has become a national public menace.

STATEMENT BY HON. ODIN LANGEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. Chairman: I am pleased to have the privilege of submitting a statement in behalf of H.R. 2525, to create a Commission on Obscenity and Pornography.

The exploration of means to control the filth that pervades our nation through the unscrupulous promoters who are more interested in money than morals is a subject in which I have been interested ever since coming to Congress over eight years ago. The bill you are considering is very similar to one I have introduced into a number of Congresses and embodies the basic point of my bill, that of creating a commission that would shed new light into the gray area that surrounds the dissemination of obscenity and pornography.

With crime on the daily increase in America, we no longer can sit by and accept the reasoning of the pornography purveyors who cry "censorship" and "freedom of the press," or that there is no definition of obscenity that can be enforced. These cries too often cloak the real purpose of these people, to make a buck easily and quickly regardless of the results.

A respected Library of Congress report in my files succinctly states the reasons for the increasing volume of filth in the nation. Commenting on filth in the mails in particular, the Library cites "tremendous profits realized from a relatively small capital investment; and the very broad definition of obscenity handed down by certain courts." These reasons should not, however, deter a fact-finding group such as the commission proposed in this bill. The obscurity surrounding the peddling of filth, in fact, is a compelling reason to establish such a commission.

I simply cannot believe that the mores of this nation have changed to the extent that we must buy the argument that the public now accepts such material per se. If only adults were involved, perhaps the purveyors of this filth would have at least a small point. But adults are not the only ones involved. Our children are involved—children who are still in the learning and development process. We must not allow the filth peddlers to undermine and by-pass those parents who are attempting to instill lasting moral values in their children. We legislate against and control other areas where there is a threat to the physical and mental development of our children. We have child labor laws to protect their growing bodies. The selling of alcoholic beverages to minors is prohibited. Children under a certain age are not permitted to drive an automobile, and they are not admitted to certain movies.

Not only would a commission on obscenity and pornography gather together a panel of experts to shed light on the legal darkness surrounding filth purveying of every form, but it would also provide information on what action can be taken at local levels of government and by individuals. Public opinion is, in the final analysis, the driving force that can and must create an atmosphere of decency. But the public, like the government, is entrapped in the maze of uncertainty that permits obscenity and pornography to reach our young people through many mediums, including direct solicitation by mail, through magazines on our newsstands and in the motion picture houses. The public must be provided with the proper information with which to effectively launch their own campaigns.

Again, permit me to thank the members of this subcommittee for permitting me to express support of H.R. 2525. You are to be commended for holding these hearings. As you examine this question in your usual careful and proficient way, permit me to inject one last observation: time is of the essence. We have too long deferred proper action to adequately protect the people from the types of materials over which they really have too little control.

STATEMENT OF HON. DONALD D. CLANCY, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF OHIO

As sponsor of a bill to create a national commission which would make a comprehensive examination of the problem of the spread of obscene publications and other materials and then recommend appropriate and effective remedial legislation, I am pleased to add my strong endorsement to the bills you have under consideration.

I believe most of us are agreed that the increasingly widespread dissemination of indecent literature and other forms of pornography is indeed a grave problem that demands our attention and action.

Without infringing upon the constitutionally guaranteed rights of free speech and press of the First Amendment or the procedural rights relating to search and seizure of the Fourth Amendment and the right of due process and equal protection of the laws of the Fourteenth Amendment, an effective way must be found to control the distribution of harmful materials.

A national commission such as we envision, composed of experts from a widely representative group with the responsibility of devising effective means of coping with this menace, would put the smut peddlers on notice that we intend to protect our citizens, and especially our children, from their illicit offerings. Particularly essential is the need to keep morally objectionable materials out of the hands of impressionable minors.

The distinguished Chairman of this Subcommittee in his opening remarks has made it unmistakably clear that the proposed Commission would not in any way function as a board of censors, not would it interfere with constitutionally guaranteed freedoms. Instead, it would perform a distinct service for the Congress and for the nation by laying the groundwork for a program to regulate the traffic in obscene materials.

I strongly urge that swift and favorable action be taken on this legislation to create a national Commission on Obscenity and Pornography.

STATEMENT OF NICHOLAS G. FRIGNITO, M.D., MEDICAL DIRECTOR, COUNTY
COURT OF PHILADELPHIA

I appreciate this opportunity to address you on my position regarding pornography. I have the unusual opportunity to observe how pornography affects our youth in Philadelphia in my position as Medical Director and examining psychiatrist in the County Court of Philadelphia. In over twenty years of service I interviewed and examined thousands of delinquent boys and girls, and continue to examine many more each year. I find a significant number of our youth are frequently involved in sexual misconduct. They are impelled by pornographic and obscene material which is readily available from the purveyors of smut.

In the County of Philadelphia the average young boy or girl is assailed by smut in their earliest years. Most boys and girls report they first come in contact with obscenity in grammar school. They are first exposed to indecent pictures and playing cards. These items can be purchased by the children or are passed on to them from others in their classes. It is not unusual for the children to ex-

change the obscene material. This onslaught continues throughout their adolescent years into adulthood.

What is presented here regarding the influence of pornography is the experience of many of the court's staff; psychiatrists, psychologists and other professionals who are involved in the function of the court. Court statistics reveal tremendous increases in the number of sexual offenses, fornication, sodomy, indecent assault, rape, illegitimacy, indecent exposure, corrupting morals of minors. Many of the delinquents and adults involved in such behavior admit to the use of pornography.

Many juveniles and adult offenders apprehended for offenses other than sexual are also frequently involved in sexual misbehavior which can be directly attributed to the use of pornographic material.

Many of the delinquent boys and girls and adults who come to the attention of the court on charges of assault, robbery, larceny, burglary, carrying concealed and deadly weapons, are readers of smut, masochistic and fetishistic magazines, obscene comic books and lewd writings. A notable increase in homosexual offenses can be traced to the availability of magazines devoted to these perversities.

Though there may be minimal physical damage from sexual misconduct in the adolescent, there can be devastating effects on intellectual, emotional and moral development. Erotic arousal from smut fosters indecent personal habits. It frequently leads to indiscriminate sexual misconduct. The increased incidence of venereal disease is a well documented medical statistic.

There are records in the County Court of Philadelphia to demonstrate that indiscriminate use of smut leads to sexually aggressive acts, and in some incidents to homicide. Aggressive delinquents band in small groups and devote considerable time to pursuing and reading smut devoted to sadistic and masochistic practices. They frequently indulge as a group in these chaotically perverse activities. During psychiatric treatment of institutionalized adolescent delinquent girls, a significant number of incidents of incestuous assaults are reported. The sexually aggressive fathers, brothers or other relatives, are devotees of smut.

It is my opinion pornography in any form is vicious and dangerous. It undermines moral life, induces the young to sexual delinquency, and the morally and intellectually weak to criminality. In my experience in the County Court, prostitution, sexual perversity, aggressive sexual acts are increased immeasurably by the use of smut.

I am very much in favor of legislation devised to control the transmission or sale of pornographic materials.

STATEMENT OF AMERICAN LIBRARY ASSOCIATION

The American Library Association is grateful for this opportunity to express its views in connection with the hearings held on H.R. 2525 and related bills, looking to the creation of a Commission on Obscenity and Pornography. We appreciate the purpose of the bill, H.R. 2525, in endeavoring to protect the public, and particularly minors, from obscene and pornographic publications. However, we cannot support the measure for the reasons which we should like to submit.

The ALA, a nonprofit, professional association of more than 35,000 members interested in the development of library services in the United States, last expressed its opinion regarding this matter on September 24, 1965, in connection with hearings held on H.R. 7465 and related bills. We could not support that legislative proposal in part because we, like others, felt no Commission of the kind contemplated ought to be established before careful studies were undertaken and completed, under unimpeachable nongovernmental auspices, to "develop scientific data measuring the effects of obscene matter" and "clarify the premises underlying obscenity laws" including the premises of the very bill (H.R. 7465) then under consideration. The Association also urged that scientific studies be made of the effects which the enforcement of censorship laws were having upon our institutions of free expression including the mass media of communication.

The ALA position with respect to H.R. 7465 was taken in consideration of the Association's longstanding policy in favor of freedom of expression, and against all forms of censorship, private and public. The Association believes that the freedom to read, guaranteed by the Bill of Rights of the United States, is essential to our democracy and must be preserved. Our position was taken also in view of action by the U.S. Supreme Court in ruling against other semigovernmental Commissions created at the State or local level with the intent of combating obscene and offensive material.

H.R. 2525 differs from previous legislative proposals opposed by the American Library Association in several commendable respects, perhaps the most important of which involves a provision for legal and other studies into "obscenity" and the obscenity laws. The Association is glad to see that H.R. 2525 does not assume that which has never responsibly been shown, that "obscene" material contributes to crime or delinquency. It is precisely in this area that scientific research would be welcomed. Unfortunately, H.R. 2525 does not seem to offer any reliable method for conducting such studies, particularly the non-legal studies of "the effect of obscenity and pornography upon the public, and particularly minors." The bill fails to specify that such studies would be scientifically conducted by experienced and reputable research institutions, and instead gives the difficult task of carrying out the studies to the sixteen-member Commission itself, by means of "hearings," the collection of information and "suggestions" from interested agencies and groups, and "consultations" with governmental organizations and private groups. It can safely be predicted, Mr. Chairman, that without more formal, and factual data, based on a full-fledged scientific study, this Commission would be engulfed by an avalanche of public emotion and uninformed opinion created by well-known national and local pressure groups.

In short, H.R. 2525 makes no real provision for the carrying-out of scientific studies; in assigning a study task to the Commission, the bill risks the grave danger of letting loose on the American media of expression and communication a semi-governmental investigation concerning matter which any three Commission members might consider "morally and culturally corrosive and otherwise harmful to the public, and particularly minors." Such an investigation, obviously, would be the antithesis of the scientific study which the ALA supported. It would be the antithesis, also, of the "reliable scientific study" involving "painstaking research conducted over a relatively long period of time" which the Honorable Fred M. Vinson, Jr., Assistant Attorney General of the United States, supported in his testimony of April 24, 1967. And it would be the antithesis of the "carefully designed, scientifically sound study on whose results we could all agree" supported by the Executive Director of the National Council of Juvenile Court Judges, Mr. John F. X. Irving, in his testimony of April 24, 1967.

In our judgment, it would have been a service for the Subcommittee's attention to have been directed to the fact that the recent comprehensive Report of the President's *Commission on Law Enforcement and the Administration of Criminal Justice*, called "The Challenge of Crime To A Free Society," failed to associate obscenity or pornography with crime or delinquency, in any way. Moreover, none of the causal relationships alluded to in the statement presented to the Subcommittee by Dr. Lawrence Kubie found any support in the studies and report of the President's Crime Commission. One is forced to wonder what possible good could be accomplished by any studies that were conducted by the Commission proposed under H.R. 2525.

It is noted that, although nine of the sixteen members proposed to constitute the Commission would be required for a quorum, three members alone would be empowered to take testimony and interrogate witnesses which could cause dangers to individuals.

Concerning the provision for a study of the laws pertaining to the control of obscenity and pornography, again it seems evident that only a responsible, independent research institution, or center for legal studies could conduct such a study free of suspicion of bias generated by pressures from private groups and governmental organizations.

As to the bill's provision for a survey of the methods used in the distribution of obscene materials, in the absence of a firm definition of the "obscene," the Commission would have no guidelines or boundaries, or nothing other than its own sensibilities, for its investigation and would be in constant danger of inquiring into everything that three persons might think obscene or morally or culturally corrosive.

In this connection, attention should be paid to Mr. Vinson's testimony to the effect that the Department of Justice has successfully been investigating and prosecuting publishers and distributors of commercial obscenity, and that "a comparatively small number of distributors are responsible for the bulk of the nationwide traffic in commercial obscenity." Stating that the 1966 U.S. Supreme Court decision in *Ginzburg v. United States*, provided federal prosecutors with "a needed and useful tool" for focusing on mass producers of obscenity, this testimony by the Assistant Attorney General appears to disclose no need for any national Commission on Obscenity and Pornography to struggle to arrive at new "definitions of obscenity and pornography," as provided in the bill.

Regardless of the merits of that decision, it seems to be providing a workable definition for the prosecuting arms of the federal government, with regard to commercial obscenity. No reason appears why State and local prosecutors cannot adequately function under the same definition.

Mr. Chairman, we have hesitated to record these doubts concerning the need for this new Commission, and these fears concerning the thrust and impact, in terms of free expression, of any "studies" undertaken by such a Commission—because we are sensitive to the long hours and conscientious attention which you and the Members of your Subcommittee have paid to the troublesome problems to be dealt with by H.R. 2525. But where a choice must be made between tolerating the risks which invariably accompany free and open expression, and inviting the dangers to our democratic institutions presented by any form of censorship, the decision is clear. In fact, it was made for us with the adoption of the First Amendment by the Founding Fathers.

In accordance with this judgment, we wish to urge you respectfully, on behalf of our Association, not to favor H.R. 2525, unless the scope of the measure is limited and is directed to the encouragement of scientific research by responsible institutions into the problem area with which the Select Subcommittee is concerned.

STATEMENT OF AMERICAN BOOK PUBLISHERS COUNCIL, INC.

American Book Publishers Council, Inc., of 1 Park Avenue, New York, N.Y., is a membership corporation composed of most of the leading publishers of books of general circulation, including many university presses and most of the major publishers of paperback books. It is estimated that the 191 members of the Council publish and distribute over 85% of all general books published in the United States.

The Council welcomes a scientific investigation as to whether or not there is any causal connection between certain printed material and crime and other antisocial behavior and does not oppose the other aspects of the proposed study.

The Council believes, however, that it would be in the public interest to have the proposed investigation made by a major university rather than by a governmental commission. The reason for this belief is that the Council is of the view that the method it recommends will result in a more scientific and objective study than would take place pursuant to the procedure now set forth in the Bill. We firmly believe that the proposed investigation should be enabled to utilize the expertise of a variety of different fields rather than depend upon a consensus vote of sixteen governmental appointees who might be less apt to be expert in each of the fields which should be called upon for knowledge and experience. To mention only the most obvious, would be to include psychology, medicine, criminology, sociology, literature and the law. Each of these offers a different approach to the problems and hence the investigation should take advantage of at least those different approaches.

The inter-disciplinary nature of these problems makes it unsuited for a governmental commission to undertake itself, but ideal for a scientific and objective investigation by a major American university, pursuant to a government grant. A university can more readily assemble a group of experts in the various aspects of the problems and utilize their various talents to achieve a truly comprehensive study. Moreover, a university drawing upon a diverse faculty is perhaps best equipped to avoid the dangers of prejudgment and opinions based upon prejudices rather than scientific analysis.

The idea of a university study of a problem confronting American government is not unique. Recently the Securities and Exchange Commission commissioned the University of Pennsylvania to conduct a study of investment companies. Based upon that study the SEC has drafted a set of recommendations which is now before the Congress. While, of course, we do not take any position with respect to the merits of that study and the SEC recommendations, it is clear that the University of Pennsylvania has allowed the debate on investment company regulation to be at a higher level, and based more upon established fact than would otherwise be possible. If such a study has proved helpful with respect to investment companies, the value of such type study is even more apparent in investigating the problems here where the issues are more complex, the amount of initial information less, the prejudices and emotional impact involved immeasurably greater, and the subject matter is protected by the First Amendment.

Accordingly, the Council recommends that H.R. 2525 be modified to direct the investigation to be conducted, under government supervision and grant, by a major American university.

NATIONAL COUNCIL OF CATHOLIC MEN,
Washington, D.C., May 5, 1967.

Mr. DOMINICK DANIELS,
Chairman of House Select Subcommittee on Education, House Committee on Education and Labor, House of Representatives, Washington, D.C.

DEAR MR. DANIELS: I am writing you on behalf of the National Council of Catholic Men in regard to H.R. 2525 which recommends the creation of a Commission on Obscenity and Pornography.

NCCM, as the federation of all Catholic men's organizations in the United States has supported the establishment of such a commission over the years.

In our considered judgment, such a Commission is an excellent method of studying all aspects of one of the most serious problems of our time in the social communications area. It is a problem, as you so well know, that is of great concern to mothers and fathers throughout the country—and, at the same time one of complete frustration. The problem continues and there has been no really serious effort by our national government to study it and to recommend methods of meeting it on a reasonable basis.

Therefore, once again NCCM endorses the proposal for a Commission, applauds your personal efforts and urges the Committee to act favorably on it.

Sincerely yours,

MARTIN H. WORK,
Executive Director.

NATIONAL COUNCIL OF CATHOLIC WOMEN,
Washington, D.C., May 5, 1967.

Hon. DOMINICK DANIELS,
*House of Representatives,
Washington, D.C.*

MY DEAR CONGRESSMAN DANIELS: The National Council of Catholic Women supports H.R. 2525, and trusts that this bill will have favorable consideration.

The shocking problem of pornography has been a matter of real concern, over the years, to the National Council of Catholic Women, a federation of Catholic women's organizations, numbering some 14,000 and representing some 10 million women. Strong resolutions were adopted in 1950, 1952, 1954, 1956, 1958, 1962 and 1964, which said, in essence:

"* * * we will initiate and cooperate in community programs, local ordinances, state and national legislation which will guard against the sale of salacious literature and the showing of movies unfit for youthful viewing. We will emphasize the cultivation of high standards of taste in literature, art, films and the mass communications. In particular we will commend those merchants and movie managers who demonstrate their responsibility in these crucial areas."

We pledge our every effort to cooperate with the aims of this bill.

Very sincerely,

Mrs. JOHN D. SHIELDS,
National President.

NORFOLK, VA., May 3, 1967.

Hon. CARL D. PERKINS,
*House of Representatives,
Washington, D.C.*

DEAR CONGRESSMAN PERKINS: As a follow-up to correspondence which you had with Porter Hardy, I am enclosing a photostat of an article written by Thurman Sensing which I believe will be of great interest to you.

The public support in the Norfolk area is overwhelming for the establishment of some sort of legislation to control pornography and obscenity. I have this day written to the Postmaster General of the Postal Service asking what they intend to do to control the unsolicited mail being sent in to homes; in many instances to juveniles. It is sent first class mail and the address indicates that it is done by an addressograph plate. I, myself, received one of these brochures. I feel sure that if the postal authorities really are sincere in their efforts to stamp this out steps can be taken. The origin of the literature is the Los Angeles area and I am sure they are familiar with the location of the various publishing houses.

To date I have made ninety-six appearances before civic clubs, luncheon clubs, women's organizations, church groups, etc., and in each instance these groups have responded by supporting some sort of legislation to control this problem.

Let me thank you for your efforts and interest and I certainly hope that something can be accomplished.

Another area that needs looking into is the movie industry. I have written Mr. Jack Valenti in this connection challenging him to apply the guidelines he announced to most of the movies being shown in our local theatres. Frankly, I don't expect much help in this area and I am probably too ambitious.

If any support from this area is needed to reflect the desires of the public in general, please feel free to call on me.

With kindest regards.

Sincerely,

SAM T. BARFIELD,
Councilman, Norfolk City Council.

SENSING THE NEWS—UN-AMERICAN ACTIVITIES

(By Thurman Sensing, executive vice president, Southern States Industrial Council)

The month of April, a time of beauty as spring breaks over the American landscape, this year may be marred by ugly political realities. At mid-month, for example, anarchists and "peaceniks" will have converged on New York City to conduct massive demonstrations at the gates of the United Nations building against U.S. defense of freedom in South Vietnam.

According to reliable reports, these demonstrations are expected to be the largest ever carried out by radical elements in the nation. Among the prominent participants, it is believed, will be the Rev. Martin Luther King, Jr., who is shifting his attention from "civil rights" strife campaigns to the anti-Vietnam campaign.

The worsening of the battlefield situation of the communists in Vietnam lies behind the new urgency with which domestic radicals are approaching the April demonstrations. The homefront leftists realize that the communist troops in Vietnam are facing annihilation and that public pressure is mounting for stepped-up air and naval attacks against Communist North Vietnam. Thus they clearly intend to pull out all the stops in demonstrations inside the U.S.A. They are reported to be seeking bloody clashes with police authorities. In particular, they want a real clash at the gates of the U.N. building in order to make the Vietnicks here appear as martyrs. They also believe that massive anti-Vietnam demonstrations in the U.S.A. will produce even stronger anti-American declarations by the Afro-Asian bloc in the U.N. and by U Thant, Secretary-General of the U.N. U Thant already has clearly indicated that his sympathies lie with Hanoi, not Saigon.

The demonstrations planned for New York City are only part of a new drive by the pro-communist forces to gain power in the United States and to eliminate anti-communist activities on the part of the U.S. government.

Insufficient attention has been paid to what is known as "The Underground Press" in the United States. Reference here is to the ultra-leftwing sheets which have begun to appear in several cities and on a number of campuses. These small newspapers have as their principal target the stopping of American efforts in Vietnam. To this end, they endorse every conceivable assault on public authority and public decencies. They approve the flight of young peaceniks to Canada, where they have a safe harbor as draft-dodgers. They recommend films produced by or in behalf of the Viet Cong. Among their various editorial proposals are projects that are utterly obscene and perverted, which cannot be described in family newspapers, but which are an effort to degrade public officials.

It should be realized, too, that "The Underground Press" stresses "free speech campaigns" involving filthy language and recommends the showing of pornographic films. Realistic observers of these gutter sheets understand that the endorsement of pornography in print and on film is a calculated effort to undermine the morality of the American people. In an effort to weaken the fabric of our nation, these journals and their sponsors hope to turn loose a flood of pornographic material.

In this connection, the national public should know that in recent months one of these "underground" papers distributed 70,000 copies of one of its filthiest issues to elementary school children on New York City's East Side. Now, it is obvious that printing and distribution of 70,000 copies of a gutter sheet is a costly proposition. Public agencies and private citizens should inquire as to the source of the money for this project. Indeed it is time that the House Committee on Un-American Activities, or other suitable agencies of Congress, conduct a

full-scale investigation of the actions and financial backing of "The Underground Press." Some well informed journalists, who have devoted years to the study of Communist Party operations in the United States, are certain that the money for both the upcoming demonstrations and the continuing and accelerated pornography campaign is coming from communist sources.

The danger is that the public will imagine that the war in Vietnam is a one-front war. The truth is that the front is everywhere, including here on the home front. Among the targets of the communists are not only soldiers in the Pacific but the youth people of our nation, the students who will be the leaders of tomorrow. This is why it is imperative that there be an immediate investigation of what lies behind these new un-American activities.

NORFOLK, VA., January 20, 1967.

HON. PORTER HARDY, JR.,
House of Representatives,
Washington, D.C.

DEAR PORTER: I am attaching a copy of a recent letter received from Senator Mundt regarding his Bill, S. 309, which concerns itself with the problem of pornography.

I feel sure, from your past letters, that you will support his Bill and will use your influence to gather the needed support in the House.

The attached photostat of an article in the Palm Beach newspaper is, in my opinion, most interesting and significant. In fact, it is the first action of a Communist country with which I totally agree. If a country, so well versed in "brain-washing tactics," recognizes the danger to the mind and spirit of youth from a steady diet of this "trash," should we not take bold action to demonstrate our fears also. We might start with the Supreme Court and educate them to the fact that all law is established in spirit, (for a purpose), and must be so interpreted. The letter of the law makes adherence humanly impossible—the only exception being the Law of Nature. Sorry if this sounds like "preaching", but, Porter, *something* must be done. It can only be done at the Federal level. The situation at the local level is worsening—news-stands and movies have pulled out all stops, and I am daily being contacted by parents who find their children in possession of "hard core" pornographic books or being solicited by some publishing house. I went to a very fine movie with my family and then the coming attractions were flashed on the screen—"The Rape"! All the gory promises were shown. Somewhere, somehow, my rights have been forgotten.

Thanks for any help you can render and I can assure you ninety percent of the people will applaud your action.

Sincerely,

SAM T. BARFIELD.

U.S. SENATE,

— Washington, D.C., December 28, 1966.

MR. SAM T. BARFIELD,
Councilman, Norfolk City Council,
Norfolk, Va.

DEAR MR. BARFIELD: Thank you for your good letter of December 8 which I found awaiting me here in Washington when I returned from a rather extended visit back home in South Dakota during the Congressional recess.

I am, of course, delighted to learn of your strong and enthusiastic support of my bill, S. 309, to try to do something effective about the problem of pornography. I assure you I shall re-introduce this legislation early in the forthcoming session of Congress, and I deeply appreciate your willingness to help provide effective support for it among the Congressmen and Senators of your home state of Virginia.

Incidentally, our major problem seems to be in the House of Representatives. The Senate once before has passed this legislation, and I am sure we can get it enacted again. After long and extensive hearings and what appeared to be favorable indications for passage in the House of Representatives, the bill died a quiet death over there last year. What is obviously needed in the House is a few Congressmen who will take the floor of the House and give articulate and aggressive support to the early passage of the necessary legislation.

With best wishes and kindest regards, combined with the Season's cheeriest greetings, I am,

Cordially yours,

KARL E. MUNDT, U.S. Senator.

HAVANA LAUNCHES CLEAN-UP; SEX MAGAZINES GIVEN TOSS

HAVANA.—A thriving market in cheap sex-and-sin paperbacks and old American comic books and magazines is at the point of disappearing from the scene here.

There are indications the Fidel Castro government plans to eliminate hundreds of sidewalk stalls dealing in the publications in Havana. Some already have been removed; proprietors of others are being warned to clean up their merchandise and their sales operations.

Old Havana's busy thoroughfares of Reina and Galiano have been identified by the Communist Youth newspaper Juventud Rebelde as the centers of such operations.

Government officials are especially interested in doing away with scores of different editions of American comics they say were translated into Spanish in Mexico City years ago.

"These are dedicated to sadism, sex and violence," Juventud Rebelde says.

Another lucrative business is the publication by "pirate printing houses" of thousands of racy novels and books on sex—usually pornography disguised as science.

"While copies of 'Don Quixote' gather dust in the bookstores, two editions of 'Two Nights of Pleasure,' a pornographic novel falsely attributed to Musset, were sold out immediately," reported the newspaper.

The favorite themes for comics "are the same stupid arguments, the same anti-Communist propaganda," it says, "some of it is even fascist."

"This black market is competing with government publishing houses seeking to bring culture to a people poisoned for years and years with nonliterature and pornography . . ."

Some of the book-stall operators deal in one special type of publication, such as romantic novels. Others will "exchange" only science fiction; some barter only comics or magazines. Most of them have other small businesses on the side, such as cigar or shoeshine stands.

Proprietors profit on each sale, often requiring that the buyer trade in another book or magazine of the same type. The stock phrase for comics is "10 cents and another." The stall's inventory thus is static while it undergoes a turnover in titles.

"It cannot be said that the black market exists because the people have bad taste; that it will disappear with the slow increase in the cultural level of the masses," said Juventud Rebelde. "The black market should disappear in order to contribute to the formation of the tastes of the people."

It then went on to outline the government's efforts in the cultural field, including the publishing of novels and short stories along with the numerous political books put out each year.

The government is also experimenting with the publishing of "clean comics" for the children, dealing primarily with historical incidents as interpreted by the Castro regime.

STATEMENT OF RANDEL SHAKE, NATIONAL CHILD WELFARE DIRECTOR,
AMERICAN LEGION

Mr. Chairman and members of the subcommittee, I am Randel Shake, National Child Welfare Director of The American Legion, a position I have held for more than seventeen years. My office is located in the National Headquarters Building of The American Legion at 700 North Pennsylvania Street, Indianapolis, Indiana.

The American Legion supports the passage of H.R. 2525, a bill to create a Commission on Obscenity and Pornography.

Since its inception The American Legion has been interested in the children of this Nation and for more than forty-three years has carried on an active organized child welfare program through the several states. At the present time we have over 16,000 Posts and nearly 14,000 Units of the American Legion Auxiliary which stretch from border to border and coast to coast. Our Child Welfare Program in the main is carried on by volunteer child welfare workers among the members of The American Legion and its Auxiliary and we estimate that we have nearly 50,000 people volunteering their efforts toward a better life for the Nation's children. Because of our structure and the rather unique use of organized volunteers, we believe we are in an excellent position to secure a

"grass roots" expression of the problems affecting children throughout the United States as well as those which are perplexing and frustrating to parents.

One such problem is the unsolicited flood of obscene and pornographic materials which sweep this Nation. As some slight measure of our concern, The American Legion has adopted resolutions concerning this problem since 1950. In recent years resolutions have been adopted in 1960, 1961, 1962, 1963, 1965, 1966 and 1967. I think this is evidence that our concern is not just a passing whim.

The last action by The American Legion was a resolution adopted by our National Executive Committee, meeting in Indianapolis, Indiana, on May 3-4, 1967. The resolution unanimously adopted by that body is as follows:

"CREATE FEDERAL COMMISSION TO INVESTIGATE OBSCENITY AND PORNOGRAPHY

"Whereas, Traffic in obscenity and pornography directed at our Nation's children and youth remains at a high level and is a threat to their moral fiber; and

"Whereas, Increases in sex crimes and certain types of juvenile delinquency are indicative that this threat has become a reality; and

"Whereas, It is most difficult for private organizations and individuals to obtain facts on the magnitude of this problem and to secure information concerning the sources of production and the channels of distribution for obscene and pornographic materials; and

"Whereas, For many years The American Legion has maintained a policy of complete opposition to the production, distribution and sale of obscene and pornographic materials; and

"Whereas, Legislation has been introduced into the Congress of the United States which would establish a Federal Commission on Obscenity and Pornography the functions of which would be to conduct a thorough investigation of this problem and to recommend advisable, appropriate, effective and constitutional means to deal effectively with traffic in obscenity and pornography; Now, therefore, be it

"Resolved, By the National Executive Committee of The American Legion, meeting in Indianapolis, Indiana, May 3-4, 1967, that it urges the Congress of the United States to act favorably on legislation which would establish a non-permanent Federal Commission on Obscenity and Pornography."

Beginning in 1954 The American Legion was quite active in supporting the establishment of a Comic Magazine Code Authority for the comic magazine industry. This Authority which "polices" itself has proven most successful in eliminating objectionable comic books. Likewise, we have supported various bills considered by the Congress through the years which would strengthen the Federal law dealing particularly with the mailing of obscene material. In that regard we wish to express The American Legion's appreciation for the action taken by the Congress which provided that an offender using the mails for distribution of obscene literature may be prosecuted at either the point of deposit or the point of delivery of such materials.

Our concern over the availability of this material to our children and young people stems from the belief that it tends to destroy the moral fiber of our children through the establishment of false moral standards. We recognize, of course, the vast increase in the crimes of violence and sex offenses among some of our youth. We do not attempt to establish a direct relationship between this type of crime and the availability of pornographic materials, but we do maintain that such materials tend to create an atmosphere in which other more direct causative factors may operate.

We are cognizant, Mr. Chairman, of the legal difficulties which face the Congress in its efforts to strengthen legislation controlling traffic in obscene materials. In like fashion, we are aware of the difficulties faced by the Supreme Court of the United States in protecting constitutional rights of individuals. With no criticism intended, we do believe, however, that some decisions of the Supreme Court in the past few years have created a "gray" area in the minds of many concerning what is or is not obscene. It has been our observation that this same attitude of indecision on the part of the general public has probably been adopted by some individuals in some of our agencies of criminal justice.

It is for this reason that we favor the enactment of H.R. 2525. We believe a thorough investigation of the whole field of pornography and obscenity, and the laws pertaining to it, with substantial consultation by leading constitutional law authorities, may serve to clear the air. We believe such an investigation would

greatly assist an organized and free society to establish the limits it wishes to accept without infringing on the constitutional rights of the individual.

We know such a study and evaluation would not be an easy task, but we are confident it would be of value to the general public, as well as to the Congress. We would sincerely hope that with the study information available, such a Commission would make recommendations to the Congress that would offer more substantial protection to the Nation's children from the moral evils of pornography.

If we have any criticism of H.R. 2525, it is that perhaps the bill does not allow sufficient time for a workman-like job to be completed. We do urge the Subcommittee to recommend this bill for adoption and we hope the Congress will support the recommendation of the Subcommittee.

Mr. Chairman and members of the Subcommittee, The American Legion expresses to you its sincere gratitude for the opportunity and courtesy you have shown in permitting us to make our views known.

NATIONAL ASSOCIATION OF EVANGELICALS,
Washington, D.C., May 15, 1967.

SELECT SUBCOMMITTEE ON EDUCATION,
U.S. House of Representatives.

MR. CHAIRMAN: The National Association of Evangelicals is extremely grateful to be able to add to the support of HR 2525. We represent a large and varied constituency of individuals, churches and denominations, totalling some two million members. Within the framework and active participation of our organization are a number of affiliate Commissions. Combining the participants of these various groups, the NAE serves some 10 million people.

We have been concerned for a number of years over the losing fight against indecent literature. Moral decay and debauchery within our society constitutes a far more formidable foe to our survival than any outside enemy. One of the largest contributing factors to this bankruptcy in respect for decency is the flood of salacious filth which has inundated our cities. Few, if any industries today are quite as lucrative. This not only provides a strong personal motivation for those without moral restraint, but also makes available unlimited resources for bribery, blackmail, coercion and superb legal assistance.

How has this happened? Much could be added about unfortunate, and unclear court decisions and mistrials of justice. But it seems to us that the most devastating results have been the confusion on the part of those who genuinely want to do something to remove this threat to our society.

An individual, though offended and outraged at local instances of pornographic sales, is at a loss to know how his influence might be felt. Should a group seek legal aid, and succeed in bringing this case to court, the lawyers for the defense scream "witch-hunter". The case is either dismissed with a token warning and a small fine, or dropped outright, while the root of the problem flourishes.

This literature, which in the past was found only in a very small segment of society, can now be distributed into all realms of society with impunity. The mails are no longer off-limits. Nor are the more erudite bookshops. Salacious material is out of the backstreets and into the salons.

It is precisely at this level that it does its worst damage. Because of the nature of the material, simple curiosity is a major factor in attracting new readers. Once the curiosity is sufficiently titillated, appetites are developed and so on down the scale. This has its most tragic results among the teenagers and junior age groups.

Government cannot take the place of a strong moral family, in educating the youth of the country. We would not place that responsibility before the legislators. But when any industry can so override due process of law, as the publishers, distributors and authors of the indecent materials have, then it is the priority of government to lay down boundaries outside which they cannot pass.

Quite frankly, Mr. Chairman, our own organization has been almost hopelessly confused in its effort to combat obscenity. Until a few years ago, we had a Churchman's Commission on Decent Literature. But this was dropped from the activities of the NAE, when we came to the morass of legal wrangles that did not result in any solutions and involved great sums of money.

We have passed a number of resolutions at our annual conventions, beginning in 1953. Our latest was in 1965, and in part is quoted here:

"Whereas the lucrative business of pornography has greatly increased the flow of obscene literature and Whereas the U.S. Supreme Court has held that

obscenity is not protected by the U.S. Constitution and that 'contemporary community standards' may be enforced by law * * * Therefore be it resolved that the National Association of Evangelicals Commends the U.S. Supreme Court for its purpose to promote objective justice and proper interpretation of the U.S. Constitution regarding the control of obscenity but deplores any court's decisions which undercut the responsibility of the states to deal effectively with obscenity cases, thus significantly encouraging the traffic in obscenity."

But we have not introduced resolutions since then because it has become merely redundant verbiage. We are very much interested in this issue. Our people are deeply concerned and disturbed. But we have reached a point of near exasperation in getting effective action through the normal processes of the courts or other civic action.

We note the provisions of HR 2525, and of the companion bill which passed the Senate on the 11th of this month. We are particularly pleased with the paragraphs that take notice of the need for dissemination of information and trust that at least this would be a beginning for the problem stated earlier.

We trust that as such measures became reality, the Commission would be able to clear the technical jungle that has grown up about the issue of free press, and wise printing, so that those who are genuine in their authorship-publishing activities would be unhampered by "witch-hunting" and those who are pandering the public with overbearing indecency would be properly controlled.

Thank you very much.

Clyde W. Taylor, General Director.

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