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OBSCENITY IN THE MAIL

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HEARINGS

BEFORE THE

COMMITTEE ON POSTAL OPERATIONS

OF THE

COMMITTEE ON

POST OFFICE AND CIVIL SERVICE

HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

SECOND SESSION

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HEARING ON THE REPORT OF THE PRESIDENT'S COMMISSION ON OBSCENITY AND PORNOGRAPHY, AND ON H.R. 19541, A BILL TO AMEND TITLE 39, UNITED STATES CODE, TO IMPROVE THE PROTECTION OF A PERSON'S RIGHT OF PRIVACY BY DEFINING OBSCENE MAIL MATTER, AND FOR OTHER PURPOSES

AUGUST 11, NOVEMBER 17 AND 18, 1970

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OBSCENITY IN THE MAIL

TUESDAY, AUGUST 11, 1970

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

The subcommittee met, at 10 a.m., in room 210, Cannon House Office Building, Hon. Robert N. C. Nix (chairman of the subcommittee) presiding.

Mr. NIX. The subcommittee will be in order.

It is the position of this subcommittee that legislation in conformity with U.S. Supreme Court cases on obscenity may do three things. It may protect the privacy of adults, it may bar pandering advertising from the mails, and it may protect children from obscene materials according to a separate standard applicable to children.

Based on this understanding of the law, the subcommittee recommended and the House of Representatives enacted H.R. 15693, which bill is now before the Senate Post Office and Civil Service Committee. Title II of that bill, which is a privacy protection provision, is part of the postal reform bill, H.R. 17070, the Dulski bill which has been passed by both houses of Congress. The protection of minors, 16 years and under, contained in title I of H.R. 15693, another Dulski bill, awaits action by the Senate.

I have not seen the final report of the President's Commission on Obscenity which began its study in earnest during 1969. I understand the final report will be ready for distribution to the public on or after August 30, while Congress, of course, is in recess. The final deadline for submission of the report to the President, according to the statute which created the Commission, is September 30.

Because the report is due to be published when Congress is in recess, I thought it wise to at least have preliminary hearings on the Commission's work before any intensive study is given to the report in September or October. I believe that we should all reserve judgment on the report until after its publication and therefore the purpose of these hearings is to alert the public to the report's coming publication in order to avoid uncritical acceptance of what may be very broad conclusions.

Tentative drafts of panel reports and a tentative draft of a full staff report raise questions in my mind as to the methodology pursued and the broad conclusions drawn. I believe that the use of scientific terminology should not protect such a report from careful scrutiny.

Our first witness today is Dr. Victor B. Cline, a psychologist from the University of Utah.

I understand Congressman Burton from Utah is present. I am very happy to have my colleague from Utah present, and it will be a pleasure for this committee to have you present Dr. Cline.

Mr. BURTON. Thank you, Mr. Chairman. It is a pleasure to introduce Dr. Cline.

As you and the other members of the subcommittee know, I have some bills on pornography pending before the committee. And I am happy to have Dr. Cline as a lead-off witness, because he is a real expert.

Not only is he from Utah, but he is a professor from my alma mater, the University of Utah, and as you can see in his opening statement, he is a Berkeley Ph. D., and I think that is interesting. He is a member of the American Psychological Association, a professor of psychology at the University of Utah, teaching courses in clinical, child, and experimental psychology. He was formerly a research scientist with the Human Resources Research Office of George Washington University. He is a practicing clinical psychologist, engaging in psychotherapy, author of over 40 published research papers, principal investigator of a number of research projects funded by the Office of Naval Research, the NIH, Office of Education, and so forth. He is the program director of the Southern Utah Guidance Clinic.

Dr. Cline has prepared for the committee a statement that I think will be very helpful, and he has some comments, Mr. Chairman in which your committee will be interested. So at this time, I would like to present Dr. Victor B. Cline from the University of Utah.

Mr. NIX. Thank you, Congressman Burton. I would like to say to you, Dr. Cline, that the committee is deeply appreciative of the fact that you are appearing here today, and we gladly welcome you.

Mr. BURTON. May I say, Mr. Chairman, that Dr. Cline has prepared a major study of the impact of pornography on the young, and that will be apparent to your committee as it is unfolded.

STATEMENT OF DR. VICTOR B. CLINE

Dr. CLINE. Congressman Nix, I appreciate this opportunity to speak before this committee. I have three documents which I would like to present today. The first is a letter which I sent last week to each member of the Commission on Obscenity and Pornography. The second is a critique of the Commission's Effects Panel report which accompanied this letter, and the third is a paper somewhat dated now which I have prepared entitled "Pornography and Behavior: The Issues and Evidence."

This latter is rather lengthy so I will submit it in written form, but will not read or discuss it at any length during my presentation today.

Mr. NIX. Do you wish to have the documents that you mentioned made a part of the record?

Dr. CLINE. Yes, I do.

Mr. NIX. Without objection, then, the documents indicated a moment ago by you, Dr. Cline, will be made a part of the record at the end of your testimony.

Dr. CLINE. Thank you.

I find myself in the difficult and awkward position of being asked to

review and evaluate a report which has neither been published nor even been approved by the Commission responsible for it. However, since the report has been unofficially released anyway, and some members of the Commission staff have been giving interviews citing the results to the media, with a great deal of attendant publicity, I do feel at liberty to discuss it with you today.

First, I would like to read the letter which I sent to each Commission member, including the chairman. [Reads:]

DEAR DOCTOR LOCKHART: Several weeks ago a fellow member of the Presidential Commission on Obscenity and Pornography sent me a draft copy of the "Effects Panel" report asking for comment. This, I suspect, was done because I was a psychologist with some training in social science methodology and statistics, had testified before your Commission at the Los Angeles hearings last May 4, and did have some acquaintance with the scientific literature in the area of obscenity and pornography.

After reading the Effects Panel report, I found it so badly flawed in so many respects, frequently drawing conclusions and making inferences unwarranted by the data, neglecting evidence showing contrary views, and ignoring issues which would seem logically to be in the purview of the report, et cetera, that I prepared a brief though necessarily limited critique. This was limited in scope because of not having access to all of the original studies (especially those financed and supported by your Commission).

In my view, while this report presents itself on the surface as a fairly thoughtful rational review of the scientific evidence, it in fact is a gross mixture of truth and error, part science fiction, and certainly a travesty as a scientific document attempting to do a judicious and fair survey of the literature in this area.

I recognize that in this letter I am raising grave and serious questions which to some extent reflect on the competence and credibility of your professional staff (not the Commission members themselves, for the most part). If my charges and views be in error, let an independent panel of experts so determine this.

If what your hired professional staff has written is true, scientific, valid, and without major flaws, then they should welcome a careful, thorough evaluation of what they have done by those peers having high competence and professional ability. And if the Commission would allow, I would like to make a more lengthy critique of this report, but would request access to the complete studies.

When addressing the Commission at the Los Angeles hearings last May 4, I recommended as strongly as I could and again do so (especially in the light of the report that has been produced) that an unbiased panel of scientists with special competence in social science research methodology be assembled to (a) evaluate the original research sponsored by the Commission, and (b) assess what conclusions might legitimately be drawn from the assembled evidence. I would suggest that these experts include people of the caliber of Dr. Kenneth Clark, President of the American Psychological Association, and that they represent some variation in social, political, and even religious values, since these factors do significantly contribute to experimenter bias.

If you really are interested in ascertaining the truth about pornography's potential harm or nonharm, I see that you have little to lose by such an endeavor.

Since this Commission's report undoubtedly will have a profound effect on legislation before Congress, the judiciary, educators, the media, ministers, and even parents, a flawed report being issued under the Commission's imprimatur would represent a major dereliction of responsibility as well as contributing even further to the tensions and conflicts which beset our society. This is especially so now, since in my view this report has limited credibility and is certain to be vigorously attacked by knowledgeable critics, as well as others.

Despite the above comments, it is obvious that a great deal of information has been assembled which will indeed advance our knowledge about pornography's effects on human behavior, and even from those studies that are flawed due to poor design, inadequate samples, etc., a great deal of useful information can be secured which will prove helpful. However, all of the positive contributions made

will be cast into controversy and will tend to further polarize at least some people in our society even more, if this sloppy and poorly done report stands in its present form.

Yours sincerely,

VICTOR B. CLINE, *Professor.*

Next, I would move on to the critique, which begins, "Evaluation of Effects Panel Report."

This review is limited by the fact that I don't have those studies funded by the Commission which are cited and used in part as evidence in coming to many of their conclusions. I do have a number of studies, but not those which the Commission had funded. Despite this, enough details are given and I am acquainted with some of the studies sufficiently to comment on them. First, I might make a few overview comments.

(a) Time and again conclusions are drawn which are not warranted by the data presented.

(b) Most of the studies investigate "relationships" between things, but not causality. Now, this means that they are not warranted in saying that pornography causes or does not cause specific behaviors. They just don't have the evidence. An example might be a relationship between a person's height and performance on a certain math test, of course because older, more mature children are taller. But from the scientific view, you would be in error to say that height was causally related to math ability. This would be because you hadn't controlled for age.

(c) In their review of the literature there are occasions when negative evidence is omitted, that is, evidence which favors conservative views on pornography's influence. Example: In their survey of how professional workers view pornography—note this is how psychiatrists and psychologists view pornography's effects—they omit the 1967 survey by the Christian Communication Apostolate, which was mentioned to them in my May 4 presentation to the Commission, which shows views contrary to their own.

(d) They sometimes indiscriminately mix good with poor studies, those having less worth because of crippling methodological weaknesses, making no distinction between the more valid and the less valid data. Not carefully evaluating the quality of the research they use in their report is a serious shortcoming of their whole Effects Panel report. Example: In my report to the Commission, I note in detail the shortcomings in the Lipkin and Carns study, which is in this document I presented to you entitled "Pornography and Behavior, Issues and Evidence." I note in detail the shortcomings of the Lipkin and Carns study of professionals' attitudes toward pornography and how opposite conclusions could be drawn from their data.

These shortcomings are never mentioned, even though specifically pointed out to the Commission. To put it in a less charitable way, I doubt that any decent university psychology department would award a master's thesis on the basis of such an incautious review of the literature as this is, and especially the unwarranted conclusions drawn from some of the data.

(e) There is neglect of consideration of a whole group of negative effects variables such as (1) the increase in VD in the last 5 years; (2) divorce rate, highest in 25 years since the war; (3) aggressive rape,

great recent increases; (4) premarital sex pregnancies, significant 10-year increases (these latter two items are discussed but not adequately); (5) child molest, not adequately considered by the panel; (6) extramarital sex, not discussed or considered by the panel.

Now, since the Kinsey studies there should be recent data indicating if there has been significant changes in this area which would certainly have an implication for the stability of the family. This is not considered by the Effects Panel.

(f) There is a total neglect of the porno-violence problem, where pornography and sado-masochistic themes are combined with the possible influence of this type of material on the viewer. This is especially surprising since a majority of the so-called skin-flics link this material together; example, Russ Meyer's "Harry, Cherry, and Raquel," as do also a great number of porno paperbacks; example, "Last Exit Brooklyn." And there is a great deal of substantive and suggestive literature (research) dealing with violence in the media. This problem was called to the attention of the Commission, so their neglect of it is obviously arbitrary.

(g) There are surprisingly few qualifications in either their conclusions or presentation of their research findings when such are repeatedly called for because of the flaws in many of the research studies cited. This suggests that those panel members reviewing the effects problem are either not properly trained in scientific methodology in the behavioral sciences, or did not get unbiased consultants to review their interpretations (report) of the research data. Since this report will have major status in the nonscientific world, the media, among the judiciary, and even with many parents, I feel it is critically important that the major research studies as well as the conclusions drawn about their meaning be subject to an unbiased panel for review. Such a panel might include such people as Kenneth Clark, president of the American Psychological Association. The report in its present form presents a major problem of credibility.

(h) Throughout much of this report there is a very slipshod and changing definition of what is meant by pornography and erotica though the Commission did attempt for some of their own studies to use standard films and slides. But sometimes it is written material of minor erotic content, or a film showing nudity but not much else, or a still picture showing a woman engaging in oral intercourse with a man, or a movie showing lesbian and heterosexual activity. Thus in discussing effects, there is a tacit assumption that all of this material is somewhat the same, and hence has probably an equivalent effect or noneffect on the viewer. Not sufficient recognition is given to these differences in summarizing the various research studies and making broad sweeping generalization about pornography's influence, or lack of it.

Also running through most of this report, and the research papers included, not sufficient attention is given to the amount of pornography consumed and over how long a period of time. A one-time viewing of pornography in a person's life may be given the same weight as someone viewing it consistently over many years. Particular studies varied in their attention to this problem.

There are innumerable problems with conclusions drawn from inadequate data. For example, they conclude in their item six that,

“Continued or repeated exposure to erotic stimuli results in satiation of sexual arousal and interest in such material.” The experimental study focusing on this problem went longer than several months, so they have no experimental evidence covering a longer period of time to justify such a statement. Their statement also rejects obvious clinical experience where a man may find himself stimulated by the nude body of his wife for 30 years, even though there may exist temporary periods of satiation as to need for sex and erotic stimulation.

The periodicity of the sex drive suggests continued cycles of interest and satiation continuing throughout life. Their conclusions suggest that if we let people have all the pornography they want, they will soon get tired of it and not want any more. Their evidence only shows that if you give people a great glut of pornography they will temporarily satiate. But the same may be said of having sexual intercourse, eating, drinking, and so forth.

Another example of an inadequate review of data is Kupperstein and Wilson's review of the statistics on illegitimate pregnancies and other data over several decades. They conclude in reviewing these data that “In view of the severalfold increase in erotica the data do not support the assertion that the heightened availability of erotica during the past decade has been accompanied by a parallel rise in the incidence of antisocial sex behavior among minors.” A look at the full data, which they do not give, does not warrant such an assertion.

Now, when I came to Washington yesterday, I went over to the Justice Department and looked through their statistical files as well as the U.S. Public Health Service, and I have some data here which I would like to present.

Now, what I did was to look at the latest figures on forcible rape for the last decade, which is one we are concerned about, also prostitution and VD, gonorrhea, illegitimate pregnancy, and sex offenses.

Let me just review what is on this sheet.

In the area of forcible rape, for all males, in the 9 years, 1960 to 1969, it is up 57 percent. This is on top of population growth. I mean, this is corrected for population growth; for males under 19, however, it is up 86 percent. In the case of prostitution and commercial vice—by commercial vice, they mean the operation of a house of prostitution, things of this sort—for all females, this is up 80 percent, but for females under 18, it is up 120 percent. These data are corrected for population increase.

In the case of VD and gonorrhea, for females 15 to 19, it is up 52 percent. For females 20 to 24, it is up 36 percent. For females 25 to 29, it is up 25 percent over a 3-year period, 1965 to 1968. They didn't have data for other years with this kind of breakdown, though for the decade, 1960 to 1969, it is on the whole, up 76 percent. Now again, this indicates the highest rate of increase is with females under 19.

Then the case of illegitimate pregnancy, all females over this period of time, 1960 to 1969, it is up 17 percent; for females 15 to 19, it is up 28 percent, corrected for population increase.

In the next category we have what is termed by the Unified Crime Report, “sex offenses.” These include homosexual acts, statutory rape, things of this sort.

This showed, during the decade—for all people or all subjects—

down 17 percent. For those under 18, down 21 percent. However, according to Justice Department officials, this decline is spurious, due to the fact that there has been a change in law enforcement policy which has to do for example with homosexual offenses. Where formerly police officials in various cities would go through the parks and public restrooms arresting people engaging in homosexual acts, they have found in the last few years that they couldn't get convictions, so there has been a major change in this kind of arrest and enforcement policy. But there has been no real decrease in these kinds of sex activities. So this, in a sense, is a spurious type of figure, and should not be considered without this evidence in view.

Now, considering this they make the claim, that, "The data do not support the assertion that the heightened availability of erotica during the past decade has been accompanied by a parallel rise in the incidence of antisocial and criminal sex behavior among minors." The data suggest that this isn't true.

The Commission report presents such conclusions as these, which represent an almost Alice in Wonderland type of distortion of the actual evidence, as "truth" without any remarks about the shortcomings of the data, or the limitation of it.

Now, most of the research reviewed has another serious shortcoming. It treats pornography as a single unitary variable in its relationship to various potential antisocial behaviors. Actually most antisocial behavior is multidetermined. A good example is juvenile delinquency which may be caused by one set of variables in one person, and another set for another. A multivariate approach almost necessarily must be used in studying the causal correlates of something like rape, sexual maladjustment, child molest, so forth. Thus it is conceivable that pornography and addiction to it, or to porno violence, may be a contributing factor in only 26 percent of the rapes that occur. But unless the design of the research is quite sophisticated, this will never show up in one's data analysis.

Another type of error made throughout some of the research reported on here is the uncritical reliance made on questionnaires and verbal report which assumes that people, especially sex criminals, will and can give undistorted truthful reports of activities engaged in many years previously. The fallibility of this kind of data has been demonstrated repeatedly, including the polls conducted in England up to 4 days before the English people voted out the Labour Party—in complete contradiction to the surveys of public opinion made by a number of professional polling groups.

On page 117 several studies are cited where adult bookstore and movie patrons are white, middle-aged, and middle-class who appear to be respectable members of our society. It is also noted that blacks are underrepresented in these bookstores even though they are overrepresented in crime statistics. Thus the Commission suggests that it is respectable people who prefer pornography. What they forget to say is that these adult bookstores and movies are located for the most part in downtown urban areas near hotels and businesses frequented by middle-class whites. None of the researchers went into the Negro ghetto, or working class neighborhoods—with but one or two exceptions—to assess the type of erotica purchased there. Many corner drug-

stores sell all types of literary pornography and soft core picture magazines. No mention is made of mail-order pornography in this portion of their report. So to conclude that pornography is a special and even almost exclusive concern of middle-class whites on the basis of the limited data presented cannot be substantiated by any study reported here.

Item 16 of the report states, "Sex offenders, compared to other adults, are generally less experienced and less interested in erotic materials during both adolescence and adulthood." This is not entirely accurate. In the Gebhard study of sex offenders they found that about a third of their male controls said that they had owned or personally possessed pornography while a general prison group reported about half their number possessed it.

When all sex offender types are combined they are above the normal controls, that is, people out of prison, but somewhat below the prison group in owning and possessing pornography. But when we look at the specific subgroups within the sex offenders we find that homosexuals who have committed sex crimes against adults lead the list above every other group with 54 percent possessing and owning pornography.

The Commission overlooks these data and never reports—in their review of the Kinsey research—on the sex offenders in subgroups. This is a serious flaw in their report. Psychologically the man who commits incest with a minor is an entirely different sort of person from the aggressive rapist or homosexual, and to combine them in any type of data analysis is scientifically unwarranted.

The Gebhard data confirm this again and again in all sorts of comparisons of these different types of sex deviants. This is particularly glaring as an example of not reporting data which suggest findings different from the conclusions reached in their summary section.

One additional problem has to do with the report's omission of any reference to the studies of imitative and social learning of Albert Bandura and his associates. This series of researches suggests that a great deal of learning occurs through watching and imitating the behavior of others. Much of pornography is not just an obscene picture of a couple copulating. It involves literary depictions of sexual assault, as in the homosexual rape in "Myra Breckinridge." A good share of pornographic—soft core and hard core—films model a variety of anti-social sexual behavior. If Bandura's research has any validity it would suggest that certain types of pornography involving whole sequences of behaviors probably would affect some individuals if they saw it consistently modeled on the screen or in fiction. This certainly has been true with certain types of delinquent behavior when juvenile offenders have in some instances repeated what they saw on the screen.

As an aside here, I mention an incident which happened a few months ago in Salt Lake City. A junior high school boy was found drunk in school with some of his companions. On investigation, they found that this young man had seen over educational TV a few nights before a documentary on how to make whisky. On the basis of this one-time exposure or viewing, he built a still, made his own whisky, and brought it to school. This is one amusing example of imitative learning or modeling that Bandura has done a great deal of impressive research about.

I think that the same thing might occur if one were to see consistently modeled before one various other types of antisocial behavior.

Now, I have an addendum to the critique which I sent to the Commission which I have not yet had time to forward to them. This adds further comments about the report.

No "attitude changed by pornography" study went longer than 30 days—based on information available from their report. To claim as they do that, "Exposure to erotic stimuli does not alter established attitudinal commitment regarding either sexuality or sexual morality" on the basis of such limited data would appear an unwarranted and injudicious claim. About all they can legitimately say is that no changes were found in this brief period of time under the conditions of this particular experiment. Their generalizations are not warranted by the data.

There is no study reported and no mention made of the problem that addiction to pornography might have relative to marital adjustment. The pattern of a husband preferring pornography over his wife for erotic stimulation and masturbation for sexual outlet can cause considerable adjustment problems in some marriages. This information was in the data collected by Rene Nelson which the Commission possesses and was again suggested in the May 4, 1970, report to the Commission by this speaker. The Commission has neglected this type of effect or any other type of marital effects problem.

In their summary section the Commission states, "Professional workers in the area of human conduct generally believe that sexual materials do not have harmful effects." Yet in the Lipkin and Carns study—which they repeatedly quote from—which is flawed by sampling problems and other weaknesses, they use only that data which supports their position. They fail to state in actual numbers that 254 psychiatrists and psychologists had seen cases where they found a direct causal linkage between involvement with pornography and a sex crime, while another 324 professionals reported seeing cases where the relationship was suspected. While these 588 therapists represent a small group percentage-wise, it would seem to this reviewer irresponsible to gloss over them as if they didn't exist. In addition, their neglect in citing other studies—also flawed—which show a majority of therapists seeing cases where pornography and sex crimes are linked is to me difficult to comprehend.

Their report is lacking in any longitudinal studies which would be most revealing or even any true in-depth clinical studies of individuals. The vast majority of the studies involve either a survey of some sort, asking questions about attitude, history, and so forth, or exposing people to pornography briefly then seeing what they say or do or feel. The problem with the questionnaire is that one never really knows, especially in the sexual area, how accurate or honest the respondents are. The problem with the short-term experiment is that the samplings, to begin with, are biased by excluding all those people, especially females, who refuse to submit to such an experiment.

It is also highly unlikely that anybody will participate in antisocial sex activity when under such close observation, or admit to some criminal behavior—child molest, rape, exhibitionism, and so forth—even if he did it as a result of the experiment. Also the brief time span of the

experiments never allows one to determine if pornography has a long-term effect in changing morals, attitudes, and behavior, which one might more logically and realistically expect.

Probably the most important study funded and cited by the Commission is that by Abelson, et al., wherein they survey a nationwide sample of Americans on their attitudes about pornography and associated subjects. But a close examination of their data suggests that some of their results are suspect and of questionable validity. In Kinsey's studies 77 percent of his male subjects and 32 percent of his females reported sexual arousal by erotic materials.

In Abelson's survey only 23 percent of his men and 8 percent of his females admitted to this. This tremendous difference in findings raises serious questions about whether Abelson was getting honest and valid responses from his sample, especially when most other studies get figures closer to Kinsey's.

Additionally, most experimental studies show 60 percent to 90 percent of both sexes being indeed sexually aroused by the erotic. Since Abelson's interviewers were for the most part middle-aged housewives with little or no previous experience in this type of sex interviewing, it is possible that on a good share of the sex questions, there would be some reluctance for many people to be completely candid with these mother-type interviewers. So there exists serious questions about the validity of this keystone study referred to so frequently throughout the report. It should be noted that there was one questionnaire for adults which was filled out privately, but a sizable number were not returned for analysis.

The Commission quotes researcher Gebhard of the Kinsey Sex Research Institute as saying that in his study, he found sex criminals as being sexually unresponsive to stories of rape, violence, and torture—inferring that this is the way all sex offenders are. They fail to state that Gebhard was referring to only one type of sex offender out of 21 types studied, who comprised only 14 percent of the total sample. They don't mention this, or that this data was based on retrospective verbal self report, uncorroborated by any direct evidence and subject to the usual defenses, distortions, and inaccuracies of this type of data. They also give overinflated, incorrect numbers of subjects. Their figure is 1,500. The actual figure is 199.

Additionally, if one looks at Gebhard's original data we find that certain types of sex offenders score extremely high on being sexually aroused by pornography. These are heterosexual rapists of minors, homosexual offenders against adults. But this, again, is not reported. It is effectively masked by combining all sex offenders together, which includes certain types like those individuals committing incest against minors, for whom pornography turns them off, for the most part. Hence they get very low scores on arousal and depress mean group scores if combined with other offenders.

So when the Commission concludes that, "Sex offenders are less aroused by erotic stimuli and less interested in the erotic than adults generally" they have manipulated and misreported their data and are not telling it like it is.

In the overview and summary it states, "Studies indicate that exposure to sexual stimuli has detrimental impact upon moral character,

sexual orientation, or attitudes about sexuality among youth." This statement is made despite the fact that not a single longitudinal study, not a single experimental study, not a single definitive research of any kind has been done in this area relative to minors. The only information presented is inconclusive circumstantial evidence of very limited application and relevance. When they state that there is "no evidence," it means, though they don't state it, that there is no evidence both ways. Their conclusion of "no detrimental impact on youth" in the absence of any significant juvenile research reveals a shocking and naive disregard for truth and the canons of honest scientific inquiry.

And in concluding with this statement, I would like to say that I am not referring to the individual researchers of good reputation in the field, many of whom have expended a great deal of legitimate and serious effort. And even though many of these studies are flawed, this is certainly true of most social sciences research.

Thank you very much.

Mr. NIX. Thank you, Dr. Cline.

Mr. BURTON. Mr. Chairman?

Mr. NIX. Yes, Congressman?

Mr. BURTON. I hope the committee would have time to read Dr. Cline's entire presentation here, which you graciously inserted in the record. But if you don't have time to read it all, I would recommend that you read page 2 concerning pornography in Denmark, and page 4, the section entitled "pornography and violence," and page 12, the section entitled "No girl was ever ruined by a book?" And also page 16, "If pornography is so bad, why do people buy it?" That is page 2, page 4, page 12, and page 16.

And I think Dr. Cline has raised some very serious questions about the validity of the Commission's report. In that respect, I endorse his statement.

We thank you for the opportunity to appear, and will be happy to answer any questions.

Mr. NIX. Thank you, Congressman Burton.

It is a pleasure to have you, Dr. Cline.

Dr. CLINE. Thank you.

Mr. NIX. I understand from your testimony that you categorically reject the statement—such of it as has come to your attention—as being scientifically inaccurate, incomplete, and very poorly done, and the most that could be said is that all they can legitimately say is that no changes are found in this brief period of time under conditions of this particular experiment?

Dr. CLINE. That is essentially correct. Or to put it in other words, the report is suspect, because of the manipulation of some data, the misreporting of some facts, the omission of evidence which suggests other kinds of views, and other sides to many of the questions. There are serious problems in making interpretations about this report.

Now, what I have asked the Commission is if I could review some of their sponsored research and other data. Now, my critique here, remember, is only a partial critique. I have asked the Commission to be able to review many of their original studies, because this is just the beginning of the critique of their study. There are many flaws in it. I

think that the whole study needs to be very carefully reviewed, as I suggested, by a panel of independent experts in the social sciences.

Mr. NIX. One of my concerns, Dr. Cline, arises from the fact that this is a study consisting of a limited number of experiments over a limited time, and yet its conclusions affect or concern themselves with the entire remaining 50 years of the subject's life. And when I read that part of the report, then, since the first conclusion the Commission has found, that, "Explicit sexual materials do not have any ascertainable causal relationship with crime, juvenile delinquency, other anti-social conduct, sexual or nonsexual deviancy, character disorders, or significant emotional disturbances"——

Dr. CLINE. This is a remarkable statement. And sufficient evidence in my opinion is not here to support it.

Mr. NIX. And they go on, the second conclusion, "The Commission believes that the present and potential size and nature of the industry in the most explicit type of sexual materials and the profitability of this industry also fails to provide any reason for governmentally imposed prohibitions upon adults." In reading the report, I haven't been able to see that any evidence is included in the report to support that conclusion. Perhaps you have found evidence to support it.

Dr. CLINE. I have not. I would like to comment that there have been a number of extremely interesting and helpful studies, and I am sure when these have all been evaluated, some very useful and helpful conclusions can be drawn. But that is still in the future.

Mr. NIX. They go further, to say, "The Commission concludes that the relaxation of remaining legal controls upon what adults may purchase or view would not dramatically alter the market for such materials in the long run." Now, for the life of me, I fail to understand how they could have reached that conclusion.

Mr. BURTON. Mr. Chairman, could Dr. Cline comment on that?

Mr. NIX. Yes, of course.

Mr. BURTON. On page 2, where you said that the availability would not necessarily increase sales, this is one of the pages I recommended.

Mr. NIX. Yes.

Dr. CLINE. In Denmark, they cited supposed reduction in the sales of written pornography. But what has occurred there—since their law was changed permitting or legalizing the selling of all types of pornography—has been a switch in the type consumed, a change in emphasis in the type of pornography purchased which has gone from the written material more to the visual type of material. In fact, they indicate this in their report.

Mr. BURTON. They are selling \$35 million now in Denmark, a country of little more than 4 million people. They have a foreign market of more than \$65 million.

Mr. NIX. Finally, the Commission finds that, "Public opinion in America does not demand that legal prohibitions be imposed upon the distribution of explicit sexual materials to adults." There again, I would like to have you comment, Dr. Cline.

Dr. CLINE. According to Gallup polls, and some of the other polling agencies, a high percentage of the population does indicate some concern. The main evidence that they offer to suggest this is true is in the Abelson study which I have commented on, in which they did this

nationwide survey. The question they asked each of the people they sampled was something like this: "What are the two or three major problems which face our country?" And because relatively few people mentioned pornography, they concluded that this is not a pressing problem in America today. Most people mentioned the war in Vietnam, which would obviously be No. 1, and things like crime in the streets, and so forth. But this is an example of getting the kind of result you want by asking a certain type of question.

In other words, they didn't ask any question specifically about concern about pornography, which the Gallup and other polls had previously, which showed just the opposite—that was that many people were very concerned about it. If you don't ask questions about it, or ask only this one question in this way, you get this kind of result.

Mr. NIX. The report goes further:

In recommending the repeal of adult legislation, the Commission also seriously discussed and considered the view that such legislation should be retained in order to aid in the protection of young persons from exposure to explicit sexual materials. In response to this concern, the Commission affirmatively recommends the adoption or retention of legislation designed to protect young persons from exposure to certain materials without parental consent. The Commission does not believe, however, that the objective of protecting youth can or should be achieved at the expense of totally denying adults the right to obtain materials of their choice.

Do you have any comment on that, Dr. Cline?

Dr. CLINE. In my May 4 presentation to the Commission, my recommendation was that for now the present laws be left unchanged, and that we institute important, major, well-funded, longitudinal research in this area which in the end will be the only research which will ever give us, I think, any really valid kind of answers to these questions. And until we have this evidence on hand, I think that the onus of responsibility for proving no harm when suggesting any major change in our laws is on the people who propose the change. In other words, I am suggesting that they have the burden of proof to demonstrate that it has no harmful consequences. So it seems to me that we do need more findings and more good research before we make any major changes in our laws.

Mr. NIX. If that portion of the report that has come to the attention of the subcommittee reflects the conclusions that will be set forth in the full report, insofar as this Member is concerned, \$2 million is too high a price to pay for what has been received.

Mr. Derwinski?

Mr. DERWINSKI. Thank you, Mr. Chairman.

Doctor, your letter to Dr. Lockhart made reference, and I quote, "I am raising grave and serious questions which to some extent reflect on the competence and credibility of your professional staff."

Now, to what degree have the members of the Commission allowed the staff to run away with this operation, or to what degree, to your knowledge, have the Commission members, rather than staff, played a major role?

Dr. CLINE. My understanding, after talking to several of the Presidential Commission members, is that a professional staff was recruited and hired who did most of the actual work of collecting evidence, assembling it, writing it up, and so forth, and their task was to prepare

this report. This was with some guidance by various panel members. I believe it was Prof. Otto Larson, University of Washington, who headed the effects panel report, and under his guidance this professional staff gathered this information. Then they were to submit it to the Commission as a whole, who were to approve it.

As I understand it, this has still not been done. In fact, I think they are taking today and tomorrow to make some decisions along this line. This is my understanding.

Mr. DERWINSKI. I would hope we could relate this comment of yours to your report of August 3 to the Commission. You refer, in point (f) in your commentary, to the Commission, and you make the charge that this neglect of data is obviously arbitrary. Here, again, would this be the staff neglect or to what extent would any of the Commission members be aware of what has been called to their attention?

Dr. CLINE. Well, at that time I presented to them in my opinion a number of issues which seemed germane to this problem, things they should be sensitive to, especially some of the possible flaws in some of the scientific literature, and so forth. When I read this report, I had the feeling that this was disregarded, and no cautions were introduced in accepting the evidence from these flawed reports, which is ordinarily, in the social and physical sciences, an accepted custom, if there are defects in your data, you report them. You don't present them to a nonprofessional audience as something they aren't.

This concerns me a great deal, this lack of scientific caution.

Mr. DERWINSKI. I have a recollection that at least one of the members of the Commission was disenchanted with the degree of work that he as a member was involved in, and he conducted a one-man hearing, for lack of planned activity on his part. Now, this leads me to the conclusion that the 18 Commission members have been on paper more than the activists that they might have been. They may be victimized by a staff which for reasons unknown to us at the moment, has gone off on inaccurate tangents.

Dr. CLINE. The problem is that only several members of the Commission have training in social sciences research methodology and statistics. This means that this kind of a report would be extremely difficult for the other members to evaluate, especially when presented in the form that it was.

In fact, it was very difficult—it took a lot of work on my part and a great deal of research to track down some of these studies to find out what the original data looked like. This would be almost impossible for these people not trained in this area to do. So there is no way in which they could really refute this kind of a paper presented to them.

So this represents, I think, very serious problems to the Commission members themselves. It was for this reason that I wrote with some haste and urgency my limited critique, asking only that the whole report be looked at carefully and thoughtfully, and that the truth come out. And this could be done by a panel of social scientists of impressive reputation. This is the only thing I ask. And, of course my critique is limited and incomplete due to not having access to all of their original Commission sponsored research.

But to present a report like this, which seems in my opinion so flawed—and there is no other word I can use but that one—and with

so many misrepresentations in the data, especially with the impact that this kind of report could have, and with so many of the Commission members really being unable to adequately evaluate it, it seems to me that we need definitely a more careful look at the study. This is all I am asking.

And if it is true, if it is scientific, if all my statements here today are ridiculous and unfounded, well, then these can be proved. But to release this incautiously, as some of them want to do, this concerns me.

Mr. DERWINSKI. This release, I suspect, was a deliberate leak to some segments of the press, and this technique is always questionable.

Doctor, you made a reference to the brief period of time in which certain tests were conducted. This is in reference to the conclusion evidently reached by the Commission. Now, would a lengthy exposure to pornography be habit forming? Is there such a thing as a habit-forming factor in exposure to pornography?

Dr. CLINE. With some people, this occurs. And in my clinical practice, I have had husbands who have been addicted to pornography and prefer it over their wives for erotic stimulation and use masturbation as a release.

This has had a major psychological effect on the wife. She feels rejected and unloved. She doesn't understand it. This has created serious problems in the marriage.

This kind of problem was presented to them May 4, which is also in other data which they have, like that of Rene Nelson, which I presented. Nothing was ever mentioned of this kind of thing, and I don't understand it.

Mr. DERWINSKI. You also make note of the fact that the Commission didn't make any mention or evidently did not study mail-order pornography. Our committee has gone into this in great detail over the years, and the mail-order business in pornography is a multimillion dollar operation. It is inconceivable that they would neglect or brush over this area.

Dr. CLINE. No mention is made of this in their Effects Panel Report. Now, they have several other reports which may deal with it from a legal or other point of view. In fact, in their Legal Panel Report, they may talk about this. But as far as effects, there is no discussion of this. This is neglected.

Mr. DERWINSKI. Thank you, Mr. Chairman.

Mr. NIX. Mr. Gross.

Mr. GROSS. Thank you, Mr. Chairman.

Dr. Cline, you have delivered a sweeping indictment of the Commission report. I will await with interest, and hope that I can attend the subcommittee hearings when the Commission appears in behalf of its report. But if any substantial part of your criticism—and I would not challenge it in the slightest at this time—if any substantial part of your criticism of the Commission report is accurate, I would agree with what I believe Chairman Nix has said, that there has been a terrific waste of \$2 million of the taxpayers' money.

I have no further questions, Mr. Nix.

Mr. NIX. Thank you, Mr. Gross.

Mr. Henderson?

Mr. HENDERSON. Thank you, Mr. Chairman.

I have no questions. I sit here as one extremely interested in the problem of pornography, and one who is concerned with the preliminary press releases associated with the report of this Commission. So I regret that I was not on time to hear the gentleman's testimony. I certainly will make it a point to read it.

Thank you, Mr. Chairman.

Mr. NIX. Thank you.

Congressman BURTON, I want to express the thanks of the committee for your appearance and the presentation of Dr. Cline, and I want to particularly express our appreciation to Dr. Cline for his appearance here, and for the contribution that he has made. I feel that it is a vital contribution and will be most helpful to the members of this subcommittee in arriving at whatever conclusions we see fit to find.

Mr. BURTON. I thank you, Mr. Chairman, on behalf of myself and Dr. Cline.

I would also like to tell the committee that if you look carefully at the research he has done on this without pay but because of his interest in the subject and his interest in coming back here, in refuting what appears to me to be a faulty Commission report, unscientifically taken, I think that we owe a great debt of gratitude to citizens like this. Because in essence, the things that I have heard and read in the press about the Commission report, the ultimate seems to be that if you saturate the public with pornography, that eventually they will get sick of it. And Dr. Cline's report, I think, in a very factual and scientific way, refutes that sort of an argument.

I am very grateful to you and to Dr. Cline, and to the members of your committee for hearing us out this morning.

Mr. NIX. Thank you.

There is one final thing that I should like to bring up. I recall reading in the limited statement that reflected some things done in the full report—which has not been delivered yet—that there is a difference between the reaction of the liberals and conservatives.

Did you come across that, Doctor?

Dr. CLINE. This is one of the studies I would like to look at. They have it locked up in their files.

Mr. NIX. That really intrigued me. I have to go into that more fully.

Again, I want to say I deeply appreciate your appearance here. Thank you very much.

Mr. BURTON. Thank you.

Dr. CLINE. Thank you.

(The article, submitted by Dr. Cline, follows.)

PORNOGRAPHY AND BEHAVIOR: THE ISSUES AND EVIDENCES (ADAPTED FROM STATEMENTS MADE TO THE PRESIDENT'S COMMISSION ON OBSCENITY AND PORNOGRAPHY, LOS ANGELES, MAY 4, 1970)

(By Victor B. Cline, Ph. D., Department of Psychology, University of Utah)

(The writer is a Berkeley Ph. D. (1953), member of the American Psychological Association, a professor of psychology at the University of Utah (teaching courses in clinical, child and experimental psychology). He was formerly a Research Scientist with the Human Resources Research Office (George Wash-

ington University), is a practicing clinical psychologist engaging in psychotherapy, author of over 40 published research papers, principal investigator of a number of research projects funded by Office of Naval Research, National Institutes of Mental Health, Office of Education, etc. He is the Program Director of the Southern Utah Guidance Clinic (a traveling mental health clinic, consultant to various government agencies, business firms, etc.) The January 30, 1970 issue of *Life* reviewed in a picture-story his research assessing the effects of violence in the media on children.)

Introduction

Despite some opinions to the contrary, few in our society would doubt that we are in the midst of a revolution of our values—religious, social and sexual. In the past ten years, in particular, we have witnessed a new permissiveness in the arts (and nonarts) in the realm of the erotic which now goes considerably beyond anything ever tolerated in our country's history. And it would appear that many educated Americans do not regard this with disfavor, but probably relish it as adding an additional spice to our cultural life. Certainly in some surveys made of behavioral scientists and clinicians (practicing psychologists and psychiatrists) there appears to be no undue concern about the potential "corrupting or harmful" effects on viewers of such materials. And it would probably be not unfair to say that in much of the popular press as well as the more intellectual journals there has existed a kind of benevolent tolerance, if not outright pleasure, in seeing the emergence of what some have called a "healthy obscenity."

To many this represents a kind of liberation of man's spirit from a period of repressive guilt about sex and one's body which seemed to stifle men and women in their relations with each other.

However, an unrestricted dissemination and diet of pornography may possibly present some problems to our society. This possibility has seen almost no discussion or examination in our more thoughtful and rational journals and magazines in the past decade.

Since a good share of the discussions about pornography and obscenity in most of the media have in recent years been supportive, tolerant, and generally accepting (with but few exceptions), the thrust of the present discussion will be to review some of the issues critically, in some depth, and from a broader perspective than ordinarily has been the case.

Examination of the "satiation theory"

A frequently raised issue relative to pornography has been the "satiation theory" which says in effect that if pornography were to be legalized and everyone were allowed to purchase or secure as much as he wished, people would soon become satiated and, presumably, their curiosity satisfied, and would not have much further interest in the material. An additional benefit seen would be the possible therapeutic effect pornography might have on potential sex criminals. It would serve to keep the potential rapist off the street. The April, 1970 *Playboy*, for example, cites the apparent fact that since Denmark legalized pornography in July, 1969, the rate of sex crimes there has declined dramatically and sales of pornography have also "dropped off". However, in a UPI report from Copenhagen dated January 10, 1970, Danish criminologists cautioned against crediting a drop in sex crimes to the new law. While previous reports had indicated a 31% drop in sex crimes, according to police and criminologists this figure was misleading because it incorrectly included (in the "before" comparison) public indecency, voyeurism, male prostitution, and the sale of pornographic material, all of which are now no longer considered crimes. Rape and sexual assault have not as yet changed in their incidence of occurrence. With regards to the drop in the sales of pornography this apparently is also not quite accurate.

While the demand for printed material of an erotic nature appears to have subsided somewhat, this has been replaced by a great compensating increase in the sale of visual-pornographic material (now legal). This would not seem unreasonable. For most individuals purchasing pornography, visual material would undoubtedly have a greater sexual stimulus value than the printed word and would probably be preferred by those seeking sexual arousal from this sort of material. Mention should also be made of the great increase in the number of Danish "porno-shops" since pornography has been legalized. *The Copenhagen*

Times (No. 6, January 1970) estimates more than 50 of these establishments are now clustered around Copenhagen's main rail station alone.

The *Times* estimates that the local Danish pornography market to be about \$35,000,000 (in a country of 4,800,000 people) and the export market around \$65,000,000. And certainly in the U.S. where almost any printed pornography is now freely available anywhere, there appears no general decline in its general volume or people's interest in it. Also in a study by Levitt and Brady (39) no relationship was found between pornography's ability to erotically arouse one and previous exposure to it (e.g., has not satiation effect). Thus to date, at least, there seems to be little or no hard evidence to support either the "satiation theory" or the "reduction of sex crimes" theory for pornography if it is sold unrestricted. And whatever the total effect will be will doubtless not show up in just a few months (in the case in Denmark). We may have to wait possibly for a generation to note its full effect on the life style, marriage, patterns of divorce, and the general happiness and well being of the Danish people.

Related to the "satiation theory" is the "catharsis theory" or "drainage theory" which says, similarly, that if a potential sex criminal reads or looks at pornography it diverts his attention and keeps him off the street, and that he now can vicariously drain or discharge his sexual impulses at the fantasy level. While careful empirical research on this question is quite limited, we do have a great deal of solid research in the area of violence. Some psychologists used to argue that seeing violent scenes on TV or in motion pictures or reading about them provides just such a catharsis or drainage of hostile and aggressive impulses (just as some similarly posit about pornography). In studies where both child and adult subjects have been exposed to scenes violent in content the results consistently show that this provokes the viewer to increased aggressive activity.

Here we have some fairly solid experimental and clinical evidence, much replicated, by such diverse investigators as Walters, Bandura, Berkowitz, Wertham, Hartmann, Siegal, etc., who have convincingly demonstrated that when subjects (adults and children) are exposed to scenes of violence, it very definitely effects their behavior adversely—with increased amounts of aggression (such as giving electric shocks of increased intensity to partners, beating up dolls, etc.). In other words, seeing violence is not a catharsis for hostile aggressive feelings, but rather a very potent stimulus that provokes people into greater overt acted out hostility on other human beings or human substitutes. Thus in the area of violence the so-called "catharsis theory" has been pretty well exploded. And one might well question whether pornography provides a catharsis rather than a stimulus to more sexual acting out—especially for individuals with weakened controls who might potentially harm or injure others. It would seem that the burden of proof rests with those who claim, "no effect" or that pornography should have unrestricted distribution because there is no evidence that it can damage or harm. In any instance of change or innovation, just as in the introduction of new drugs, it is the responsibility of the innovator to show or demonstrate "no harm."

Looking carefully at the violence research findings here is critically important because nowadays much borderline pornography is linked with violence in both motion picture screenplays and many books (e.g., *Nova Express*, *Last Exit Brooklyn*).

The problem of "porno-violence"

There is a relatively new phenomenon where we have the mass distribution of printed matter widely appearing in paperbacks at corner drug stores and supermarkets (and to an increasing extent in the newer films) referred to as pornography à la the Marquis De Sade which consistently links pornographic type material with sado-masochistic violence. Psychologists have invested a vast amount of energy in studying the processes whereby people learn things. One does not have to know too much about the conditioning theories of Ivan Pavlov and B. F. Skinner or understand in detail the research of Albert Bandura (2, 3, 4, 5) in modeling and imitative learning to recognize what might occur where a human organism is constantly sexually stimulated and aroused (which the research evidence shows that pornography can do) in association with printed or pictured themes and fantasies of people being injured, tortured and abused. The laws of learning apply here just as much as in any other setting. P. H. Johnson (27) in her analysis of the English Moor murders case argues that the literary model of De Sade's and a host of similar works helped both rationalize these murders as well as helped provide explicit formulation to the methods and details in carrying

them out. This is the case where both children and young adults were sexually violated and killed while tape recordings were made of the event. These tapes served to provide a further stimulus to later sexual activities of the participants, Ian Bradey and Myra Hindley. And while there are always a host of precipitating factors in any crime, it is not beyond the stretch of reason to believe that some of the models for this crime or series of crimes were provided in part by the vast library of sado-masochistic pornography which this couple collected, produced and stimulated themselves with.

The sexual arousal powers of pornography

We have evidence from studies by such investigators as Levitt, and Brady (17, 18, 39) that (not unsurprisingly) pornography does have the power to sexually stimulate and arouse the viewer (particularly males). In fact, the Kronhausen's (34) in their *Pornography and the Law* report that in their survey of (and exposure to) literally hundreds of "obscene" books in several languages that they—even at the end—continued to be stimulated by some of these materials. And the unanimous testimony of all those they interviewed who indulged in this material was that it was sexually arousing. But specifically *how* this sexual tension will be discharged will in part be determined by previous learning. It might involve masturbation, going to a prostitute (the March 11, 1970 issue of *Variety* interestingly notes the problem of prostitutes patrolling the "skin-flic" theatres of New York and picking up their customers as they came out the doors after being sexually aroused by the films inside). In certain individuals stimulation and arousal by such erotic materials could, under certain conditions, conceivably lead to a sexual assault, or child molest. Or what if association with a prostitute was a preferred sexual outlet, but no prostitute happened to be immediately available after being stimulated by pornography? Or what if the individual had a great deal of hostility toward women and saw a film modeling and combining sex with violence inflicted on the female? What might happen if he were then to see a prostitute shortly thereafter? The possibility of injury being inflicted is not beyond the realm of possibility. This is the type of "accident" that probably would go unreported and never show up on police files.

Limitations in doing obscenity research

Because of ethical considerations we cannot subject adolescents or younger age children to exposure in any quantity of pornographic materials and then follow them through with matched and control groups for 10 years to determine if they have been "harmed or injured" by such exposure, or their marital adjustment disrupted, or have suffered from any psychosexual or other disturbances. It is even most difficult in studying adults whose life histories have included much exposure to pornography, to disentangle the literally hundreds of causal threads or chains that contributed to their later adjustment or maladjustment. Because of the extreme complexity of the problem and the uniqueness of individual human experience, it is doubtful that we will ever have absolutely convincing scientific proof that pornography is or isn't harmful. And the issue isn't restricted to, "Does pornography cause or contribute to sex crimes?" The issue has to do with how pornography affects or influences the individual in his total relationship to members of not only the same but opposite sex with all of its ramifications.

Hardy's review of the scientific literature

Hardy, (28) a psychologist, after reviewing the literature relative to the potential harmfulness of pornography, concluded, "In persons whose impulses are well regulated by a mature sense of social and moral propriety, exposure to erotic stimuli per se is not likely to produce conduct which will violate their (personal) standards. Those who do not possess effective restraints on impulses will naturally be more likely to exhibit this behavior upon arousal. For some individuals, pornographic stimuli may occur as precursors to overt sexuality. On future occasions, they will serve as cues or triggers to such behavior. If such a sequence becomes habitual, similar pornographic stimuli may become established instigators to a behavioral sequence culminating in overt sexual expression (conceivably anti-social). They (pornographic materials) become, then, aspects of sexual foreplay." Hardy also concludes that some of the milder forms of obscenity may be potentially more "damaging" in changing attitudes and behavior because it is easier to identify with.

Spock's recommendations

Pediatrician Spock has expressed concern recently about the amount of violence and pornography in the media. This material, as he sees it, "Tends to assault the carefully constructed inhibitions and sublimations of sexuality and violence that are normal for human beings. This abrupt and aggressive breaking down of inhibitions can be disturbing to a society as a whole and particularly to its children. This seems riskier when a society already has soaring rates of delinquency and crime, an insatiable appetite for brutality on television and unprecedented loss of belief in man's worthiness." I would agree. Spock favors the retention of those codes (laws) which restrain those adults (who disseminate porno-violence) who have little in the way of standards or self discipline. He points out that in previous time it was relatively easy for parents with idealistic concepts of sexual love and a disapproval of violence to keep their children from more than accidental exposures to this material. "This situation is different today. The luridness of what's on the newsstands is limited in many places only by the personal ethics of the proprietor."

Pornography's threat to ego controls

With some individuals the pornographic depiction of sex may arouse fear that it may be difficult or impossible to control the cravings it arouses. These are felt by many persons, as psychoanalyst Ernest van den Haag (54) has noted as threats to what personality integration and ego dominance they have achieved. "It matters not at all whether the loss of control would actually occur. What matters, is the fear of losing control. This is often projected onto others and the fearful person may see them (the impulses) as uncontrolled and himself (herself) the victim. Censorship, laws, codes, etc., thus function as the social analogue to and in support of individual repression. Thus society represses those things that may swamp its order and impair its function."

The "no-proof" problem

Psychiatrist Max Levin (38) responds to the assertion made by the Kronhausen's (34) and many others that there is "no proof" that pornography produces crime and antisocial behavior, by calling this naive and deceptive, "The present is the result of the past. What we do or think at a given moment is the culmination of our whole life history up to that point. When a man commits a crime, he is responding not only to the situation of the moment but to all the events of his life, to the conditions of his childhood, to all the traumatic experiences he has undergone from the day he was born. In a few instances it is fair to assume a direct connection between obscene literature and a sex crime. But in most cases it would be a thankless job to try to allocate responsibility among the many factors, remote and immediate, that might have affected his behavior. But there is another and more important reason to dismiss the argument of "no proof." A test of pornography that focuses on the rate of crime is the wrong test. There is *overt* behavior and implicit or *internal* behavior. Crime is overt behavior.

A man's overt behavior may be impeccable in that he never commits a crime, he never assaults anyone, yet his internal behavior may be destructive in that he assaults himself with his distorted notions of sex and his disturbed sex fantasies, and, in the process, he victimizes those whose lives are intertwined with his, most of all his wife and children. It is probably no exaggeration to say that sexual and marital maladjustment causes a sum total of human suffering greater than cancer and heart disease. The number of people who commit rape is small, whereas the number of those who suffer from sex problems is enormous.

This, then, is the real test of pornography: does it disturb and pervert the feelings and attitudes that people have in the realm of sex. Does it foster an unhealthy conception of the role that sex plays in life. A man and a woman vow to love and cherish each other to the end of their days, but they end up as enemies. Hostilities in marriage is a complex matter, and it cannot always be defined in simple terms, but in many cases it stems from confused sexual attitudes. Sex ought to be the supreme expression of love and tenderness, but so often it is no more than a vehicle for the acting out of sadistic impulses. A husband, for example, fails to satisfy his wife and a study of his problem reveals that he fancies the sex act not as an act of love, but as a vent for his aggressive impulses. Levin goes on to raise the question if healthy attitudes could possibly

be fostered by an impressionable youngster reading paperbacks where the beautiful and sexually provocative blonde is raped, stabbed and viscerously dismembered?

In an unpublished study, Salt Lake attorney, Rene Nelson, after conducting several thousand interviews among young adults and adolescents in Utah and California focusing on their pornography viewing habits, found (among other things) a not uncommon syndrome where some husbands had developed a preference for pornography as a sexual stimulus (rather than their wives) with masturbation for relief which resulted in associated marital problems. How widespread this phenomena is would be difficult to determine because of the limitations of Nelson's sampling technique. But it would certainly suggest an area for further study.

Should society protect children and damaged adults?

This raises the question of who is responsible for those children (or adults) who lack healthy models, are damaged, or who have minimal internal controls? Does society through our legal codes have a responsibility to protect them? A specific sample of this problem in the area of violence is highlighted in the Final Report (1969) of the National Commission on the Causes and Prevention of Violence. (44) "We believe it is reasonable to conclude that a constant diet of violent behavior on television has an adverse effect on human character and attitudes. Violence on television encourages violent forms of behavior, fosters moral and social values about violence in daily life which are unacceptable in a civilized society. Further, television may reduce or even counteract parental influence. Moreover, television is a particularly potent force in families where parental influences and primary group ties are weak or completely lacking, notably in low income areas or where violent life-styles are common.

In these instances, television does not displace parental influence: it fills a vacuum. The strong preference of low income teenagers for crime, action, and adventure stories means that they are constantly exposed to the values of violent television programs without social importance, especially in the light of the large amount of time low income youngsters spend with television and the high credence they place in what they watch. The television experience of these children and adolescents reinforces a distorted, pathological view of society.

In the commission's studies they found that in every major city, the district which has the lowest level of education, the highest rate of unemployment, the poorest housing, and the highest degree of poverty was also the district with the highest rate of violent crime. These areas also have the most persistent television viewers. Here the distinction between the use of violence on television and that in real life is less than it is in other areas.

So whether we are talking about sex or violence and its expression it would appear that some individuals in our society are more susceptible than others to the things they are exposed to via the media. Since frequently sex and violence are combined in much popular literature and motion pictures, it would seem that this could have harmful consequences for some individuals.

Why don't parents assume the "censor" role?

The argument that its the responsibility of the parents to control or "censor" the materials their children might potentially be exposed to, is not as easy or practical as it sounds. In this permissive age where children have access to cars early, considerable money and mobility, control over what adolescent children are exposed to is difficult at best or impossible. Many parents have found this out to their horror when they have learned that their son or daughter has been using sophisticated drugs for (sometimes) several years without their knowledge. If the whole environment becomes polluted, many kinds of parental controls become extremely difficult. Where the family is emotionally or psychologically disrupted the problem becomes even more difficult. Throwing the full responsibility on the parents for the determination of what influence their children are exposed to is in this day naive and not altogether possible. Parents need the help of the community with its various protective agencies and resources.

Pornography's distortion of sex

One of the major objections that I have, as a psychologist who is frequently involved in marriage counseling and family therapy, with pornography are the distorted images it gives to adolescent youth still going through the difficult phases and crystallization of their psychosexual development. Most pornography is blatantly untrue and very unscientific. They are also terrible sex or marriage

manuals. Most are written by men and impute to females a male sexual nature and qualities of sexual feeling that are entirely untrue. Its sex miseducation without redeeming social value. Or as van den Haag (34) put it:

Pornography severs sex from its human context. It reduces the world to orifices and organs; incessant copulation without apprehension, relationship or love. It's the bare sensation of pain and pleasure. This reduction of life to varieties of sex is but the spinning out of unreal fantasies which upset the burden of reality and individuality, of conflict and commitment, thought and consideration. People are literally devoured, tortured, mutilated and dehumanized.

No girl was ever ruined by a book?

Jimmy Walker, a former mayor of New York, once quipped that no girl was ever ruined by a book. While this is slightly humorous, of course, we know this really isn't true. The Protestant Reformation was ignited by a written proclamation. Our whole educational system is dedicated to the proposition that books or the knowledge in them can change lives and affect our personal decisions. The printed word has laid the foundations for revolutions (e.g., Karl Marx's *Das Kapital*), and has helped change the course of elections and governments and even possibly converted or corrupted many people to entirely new ways of living. We have good evidence, as previously mentioned, that pornography does have the power to provoke and arouse sexual feelings in the viewer or reader. In some it will merely titillate, in another it may elicit feelings of guilt or revulsion, while in another it might conceivably provoke the individual to sexually assault or seduce another.

A single book written by Ralph Nader (*Unsafe at Any Speed*) has set in motion a whole series of events leading to legislation which is now undoubtedly saving thousands of lives yearly on the highway.

The Chicago survey of professionals' attitudes towards pornography

Occasionally surveys have been made to determine how professional psychologists and psychiatrists regard pornography and whether they see it as having harmful consequences for the viewer or consumer. One example of a survey of this type was made at the University of Chicago (40) in 1969 wherein questionnaires were sent to 7,500 psychiatrists and 3,000 psychologists (see *Forum Newsfront*, Nov., 1969). The main finding was that 80% of those surveyed reported that they had no cases (patients) in which pornography played a causal role in antisocial sex behavior. Much was made of this by some commentators (e.g., *Playboy*, Jan., 1970) as suggesting that pornography was relatively harmless and should not be censored or restricted.

However, if we look at the study a little more closely we find the picture isn't that clear or simple. In fact 56% of those surveyed indicated that they believed that censorship in some form should be applied to pornography. And 58% did not believe that pornography acts as a safety valve or catharsis (as some clinicians believe) to reduce sexual tensions (in a potential rapist, for example). Also we find that just 3,400 (or only 32% of the 10,500 who had been sent queries, mailed them back, which certainly does not give us a valid or representative sample of those surveyed.

Thus the 80% figure (those reporting or suggesting no patients harmed by pornography) shrinks to 26% or only 2,720. What are we to conclude if only 2,720 professionals of 10,500 queried say they have found no relationship between pornography and anti-social sex behavior? Also the critical question of how many of these therapists had actually seen or treated sex offenders and specifically studied the pornography dimension in their histories was never asked. Thus it is possible that a good share of these therapists may never have seen or treated individuals with histories of anti-social sex behavior. Most frequently those individuals involved in forcible rape and assault come from the lower socio-economic groups who not only are unable to afford therapy, but many would not be interested even if it were offered.

Just because many therapists never see these patients and even if they did, may never have specifically studied the possible etiology of pornography in their problem, do we throw out those cases where a number of therapists do report causal relationships? Then what about those who were surveyed who did find or suspect a relationship? In this study they represent 17% (of those who answered) who said they had either found a causal connection or were suspicious.

Do we discount the testimony of 578 therapists because they are in a minority?

What if 100 physicians from throughout the United States reported finding a link between cancer of the cervix and the taking of a certain type of birth control pill? Is their testimony discounted because another 1,000 physicians report not finding an association?

Another problem with the Chicago survey is the way the questions were worded. As surveyers and pollsters going back to Franklin Roosevelt's landslide victory over presidential aspirant Alf Landon ruefully found out, how you phrase or ask your question is absolutely vital in determining how many people will agree or disagree with it. In this survey the "negative effects" question, which is most vital to our concern is worded so that the respondent has to agree that pornography is a causal factor in anti-social sexual behavior. If other phrases had been used many more clinicians might have assented. In the behavioral sciences it is almost impossible to prove absolutely any direct causal relationship between two events because of the multiplicity of factors contributing to any behavior. Thus how you word your question is vital to what you obtain in your results.

Another vital omission in this (as well as almost all other similar type surveys) is the lack of concern about any *other* type of negative or harmful consequences than just the narrow legal concept of anti-social sex behavior (e.g., forcible rape) which pornography might be responsible for. Psychiatrist Max Levin, as previously indicated, makes the sharp distinction between *overt* and *internal* behavior. The number of people who commit rape is small, whereas the number of those who suffer from sexual problems is enormous.

Thus, if the writer had have received one of the Chicago questionnaires, he would have had to indicate "No" and be in the 80% group who reported they had had no patients who had participated in anti-social behavior because they had viewed pornography. Yet he has a patient now who is addicted to this material and chooses stimulation by it with masturbation for relief who is having acute marital problems because his wife feels greatly rejected in the sexual area. Questions about how pornography might affect marital and other sexual adjustment patterns are almost never asked, and rarely studied by psychotherapists.

In fact, with the data presented in the Chicago survey one could probably just as easily make a case that because several hundred therapists said they had indeed found a "causal link" between viewing pornography and anti-social behavior—that such a link probably exists. And the fact that an even larger number of therapists had *not* observed such a relationship is in no sense proof that a relationship doesn't exist. Because their non-observation of such a phenomenon might be due to not seeing this type of patient, or if they had they might not have systematically studied the specific problem of pornography's influence, or because of their personal values which might regard viewing pornography as personally agreeable (to the therapist) which could bias their observations, or pornography and anti-social behavior may only occur when X number of other events also coexist which would mean that only one in possibly five pornography addicts would exhibit anti-social behavior (as an example).

In sum this survey, as most like it,¹ is flawed methodologically. It would be most dangerous to draw any major or significant conclusions, and especially to make decisions that might effect legislation, judicial verdicts, or suggest to parents conclusions that would be unwarranted from the data relating to their concern about their children being exposed to such material.

If pornography is so bad why do people buy it?

An occasional argument used in defense of obscenity and pornography is that "We wouldn't sell it if there weren't people to buy it—we give the public what it wants." The problem with this is that there is no kind of social evil that one can't find a market for. But this does not mean that society has to tolerate it. Or theatre owners say, "We lose money on "family pictures," its sex and violence that sells." Yet if one looks at the 20 all time money makers, among these would

¹ A contrasting survey made in 1967 by the Christian Communication Apostolate, Archdiocese of New Jersey found 84 percent of the psychiatrists and physicians agreeing to the proposition that there was a relationship between pornographic, obscene, violent, crime-centered, or sadistic printed matter and delinquency. But here again, the findings are flawed because only 74 (18 percent) of the 417 psychiatrists who were sent questionnaires bothered to reply. Interestingly, the results of this survey were never published in Playboy or given much national press coverage as have other similar surveys which reached opposite conclusions.

nearly all be in the G or GP category with several exceptions. A "family picture" will not sell, however, if it is poorly conceived and made or if it happens not to hit a certain note or popular chord with the movie going public. In the April 15, 1970 edition of *Variety* the current top ten grossing films are: Hello Dolly, Midnight Cowboy, 2001 Space Odyssey, Oliver, Bob & Carol & Ted & Alice, Butch Cassidy, Paint Your Wagon, Funny Girl, Cactus Flower, and Easy Rider. Only two are R rated and one X rated.

Is obscenity merely in the eye of the beholder?

Some have commented that what is obscene is essentially in the eye of the beholder. What is "dirty, disgusting, pornographic" to one, may be seen as beautiful and esthetically pleasing to another. Thus obscenity begs definition since it is unique to the individual beholder. This, of course, is both true and not true. Yes, individuals will vary in their esthetic response to written and visual materials. And some persons because of their particular sexual neurosis will object to underwear ads in the Sears-Roebuck catalogue. But, as juries have demonstrated literally thousands of times, there do exist community standards, and when these have been exceeded, juries have brought home unanimous verdicts to as whether certain materials have been offensive, shocking, and obscene or not. And while some literary critics, lawyers, artists, and other professional people claim they cannot make the distinction between say, art and pornography, actually do not wish to because they regard pornography as legitimate, or fear the censorship of pornography may be extended to art or literature.

A redefinition of obscenity-pornography

While the courts and various students of the problem have wrestled with the problem of a definition of pornography or obscenity (which I use interchangeably) the definition which this writer has found most useful and which applies to his discussion of the topic in this paper involves a four fold test:

1. Sex is presented out of context, unrealistically, or occasionally.
2. The purpose and/or effect is the stimulation of sexual lust.
3. A shock or trauma is provided to the sensibilities of the average viewer (a jury can decide this issue).
4. It models anti-social behavior (rape, sex torture, etc.).

While material doesn't necessarily have to meet all four of these tests to be judged "pornographic," the more that are met the more likely the material could be termed pornographic.

The "first amendment" problem

The First Amendment of the Constitution of the United States reads as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of Grievances." And while the Supreme Court of the United States has repeatedly rejected the notion that pornography and obscenity are protected by the first amendment (Roth vs. United States, 354 U.S. 476, 1957; Alberts vs. California, 354 U.S. 476, 1957; Mishkin vs. New York, 383 U.S. 502, 1966; Ginzburg vs. United States, 383 U.S. 463, 1966) the court has wandered in a "no man's land" over the issue of defining obscenity. And through the process of shifting the standards in the definition of obscenity we now find ourselves in a situation where almost anything that can be written (even though juries may find it obscene and/or pornographic using Roth decision standards) can be given distribution and sold in any bookstore, pharmacy, or supermarket in the country.

In the area of the visual and plastic arts we are almost to that same point. This means that, in effect, even though pornography has never historically been given legal sanction, and the Supreme Court has repeatedly stated that it is not protected by the First Amendment, the Supreme Court by example and many lower courts following suit have abrogated this tradition by the simple process of redefinition. This undoubtedly has been a reflection of the particular social-ethical philosophies of those judges participating in the decisions which have accomplished this. But undoubtedly their attitudes have been influenced by such works as the Kronhausen's (34) *Pornography and the Law* which while admitting the aphrodisiacal effect of pornography, argue in its favor, for among other things, its cathartic effects on sex criminals citing as evidence only opinions of others. Not a single supporting validated empirical study is cited. Or where

research is mentioned which fails to show any negative effects of pornography (such as Gluecks) they do not mention that the Gluecks did not even study the effect of obscenity. The conclusions the Kronhausens draw are biased and reflect primarily their own sexual social values. A good portion of the Kronhausen book is a personal essay, not a scientific document. It presents only that evidence which supports their point of view.

A good number of their declarative statements have absolutely no scientific support and essentially are only unsupported hypotheses. Their book, despite its pseudoscientific air, is a tract reflecting their values, no less than that sold by the Watchtower Society on many street corners. Despite this cautionary statement, their book does have a number of useful ideas, and suggestions for research which someday might lead us closer to the truth. The potential danger of the Konhausen document is the misuse made of its sometimes inaccurate and misleading assertions. It is cited frequently elsewhere, sometimes in prestigious professional psychiatric journals as furnishing proof of pornography's benignness.

Playboy magazine, with a circulation approaching six million, brilliantly edited, and read by great numbers of the clergy, legal profession, congress and the college educated, has carried on for many years a very biased unremitting pro-pornography campaign. Only evidence in favor of their position is ever presented. And frequently misinformation (as with the drop in sex crime in Denmark) is presented as fact (probably unintentionally). It is virtually impossible, even in letters to the editor to get a fair hearing. They carefully marshal evidence and non-evidence in overpowering rebuttals to any letter presenting opposing opinions (carefully selected for their purposes). It would probably be not unfair to say that the intellectual press in America would be in essential agreement with this aspect of the *Playboy* philosophy, with most editors as an "article of faith" being against "censorship" and comstockery in any form.

Thus in the last decade, despite *Time* magazine's comment that "Everyone agrees that there is such a thing as pornography and that it is bad," there hasn't been one article that this writer is aware of giving an intellectual defense to this proposition in any of the intellectually respectable journals in this country (van den Haag (54) being the one possible exception). This writer has found from personal experience a virtual closed mindedness and hostile self righteousness, faintly reminiscent of 18th century Calvinism, among editors, also bringing to mind psychologist Milton Rokeach's discussion of dogmatism and the authoritarianism of the Left (in the *Open and Closed Mind*). This means that for broadly reading educated Americans, for a decade at least, they have not been exposed to anything in the media (other than in some religious periodicals, though rare here, too, and "decency groups") which might raise serious rational objections to pornography and its influence on various consumers.

Counter propaganda, however, has been continuous and vociferous. This has had the effect of perpetuating certain myths about obscenity and pornography which in time are accepted as fact and become a part of the social-political philosophy of many thought leaders, jurists, editors, and other people in positions of leadership and decision making.

The judge is culture bound too

In the case where individual judges are required to rule as to whether a particular motion picture or book is obscene we are faced with the same psychological dilemma as where an individual vice squad officer, or Mrs. Grundy becomes the arbiter of the community's morals. All are locked in by their particular biases, unique culture and personal history. The judge can just as easily have a sexual neurosis which will effect his decision as any paid small town censor. There may be some real problems in the tendency of higher courts (judges) overturning decisions arrived at by local juries where at least the individual biases and unique sexual hang-ups of the jurors canceled each other out and who also represent a fair sampling of the community which helps us arrive at a community standard.

The judge, however, has no one to cancel out his biases and prejudices, and hence in a psychological sense, is probably much less suited to make such a decision which involves values and consent of the governed as much as any clear legally defined concept (of the appropriateness for public display of potentially obscene material or screen play). And to pretend that any judge has some standard measuring stick in assessing obscene material is to be either very naive or dishonest.

As it is now, there exists the real possibility that the censor (or anti-censor) of the future will be a corps of judges who may well spend a great deal of their time in private screening rooms deciding what erotic movies the public can and cannot see. And of course this is no different than when the sheriff's deputy alone made the decision. The costumes they wear are different, but the humanness and imperfection of the two men remain the same.

The "redeeming social value" problem

A special problem has developed relative to one of the legal tests given in the determination of whether certain subject matter is obscene or not. This involves a minority court opinion (Brennan, Fortas, and Warren) written by Brennan and concurred by the other two in the Jacob Ellis decision regarding the film, *The Lovers*. Along with several other conditions Justice Brennan wrote that for something to be obscene it must be "utterly without redeeming social value." The problem is, there is nothing totally without some socially redeeming qualities—so in effect, this amounts to no test at all and if interpreted literally would set no limits. Somehow this test has been given more weight than it deserves, even though it represents only a third of the court's opinion (and two of the jurists are no longer on the court now). In a time when judges and juries are confused by the frequently conflicting high court decisions in this area, and vary greatly in their verdicts, a commercial pornographer can produce the purist of hard core pornography.

Then in a matter of a few minutes he can append a 1% or 5% factor of additional material that might give it some "socially redeeming merit", which allows him to meet the Brennan test. Or the reductio ad absurdum would be to create hard core pornography then have a self-acknowledged expert indicate in the preface that it has some socially redeeming qualities, which would give the expert the obverse of censorship, complete license. Thus as one commentator has put it, socially redeeming qualities is a meaningless phrase because it is impossible to create something without some smidgen of social redeeming interest to somebody somewhere, even if it were only to chronicle our societies' debauchery and collapse.

In the case of the movie, *I am Curious (Yellow)*, a U.S. Circuit Court of Appeal in a 2 to 1 decision (no jury) ruled that it did have some socially redeeming merit, but as the *Time* reviewer commented (March 14, 1969), "If it were not for the sex scenes, it would probably never have been imported. It is simply too interminably boring." In other words it was prurient interest and not social interest that prompted its importation and prompted people to pay money to see it.

Superior Court Chief Justice G. Joseph Tauro of Boston in ruling *I Am Curious Yellow* (Nov. 12, 1969) obscene commented, "I am convinced that the deletion of the explicit sex scenes would eliminate customers in such numbers that it would quickly and unceremoniously be shipped back to the country of its origin." He also indicated that the minority court test of "redeeming social value" was not a mandate to be followed by lower courts. This was because the majority of the Supreme Court did not agree to this test and thus it is not a precedent or a true independent test for obscenity. Judge Tauro further states, "The subsequent history and effects of the Brennan 'social value' test have clearly demonstrated its unworkability and require its rejection." This means, in effect, that the tests concurred in by a majority of the court, in *Roth*, still stand.

Frequently justices of the high courts do not correctly assess the full impact of their decisions or they might be a little more cautious in how they are written.

When several years ago, the high court ruled that nudity was not obscenity, many applauded this decision. When one thinks of some of the great works of art of the masters involving nudes, or some of the exquisite nude statuary at San Simeon or in the great museums of the world, one can agree wholeheartedly with the court. But shortly after this decision, in many cities of the U.S. there appeared in a number of shops and movie houses "beaver" films, and "beaver" photographs, picture books, etc. These involved still photos or movies (usually of prostitutes) lying nude, prone on a bed or a couch, spread eagled, exhibiting their private parts, and making suggestive movements with the buttocks.

Since nudity was no longer considered obscene, and this was a form of nudity, many prosecutors shied away from controlling this. And it has flourished ever since. That it is obscene there is little doubt. In a symposium on pornography organized by the Department of Psychiatry at the University of Utah Medical

School in 1967, a series of slides were flashed before the audience showing pictures of various types of "obscenity." The audience, comprised of medical students, faculty, psychiatrists, psychologists, etc., rated the "offensiveness" of each of these photographs. A slide showing a closeup of the open vagina (similar to a typical "beaver" trade photo) was rated as "pornographic" by a great majority of these present, who, for the most part could be termed quite sophisticated and shock-proof.

Several weeks ago a documentary film, *Pornography in Denmark*, began commercial exhibition in Los Angeles. It features live and still action hard core pornography. Using the vehicle of being a documentary film about an important socially relevant topic its claim to being seen is in having socially redeeming merit. And it probably does. But it still features a great deal of hard core pornography, which under the 1957 Roth decision is not protected by the First Amendment, and it violates local as well as state statutes.

If the courts should somehow sanction its continued public display under the shaky minority court test of "socially redeeming merit," we would probably see the same thing happen as when the "nudity isn't obscenity" ruling stimulated the proliferation of the beaver trade. In this case it would not be hard to imagine literally hundreds of documentaries (with "social value," of course) filling the art cinema theatres around the country with such titles as *Pornography in Klampenborg*, *Pornography at Dyrehaven*, or even *Son of Pornography at Klampenborg*. These films could be produced by anybody with sufficient funds to hire a prostitute, rent a camera and borrow a blanket.

Unfortunately, just as bad money drives out good, this type of film would probably "drive out" or in part eliminate films of ideas or at least show-cases for their exhibition. And in an ironic way this might conceivably do more harm to the cause of free speech and the unhampered expression of ideas in motion pictures than a whole fistful of mild obscenity ordinances. As writer Pamela Johnson (27) has noted, "The moment the conception of a theatre of kicks comes in at the window the theatre of ideas flies out at the door."

Without consent of the governed

In this recent history of obscenity and the law where a relatively few justices have, according to some of their critics, legalized pornography by fiat, without the consent of the governed, this represents a kind of disenfranchisement of a good share of the population of this country and their attitudes about pornography, if we can believe the Gallup Poll. Some of the sterner critics of this have called it legislation by legal interpretation, by justices who are not responsible to any constituency. And because, probably most of the people who hold to the more traditional values, also favor some controls in this area, tend *also* to be more conservative, traditional, law abiding, and conditioned to respect their governmental institutions, they find it most difficult to know how to respond, other than write their congressmen (which a great many have been doing lately).

Thus to some extent the dictum, "Qui Tacet Consentit" (he who is silent gives consent) applies to the silent majority, who are bound by their prior "programming" and life long conditioning to respect the powers and authority of their government.

This concern about the judiciary is not new. Thomas Jefferson some 150 years ago, in his private letters expressed considerable dismay about the "Very dangerous doctrine of the judiciary being the ultimate arbiters of all constitutional questions, especially when they have, with others the same passions for party, for power, and the privilege of their corps. And their power is the more dangerous as they are in office for life.

Even liberal and activist justice Black has recently (March 1968) expressed concern here, "Too often judges forget that they have taken an oath to support the constitution as it is, not as they think it should be. There is a tendency now among some to look to the judiciary to make all major policy decisions of our society under the guise of determining constitutionality. The belief is that the Supreme Court will reach a faster and more desirable resolution of our problems than the legislative or executive branches of government. I would much prefer to put my faith in the people and their elected representatives to choose the proper policies, leaving to the courts questions of constitutional interpretation and enforcement. I strongly believe that the public welfare demands that constitutional cases must be decided according to the terms of our Constitution itself and not according to the judges' views of fairness, reasonableness or justice. . .

I fear the rewriting of the Constitution by judges under the guise of interpretation.

Columnist J. L. Jones has expressed this same theme, "Judges who are less judges than activists, who are concerned less with the law than with means of bringing about what they consider desirable end results are naturally a threat to the system of checks and balances. By novel interpretations of the Federal Constitution they amend, in effect, the Constitution itself, and thus invade this ancient right of the state legislatures. By interpreting the intent of lawmakers far beyond the law's wording, they really write new law and thus move into the field of legislation.

The dirtiest word of all—censorship

The very word censorship smacks of authoritarian dictatorships, book burning, Hitler Germany, and all kinds of unsavory anti-democratic attitudes and behavior.

Yet, since the days of the founding fathers some limits have been set on freedom of speech by mutual agreement of the electorate. No one is permitted to slander or libel another without accepting the consequences of his deed. Free speech does not permit shouting "Fire" in the crowded theatre. And certainly until now pornography has never been considered a free speech issue.

We have precedents for all kinds of controls in our society. We don't permit our neighbors to run their power mower at three o'clock in the morning. We ticket the speeder doing 40 in a school zone, or fine the litterer who drops garbage on the highway.

Some people have the fear that if you do exercise some control over such things as obscenity or violence in films and books that this will somehow lead to other encroachments on freedom of speech. However, there is no historical instance where censorship of pornography has endangered other freedoms. And that the converse of this has occurred, as in Communist Russia, is irrelevant to the first issue.

Author-writer Max Lerner who testified in defense of the publication of Henry Miller's *Tropic of Cancer* has declared himself for limited censorship. In his view, "Freedom operates best when we can set up safeguards against the destructiveness of those who don't care about freedom but advocate freedom so that they can exploit it. There are individuals who will be hurt if there are no restraints at all against publication: children who are forced by social pressures into an unhealthy sexual precocity; adults who are psychologically disturbed; and others who are walking a thin line in their search for selfhood and might easily be pushed over into a whirling confusion about their sexual identity. As justice Oliver Wendell Holmes once put it . . . "a line there must be."

Psychoanalyst Ernest van den Haag has commented that he is against both censors and pornography (54). But he is even more against one without the other. Censorship he feels protects vulnerable people from injury or distressing trauma and it prevents the pornographer from soliciting obnoxiously. He argues that, "pornography exhilarates and solaces some people, while censorship satisfies, relieves and shelters others. The shock value of certain dirty words which some people relish depends on their not becoming clean by approval or habitual use. It's the social taboo, legally endorsed, that gives pornography much of its defiant charm. The fact that it is forbidden provides half the rapture and excitement. The pornography buffs who oppose censorship so much, sound remarkably like masochists complaining about the pain on which their pleasure depends. And the censors relish the proceedings no less."

Censorship occurs all the time everywhere. Every newspaper and television network edits (censors) vast amounts of material daily. Sacred community cows are protected, people's feelings are considered, etc. A lot of this involves editing to "good taste" but even though this is so, it is still censorship of a kind. Not governmental, but private.

In the recent motion picture M.A.S.H. the Catholic Chaplain who is made to look so ludicrous, could never have been a Negro. No law dictates this, but good taste (a form of control or censorship) does.

All societies have some laws which restrict that which is shown or exhibited to the general public. Even in Sweden and Denmark, where there exists a remarkable freedom in the presentation of erotic materials, there is strict control and censorship over the amount and quality of violence permitted in the mass media. This liberality in the sexual area and strict constraint in the violence

area represents, in fact, an informal concensus of the people with regards to these matters. And freedom of speech is in no wise jeopardized there because controls or restraints are placed (in this case) on the depiction of excessive violence in the mass media.

All advanced western societies have laws which restrict, for example, an individual from exhibiting his private parts in public. This also includes pornography. However, a person may exhibit himself to his hearts content in the privacy of his home, or run around nude all day—as long as this is not done publicly. In fact, the Supreme Court has recently recognized the right for a man to look at pornography in the privacy of his own home without restraint. In this way the courts and society have attempted to allow a maximum of freedom to the individual, but at the same time recognizing the differences between a *public* vs. *private* display of the same material.

Thus restraints are placed on displaying pornography or in “exhibiting” oneself in public. Society recognized that this represents an infringement on the rights of others—and their right not to be assaulted by a public display of this sort of thing. You can be as obscene as you wish in the privacy of your own home—but you don’t have the right to inflict it on others in public places. Mention might be made here of the “problem” of the artist, many of whom feel they should have complete license to create or produce works of art without any restrictions by the society in which they live—even if these works should be judged obscene or pornographic. While they undoubtedly have the right to produce anything they wish, one would wonder whether they would also have the right to exhibit, in public, works which might be deemed obscene, anymore than the exhibitionist has the right to exhibit himself in public (even though no law prevents him from doing the same thing privately).

And the fact that what is considered offensive, shocking, or pornographic (i.e., community standards) will change from age to age, doesn’t change society’s rights to set some limit on what it will tolerate *in public*, just as in the case of the exhibitionist.

This issue of the possible curtailment of free speech is certainly an important one. But in some ways, as we have already suggested, it is a pseudo-issue in that in most democratic societies which do have laws controlling these things, do not have their free speech threatened and are not about to be taken over by a new version of Adolf Hitler or Joseph Stalin. The reason why is that, it is primarily the style not the intellectual content or the idea which offends or harms. For example, the early Greeks had a great deal of violence and some eroticism in their plays. Yet few, if any, child psychologists would see these plays as damaging to the psyche of any child or adult observer. Why? The violence almost always occurs off stage. In the case of Shakespear and the *Holy Bible*, they also have some sex and violence. Yet nobody (that I have ever heard of) has ever suggested that they should be censored or restricted to anybody of any age. The reason, again, has to do with the style or the specific technique of presentation not the intellectual content. In the case of Shakespear, he presented 52 violent deaths onstage and 64 behind the scenes in all of his works.

These deeds do not occur for themselves but are entirely subordinate to the plots, as psychiatrist Frederick Wertham (58) has noted. Likewise the eroticism and violence in the Bible grow out of a larger narrative and are in balance with other natural events in the lives of the people described. They occur in the context of the ebb and flow of more complete relationships between men and women, with antecedent events as well as consequences. There is not an obsessive or perverse preoccupation or singleminded magnification of these events. However, most pornography on the other hand is false and untrue as far as depicting real life or human sexuality is concerned. It presents sex out of its human context. As a series of depersonalized orifices and organs. Sex without tenderness, love, civility, and the full texture of human relations.

Many television broadcasters have found it possible to broadcast X-rated type films by the simple expedient of editing small portions of certain scenes which go beyond certain customary limits of candor. However, the intellectual content or message or ideas of the film remain intact and unchanged and are in no wise affected. True freedom of speech, in my judgment, is relatively unaffected with minor stylistic changes.

Who is to judge? Who is draw the line?

This leads to the next problem which many people are bothered by. And that is, “Who is to judge?” Who is to be the censor—granted some of this material

may be harmful. Who is to say how much is too much, where to draw the line or where that point is, where one exceeds contemporary community standards. That's simple: a jury. If someone is offended, he brings charges. He indicates that he thinks the laws covering this sort of thing have been violated. A jury is called which represents a sampling of the community. They examine the evidence and the testimony and they decide. This has been done thousands of times over many centuries in free countries. It's not perfect, but it's better than any other method available.

The advantage of the jury in determining community standards is that in using 12 people we cancel out the effect of each person's individual sexual neurosis or personal bias, and get a fairly true reflection of current contemporary community standards. And I think, where this line is will vary over time, and from community to community. It will also differ for adults and children. But this line still needs to be drawn for the same reason we need to control airborne pollutants—for the welfare of the citizenry.

The problems we face "back home"

A brief comment might be made of the specific difficulties which face the community I live in with regards to obscenity and pornography. The focus and concern of the Salt Lake Area Youth Protection Committee, of which I am chairman, is to study, review, help solve problems which confront youth. I will restrict my remarks to the area of pornography.

We have a problem which we cannot, legally or in any other way cope with. It has to do with the mailing of obscene as well as hard core pornographic advertisements, unwanted and unordered, into a good number of local homes. Where the mother works or is otherwise engaged when the children return from school, it becomes difficult to intercept or control the introduction of this sort of mailed material into the hands of children.

While post office regulations (Title III of the 1968 Postal Rates and Federal Pay bill) allow one to request that his name be taken off a mailing list of a pornography publishing house, this in fact often doesn't work or is not effective. This is because these lists are repeatedly sold to other similar publishers and many of these companies are constantly changing their mailing addresses and names which allows them to escape any penalty of the law. I have two exhibits here to demonstrate this problem. These two advertisements were mailed to Salt Lake residents soliciting orders for pornographic films, books and magazines. These advertisements were sent unordered and unwanted. One comes from a Los Angeles firm and the other from a Danish firm (which apparently purchased a mailing list from an American publisher).

Both advertisements show explicit depictions of fellatio, cunnilingus, heterosexual intercourse, homosexual relations, and one shows females engaged in intercourse with animals. Sending these advertisements into homes, unordered and unwanted, represents, in my opinion, a serious invasion of one's privacy. Yet there is no legal way these can be stopped. In the case of the advertisement mailed from Los Angeles a false and non-existent California return address is given, but the instructions require one to mail the money for wanted goods out of the country. Thus the Los Angeles firm uses an out-of-the-country mailing post, where they escape the penalties of our local laws, collect their money, then mail back through our post office service the illegal material.

In another local problem we have found repeatedly that so called X films, some of which violate our local laws for minors to view, are shown to minors. Some theatre owners disregard the X rating and allow anybody with money to see the picture, especially at drive-in theatres. In fact one local drive-in recently advertised all under 12 admitted free for an X-type picture. In the case where the film clearly violates local statutes with regards to juveniles, we have found law enforcement officers relatively disinterested in enforcement.

This appears from our study to be due to three things: (1) many prosecutors lack expertise in handling obscenity cases which are tricky and difficult; (2) a number of law enforcement officials have to some extent been intimidated by the bewildering and frequently contradictory judgments of higher courts in obscenity cases and tend not to want to get involved with them when the likelihood is considerable that their case may get thrown out later on a technicality; and (3) our community, like all others has experienced a sharp and steady rise in crime which has created very serious work overloads for all law enforcement personnel. Thus in dealing with pornography statute violations this is frequently

seen as a problem of low priority which tends to be slighted compared to other more aggressive crimes such as burglary, assault, rape, etc.

In any event there is a great deal of frustration and dissatisfaction by some members of our community group in not being able to cope with problems such as these.

The "hidden agenda" or underlying issue: values

Laws against obscenity are near universal and date back to the 19th century when steam and electricity multiplied the number of copies of books that could be produced rapidly. And in the past this has been regarded as much a community decision to sanction or not sanction the public distribution of this type of material as it has been a community decision whether there should be public brothels. In other words the community in nearly all modern western societies has restricted pornography and obscenity and has judged it "not good." The cancellation of such laws which recently occurred in Denmark is a first and represents a rather radical social experiment. But what its ultimate effect will be on the people will take possibly a generation to determine. Even though most societies have had an illegal underground dealing with these sorts of materials (as with most other illegal things) the fact remains that in nearly all modern societies (regardless of government) there has existed some sort of consensus about the "deleterious effects" of the pornographic. And while this might not represent a strictly scientifically based decision, but rather one based on values, it still represents a significant and meaningful act by the community.

Bertrand Russell has commented that science can never say what ought to be done and logic cannot provide a man with a set of ethical beliefs. To some extent this applies here. The decision on pornography is related and tied in primarily with values which in our Western culture have their roots in the Judeo-Christian tradition. And as religion and the protestant ethic become of increasingly less importance to many people, and we disassociate ourselves from our religious heritage the assumptions on which previous values have been based will be challenged. So the present controversy over pornography (among other things) may represent at heart the split which exists among many citizens over the values represented by the Judeo-Christian ethic with its conservative attitudes toward the expression of sexuality.

Thus it is interesting to note that in the Scandinavian countries where pornography is tolerated and with their more liberal attitudes toward sexual behavior both before and out of marriage, there is a minimum of religious activity or commitment. The Rev. P. Werner Hansen, Rector of the Copenhagen Cathedral, for example reports only 1% of the people of Copenhagen attend church service. This may also partly explain the general "indifference and lack of concern" which many psychologists and psychiatrists have relative to pornography. Anecdotal, and experiential data as well as several surveys (conducted by Leuba (37) and later by Riggs (48)) suggest that psychologists are the least religious of all professional groups studied with only 10% to 23% (depending on the survey) admitting to a belief in deity. And there is little reason to believe that psychiatrists differ much from this figure. This, of course, is in sharp contrast with the general population where traditionally the figure of a belief in a deity hovered around 96% (Detroit Area Study, Gallup Polls, etc.) with 4% undecided and a small fraction of one percent declaring themselves atheists. Free of the restraints imposed by the Judeo-Christian tradition, and influenced by the pan-sexuality of Freud, and the morally neutral behaviorism and empiricism of much psychology it would not be surprising to observe values in these professional groups considerably at variance with traditional American norms—especially in the sexual and pornography areas.

The issues of values, as previously suggested, is very vital to our whole concern about pornography, and its possible effects on the viewer. Some would argue that we are moving into an era, not of changing values, but of "no" values, of fewer or "no" standards, which is the direction sometimes suggested by situation ethics. This has been noted by no less diverse personalities than Pulitzer prize winning author Barbara Tuchman and philosopher Will Herberg. Miss Tuchman (53) has noted the evasion of leadership by many American intellectuals in their general unwillingness to state standards. "Everyone is afraid to call anything wrong, or vulgar, or fraudulent, just bad taste or bad manners." We hesitate to label anything wrong and thereby hesitate to require the individual to bear moral responsibility for his acts.

We have become afraid to fix blame. If an act, like indecent exposure, is offensive, then what is offensive to the greater part of society is anti-social, and what is anti-social, so long as we live in social groups and not each of us on his own island, must be curtailed. At this stage in our culture, pornography has gotten so far the upper hand, that to do battle in its behalf against the dragon censorship is rather like doing battle today against the bustle in behalf of short skirts; I believe that the proliferation of pornography in its sadistic forms is a greater social danger at the moment than censorship; if one looks around at the movies, especially the movie advertisement, and novels and the pulp magazines glorifying perversion and the paperbacks that made DeSade available to school children, one does not get the impression that we are being stifled in the Puritan grip of Anthony Comstock.

Philosopher Will Herberg at Drew University has written, (30) "The really serious threat to morality in our time consists *not* in the multiplying violations of an accepted moral code, but in the fact that the very notion of morality or moral code seems to be itself losing meaning for increasing numbers of men and women in our society. It is here that we find a breakdown of morality in the radical sense, in a sense almost without precedent in our Western history." Those individuals in our culture who identify with the Judeo-Christian tradition do have concerns over the control of the sexual impulse with fidelity in marriage and chastity before, seen by some as valued behaviors. Pornography or gray area type of obscenity is often seen as a threat to these controls—especially for youth. Many adolescents, in fact many adults have problems in controlling their sexual and aggressive impulses. For example between 1960 and 1968 the national rate of forcible rape increased 65% (see Final Report (44) by National Commission on the Causes and Prevention of Violence) and while such figures are subject to various interpretations and corrections, the true figure could be considerably higher as the Commission notes.

If the primary issue is a values one, with some citizens declaring an interest and a right to be exposed to pornography if they so choose, then we quickly focus on the issue of public vs. private display of the pornographic. It would seem not unreasonable to allow those citizens who wished, in privacy, to subject themselves to displays of pornographic material. However, the public display of this same material involves an infringement on the rights of those people whose values incline them not to be so assaulted and their right to protect their children from such a display. An additional consideration focuses on the fact that the courts, up to the Roth decision in 1957 declared obscenity as *not* protected by the First Amendment of the Constitution. The fact that pornography should be restricted has never until now in this country been an issue before the courts. And as *Time* magazine commented some months ago (July 11, 1969), "Everyone agrees that there is such a thing as pornography and that it is bad." Interestingly even D. H. Lawrence favored rigorous censorship of obscenity. "You can recognize it," he wrote, "by the insult it offers, invariably to sex and to the human spirit—the insult to the human body, the insult to a vital human relationship." Even author Henry Miller recently denounced pornography as a "leering or lecherous disguise that has helped make sexuality joyless."

And such pronouncements as those by the New York Academy of Medicine (65) are not unusual, "The Academy believes that although some adolescents may not be affected by the reading of salacious literature, others may be more vulnerable. Such reading encourages a morbid preoccupation with sex and interferes with the development of a healthy attitude and respect for the opposite sex. It is said to contribute to perversion. It can be asserted that the perusal of erotic literature has the potentiality of inciting some young persons to enter into illicit sex relations and thus leading them into promiscuity, illegitimacy and venereal disease." And while one may fault their prose and lack of scientifically verifiable data, this still reflects an opinion and some underlying values not uncommon among such groups around the country. It says in effect we believe pornography to be "bad, not good," essentially a moral judgment.

We get similar types of condemnatory comments in Senate Report 2381 where the effects of pornography and obscenity on juveniles are likened to a highly addictive narcotic with strong "hooking" qualities. While the many conclusions are based on the testimony of assorted experts, law enforcement officers, and the like, the general tone includes strong moralistic qualities which, again, reflect a set of values endorsed by this congressional committee.

A need for careful evaluation of sponsored research

I would respectfully suggest to the commission that with regards to the various research projects which they have contracted out, that a panel of social scientists, experts on human research, carefully evaluate the research results and especially the kinds of conclusions which might be drawn from them. If this, or something like this is not done the Commission could run considerable risks when the final report comes out. If even only several of the commissioned studies are badly flawed methodologically and incorrect inferences were drawn from them, there could exist the strong possibility of attack and criticism by the scientific community which might result in a casting of doubt on the validity of all the studies, which would greatly lessen the impact of the whole report. But probably the more important reason is in the interest of truth. The issue of pornography and its dissemination is very emotionally loaded for those on both sides of the fence. We have witnessed in the recent past a real abuse of statistics and studies about pornography which are little more than myths, but passed on and thought of as valid sometimes by the most reputable of professional personnel.

For example one national publication, with a circulation of many millions, almost monthly cites the 31% drop of sex crimes in Denmark as impressive evidence of the beneficial effect that pornography might have if legalized. While this supposed factual information is totally incorrect it is read and regarded as valid by judges, lawyers, members of juries, parents, clergymen and others in positions to make important decisions about these matters. In another example a psychiatrist, a consultant and authority on sex crimes and sex criminals for the Los Angeles Police Department recently (March 1970) told a group of Utah Law Enforcement Officers meeting at the University of Utah that pornography is probably desirable for sex criminals and serves to reduce sex crimes via the process of catharsis. He cited as evidence the 13% reduction in sex crimes in Denmark since the legalizing of pornography.

Any housewife or high school student who reads the newspapers carefully could have corrected him on this. But this well illustrates the dangers of drawing incorrect conclusions from your data, and how myths can be disseminated and recirculated till they attain the status of "fact", even for the experts. Since the findings of this commission will have major implications for legislation now before Congress as well as being very influential in affecting decisions arrived at by the judiciary, it would be seen as very critical that interpretations of the scientific data collected meet the highest standards and canons of verifiability and validity. If this does not occur not only will all of the time and effort be wasted but there will be precipitated additional controversy and conflict in a country already overburdened with dissension.

Summary recommendations

In summary, and apart from the values issue, I feel that there is sufficient circumstantial and some limited direct evidence about the possible harmful consequences to both children and some adults in viewing pornography (as I have defined it) to warrant major well funded longitudinal studies of this problem which would focus on potential causal chains and linkages between behavior and stimulus. And until these studies have been completed and validated, those laws now existing should not be further modified and that reasonable controls be continued over the dissemination of so called "hard core" pornographic materials.

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Mr. NIX. Our next witness will be Dr. Sheldon Starr, family study unit, Veterans' Administration Hospital, Palo Alto, Calif.

Doctor, it is a pleasure to have you. Would you introduce your associate, please.

Mr. JOHNSON. I am Bowie Johnson, assistant to the General Counsel of the Veterans' Administration, accompanying Dr. Starr here today.

As you know, Mr. Chairman, the committee wrote to us last week with respect to the study that had been made by Dr. Mann and Dr. Starr, both of whom are on our staff.

After we looked into the matter, we found that this study was made under an independent contract between Dr. Mann and the Commission, and the Veterans' Administration as such was not directly connected. Now, Dr. Mann, who was the contractor, is in Europe and is not

available, but Dr. Starr is here today. He is the chief of our family study unit out in Palo Alto hospital. He has been with the Veterans' Administration some 10 years. He is also an assistant clinical professor of psychiatry at Stanford Medical School, and he has had a number of years postgraduate training in family therapy.

Mr. Nix. Thank you, Mr. Johnson.

Dr. Starr.

STATEMENT OF DR. SHELDEN STARR, FAMILY STUDY UNIT, VETERANS' ADMINISTRATION HOSPITAL, ACCOMPANIED BY BOWIE JOHNSON, GENERAL COUNSEL, VETERANS' ADMINISTRATION

Dr. STARR. Well, I didn't come prepared with a written statement. I just assumed I would refer to some notes that I have, and talk off the top of my head, so to speak.

Mr. Nix. Dr. Starr, we realize your time was limited. We quite understand that you do not have a prepared statement.

Dr. STARR. Thank you.

What I would like to do—as a member of the team that was commissioned by the Commission on Obscenity and Pornography—is report at this hearing as to what research we did, why we did it, what our findings were, and then we can get into questions afterward.

Our study lasted for 84 days. What we wanted to do was to investigate what effects in the natural environment exposure to erotic material had on married couples. Our sample consisted of married couples, married at least 10 years or longer.

We wanted this kind of sample because we wanted people whose marital relationships presumably are reasonably stabilized. We wanted to see what effect systematically exposing them to erotic stimuli would have on their sexual relationship as well as their general marital relationship.

We recruited volunteer subjects from the community which was Palo Alto, Calif. We ran an ad in the local newspaper which I would like to read because it captures the tone, I think, and the climate of the study.

We ran this ad for 2 days:

Married couples needed by federally funded team of social scientists to participate in important and unique scientific research project. Must be married at least 10 years. Spend 2 minutes daily for 12 weeks completing checklist of marital behavior. Absolute anonymity guaranteed. Payment at end of study.

We paid our subjects \$75 per couple. We did not want to specify in that ad that it was sexual behavior that we were interested in, because we wanted to get a sample of people that would be representative of the kinds of people who live in that community.

We received 186 phone calls in these 2 days and 21 mail responses and following this our answering service told us to take our business elsewhere because that was a bit much. They evidently continued to receive inquiries following that, however. These people were invited to attend a meeting in groups at which time we spelled out quite explicitly what was involved in the study.

One hundred twenty-three of the 186 couples were called by the secretary we hired to do this. This secretary incidentally explained to

the respondents that this was a study that did indeed deal with marital behavior, but it also dealt with sexual aspects of marital behavior.

My interest, incidentally in the marital behavior in general came about because of my involvement in the family study unit at the veterans hospital and my work with couples and married people for the last 5 years.

There were 105 couples who agreed to attend the meetings. However, many of them could not make it because of babysitting problems and 95 couples showed up. Of the 95 couples who did show up 93 agreed to participate. After they showed up they were told what the procedure would be.

Now the reason I am going into such detail is that in any kind of scientific research of this sort it is a very critical matter what kind of sample you get and what they are informed about the study.

In these group meetings before they agreed to participate in the study the volunteers had our procedures explained to them completely. They were shown a copy of the daily questionnaire, a questionnaire of roughly 35 different variables which they were to check every single day, husband and wife separate from one another and without consulting one another.

The behaviors listed on that questionnaire cover every conceivable kind of sexual behavior that you can imagine.

In addition to that, such variables as how much quarreling was there that day, how they got along, was there expression of affection, in general, variables dealing with the relationships of marriage not directly concerned with sexuality were included in the questionnaire.

The subjects were allowed to look at this questionnaire so they would be apprized of exactly what they were going to have to do.

They were also told that they would be seeing motion pictures portraying very, very specific acts of sexual activity. Again, here we were very careful to point out to them that indeed many of the flicks that they would see could certainly possibly offend some people, that these pictures could be considered pornographic, and that it was up to them if they wanted to take part in this study.

All of our subjects signed releases and consent forms stating in essence that they understood the purpose of the study and they were willing to participate.

To simplify matters, what we really wanted to find out was what effects these erotic films would have on this kind of population. I would like to briefly describe this population because I believe that in research of this sort it is necessary to make differentiations from populations who have psychiatric disorders or very disturbed people or people with sexual aberrations.

The volunteers for this study had a median age of 45 years for the males and 42 for the females.

The median length of marriage was 17½ years, so our subjects were well established in their marriages.

Only 10 percent of the males and 7 percent of the females had ever been divorced so these were stable people from that point of view at least.

A wide variety of occupations were represented. I won't bore this committee unless requested with the specific breakdown. I would say,

however, it covered advertising executives, architects, attorneys, businessmen, photographers, civil service employees, computer operators, skilled laborers, unskilled laborers, housewives, auditors, medical photographers, and I can go on and on.

This list can be submitted if you wish.

The educational level of this sample, I believe is fairly typical of the community of Palo Alto and probably many, many such communities throughout the different parts of the country.

Of the males, 24 percent had master's degrees, 16 percent had Ph. D. or M.D. degrees. About 12 to 14 percent of males and females had some kind of graduate work. This sample was rather well educated.

Income level was rather high. The average—well, it depends on how you define high these days, but the average income was in the \$15,000 to \$25,000 bracket. Half of our population fell into that category.

Quite interestingly enough you run into some fascinating things when you do research like this. Evidently the female partners reported much lower incomes than the husbands reported. This makes one wonder whether they know what the husband is making or whether the husband is holding out on them.

We asked subjects to rate themselves regarding their marriage, also. We wanted to know if we sampled a population of people who were discontent or miserable, and who in effect volunteered hoping somehow that their misery would be alleviated.

On this rating, 88.8 percent of the males and 90.1 percent of the females rated themselves as at least being average to happy or happier than average to very happy in their marriages and roughly about 12 percent of the males and 12 percent of the females—that is an approximation—maintained that the marriages were somewhat unhappy.

There was a very, very small percentage, 1.2 percent, saying they were very unhappy in their marriage.

With regard as to how they rate themselves on their sexual life, most of the people rated their sexual life as being satisfactory although 13.6 percent of the males and 12.3 percent of the females rated their sexual life as being very unsatisfactory.

We wanted to see if we drew a sample of people who were offbeat, because we didn't know. We did these analyses all at the same time. We asked the question about whether there was any wife swapping or some such activity in the sampling.

Now this figure went well into the 90 percent of people who never did or wouldn't consider such a thing.

The main thing we were interested in was having them mail in the daily report each day for the 12 weeks of the study.

The first 4 weeks of the study was the baseline. That is, before we introduced any kind of erotic material we were able to get such items as frequency of intercourse, how it was done, what was done. The daily questionnaire also included a fantasy activity and a desire to actually take part in such activities.

We covered a rather broad range of sexual activities in the daily report, including items which would be clearly labeled by current community standards as deviant sexual behavior. We included in this wife-swapping, sado-masochistic behavior and so forth, feeling that we

wanted to get as complete a picture of these people's behavior as possible.

After the first 4 weeks of the study we divided by random choice through use of a table of random numbers all of our couples into what I will refer to as the experimental couples; that is, those who are going to see the erotic films, and the control couples, those who saw no erotic films.

Now these nonerotic films were films which were the kind of high quality arty films that one would see in the theater like a short subject.

Mr. NIX. Dr. Starr, may I interrupt? It is difficult for me to distinguish between arty and nonarty pornographic films. Would you explain that?

Dr. STARR. Let me specify, sir; the control group saw the kind of nonsexual film that one would see; by arty I mean aesthetically pleasing and of high quality. There was one film that dealt with creativity, for example. That is what I mean. I did not mean arty in the sense of sexuality.

The experimental group, however, during the second 4-week phase of the study each week observed a variety of films that we had assembled portraying specific sexual acts. In those films we also included portrayals of sexual acts that would be considered sexually deviant by community standards, in addition to acts which would be considered normal heterosexual acts.

One of the films was a film that notes special merit because it figures in the results of our study. That was a film which was made recently by a woman cinematographer which had in it explicit portrayals of sexual activity but this film was done very, very aesthetically. There were numerous backdrops of the ocean, the forests and there were scenes in the film which were not blatantly sexual.

For example, a couple would be holding hands and looking at each other lovingly, so this particular film in addition to portraying blatant sexual behavior, also had tied with that, affection and love and this constituted the aesthetic qualities of this movie.

Following the second phase, the second 4 weeks when they saw these films, all of the subjects sent in daily reports for 1 month after the films to see what aftereffects were occurring. So we were able to study what effects the films had during the 4-week span, when the subjects saw the films, and what effects it had the month after they saw the films.

We would have liked to study these people for longer term effects than that, for 6 months or a year for example, but funding just did not permit that.

We also wanted to look at low frequency sexual behaviors. As you can see on the description, people in our sample were straight. In San Francisco there are the straights and nonstraights, and I don't know whether this is true in Washington. This is my first trip to Washington. But our subjects would be considered pretty straight. We were looking specifically to see if there were low frequency behaviors, like sado-masochisms, wife-swapping, group sex, and whether these couples engaged in any activity they had never engaged in before the study began, as a consequence of their seeing the erotic films.

I think I could not possibly cover all of the details here. We had

11,000 daily report items, 250 variables, which gives you millions of bits of information. I would like now to report the main findings and the kinds of conclusions that we drew from these findings.

Mr. NIX. Certainly, Doctor.

Dr. STARR. What we found was that exposure to these films produced only a very brief and transitory increase in the subject's sexual behavior. That is, during the 4 weeks of film showing, frequency of sexual intercourse, for example, increased slightly.

Interestingly enough, in the third phase of the study, the 4 weeks following exposure to these films, the people who saw the films actually decreased their level of sexual activity when compared with activity before they even saw these films. This was just a trend, so that practically speaking the pre-existing frequencies of sexual behavior were maintained after exposure to erotica. We also compared sexual activities on the nights the films were shown with sexual activities during that same phase when the films were not shown. We also compared these results with the control group who did not see erotic films.

Here we found, indeed, that after the erotic films, couples went home and engaged in sexual intercourse. This was not so for control couples who saw nonerotic films. There was great statistical significance to these findings. Couples who saw erotic films translated this into sexual behavior on film viewing nights.

We found no evidence however, that exposure films incited the subjects to engage in any kind of impulsive or bizarre or antisocial acts, nor did it result in their replacing the existing patterns of sexual behavior with deviant ones. The subjects pretty well continued to stick to their usual modes of relating to one another. The subjects reported some positive changes in their sexual life as a result of taking part in the study. However, these changes were not attributed directly to the films. What subjects did say was that just filling out the daily questionnaire about their sexual behavior was itself an erotic stimulus which affected to some measure their behavior.

We cannot attribute any positive benefits that the people reported to the erotic films, because the control group who did not see any erotic films, similarly reported an improvement, a slight improvement, in their sexual life.

I would like to just enter here the main conclusions of the study, some of which are based upon a lengthy questionnaire asking them a variety of questions about their part in the study, how they felt about it, and what changes participation made, if any. We also asked them who they think should see erotic films. I will get to that in a minute.

Mr. NIX. Will you submit that report for the record?

Dr. STARR. Yes; I will.

Mr. NIX. That is the questionnaire signed by the participants at the end of the experiment?

Dr. STARR. Yes. I can do that.

Mr. NIX. Without objection, it may be made a part of the record at the conclusion of Dr. Starr's testimony.

Dr. STARR. All of the respondents indicated they were influenced by a variety of changes not just from sexual stimuli. Men reported for example that their sexual drives were influenced just by interaction with other attractive females, say at work, and females indicated that sometimes they were sexually aroused merely by getting dressed up and going out for dinner in the evening. Our subjects didn't achieve

any dramatic change in frequency, in techniques, or level of sexual gratification, or what have you following exposure to these films.

Most of the subjects found the films only mildly arousing, they indicated, but interesting. Some found a few of the films repulsive, but did not report any kind of harm from it. I am trying to sift through and just get the main points. There is a very important point here—that regarding the subjects' attitudes toward the erotic films. We asked subjects the question: Who should see films of the kind that they were exposed to, and this presented most fascinating results.

Those males who were exposed to the erotic films became more permissive about who ought to see them. We first asked them that question before they saw the erotic films, and then we compared the difference by asking this question after viewing erotic films. All of our analyses of daily measurements incidentally were change scores—the difference before and after the films were shown. Males who did not see the erotic films decreased in their permissiveness. In other words, they went more in the direction of wanting to see more control about who should see films of this sort.

Females who were exposed to the erotic stimuli became also more permissive about who ought to be able to see such films, but not quite as much as their husbands. The females who saw the nonerotic films became less permissive and much, much more conservative on this.

MR. NIX. I want to thank you very much, Dr. Starr and Mr. Johnson, for appearing here.

I will ask no questions at this time, but I assure you that I intend to study the report, and I want to express my appreciation for the fact that you have come here and have submitted your report.

We have a limited amount of time, so I will not ask any questions.

MR. HENDERSON?

MR. HENDERSON. No questions, Mr. Chairman.

MR. NIX. Mr. Derwinski?

MR. DERWINSKI. I just have one or two, Mr. Chairman.

Doctor, you refer to these people as volunteers. Were any of them paid once they volunteered? Were they paid for participation?

DR. STARR. Yes, they were paid after the study, but when we asked them, we also asked them what motivated them to take part in the study, and most of them said to make a contribution to science and to find out more about their own sexual lives. And they rated the monetary value very low. We felt that since these people were well endowed as far as finances were concerned that they were telling the truth.

MR. DERWINSKI. What did your experiment cost? What was the contract? What was the total sum of the contract?

DR. STARR. Well, the contract was not directly with me. The contract was with Dr. Mann. So I don't have the figure. It is somewhere in the neighborhood of \$20,000 or \$22,000, as I understand it. But that might be inaccurate.

MR. DERWINSKI. Thank you, Mr. Chairman.

MR. NIX. Mr. Gross?

MR. GROSS. Thank you, Mr. Chairman.

I am not clear as to your connection with the Veterans' Administration, Dr. Starr.

DR. STARR. I don't understand your question. I am chief of the family study unit. When Dr. Mann, who is out of this country, which is the reason he is not here—

Mr. GROSS. Family study unit of the Veterans' Administration?

Dr. STARR. Yes.

Mr. GROSS. Are you a full-time employee?

Dr. STARR. Yes. I am under civil service.

Mr. GROSS. You are under civil service, yet you conducted this experiment? Is that true?

Dr. STARR. I was a consultant. The experiment was conducted on my time.

Mr. GROSS. What were you doing—moonlighting on this job?

Dr. STARR. No, I was not. When I entered into the agreement with Dr. Mann to take part in this study with him, the initial agreement we had was that I was willing to do it without any kind of compensation at all.

Mr. GROSS. You did it without compensation?

Dr. STARR. No. I agreed to do it without compensation. At the conclusion of the study, there was some money left over, and Dr. Mann felt I should get some compensation for it. So I received a very modest sum.

Mr. GROSS. Would you care to state that modest sum?

Dr. STARR. \$250.

Mr. GROSS. I see. All right. One question concerning the setup of this experiment. Was this after you shook this down to 93 participants? Was this 93 couples?

Dr. STARR. Couples, yes, and we selected—

Mr. GROSS. Surely this must have attracted the attention of the newspapers. Was this meeting publicized?

Dr. STARR. No, as a matter of fact—

Mr. GROSS. You were able to conduct this experiment without newspaper publicity?

Dr. STARR. Absolutely.

Mr. GROSS. Thank you.

Mr. NIX. Thank you, Dr. Starr, and Mr. Johnson.

(The opinion survey referred to by Dr. Starr follows:)

OPINION SURVEY

The following questions deal with your opinions and feelings about taking part in the study. There are no right and wrong answers. Your replies should, as nearly as possible, reflect your impressions and feelings.

1. Rank in order of importance to you the three motives that *most* made you want to take part in the study. (Place a 1 beside the most important and a 2 and 3 beside the second and third most important).

- | | |
|--|---|
| a. <input type="checkbox"/> To advance science | e. <input type="checkbox"/> Just for kicks |
| b. <input type="checkbox"/> To learn more about my own and others' sex lives | f. <input type="checkbox"/> To see the films |
| c. <input type="checkbox"/> To earn some money | g. <input type="checkbox"/> Because my spouse wanted to |
| d. <input type="checkbox"/> To improve my sex life | h. <input type="checkbox"/> Other (list briefly) |

2. How accurately do you think each of the terms below describe the study in which you took part? (Check one box for each term.)

	Very accurately	Rather accurately	Fairly accurately	Rather inac- curately	Very inac- curately
a. A survey of marital sexual behavior.....					
b. A survey of marital sexual behavior and of atti- tudes toward sexy movies.....					
c. A psychological experiment.....					
d. A test of a new technique of reporting behavior.....					

3. Who was more eager to join the study? (Check one.)

- a. You b. Your spouse c. You and spouse equally
4. How accurate would you say you were able to be in answering each of the following? (Check one box for each item.)

	Very accurate	Fairly accurate	Some-what accurate	Slightly accurate
a. Psych Today Research questionnaire.....				
b. Marriage Council of Philadelphia questionnaire.....				
c. Daily report sheet.....				
d. Marital survey.....				

5. How complete do you feel each of the following was in getting at sexual behavior? (Check one box for each item.)

Very Complete—Missed few aspects. Not at all Complete—Missed many aspects.

	Very complete	Fairly complete	Somewhat complete	Not at all complete
a. Psych Today Research questionnaire.....				
b. Marriage Council of Philadelphia questionnaire.....				
c. Daily report sheet.....				

6. Can you suggest anything that could have been added to make the study more complete?

7. If you feel that taking part in the study changed your sex life in any way, place a check beside each phrase below that applies to you individually.

- a. Made me less inhibited toward my spouse.
- b. Made me more inhibited toward my spouse.
- c. Made my marital sex life more satisfying.
- d. Made my marital sex life less satisfying.
- e. Made me want to try new techniques.
- f. Made me want extramarital sex more.
- g. Made me engage in extramarital sex.
- h. Made me masturbate more.
- i. Made me more frequently aware of being sexually aroused.
- j. Made me more open in discussing sex.
- k. Disrupted my sex life.
- l. Disrupted my general marital relationship.
- m. Made me want marital counseling or therapy.
- n. Other changes (list briefly).

Now—draw a circle around the phrase in question 7 that describes what you feel is the most important change for you.

8. If you feel that taking part in the study changed your spouse's sex life in any way, place a check beside each phrase below that applies to your spouse.

- a. Made spouse less inhibited toward me.
- b. Made spouse more inhibited toward me.
- c. Made spouse's marital sex life more satisfying.
- d. Made spouse's marital sex life less satisfying.
- e. Made spouse want to try new techniques.
- f. Made spouse want extramarital sex more.
- g. Made spouse engage in extramarital sex.
- h. Made spouse masturbate more.
- i. Made spouse more frequently aware of being sexually aroused.
- j. Made spouse more open in discussing sex.
- k. Disrupted spouse's sex life.
- l. Disrupted spouse's general marital relationship.
- m. Made spouse want marital counseling or therapy.
- n. Other changes (list briefly).

Now—draw a circle around the phrase above that described what you feel is the most important change for your spouse.

9. If you think that taking part in the study changed your sex life or your spouse's sex life, check one box for yourself and one for your opinion about your spouse. Describe *HOW MUCH* you feel *each* activity below contributed to the change.

	Self				Spouse			
	Very much	Much	Some-what	Very little	Very much	Much	Some-what	Very little
a. Filling out questionnaires at start of study.....								
b. Filling out daily reports.....								
c. Seeing the movies.....								
d. Just being in the study.....								
e. Contact with other participants.....								
f. Talking to research staff.....								

10. How would you rate the effects of the study on *yourself* in terms of:

	Very helpful	Moderately helpful	Neither helpful nor harmful	Moderately harmful	Very harmful
Marital sexual relationship.....					
General marital relationship.....					
On your spouse:					
Marital sexual relationship.....					
General marital relationship.....					

11. If you felt that the study was harmful to you or your spouse in any way, describe below.

12. How confident were you that your anonymity would be safeguarded? (Check one)

- Very Confident Uncertain Very Doubtful
 Moderately Confident Moderately Doubtful

13. State in a few words what you think the main goal of the study was.

14. Suggest any changes that you think might have improved the study.

15. If you saw erotic films during the study how much were you sexually aroused by each of the following activities?

	Greatly aroused	Slightly aroused	No reaction	Mixed arousal and repulsion	Repelled
a. Intercourse?.....					
b. Oral-genital contact?.....					
c. Lesbian acts?.....					
d. Male homosexual acts?.....					
e. Group sex?.....					
f. Sado-masochistic acts?.....					
g. Female masturbation?.....					

16. Whom do you think should be legally permitted to see each type of film listed below?

	Scientists and interested professionals	Any married person 21 or over	Anyone 21 or over	Anyone 18 or over	Anyone under 18 with parental approval	Anyone
a. Intercourse?.....						
b. Oral-genital contact?.....						
c. Lesbian acts?.....						
d. Male homosexual acts?.....						
e. Group sex?.....						
f. Sado-masochistic acts?.....						
g. Intercourse with animals?.....						
h. Female masturbation.....						

Mr. NIX. Our next witnesses are Dr. James L. Howard, Dr. Myron B. Liptzin, and Dr. Clifford B. Reifler, department of psychiatry, University of North Carolina.

Will the gentlemen please take the stand.

Dr. HOWARD. I will read the statement, and then all three of us will be available for any questions you may have.

Mr. NIX. You may proceed.

STATEMENT OF DR. JAMES L. HOWARD, ASSISTANT PROFESSOR, DEPARTMENT OF PSYCHIATRY, UNIVERSITY OF NORTH CAROLINA SCHOOL OF MEDICINE, ACCOMPANIED BY DR. CLIFFORD B. REIFLER, PROFESSOR OF HEALTH SERVICES AND PREVENTIVE MEDICINE, AND DIRECTOR OF THE UNIVERSITY HEALTH SERVICE, UNIVERSITY OF ROCHESTER, N.Y., AND DR. MYRON LIPTZIN, ASSISTANT PROFESSOR OF PSYCHIATRY AND PSYCHIATRIST IN THE STUDENT HEALTH SERVICE, UNIVERSITY OF NORTH CAROLINA SCHOOL OF MEDICINE

Dr. HOWARD. Mr. Chairman and members of the committee, my name is James Lawrence Howard. I am an assistant professor in the department of psychiatry at the University of North Carolina School of Medicine.

I hold a Ph. D. in psychology from Tulane University, granted in 1968.

My colleagues, who appear with me, are, respectively, Dr. Clifford B. Reifler, currently professor of health services and preventive medicine and director of the university health service at the University of Rochester in New York, who at the time of this experiment was associate professor of psychiatry and senior psychiatrist of the student health service at the University of North Carolina School of Medicine; and Dr. Myron Liptzin, assistant professor of psychiatry and psychiatrist in the student health service at the University of North Carolina School of Medicine.

We are grateful for the opportunity to present to you the nature of the experiment which we performed in Chapel Hill last summer, the results we obtained, and the conclusions which we draw.

We are particularly grateful for this opportunity because the experiment has been grossly distorted in the press and has been referred to as immoral, obscene, and a violation of divine and natural law.

It has further been distorted insofar as it seems to imply that we held captive a group of young students and forced upon them an exposure to obscene and pornographic material. We should, therefore, like to present the circumstances and the facts accurately.

We undertook this research under a contract with the Presidential Commission on Obscenity and Pornography because we were aware that the field of pornography and its effects was full of opinions yet contained very little data.

We also knew of the reports that the social experiment in Denmark had led to a rapid loss of interest among the Danes in each successive class of pornography as it became freely available.

We were interested in determining whether different or similar effects would be obtained in a carefully controlled laboratory experiment. That is, would satiation and boredom occur?

For this purpose we designed an experiment which specified the nature of the population that we would expose, the conditions under which they would be exposed, the type of stimulus material to be used, and the measurements and reports that we would obtain from the subjects.

This proposed experiment was submitted to the clinical research advisory committee of the medical school, which is comprised of eight professors from the medical school, one of whom is Chaplain Fred W. Reid, an ordained minister of the Southern Baptist Church, holding both a bachelor's and a master's degree in divinity.

Following their approval, we submitted this proposal to the President's Commission, who granted us the funds to carry out this experiment.

The conduct of such an experiment involves both ethical and technical problems. We should like to describe to you the way in which we handled these.

The subjects that we chose were all young men, ranging in age from 21 to 25 years. No minors were employed.

We also feel that they were fairly representative of a university student population of this age group. By education, 11 were seniors in college, six were juniors, one was a sophomore and five were graduate students.

In terms of social status, 15 came from families with an income of \$10,000-\$20,000 yearly, five with an income above \$20,000 and three with a family income below \$10,000. By political affiliation, eight were Democrats, 11 Republicans, and two Wallace-ites. Two specified no particular political affiliation. In terms of future careers, seven were either premedical students or medical students, two intended to enter the law, one aspired to a business career and one was in the school of pharmacy.

Although the others had not made definite career choices, two were in American studies, five in history, two in psychology and three in English. Five of our subjects of the 11 who were college seniors were about to enter the Armed Forces upon graduation. Three were members of the Reserve Officers Training Corps. Out of our entire group only one might have been classified as "beat" or "hippie" insofar as he had long hair. By religion, 14 were Protestant, two were Catholic, one was Jewish and six professed no religion. The point to this rather detailed description is that we feel our population was not only representative of the student body but also that it was mature, goal-oriented and responsible. Although this description only includes the experimental population, the control subjects were similar.

The choice of these subjects was made as follows. A public announcement was placed on bulletin boards throughout the university, asking for volunteers to participate in an unspecified psychological experiment which would involve 2 hours a day of their time, 5 days a week for 4 weeks. For this they would be paid \$100 each. Seventy students responded to this ad. At this time the 70 volunteers were told the nature and the conditions of the experiment. Twenty-four of the 70 immediately dropped out and for the vast majority of these the stated reason was that their classes or jobs did not permit them to break up their day in order to meet the scheduling requirements of the experiment.

The 46 subjects who met the criteria were given 1 week to decide whether or not they wished to participate in the experiment and if so, were required to have a psychiatric interview. Eighteen of the 46 did not make further appointments, and we do not know why. Of the 28 remaining subjects all were given psychiatric and psychological tests. Three were eliminated by the interviewing team because of the feeling that they were emotionally unstable. Two additional ones found their schedules to be more rigid than they had anticipated and, therefore, dropped out; and 23 subjects remained for experiment.

A control population of nine subjects was selected with the same care and rigor from those subjects whose schedules did not allow full participation. It is worth noting that of the 23 experimental subjects and nine controls, all but three had previously had some experience with pornographic materials. Twenty-eight of the 32 subjects had had sexual intercourse. At the beginning of the experiment five of the subjects were married, and by the end four more had been married. Parenthetically, we would hesitate to conclude that the experiment increased the marriage rate. A much more likely reason is that it was summer and many of the students were marrying following their graduation.

The subjects were advised that at any time during or following the experiment that they were upset in any way they could see a staff psychiatrist or a counselor or minister of their choice. None of the subjects indicated a need for this type of counseling. The subjects were advised that if at any time they chose to drop out of the experiment, they would be paid on a prorated basis for the amount of time spent in participation.

Finally, we wish to emphasize the privacy and confidentiality accorded to our subjects. For instance, during the course of the experiment the subjects sat alone in a room equipped with a moving picture projector and with a four-drawer file in which the top drawer contained pornographic movies; the second, pornographic stills; the third, pornographic literature; and the fourth neutral magazines, books and novels. The subjects were required to spend 90 minutes in the room every day, but the way in which they spent their time was a matter of free choice. The subjects were not permitted to bring their studies into the room, but they were free to use any of the materials in the room, including the nonpornographic materials, exclusively if they chose. Late in the course of the experiment, when the subjects were apparently bored and satiated with the available material, several used the 90 minutes to nap, write letters or daydream.

We would hope that this description of the selection of the subjects and the conditions of the experiment will satisfy you that this was not an immoral experiment. Only the most conservative fundamentalist of morality could consider it so. Our hospital chaplain felt that not only were no moral or ethical canons violated but that the experiment was a necessity in providing a sound basis for further thought and action.

At this point it becomes necessary to consider some of the technical aspects of the experiment since apparently some of our experimental methods are being objected to. We were interested in measuring the degree of arousal created by pornographic material after repeated

exposure 90 minutes for 3 weeks. How is one to measure arousal? One method is to depend upon self-reports. This is potentially subject to error, partly because subjects, for a variety of reasons, might not tell the truth and partly because mixed emotions might be generated which would not be appropriately identified by the subjects.

Nonetheless, we did use this technique and devised a scale in which the subjects reported the degree to which they were aroused during each 10 minutes of the daily session. There are also nonspecific methods for measuring arousal such as measurement of heart rate, blood pressure, respiration and skin temperature, but these are not specific to sexual arousal; and an angry, embarrassed, delighted or disgusted subject would probably show the same responses by these indices.

There is, of course, one obvious method for measuring sexual arousal in the male, and this we used on three occasions during the experiment, during an initial movie, a movie immediately following the 3 weeks of exposure and 2 months later. We used a commercially available instrument, which has been used by many investigators for measuring the turgidity of the penis. The instrument is called a plethysmograph. It was only used on three occasions because we recognize that the use of the instrument itself might be a confounding variable insofar as it might be stimulating or inhibiting. The effect produced by the use of this instrument was reduced as much as possible by allowing the subjects to apply it themselves in complete privacy.

There is still one other method which, while indirect, has a high degree of validity. It is well known that when the male is aroused his prostate gland secretes a fluid. This fluid is retained in the bladder, where it is mixed with the urine. Dr. Charles Huggins, who received the Nobel Prize in 1968, found that prostatic fluid contained a specific enzyme, known as acid phosphatase, and devised a method for the measurement of this enzyme. The quantity of this enzyme depends upon the quantity of prostatic fluid, which in turn, in the physiologically normal male, is proportional to the degree of sexual arousal.

Our primary method, then, for measuring the degree of arousal objectively was that of measuring urinary acid phosphatase. Specifically, the subjects were asked to urinate and empty their bladders before entering the experimental room. At the end of the 90-minute experiment they again urinated but this time into a collection bottle, which was used for the chemical analysis of the acid phosphatase.

There is one detail of this procedure which was apparently found to be offensive by one of the members of the Pornography Commission. It happens that under conditions of extreme arousal, the volume of prostatic fluid may be sufficiently large so that there is some penile leakage and loss of this fluid. Because of this the subjects were asked to use a condom after the initial urination and to drop the condom and its contents into the collection bottle along with their urine at the end of the exposure.

All of these procedures were carried out in strict privacy and with no embarrassment to the experimental subjects, and none of the subjects reported any embarrassment with this procedure.

During the course of the daily experimental sessions the subjects were asked to report at 10-minute intervals how they were spending their time. This was done by their filling out a daily summary sheet

which had room for items on it like viewing movies, reading books, doing nothing, and so forth. Early in the experiment the subjects were occasionally viewed through a one-way screen in order to determine whether they were reporting their activities accurately. This was done sufficiently often to assure ourselves that the subjects' reports were honest and accurate, and we found them to be entirely so. We mention this detail because it was the only case in which the privacy of the individual during the 90 minutes in the room was in the slightest sense violated and this was done with prior knowledge by the subjects.

The detailed results of the experiment are in the hands of the Presidential Commission in the form of a technical report to them. It is our understanding that this will be released by the Commission along with other research and their conclusions and recommendations in approximately a month. At this point it seems necessary only to say that all subjects initially showed a high degree of arousal and of interest in the material. They spent most of their time looking at it and were strongly stimulated by it. However, this effect disappeared quite rapidly and by 10 exposures the subjects as a group showed no physiological arousal and by session 13 spent less than a third of their time looking at the pornographic material.

Even when new material was introduced, the level of arousal was small and the level of interest involved a cursory scanning of the material. Two months after the termination of the experiment the subjects returned for another session and showed arousal and interest slightly greater than at the end of the daily exposures but still substantially below that of the initial exposures.

We were, of course, greatly concerned about whether the experiment might have effects beyond those measured by the techniques thus far described. We, therefore, had the subjects respond to a daily questionnaire and to a daily psychological test designed to determine whether the experiment was significantly affecting their mood, their sleep, their work and study habits and various aspects of their personal and social life, including their sexual life. We were surprised to find that it had virtually no effects.

During the first few days the subjects thought more about sex and reported more frequent sexual feelings. However, they engaged in their usual sexual behavior no more than they did ordinarily. The effects on thoughts and feelings disappeared within 5 days, and their normal habits were resumed and maintained. Two months later the subjects were again interviewed and examined psychologically. We found no change in their previously established patterns.

When we learned that we were to be given an opportunity to testify before this committee, we contacted as many subjects as we could reach in the short amount of time available in order that we might be able to convey some additional information to this body. We were able to contact nine of our 23 experimental subjects. These subjects reported that the experiment had virtually no effect upon them during the ensuing year and what little effect it had was invariably reported to be good in the sense that they felt the experiment had been of some educational value. Four subjects have seen no pornography since the termination of the experiment even though they had access to it. None have seen more pornography than they had been accustomed to prior to the

experiment, and five have seen it occasionally as they had in the past. When asked would they participate again in the experiment, several subjects stated that they would not because it was very dull and because the pay scale was below the hourly wage which they could earn at other jobs. All of the subjects contacted indicated that if assurance of confidentiality could be given them that they would be glad to appear before a congressional committee to answer further questions.

We must, therefore, conclude that when measured by the criteria of effects, the experiment can only be called innocuous. It yielded interesting and, we trust, useful information, but did no harm and in our view can, in no sense, be called indecent or immoral.

There are two additional points which we wish to make. The first is that we make no claims beyond the experimental data. Our subjects, under the conditions of this experiment, quickly became satiated and bored. Conceivably, other subjects of different ages with different degrees of education exposed to the same pornographic material under different social conditions might react differently. We have reported our studies to the Presidential Commission. We do not know what other experiments they have contracted for, what other data they have obtained nor what conclusions they will draw from our work and the work of others, nor do we know what their final recommendations will be.

The second, and final, point which may be of interest to you is derived from the opinions of our 23 subjects. This could be an interesting group insofar as these bright and well-educated young men have had a greater exposure to pornography than most people will see in a lifetime. In a sense, they might be considered experts. Whether or not you choose to call them so, you may be interested to know that to a man they considered the question of the control of smut to be among the very minor social concerns of the day. Most of them found it difficult to think of a less important social issue. One of them was unkind enough to suggest that the matter of congressional salaries had a lower priority in his scale of social values than the control of the smut industry. None of them felt that the experiment had any significant effect upon their behavior or their value systems. Most of them suspected that had they been substantially younger, the experiment might have been upsetting to them and, hence favored some control of the availability of this material to youngsters. Several felt that these materials might be harmful or upsetting to people with serious emotional problems. However, some felt that it might be quite useful to people with marital problems or other sexual problems due to ignorance or inhibition.

We hope that this presentation has been of some value to you in your deliberations.

I will be glad at this time, as will my colleagues, to answer any questions about our report or about the study that we conducted.

Mr. NIX. Just a few brief questions, Dr. Howard.

First of all, you had nine people involved in the experiment?

Dr. HOWARD. No. There were 23 experimental subjects involved, and nine control subjects.

Mr. NIX. All right. And they had 90 minutes per day for 3 weeks?

Dr. HOWARD. Plus an initial week of the same procedure in which they did not view pornographic materials.

This was included to obtain a baseline of their responses.

Mr. NIX. What was the pay?

Dr. HOWARD. We paid our subjects \$100 for the complete experiment. There were 4 weeks of daily exposure. An initial series of evaluations, a second evaluative encounter at the end of the experiment, and a third extensive measurement session 2 months later.

Mr. NIX. How much was it they received?

Dr. HOWARD. \$100.

Mr. NIX. What, specifically, did you have them do? What was the format of the experiment?

Dr. HOWARD. I am sure you realize that there are many ways of measuring sexual arousal, and we wanted to use as many as we could, to try to tie together some other data that was available in the field. Therefore, we used psychological tests and a psychiatric interview—extensive and in depth—prior to the study. Then, after our subjects had gone through this, and we had good background data on them, they were exposed to an initial movie during which time we measured various physiological responses to a hard-core pornographic film.

Following this, the experimental subjects were exposed each day, for 90 minutes, to their choice of materials. During this time we measured their behavior as to which materials they chose during each 10 minutes of the 90-minute session.

We also measured their acid phosphatase secretion. This is an enzyme present in the prostatic fluid of the male, and is therefore present in the urine also. We measured the acid phosphatase production for the 90-minute exposure as an index of their sexual arousal during that day.

Mr. NIX. What were the ages of these participants?

Dr. HOWARD. The subjects were 21 to 23 years old.

Mr. NIX. Were the parents of these subjects aware that their children were engaging in this experiment?

Dr. HOWARD. Since the subjects were of legal age to give consent—

Mr. NIX. Well, just answer the question.

Dr. HOWARD. No formal question as to this was asked them. However, my own informal contact with the subjects indicates that most of the parents knew of the study and that their sons were engaged in it.

Mr. NIX. And you got that information from the subjects, not from the parents?

Dr. HOWARD. Yes, I did.

Mr. NIX. What conclusions did you reach?

Dr. HOWARD. We reached the conclusions that subjects of this age and educational bracket satiated very rapidly to pornography both as to what they chose to look at in the room and otherwise. Initially they spent 85 to 95 percent of their time looking at pornography. By the end of the experimental period, they were spending 25 to 30 percent of their time looking at pornography, and there was a consistent downward trend over the time course of the experiment.

Mr. NIX. And because of those findings, you concluded that pornography was not harmful to them?

Dr. HOWARD. No, sir.

Mr. NIX. What did you conclude?

Dr. HOWARD. We concluded that the subjects in this circumstance become less interested in pornography over the course of the time period.

From the psychiatric interviews and the psychological tests that we used, we concluded that the exposure had no effect on their behavior or on their attitudes toward a wide variety of areas.

Mr. NIX. Because of the limitations of time, I will not take any more of it. Mr. Henderson, do you have any questions?

Mr. HENDERSON. Yes, Mr. Chairman.

Dr. Howard, who made the first contact with you? Did you make the contact, or did the President's Commission first make the suggestion of the experiment?

Dr. HOWARD. Dr. Reifler?

Dr. REIFLER. Yes. We submitted a research proposal to the Commissioners for their consideration.

Mr. HENDERSON. Was that accepted before the experiment was begun?

Dr. REIFLER. Yes, it was.

Mr. HENDERSON. All the subjects were enrolled as students of the university. Is that right?

Dr. REIFLER. No, sir.

Mr. HENDERSON. How many of them were not?

Dr. REIFLER. A number of them were not. This was during the summer, and a number were not currently students. Eleven of them were seniors in college; six were juniors; and one was a sophomore; and five were graduate students as of the previous year.

Mr. HENDERSON. What was the total cost of the experiment?

Dr. HOWARD. \$21,679.

Mr. HENDERSON. What amount of this was paid to the students involved?

Dr. HOWARD. \$2,600, approximately.

Mr. HENDERSON. What amount was paid to the other personnel involved; specifically, I might ask the next question, then, how much did you receive?

Dr. HOWARD. I received from the study \$3,600. This was part of my regular salary during that year. It just so happened that in this case it came from the President's Commission. In return for this I spent approximately 40 percent of my time during this year working on this study. Dr. Reifler and Dr. Liptzin each received \$1,200 from the study, and again this was part of their regular salary. I might also mention that both of them spent far more time on the study than would be indicated by the amount of money they received from it.

Mr. HENDERSON. What was the difference between the total cost and the amount paid to you and the subjects? What did it go for?

Dr. REIFLER. We can submit a detailed statement.

Dr. HOWARD. I have a tentative budget that I could make part of the record, or I could give to you, sir.

Mr. HENDERSON. If you would submit it for the record, that would be satisfactory.

Mr. NIX. Without objection, it may be made a part of the record.

(The information follows:)

*Budget**

Personnel:	
Scientific investigators:	
J. Howard.....	\$3, 600
C. Reifler.....	1, 200
M. Liptzin.....	1, 200
Research assistants:	
R. Moffatt.....	900
C. Heaton.....	650
Statistical and data analysts:	
W. Boulton.....	1, 050
E. Sistare.....	800
B. Earle.....	150
Biochemical analysts:	
B. Bennett.....	950
S. Greiner.....	250
Secretarial assistance: J. Harris.....	1, 150
Social security.....	175
Retirement.....	510
Equipment.....	175
Supplies (biochemical and physiological).....	1, 800
Subject pay.....	2, 600
Miscellaneous supplies (Films, computer program, psychological tests, books, telephone and pharmacy).....	1, 440
Travel.....	400
University overhead.....	2, 675

*This statement is necessarily tentative since final statements have not been received from some sources.

Mr. HENDERSON. Now was any taxpayer's money of the State of North Carolina involved in this experiment?

Dr. HOWARD. No, sir, not directly.

Mr. HENDERSON. Would you have used the same system for obtaining approval for the experiment had North Carolina taxpayer money been used in this experiment?

Dr. HOWARD. Perhaps. At this time I should point out that before it was submitted to the President's Commission it was submitted to our Council on Medical Ethics and Human Research of the Medical School of the University of North Carolina.

Mr. HENDERSON. That leads me to the next question: Did the dean of the medical school approve this experiment?

Dr. HOWARD. Yes.

Mr. HENDERSON. Was any approval obtained above that?

Dr. REIFLER. Yes.

Mr. HENDERSON. Who specifically approved it above the dean?

Dr. REIFLER. I believe it has to go—after the approval of the chancellor, the dean of student affairs also must see the proposal and the financial and law officers involved.

Mr. HENDERSON. Now are we correct in assuming you did not go below the age of 21 in this experiment because of the problem of obtaining the parents' consent?

Dr. HOWARD. No, sir. This was more in the nature of a worry about the legal problems of exposing someone of less than the age 21 to materials of this sort at this time.

Mr. HENDERSON. So the conclusions of your experiment could not have any application to minors?

Dr. HOWARD. Yes, that is substantially correct. We would not be in keeping as scientists if we extended these conclusions beyond our present subject population.

Mr. HENDERSON. And it would be restricted to either college students or those who had graduated or were of the college community but not enrolled at that moment, is that correct?

Dr. HOWARD. As was stated in the testimony, yes, sir, that is essentially correct. We try to be careful not to extend data beyond the population that the sample was drawn from. Statistics are not valid if this is done.

Mr. HENDERSON. Then as scientists did you reach—would you say you did reach any conclusions that would be applicable to average Americans who are not of the college community or between the ages of 21 and 23?

Dr. HOWARD. As scientists, no.

Mr. HENDERSON. So for the cost of this experiment you are limited to 21 to 23 years of age of the university population representative of that population?

Dr. HOWARD. Yes, sir; if we are to remain within a statistical framework.

Mr. HENDERSON. Now, you make reference on page 3 as to political affiliations, where there were eight Democrats, 11 Republicans and two Wallace-ites. You specified two have no particular political affiliation.

What does this mean to you? It means nothing to me.

Dr. HOWARD. Mr. Henderson, in our giving these specific attributes of our subjects, we were doing no more than trying to show that there was a wide range of characteristics represented among our population.

Mr. HENDERSON. You are not making any attempt to draw conclusions with respect to political affiliation, are you?

Dr. HOWARD. This was simply demographic data on our subjects.

Mr. HENDERSON. You didn't come to any conclusions in respect to political affiliation, did you?

Dr. HOWARD. No.

Mr. HENDERSON. Maybe that was the most important point, more important than anything else to come out of that study.

Now the subjects were paid \$100 and it is not clear in my mind exactly how much time you say they spent. In one place you say for 5 days a week for 4 weeks for 40 hours; and in another place you say they spent 90 minutes a day for 3 weeks and I presume that was in the actual experimental period?

Dr. HOWARD. In the exposure to pornography; yes. We estimated that at one time the average subjects spent somewhere between 60 and 70 hours of time on subjects related to the experiment.

Mr. HENDERSON. Would the pay that you gave them equal the Federal minimum wage of \$1.60 an hour?

Dr. HOWARD. Barely.

Mr. HENDERSON. How would the time that you contributed to this apportioned to the salary you received compare with the pay of the students involved in the experiment on an hourly basis?

Dr. HOWARD. I don't think that that sort of conclusion can be drawn.

Mr. HENDERSON. Do you have the number of hours you contributed to this experiment?

Dr. HOWARD. Maybe 500, maybe more.

Mr. HENDERSON. All right, on page 5 of your statement you emphasize the privacy and confidentiality accorded to your subjects. Were they told their names would not be revealed to the public?

Dr. HOWARD. Yes.

Mr. HENDERSON. Or to their parents upon request by the parent?

Dr. HOWARD. This was never made explicit, no, sir. I think that as I say—

Mr. HENDERSON. Do you know whether or not their wives were knowledgeable of this? Did you yourself make sure that they had knowledge that their husbands were involved in this experiment?

Dr. HOWARD. All wives of the subjects were aware that their husbands were participating in the experiment.

Mr. HENDERSON. Were they made aware by you or by the subjects themselves?

Dr. HOWARD. By the subjects.

Mr. HENDERSON. On page eight you state that the subjects were occasionally viewed through a one-way screen.

Were they made aware of that type of observation?

Dr. HOWARD. Yes, sir; as we stated in the report we informed the subjects during the initial interview when we were telling them of the experimental procedure that at times their behavior would be observed unbeknownst to them through a one-way mirror in order to validate their self reports.

Mr. HENDERSON. Now on page 10, the last sentence of the first paragraph, you say that all of the subjects contacted indicated that if assurance of confidentiality could be given them that they would be glad to appear before a congressional committee to answer further questions.

What do they mean by "assurance of confidentiality"?

Dr. HOWARD. I think if you could afford them the same assurances that we gave them that their names would not become public unless they chose to make them public, that this would meet the same conditions that we offered them initially.

Mr. HENDERSON. Do you think that any 21- or 23-year-old college-age group could appear before a congressional committee and their confidentiality be assured them on any subject? Do you think it could be done?

Dr. HOWARD. I don't know what sort of procedures you have available, sir.

Mr. HENDERSON. Why would they want assurances of confidentiality in your opinion?

Dr. HOWARD. Sir, when we called them this time and asked them the questions we did in order to get a 1-year followup on their experiences, the first thing we told them was that this information was to be under the same vows of confidentiality that we gave them originally and the last question we asked them was would they appear before a congressional committee.

Mr. HENDERSON. Did any of them volunteer to appear without assurances of confidentiality?

Dr. HOWARD. Yes, sir. Several of them did, sir.

Mr. HENDERSON. Do you know whether or not any of them suggested that they might volunteer before this committee?

Dr. HOWARD. This was not suggested. We just wanted to be able to tell you whether or not this would be a possibility if you chose to get this kind of testimony.

Mr. HENDERSON. But the only assurance you can give us is that we could talk to them if we gave them assurance of confidentiality, is that correct?

Dr. HOWARD. The majority of the subjects; yes.

Mr. HENDERSON. If the committee indicated an interest to talk with those who were not concerned about confidentiality, would you be able to convey that message to them?

Dr. HOWARD. Yes.

Mr. HENDERSON. Now those who insist on the assurance of that confidentiality, do you think that they might believe that their experience and reactions are not in accord with the conclusions you have reached?

Dr. HOWARD. No, sir; all the subjects that we have contacted are in accord with the conclusions that we have stated.

Mr. HENDERSON. Do you think they might be ashamed of having participated in this experiment?

Dr. HOWARD. No, sir; I don't think this is the reaction of any of our subjects. I think the point to be made here about confidentiality is that this is still a touchy subject in the world at large and I think that they would perhaps, legitimately, be worried about how it would affect some of their contacts in their job and so forth.

Dr. LIPTZIN. I think the attempt here—

Mr. HENDERSON. How many of the 23 subjects were married?

Dr. HOWARD. At the beginning of the study five were married; at the end of study, nine.

Mr. HENDERSON. And out of the control group?

Dr. HOWARD. None of the control group as I remember was married.

Mr. HENDERSON. Now, I don't have reference to your page number—yes, I do, on page 4.

You state that 28 of the 32 subjects had sexual intercourse.

Dr. HOWARD. Yes, sir.

Mr. HENDERSON. How many of the 23 that were the subjects were in that 28 group?

Dr. HOWARD. I believe there were three experimental subjects who had not had sexual intercourse prior to the experiment so that would be what? That would be two of the control group.

Mr. HENDERSON. Do you feel that you had a sufficient number of subjects and those in the control group to reach any conclusion as to what effect the experiment would have with regard to those who had had sexual experience and those that had not had sexual experience?

Dr. HOWARD. No, sir; we did not feel that we had sufficient representation of those who had not to draw any conclusions about the difference.

Mr. HENDERSON. Now is it fair to state that this group was relatively liberal in its sexual orientation prior to participation in the experiment?

Dr. HOWARD. Yes, sir; I think they could be categorized as such.

Dr. REIFLER. Only slightly.

Dr. HOWARD. Only slightly liberal with respect to the general college population.

Dr. LIPTZIN. With respect to any population really, however, if you could define that, we could respond better.

Mr. HENDERSON. Well, within the age group and the group from which they came. The limits previously defined.

Dr. REIFLER. There was a wide range amongst our subjects in the kinds of sexual and amount of sexual experience they had just as there was in their political and religious affiliations and so forth.

Mr. HENDERSON. Mr. Chairman, I am not going to take any more time, but I would like to make the comment that it seems to me that with the experiment as limited as this is to age group and the subjects as it relates to the population generally within that age group, it is my personal opinion that this was a waste of the taxpayers' money and as a Representative on the Federal level I am as incensed as I would be in the State of North Carolina if the taxpayers' money of that State had been used in this experiment; and I thank you for this time.

Mr. NIX. Mr. Gross.

Mr. GROSS. Thank you, Mr. Chairman.

I would be interested to know why you limited this experiment to male citizens. Did we not approve the equal rights proposal?

Dr. LIPTZIN. One reason for that is that there is very limited means of measuring sexual arousal specifically in the female and as reported in the documents which you have a copy of there; there is a fairly specific measure for males; namely, the prostatic secretions and the amount thereof.

This greatly simplified the experiment from our point of view.

Mr. GROSS. You are talking way over my head now. Are you saying that you are not interested in the female reaction to this type of stimuli?

Dr. LIPTZIN. No, not at all.

Dr. REIFLER. We are saying that it is very difficult to measure the female reactions quantitatively where it is not as hard with males where there are identifiable signs of sexual arousal.

Mr. GROSS. Well, either you have lost me or I have lost you again because I don't quite get that.

Dr. HOWARD. Mr. Gross—

Mr. GROSS. Let me ask this question, Dr. Howard, have you or either of your associates been tested on this subject. Were you tested before you started this experiment?

Dr. LIPTZIN. In terms of what, sir?

Mr. GROSS. In terms of what you did in carrying out this experiment.

Dr. LIPTZIN. I am not sure what you are referring to.

Mr. GROSS. Well, were you ever tested at any time as to your reaction to pornographic material?

Dr. LIPTZIN. Not as specifically as the experimental or control subjects.

Mr. GROSS. Would you think that this would be helpful?

Dr. LIPTZIN. Not necessarily.

Mr. GROSS. Don't you think it would be helpful in your conduct of passing on this as applied to someone else?

Dr. HOWARD. Mr. Gross, most of the procedures that we used with the subjects were piloted ahead of time using people in our lab or our-

selves in order to ascertain the validity of the measure we were going to use.

Mr. GROSS. But you were not tested yourselves, you were not being tested by somebody else, were you?

Dr. REIFLER. And we were not testing our subjects. There was no challenge to them. We were measuring their responses.

Mr. GROSS. Is there a difference between measuring responses and testing them?

Dr. REIFLER. I would say so; yes, sir.

Mr. GROSS. Well, I am not going to—

Mr. HENDERSON. Would you yield to me on that point?

Mr. GROSS. Yes.

Mr. HENDERSON. On page 11 you say speaking about the subjects that they might be considered experts.

You consider yourselves now experts as a result of the experiments you conducted?

Dr. HOWARD. Sir, we were using the word expert here only in a sense of the amount of exposure to pornography versus what the average person would see in a lifetime.

Mr. HENDERSON. You are talking about average persons aged 21 to 23 in college or university communities?

Dr. HOWARD. No, sir. I was referring to the amount of pornographic material that the average male regardless of age would be exposed to in a lifetime.

Mr. HENDERSON. I don't quite understand you. You say that they are considered experts in what?

Dr. HOWARD. In their own responses to pornography.

Mr. HENDERSON. Experts in their own or in somebody else's responses?

Dr. HOWARD. Their own.

Mr. HENDERSON. Just because they have seen so much of it or because of the conditions?

The reason I asked you that, do you think any one of these that have had less exposure to various pornography than perhaps Members of Congress who have had their offices cluttered with it, do you think they are experienced? Do you think they are experts?

Dr. HOWARD. I have no knowledge of it.

Mr. HENDERSON. I know no Member of Congress who claims he is an expert in pornography because he has seen this trash. I want to know what kind of experts you are talking about here.

Mr. GROSS. One final question if I may, Mr. Chairman.

You made a point or a statement somewhere either in your presentation or later, that it was volunteered on the part of these 23 to pick up and look at photographs; is that right?

Dr. HOWARD. Yes, sir.

Mr. GROSS. What if they had refused to do that? What if they had refused finding it so repulsive that they refused to have anything to do with the photographs?

Dr. HOWARD. They were free to do so, sir.

Dr. REIFLER. At the end of their experiments many of them had spent most of their time not looking at the pornographic materials, but reading the other literature.

Mr. GROSS. What if they had started out by not accepting or not looking at this pornographic material?

Dr. LIPTZIN. That would have been an interesting result.

Dr. REIFLER. In fact, one of our subjects did this and it was duly measured and charted along with the other kinds of behavior.

We were measuring the behavior of our subjects in this area under conditions of free choice.

Mr. GROSS. So the test of the individual amounted to a measurement?

Dr. REIFLER. It is a series of measurements; yes, sir.

Mr. GROSS. That's all, Mr. Chairman.

Mr. NIX. Thank you.

Mr. HENDERSON. Mr. Chairman, could I ask one further question?

Mr. NIX. Yes.

Mr. HENDERSON. Dr. Howard and Dr. Liptzin, would you for the record tell us what your duties are in the positions you hold in the student health service?

Dr. LIPTZIN. Dr. Howard is not a member of the student health service. Dr. Reifler and I did hold that position last year.

Mr. HENDERSON. What are your duties in the student health service?

Dr. REIFLER. I believe I can answer that.

Last year I was senior psychiatrist at the student health service and associate professor of psychiatry in the medical school responsible for the direction and development in the mental health facilities of the student health service for the students at the University of North Carolina.

Dr. Liptzin was associated with me in this job.

Mr. HENDERSON. Dr. Liptzin, would you be employed there this coming year?

Dr. LIPTZIN. At the present time I am in private practice of psychiatry, sir.

Mr. HENDERSON. You are not connected with the University of North Carolina?

Dr. LIPTZIN. No, sir.

Mr. HENDERSON. Do you expect to be, this following year in the student health service, anyway connected with the university?

Dr. LIPTZIN. At this time I do not expect to be.

Mr. HENDERSON. That's all, Mr. Chairman.

Mr. NIX. Mr. White.

Mr. WHITE. I just want to ask a brief question. Do I understand that your scientific purpose was to determine the impact of pornography on the general public. Is this correct?

Dr. HOWARD. Sir, whenever a scientific investigation is conducted, you necessarily make some limitations on the population that you are experimenting on.

Otherwise costs in money and time are prohibitive. So, yes—or rather, no. We were, as I say, scientists trying to limit our population to a readily available population in which pornography was, at least by others, felt to be a significant problem.

Mr. WHITE. So in other words, your conclusions were as to selected subjects and do not apply to the general public?

Dr. HOWARD. We do not know that they apply to the general public.

Mr. WHITE. On page 11 you have stated that, "In fact it is the feel-

ing of many of your subjects that the reading or viewing of pornography would indeed affect good segments of the general public."

Dr. HOWARD. Most of our subjects indicated that they felt some age limit should be placed on the sale of pornography.

Mr. WHITE. And in fact, there was a statement made that those with emotional problems should also be restricted from viewing pornographic materials.

Dr. HOWARD. Yes, some of our subjects stated that they felt it might have some effect on emotionally unstable persons.

Mr. WHITE. So, since pornography is disseminated to all the population without selection, then you would endorse the activities of this committee to restrict the sending of pornography through the mails?

Dr. LIPTZIN. I don't think that information is available from our study. Again, these are opinions of some of our subjects and we can not draw any inferences from their opinions.

Mr. WHITE. Isn't that the logical conclusion from what you have put in your statement at page 11?

Dr. LIPTZIN. No, sir; I think our conclusions are fairly specific that we limit the data to the population studied.

Mr. WHITE. Your subjects indicated that they felt there were certain persons of the population that should not receive pornography.

Dr. HOWARD. Yes, our subjects stated this as an opinion, a personal opinion.

Mr. WHITE. That's right; because of their own experience as projected. Isn't this true?

Dr. HOWARD. Yes.

Mr. WHITE. I have one other question concerning page 10.

You make this statement, "None have seen more pornography than they have been accustomed to prior to the experiment, and five have seen it occasionally as they have in the past." Isn't that what you had in your statement?

Dr. HOWARD. Yes.

Mr. WHITE. And you are indicating, therefore, that they came into the experiment virtually on the same level of exposure or impact?

Dr. HOWARD. No, sir; we did not say that. Some of the subjects had never seen it, some had seen it extensively. What we said was compared to their own past baseline level of exposure, none increased their voluntary exposure to pornography following the experiment.

Mr. WHITE. Subsequent to?

Dr. HOWARD. Yes.

Mr. WHITE. Thank you, Mr. Chairman.

Mr. NIX. Before I adjourn the meeting, without objection, the statement of Dr. John R. Cavanagh may be now made a part of the record. (The full statement of John R. Cavanagh follows:)

STATEMENT OF JOHN R. CAVANAGH, M.D.

The report of the President's Commission on Pornography is disappointing. It seems that it is at times misleading. It speaks at great length about the effect of pornography on adolescents (or its lack of effect). It then states that their opinion that pornography does not corrupt the morals of young people is not based on actual study of young people under the age of 18 because of the sensitivity on the part of parents to such studies. The Commission does not hesitate to come to conclusions, however. Studies on college students, the report says,

may be extrapolated to those under 18 years. I wonder if it can. The report does include a study on 23 college students who were exposed to pornographic movies for 90 minutes a day. Eventually, they become satiated; not a very startling finding. It was arrived at after a considerable expenditure of tax money. It is, however, generally recognized that the sex appetite is the one most quickly satisfied, but also the quickest to return. No great research is needed to arrive at such a conclusion. One wonders how these students were selected, whether they were all males, all white, what their religious backgrounds were, how active they were in the practice of religion, why only 23 were chosen, etc., etc.

There was no need for an expensive investigation to point out the fact that obscenity does not cause many sex crimes. This has been investigated before. Pornography may stimulate the sex interest in those who already are sick and it may lead them to seek sexual satisfaction. Obscenity satisfies a vicarious interest in sex. It is more likely to be used in those who suffer from impotence. Such individuals who suffer from partial or total impotence frequently commit outrageous crimes in an effort to satisfy their sadistic or masochistic desires. Here, if used at all, obscenity may give rise only to sexual arousal but it does not in any way cause sex crimes.

The language throughout the report is loose and it is not usually clear whether cause or stimulus is referred to. Throughout the report the words pornography and obscenity are used interchangeably. Although they are regarded as harmless, they are given the same definition throughout. This is merely another example of the loose construction and confusing terminology used throughout the report. It appears at times that everyone had a hand in writing the report, which therefore lacks unity.

Although I am not easily shocked after 40 years in the practice of medicine, I must admit that I was at least very surprised to see in the report the suggestion that pornographic pictures and writings be used in the instruction of young people in sex.

I was quite surprised also to read in the report the statement that little had been done in recent years to provide materials for sex instruction. The members of the Commission must have had their heads in the sand for the last few years, during which there has been constant discussion of sex instruction and a profusion of books and articles have been published. Why does the Commission take a view that pornographic pictures would help to promote a better view of human sexuality? Can any of them have children? Why have they taken such a harmful view? I do not know, but I know many reasons why they are wrong. Looking only at the natural aspects of sex, there can be only agreement that men and women are attracted to each other. We also know that the bizarre forms of sex displayed in obscene books are repulsive to most people. We also know that most pornographic pictures and literature appeal to the prurient or "sick" interest of those individuals who find a vicarious thrill in such material. The Commission seems to wish to dispense such material to sick people. We can be almost sure it will make them worse. I am confident that they would not recommend the use of cigarettes if they believed they caused cancer of the lung, or even if they suspected that it did.

I am disappointed that such an eminent Commission, appointed by Mr. Nixon, could take such a physical view of sex with emphasis on its perverse aspects. Objectivity has limitations and becomes subjectivity when studies are designed to prove a forgone conclusion. We have long known that statistics can be made to prove almost anything. I make these statements because opinion has been generally opposed to the findings of this Commission. Are we to believe that the few studies made by this Commission overthrow all previous considerations? I realize that some articles have been published which support the Commission's attitude. I maintain, however, that there is a vast majority opposed to it.

I sincerely hope that the Congress will not accept this report. I hope that they will recognize, as most of us have for years that sex disassociated from love is a purely biological or animal act. Love should be a tender thing and should bring two people together. No one can question that there is an erotic attraction which leads to love, but that sex acts should be the culmination of such love. Sex acts between married couples may assume a variety of forms as they get to know each other. But to introduce young people to fellatio, cunnilinctus, sodomy, homosexuality, flagellation, bondage, and other perversions is to coarsen their relationship, to separate love from sex, to put their erotic life on a false plane.

Love should be fostered in the life of young people, not sordid sex.

Mr. NIX. I now have something from the Effects Panel, a statement as follows:

While these studies suggest that exposure to sexual stimuli may change attitude about erotic materials, it should be noted that persons who participated in these studies were volunteers, generally well educated, and relatively sexually liberal prior to participation. A cautious interpretation of these data would emphasize that already liberally oriented persons became, after exposure, even more liberal. These studies do not demonstrate that such changes occur or would occur among persons with established restrictive attitudes regarding erotic materials.

Thank you, Dr. Howard, Dr. Liptzin, Dr. Reifler, for appearing here today. Your testimony certainly will make remarkable contributions to our deliberations. Thank you very much. The subcommittee is adjourned.

(Whereupon, at 12:25 p.m., the hearing was adjourned.)

OBSCENITY IN THE MAIL

TUESDAY, NOVEMBER 17, 1970

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

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 210, Cannon House Office Building, Hon. Robert N. C. Nix (chairman of the subcommittee) presiding.

MR. NIX. The Subcommittee on Postal Operations will be in order.

There were many things wrong with the work of the so-called President's Commission on Obscenity and Pornography.

It had a public opinion poll taken which was supposed to show according to the Commission that the American people were not opposed to pornography.

The poll taker asked Americans which problem they considered most serious in American life. I submit that the war in Vietnam, racial discrimination, crime, and many other issues rank ahead of pornography as a national threat. But the conclusion that pornography is not regarded as serious a problem as a war, or discrimination or crime is not to say that pornography is not a problem and that legislatures should not act on it.

This is the first Presidential Commission that I know of that has had to be subjected to a Federal court injunction in order to preserve some color of fairness to the minority. Apparently the Chairman of the Commission and his handpicked staff think disagreement with their views is not scientific.

This Commission relies on laboratory experimentation with human beings in a matter of morals and national character. It equates mice with men.

Men are not mice and Americans are not laboratory animals who react the same way to stimuli.

The aim of this Commission staff and its chairman was not, as they stated, to influence State legislatures or the Congress but rather the Supreme Court of the United States. It constitutes a brief supporting the case of those who wish to push even more pornography on the American people. In order to be successful they must maintain that the Commission report is the only scientific evidence dealing with obscenity.

It is not. Our hearings today will show that. What is more, it will be impossible to prove by laboratory experiments that obscenity is or is not harmful to society. Obscenity and public morals are not subject to mathematical measurement.

In this hearing today we have four distinguished ladies and gentlemen who will appear here. The first witness today is the Honorable Thaddeus J. Dulski, Member of Congress and chairman of the Post Office and Civil Service Committee, who has displayed a deep interest in this subject, who has made specific, definite, and worthwhile contributions to this effort and whom I am honored to have here this morning to testify.

Mr. Chairman.

**STATEMENT OF HON. THADDEUS J. DULSKI, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. DULSKI. Mr. Chairman, at the outset I want to compliment you and the hard working members of your committee who have gone far in resuming these hearings on the issue of obscenity and pornography.

It is clear evidence, if such is necessary, to make it plain that our full committee, as well as your Subcommittee on Postal Operations, has a continuing interest in the very frustrating problem of controlling the flow of smut through the mails.

Our committee in this Congress has a fine record, of which all of us can be proud, in dealing with legislation to control obscenity and pornography. Earlier in this Congress your subcommittee approved a bill which passed the House and is pending before the Senate.

Part of that bill was incorporated in the postal reform law last summer, but perhaps the most important part of the bill remains pending in the Senate.

The portion which still remains involves the protection of minors from the receipt of obscene material through the mails. This provision will impose a stricter ban on the use of the mails, in any way, for the solicitation, sale, delivery, or distribution of pornographic material to a minor.

The essential part of such provision is that it will spell out in complete detail exactly what type of material is objectionable and should be banned from the mails. Such standards are a vital feature of this provision.

My bill, H.R. 19541, which is before the subcommittee today, incorporates the recommendations of the outspoken minority of the President's Commission on Obscenity and Pornography.

This bill is aimed at one of the great deficiencies in law in attempting to control smut. That is the lack of a clear definition of certain terms commonly associated with smut; in particular, the terms "obscene" and "prurient interest."

This bill is intended to close any loopholes that exist because of the lack of clear definitions of these terms in law.

The need for these clarifications was one of the conclusions of the Presidential Commission minority, whose dedication and perseverance in following through on the congressional mandate is perhaps the one redeeming feature of the Presidential Commission report.

The presentation of the Commission majority was an extreme disappointment in its failure to carry out its responsibility.

Had the Congress been restricted to the views of the majority, the end result would have been a fiscal feast for the peddlers of filth who

would have been given clear sailing to operate with relative freedom and immunity.

Mr. Chairman, I am hopeful for early action on my new bill, as well as for action by the Senate on the remainder of the earlier bill which has passed the House.

Again, allow me to commend you for your diligence on this important subject. I am very happy today that you have brought witnesses that will give clarification to this very important subject that the entire country is aroused about because pornography today has reached a plateau so that I feel that something has to be done by the Congress of the United States.

Thank you, Mr. Chairman.

Mr. NIX. Thank you, Mr. Chairman.

I want to particularly compliment you for presenting this particular legislation here today because I think everyone here is conscious of the fact that the Supreme Court in some of its decisions has brought obfuscation instead of clarity to the issue under discussion.

And for that reason it needs clarification and this legislation serves such purpose.

Thank you.

Mr. Wilson.

Mr. WILSON. I have no comments.

Mr. NIX. Mr. White.

Mr. WHITE. No questions at this time, Mr. Chairman, thank you.

Mr. NIX. Thank you very much, Mr. Dulski.

Mr. DULSKI. Thank you, Mr. Chairman.

(The bill, H.R. 19541, referred to by Mr. Dulski, is as follows:)

[H.R. 19541, 91st Cong., second sess.]

A BILL To amend title 39, United States Code, to improve the protection of a person's right of privacy by defining obscene mail matter, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section 3006 of title 39, United States Code, as enacted by section 2 of the Postal Reorganization Act (Public Law 91-375; 84 Stat. 747), is amended—

(1) by inserting the subsection designation “(a)” before the word “Upon”; and

(2) by inserting at the end thereof the following new subsection:

“(b) As used in this section ‘obscene’ means obscene as defined under section 1466 of title 18.”

Sec. 2. (a) Chapter 71 of title 18, United States Code, relating to obscenity, is amended by adding at the end thereof a new section to read as follows:

“§ 1466. Definitions

“(a) As used in this chapter—

“(1) ‘obscene’ includes matter which has its predominant appeal to the prurient interest when considered as a whole by contemporary community standards; and

“(2) ‘prurient interest’ includes a shameful or morbid interest in nudity, sex, or excretion which goes substantially beyond customary limits of candor in discretion or representation when judged by the following standards:

“(A) if it appears from the character of the matter or the circumstances of its dissemination that the matter is designed for, or directed to, an especially susceptible audience, the matter shall be judged with reference to such audience;

“(B) if the matter is distributed or exhibited to minors who have not attained their eighteenth birthday, the matter shall be judged with reference to an average person in the community of the same age as the minor to whom such matter is distributed or exhibited; and

“(C) in cases other than those described under paragraphs (2) (A) or (2) (B) of this section, the matter shall be judged with reference to the average person in the community.

“(b) Any matter which is obscene under this section shall be deemed conclusively to be utterly without redeeming social importance. Any slight social value in such matter shall be deemed outweighed by the social interest in order and morality.”.

(b) The table of contents of chapter 71 of title 18, United States Code, is amended by adding at the end thereof the following:

“§ 1466. Definitions

SEC. 3. Section 305(a) of the Tariff Act of 1930 (19 U.S.C. 1305), is amended by adding at the end thereof the following:

“As used in this section ‘obscene’ means obscene as defined under section 1466 of title 18, United States Code.”.

Mr. NIX. Our next witness is Dr. Albert Hobbs, Ph. D., Department of Sociology, University of Pennsylvania, Philadelphia, Pa.

Dr. Hobbs, you may take the witness chair. I want to extend the thanks of the subcommittee to you for taking the time to appear here today.

STATEMENT OF ALBERT HOBBS, PH. D., DEPARTMENT OF SOCIOLOGY, UNIVERSITY OF PENNSYLVANIA, PHILADELPHIA, PA.

Dr. HOBBS. Thank you, Mr. Chairman and members of the committee.

I would like to read quite a brief written statement and then be open for questions from members of the committee.

My background in this material is general as well as specific. For many years now I have been analyzing social science materials to determine whether such materials are in fact really scientific or not.

The vast majority of them—I have written several books on this—are not at all scientific.

More specifically, I was the first one to analyze the Kinsey Report on Sexual Behavior to show that these were not scientific nor were the Masters and Johnson reports. None of this material to my knowledge is scientific.

With that preface, I would like to read this statement.

The recommendations of the majority of the President’s Commission rests heavily on a foundation of—and this is their quote—

... empirical research designed to clarify the question has found no evidence to date that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal behavior among youths or adults.

This contention that no empirical evidence exists is repeated throughout their report. If this contention is incorrect; that is, if their contention that no empirical evidence exists, if this is incorrect, then the foundation for the majority report is unsound, and the recommendations which rest upon it are untenable on its premises.

It is my professional judgment that the empirical and supposedly scientific foundation on which the majority recommendations rest is quite unsound; that in reaching their recommendations this majority failed to examine the available evidence in an intellectually responsible manner; and that these recommendations of the majority of the President’s Commission on Obscenity and Pornography emerge primarily

from the preconceived bias of its members rather than from scientific evidence.

The majority contention that evidence proving the harmful effects of obscenity and pornography which would meet rigorous standards of scientific procedure does not exist is quite true; but it is equally true that neither does scientific evidence to the contrary. These issues cannot at the present time be either proved or disproved empirically or scientifically.

In fact, scientific evidence relating to any significant aspect of human behavior is so rare that one of America's foremost scholars, Prof. Jacques Barzun of Columbia, in his book, *Science, the Glorious Entertainment* (1964) stresses:

The social sciences today have yet to show one universal element or controlling "law" one unit of measurement, one exactly plotted universal variable, or one invariant relation.

I could cite many other authorities to the same effect, to show that the majority preconception that such evidence was available or could possibly have been uncovered was incredibly naive. Even this majority admits that the research on possible antisocial and criminal effects of erotica was "somewhat more restricted in quantity and in quality of rigor than that required for unequivocal conclusions."

If the members of this majority had exercised the degree of intellectual responsibility which was clearly involved in the magnitude of their task and the complexity of their subject matter, they would (1) have made this admission of the weakness of their studies much, much stronger and (2) they would never have drawn such an extreme conclusion about the nature of the empirical evidence as they did while at the same time failing to warn their readers of the glaring weakness of all empirical evidence in these areas.

This majority tells us that it set out to find a form of evidence which numerous responsible authorities know to be nonexistent. Failing to find what never existed, and what in the present state of knowledge could not possibly exist, the majority used its pedantically fortified ignorance as a springboard for a frantic leap to a totally baseless conclusion: that we must substantially change our laws.

I could go into this in some detail to show what their bias is and what direction it has gone; what the weaknesses of the study are, but this is done already in the minority section of the report and I think done very well.

So rather than labor this, I won't go into that. There are many, many points throughout the report where the majority make statements presented as fact which simply are not fact.

They contend that the long term trend in pornography has not substantially changed. This is simply not true as evidenced in 1963 when a judge of the State Supreme Court of New York modified the laws of New York in dismissing indictments against three Queens distributing concerns and seven executives accused of selling obscene literature, even though the justice said:

These are poor writings, bad in taste, profane, offensive, disgusting and plain unvarnished trash; with fully 90 percent of each book filled with lurid descriptions of sexual activities both hetero and homosexual, in sufficient detail to act as an erotic stimulus to those so inclined.

This decision was handed down in 1963. Several months later a group of reporters from the New York Times went out and surveyed the New York scene and found a tremendous increase in the amount of pornographic obscene literature. This was done again in 1970, and their latest estimate as of February 22, 1970, is that the pornographic business is now up to \$500 million a year and the number of skinflief movies have increase in 5 years from about 90 to more than 600. The number is still very rapidly growing.

According to the report 5 years ago, there were nine dirty book stores in Los Angeles and now there are more than 90. And the biggest growth is in mail order business, of course. This is what is growing tremendously.

One other thing: The Commission majority says pornography won't hurt people too much and "will substitute for the sex education."

If by sex education they mean the kind of sex education which is promoted by SIECUS, the Sex Information and Educational Council of the United States—if that is what they mean, this wouldn't have any ameliorative effect on the influence of pornography on youth.

SIECUS takes a presumably amoral stand, it doesn't take any moral stand at all. So their assumptions that you are going, through sex education, to get some character or moral training in sex is a false assumption.

I have analyzed SIECUS's materials and written a pamphlet on it, and I can't see where they would constitute any kind of dam against the possible evil effects of the flood of pornography which we are going to get.

Incidentally, also the Commission statements about Denmark are very, very much biased. Recently the Reuters correspondent published an article in the British magazine *Encounter*, and whereas the majority of the Commission says that decline in sex crimes in Denmark could not—and they are very strong about this, much stronger than the evidence warrants—they say these changes could not have been because of changes in the laws and the decline could not have been because of changes in the attitude of people toward reporting offenses.

Their own researcher said there were changes in the laws and there has been a change in the attitude. Reuters says most of the decrease is due to these two things. The committee says the opposite. They can't possibly know, they can't possibly measure scientifically or materially the change of attitude of a group of people.

Another thing he shows is that actually the more serious sex crimes in Denmark have gone up from 1962 to 1968, whereas they would have you believe the opposite, although they don't quite say it.

So my belief is that this committee cannot legitimately rest its recommendations on its claim to having scientifically proved anything or empirically proved anything. I don't think they have. That is my statement.

Mr. NIX. In substance, Dr. Hobbs, you agree with the minority?

Dr. HOBBS. In substance, yes, sir.

Mr. NIX. And with those people who are critical of the Commission report saying this report in no sense justifies the expenditure of \$2 million.

Dr. HOBBS. I can conceive of situations in which \$2 million can be spent more uselessly but they would be a little difficult to find.

Mr. NIX. Mr. Chairman.

Mr. DULSKI. I am interested in the statement you made regarding reports that sex crimes in Denmark have declined since her laws against pornography were abolished.

I have read a report recently that this is not true.

It would seem that these articles are being used in an attempt to impress the people of the United States that free traffic in pornography is a deterrent to sex crimes.

Would you agree that a major factor in the so-called decline is the fact that certain acts are no longer criminal in Denmark?

Dr. HOBBS. I think you can show—and this Reuters correspondent, H. J. Barnes, in the magazine *Encounter* did—if you just take the total of all sexual crimes, minor as well as major, the minor ones have gone down because of changes in definition on homosexuality, for example.

Acts of homosexuality which would have been a crime a couple of years ago are no longer a crime. And the other thing is a decrease in reporting. So that you do in fact get a decrease in the total but most of the decrease according to these figures from Reuters which I assume to be correct—these are official figures—most of the decreases are in the minor, more or less, misdemeanor offenses.

But in the serious offenses—rape, for example, if you take the year 1962, the number of rapes in 1962 was 189; in 1968, 217. This is not a decrease, this is an increase. Why people continue to stress the favorable or possible effects of the elimination of the laws against obscenity and pornography in Denmark and fail to note possible harmful effects, for this you would have to read into their minds.

I don't know. I understand there was some shift also about the decline, that some people when they opened the doors, stopped reading the books and began to buy the dirty films in living flesh color. Of course, you can understand that, too.

So you might have a decrease in sales of pornographic books but more than compensated for possibly by an increase in skin flics.

Mr. DULSKI. Thank you very much.

Mr. NIX. Mr. Wilson.

Mr. WILSON. Doctor, if the Commission had come up with findings that you agreed with would you think the money would have been well spent?

Dr. HOBBS. No, sir.

I have consistently throughout my entire career maintained whether I agree with something, whether or not anybody who claims this is scientific in relation to human behavior, no.

As a matter of personal belief, if this Commission had come out and said, "We believe this is it, we as individuals believe" this or that, then I would say well you are entitled to that opinion.

As a professional analyst of whether material is scientific or not, if they say it is scientific, it is my job to show it isn't, if I can.

Mr. WILSON. In other words, as far as you are concerned the Commission was needless?

Dr. HOBBS. If they rested on the premise that they can or could have found scientific evidence to prove one case or the other, this was a waste of time. This is difficult to believe in this day and age with so many books written along the same lines I have been writing for many years.

You cannot have rigorous scientific areas on either side. You have to use your best judgment.

Mr. WILSON. What do you feel Congress should do to remedy the problems we have in this field. Do you think Mr. Dulski's bill approaches this properly? Do you think it is a matter of defining the terms?

Dr. HOBBS. To the degree that the terms can be defined, to the degree you can approach them in more precise definitions for description than we have now, I think this would be very helpful. I think, also, it would be very, very helpful if such material were labeled to the effect that this could be—you don't have to make a judgment that it is, but it could be degrading.

I would be in favor of labeling materials, not in the sense of prohibiting it necessarily. That is another issue. But I do think if it is straight, hard core pornography or obscenity it could well be labeled the same way you label cigarettes.

Mr. WILSON. Do you think Chairman Dulski's bill is good at all?

Dr. HOBBS. I will say to the degree it would approach clarification of definition in relation to these matters and to the degree that people would be forewarned that this is hard core pornography material, I think it could be helpful.

Whether it would stop or seriously slow down the huge flood of such materials, this I don't know. I hope so, but that is all.

Mr. WILSON. Thank you.

Mr. NIX. Mr. White.

Mr. WHITE. Would you please tell us if you think the conclusions of the Commission were those of average men or do you think they had a particular interest?

Dr. HOBBS. I would say based on the Gallup survey where 85 percent of the people surveyed said they thought the laws should be stricter, the Harris survey—though none of these is scientific—which said 76 percent thought the laws should be stricter and my own experience with, I think, mostly average nonacademic people, the majority findings would not fit in with the opinion of average men.

The committee sort of presented itself as scientific elite. We are above the average.

Mr. WHITE. Did you study the composition of the Commission itself?

Dr. HOBBS. I did not.

Mr. WHITE. You don't know the background of these individuals?

Dr. HOBBS. I know some of them but I didn't study it as a study, no. I do know some of the members of the committee.

Mr. WHITE. Do you think any of these gentlemen had preconceived positions?

Dr. HOBBS. I think so.

Mr. WHITE. Do you think they may have had preconclusions?

Dr. HOBBS. Yes, I do.

Mr. WHITE. What impact has this report had on American society?

Dr. HOBBS. The published edition which I have got which just came out very recently, I don't think that would have as yet had much impact. The newspaper condensed version of it I think, if you lean in the direction of the laws, should be modified, it would give you naturally a good deal of reinforcement for your argument.

If you lean in the other direction you would be sort of dismayed by it.

Mr. WHITE. Do you think it is going to change anybody's mind in this area?

Dr. HOBBS. I think it could. Incidentally, I have had that experience. I have checked out with students, what did you think about this, and several of the students said, "Well, we can no longer give you our opinion because this has now been proved by the Commission and they must be right."

Mr. WHITE. Would you say then that those who will be influenced are generally in the younger areas rather than those in mature areas?

Dr. HOBBS. It would take a considerable examination to be sure of it but I would guess probably so.

Mr. WHITE. Do you have specific recommendations to this committee in the area of law Mr. Wilson touched on?

Dr. HOBBS. In the area of law I said I do feel that it could be worked out, I believe, with no special harm to anyone that such material in the very least be labeled as such so that a person then would have a choice. He knows it is hard core pornography. If he wants to read it or look at it he would know what he is doing. I think that should be done.

I think the situation has evolved now to a point where any laws are going to be extremely difficult to enforce.

Mr. WHITE. What is the general academic world attitude? Do they agree with you or agree with the Commission?

Dr. HOBBS. I would say from a longtime experience that on average the majority of the people in the social sciences and the humanities would agree with the majority of the Commission report.

In other areas, medicine, engineering, physics, chemistry, things like that probably the majority would disagree with it. You get a different temperament in these different areas.

Mr. WHITE. Did you say in your testimony what specifically you said were not scientific bases for this?

Dr. HOBBS. I went through a number of such things and I referred back to the analysis which had already been made and which is in the minority report, which I think is a very good analysis, and it is enough to persuade anybody who is persuadable that these findings are not scientific. So rather than duplicate it and pile on the thing, I didn't go into exhaustive detail. But you could do it without difficulty.

Mr. WHITE. Thank you very much.

Mr. NIX. Mr. Derwinski.

Mr. DERWINSKI. It is my understanding that you will have more detailed testimony prepared for us in addition to your comments this morning?

Dr. HOBBS. Yes.

Mr. DERWINSKI. I gather from our earlier conversation that your major concern is the lack of scientific approach by the Commission or the Commission staff more specifically?

Dr. HOBBS. Especially since they so heavily rest their recommendations on their contention that they do have the empirical evidence which they frequently refer to as being scientific. If they rest it on that, then this is a false foundation. That is the main tenor of my presentation.

Mr. DERWINSKI. Thank you, Mr. Chairman.

MR. NIX. Without objection, the additional material to be furnished by Dr. Hobbs will be made a part of the record immediately following his formal statement here today.

I make this observation: That I have read that this Commission was a Johnson Commission and I would like to make it quite clear that the Commissioners are appointed to serve at the pleasure of the President. When there is a change of Executives, they serve at the pleasure of the incumbent. They did serve at the pleasure of the President, the incumbent.

Dr. Hobbs, I want to particularly thank you for taking the time to come and I know I reflect the views of the other members of the subcommittee.

Thank you very much.

DR. HOBBS. Thank you.

MR. NIX. Our next witness is Dr. Natalie Shainess, New York, N.Y.

Doctor, will you please take the witness stand. We are happy to have you.

Do you have a written statement?

STATEMENT OF NATALIE SHAINESS, M.D., NEW YORK, N.Y.

DR. SHAINESS. Yes, I do.

I want to thank you. I consider it a privilege to be here.

I would like to say first that I concur essentially with what Dr. Hobbs has had to say.

I wonder if I might take the liberty of answering previously put questions before I go into my own comment and the latest related particularly, I believe, to Mr. Dulski's question about Denmark and the statistics there.

I would like to point out that statistics can be used in all kinds of ways to prove all sorts of things.

I also want to point out that we generally as reasonably honest people tend to assume that the surface reasons that are presented to us are the reasons we get the information we do, and I discount this because I believe that there are some subterranean reasons for the information that has been given about Denmark which relate to the powerful sex merchants and sex interests.

So that I think we are in very murky territory and it is very hard to know what to take as reality and as face value even though it does involve statistics.

I would like to start out by reading you the summary of my statement so you may be able to follow along with my more elaborate remarks.

There are a number of issues I cover, and they are in some instances in opposition to statements contained within the report of the Commission.

SUMMARY

1. Pornography—an infantile, sex-is-dirty, perverted expression of sexuality which feeds sexual self-preoccupation and obsessiveness, is alienating and tends to destroy social bonds.

2. Pornography damages the quality of mental life and is corrosive and degrading to society.

3. Pornography is degrading to women and furthers their sex-object status. And I might add, it is a status already rather far gone in our society today.

4. Women show little interest in pornography therefore it serves unhealthy male sexual interests at the expense of women, further damaging the relationship between the sexes.

5. Pornography serves the interests of the military, and harms the interests of civilian life.

6. Pornography coming through the mail is an invasion of privacy analogous to forcing the recipient to be the victim of an exhibitionist (long distance rape), and creates mood disturbances.

7. There is no redeeming value whatever in pornography.

8. Uncontrolled pornography turns society over to the sex merchants. The interest fostered in it will not disappear. Rather, the ongoing exposure will shape a taste for it. The pabulum served the public via TV is relatively unchanging, year after year—but it is eagerly consumed.

9. The recommendations of the majority report of the President's Commission on Pornography were wrong, are wrong in my view. The minority report was right.

10. Both research studies of the President's Commission, that is the two that were particularly emphasized, were methodologically and scientifically unsound, invalidating any conclusions drawn from them. The North Carolina student research project was unsound, obscene and degrading. Prior to the "research" of Masters and Johnson—first officially introduced to the American Psychiatric Association in 1964—this piece of research would never have been considered on any grounds.

11. The acceptance of the Masters' "research"—work not only scientifically invalid, but making impossible claims—and I will add fraudulent claims—in some instances—opened the door "from on high" to pornography at every level of society, and through virtually every medium. Nor has Dr. Masters ever repudiated those expressing their "debt" to him. And there is virtually no piece of pornographic literature, film or anything else that doesn't somewhere acknowledge a debt to William H. Masters.

12. Without the tireless efforts of Dr. Harold I. Lief of SIECUS (Sex Information and Educational Council of the United States) in behalf of Dr. Masters and against all critics, this research could never have found acceptance. Basis for it was the need for a "Sexual Bible" to make this body's advice "scientifically authentic." Dr. Lief has just written an article titled: "The Therapeutic Adequacy of Masters and Johnson," which further supports them and attacks all critics.

I have enclosed a number of exhibits and I just wanted to call your attention to them before going into my remarks.

The first is a review of mine in the Journal of the American Medical Association, of "Human Sexual Inadequacy" by Masters and Johnson. I want to tell you I have been deluged by letters from doctors, heads of departments in many instances, thanking me, and it is most unusual for doctors to take the time to do this—for making them feel they were not insane because they were not able to follow. It made little sense, it seemed degrading. This has gone on ever since September 21 when this review was published.

I also want you to know that the publishers of the book, Little, Brown & Co., attempted to interfere, called the editor of the *Journal of the American Medical Association* and complained about my review, called it a diatribe, wanted a retraction, and demanded another review.

This is absolutely beyond the realm of any publisher in interfering with a scientific appraisal of a work.

I also enclose two reviews of the book "Erotic Art" by Kronhausen. I gave a review of this in *Psychology Today*, and there is another review by Dr. Morgan in the *Psychiatry and Social Science Review*. The contrast is very notable.

I call this to your attention because I have had some communications with Attorney Sessions of the Justice Department because the Kronhausens were attempting to bring the exhibit on which this book was based into this country, and the Justice Department was attempting to keep it from being imported into this country.

I want to point to one of the techniques that has been used by the purveyors of sex literature. I cannot read my review in detail but I want to point out that I have a definition of pornography which I will include at the appropriate time because it has been asserted that pornography can't be defined, and I say it really isn't such a complicated matter.

I want to point out the pictures that you may have seen from this book accompanying some of the statements by Dr. Morgan, who is one of the group of people merchandising pornography within the psychiatric field.

He says that erotic arts and literature have recorded the wisdom of the ages about how to make love and so on. Then he refers to the authors as "two beautiful human beings." Now the beautiful human being theme is used over and over when anything is being offered that is pornographic. By whose standards are they beautiful human beings?

Let me quote what Dr. Morgan says:

My colleagues and I have many cases on record where reading about and seeing pictures of violent and hurtful sexual behavior has helped many poorly controlled persons to maintain control.

This is ridiculous.

Next I have two further exhibits. One is a flier of SIECUS on the latest meeting. I want to point out that SIECUS demonstrates its connection with Masters and Johnson by having the afternoon session devoted to statements on sex and aging by people at the Reproductive Biology Research Function (Dr. Master's foundation).

I want to point out something you may not see right at the bottom, that Redbook funded this, and I will tell you they had exclusive rights to taping it.

I also want to call to your attention that there is pending a suit against Dr. Masters in the sum of \$750,000 for using the wife of somebody with whom they were involved as one of the so-called sexual surrogates. Dr. Masters paid her for her services, which places him in the position of pandering—something the entire psychiatric community seems to have ignored.

Lastly, there is a new type of book for doctors teaching sex and making acknowledgement to Masters and Johnson. It verges on the pornographic, and is of little use in teaching.

I would like to read you a few statements from it:

We would like to have you examine a new type of sex book. One that will allow you to show your patients photos of the complete step-by-step response of the female sex organs from initial excitement to and including orgasm. The subjects are young, healthy, attractive girls shown responding in a most appealing, vibrant manner. It is difficult to describe the excitement of seeing for the first time the details of sexual response that research teams such as Masters and Johnson could only describe in text.

Shades of the circus barker! Let me tell you what they are describing:

They say:

You actually see the female sex organs responding to erotic stimulation. The clitoris erect and engorged by sexual excitement, the pink vaginal lips stretching to clasp a penetrating shaft, the vagina in orgasm spasmodically contracting, the racial—

I don't know where this fits.

The racial and color differences and variety of response.

I ask you—what can we learn about sex from seeing this? This is an outrage and yet this is being fostered, too.

This has been a rather lengthy introduction. I hope you will bear with me as I read my more considered statement.

I didn't mention anything about my background. I think I should tell you I have been in the field of psychiatry and psychoanalysis 26 years; that I started out largely with an interest in feminine psychology which reached out into the sexual area. I came across Masters and Johnson as I was doing research for a paper, and I call attention that this paper was called "The Problem of Sex Today" which I presented at the 1967 meeting of the Psychiatric Association, which was beaten down by Dr. Harold T. Lief, and he has since devoted himself to stopping all criticisms.

In this paper I, too, referred to Dr. Jacques Barzun whom Dr. Hobbs mentioned, saying he noted our pseudo scientism, and the damage it is doing.

I wish to go on record, at the outset, as having read the report of the findings of the President's Commission on Pornography. I am in complete accord with the minority report, prepared by Dr. Victor B. Cline, and feel its conclusions and recommendations should be followed, and considered as the only report. I was gratified that the majority report was rejected by the Senate and the President, although perhaps from a different perspective than my own. I will comment further on the report later.

Those who recommend abandonment of censorship overlook the fact that there will still be censorship, but this time provided by the seller of sexual wares, and unopposed by other forces.

I do not doubt that there is an "underground sex lobby" which has influenced opinions, even if indirectly, and represents a multimillion dollar alliance of "sex industries" concerned in promoting its own interests without regard to the immediate or ultimate best interests of the people. The kind of censorship they will provide will eliminate anything sensitive, good, loving, interpersonal, or even healthily lusty from the prevailing sexual milieu.

I. PORNOGRAPHY IN THE MAIL

There is a special factor relating to pornography coming through the mails which must be considered, quite aside from its strictly sexual potentialities. The effect upon an individual of opening a letter and coming upon something unpleasant may be extremely unsettling.

As a psychiatrist and psychoanalyst, I am particularly aware of what seemingly small things may affect the mood of the individual and unfavorably influence his feelings and actions for a considerable period of time.

The effect of opening a letter and finding something shocking is not only an unfair invasion of privacy—it is analogous to being the victim of an exhibitionist suddenly exposing himself.

As one who has worked with such people, I know that while fear and anxiety may be etiologic to the condition, its symptom expresses rage and hostility, and in effect, the victim (usually a woman) is, so to speak, raped at a long distance, visually.

To unleash this upon children and adults in the privacy of their home is unconscionable. I myself—and I consider myself shockproof at this point—have nonetheless called such materials to the attention of the Post Office, as I do not want the simple unpleasantness (for me—for others it may be much more) of such unwelcome confrontations.

II. PORNOGRAPHY AND BUSINESS INTERESTS

Among a number of dangerous "Big Brothers" (in the Orwellian sense), the sex merchant may prove the most dangerous of them all, affecting the "quality" of the great majority of the people—a factor even more important than what sex crimes may be evoked—and undermining the basis of family life. Pornography promotes obsessive sexual self-preoccupation. This, along with other types of self-centeredness fostered by advertising, has far-reaching unfortunate consequences.

The fact is that the visual image, because it is so explicit, precludes imagination or fantasy, thus impoverishing even the blatantly sexual! The onslaught of perpetual sensory input, especially of a visual nature, through the media, is increasing defects in judgment, and eliminating the creative components in personality.

The individual is absorbed simply in "taking in," and has not the time for anything further. The sex drive, the emotional ties, are strongly connected with the creative process—all great works of art and literature contain this element. So that not only does visual pornographic erotica fill the mind with ugly and (intellectually) useless material, but it precludes thought processes which lead to the more creative living elements socially and culturally.

Further, the individual is increasingly forced into a stereotyped mold—the buttonmaker of Ibsen's *Peer Gynt* comes to mind (a prophecy, one might say, now coming true).

In yielding to the pressure of essentially psychopathic business interests, who have much at stake, we will once again thoughtlessly be polluting our environment—this time, the environment of the mind. Belatedly we recognize the ecological disasters we have thoughtlessly permitted to occur. Why must we repeat our mistakes? It may well be that when this one is discovered, it will be too late to rectify.

Another most important point is that pornography destroys social bonds. It feeds secretive, obsessive self-preoccupation sexually, and undermines affectionate bonds between individuals. Pornography and alienation go hand in hand. Already, as we witness various fragmentations within our society, we see concern for others, understanding and tolerance of differences disappearing. Pornography furthers this trend.

There is an adequate definition of pornography in contrast to the statement of the Commission that there is not.

In my review of "Erotic Art" I include a definition and I say that since it is germane to a critique of that particular book I will attempt to make a distinction. Pornography concentrates on the genitals and accessory organs. It emphasizes and distorts them, focuses on the very ways that these disembodied, or maybe one should say body possessing organs, can be used to titillate or stimulate or be stimulated. These are pictures of sex organ objects devoid of all other meaning, the personality having no place. They are by their very nature created for the voyeur, or for that which is sexually unhealthy in a person, for they represent and feed compulsive sexual preoccupation and the deficit in the viewer, the inability to achieve mature sexual gratification, leaves him unsatisfied.

I might add that in all of the pornography that is shown, it is linked up to other unhealthy impulses, like murder, sadism, and so on.

III. WHAT IS PORNOGRAPHY?

The statement has been made by many, including psychiatrists, that pornography has "redeeming social value." I consider this an outrageous illustration of intellectual sloppiness. I refer to the book: *The Sexual Offender and his Offenses*, by Benjamin Karpman, M.D. Although published in 1954 (Julian Press, Washington), it is a classic text, and reviews all the pertinent literature up to that time. Its basic theses are as applicable today as then.

In the introduction, Karpman refers to "the normal pervert"—the sexually perverted person who is an otherwise useful member of society. I submit that in the time since, we are rapidly becoming a society of "normal perverts," which our devotion to obscenity and pornography fosters.

Consider the following statements:

Page 101: Pornography is symbolic of undeveloped sexuality.

Page 364: Pornography is an extension of the "sex is secret and dirty" phase of boyhood. (Thus, I conclude that the person interested in it is still perversely infantile; and pursuing pornography maintains his "status quo.")

Page 324: Connects the Peeping Tom with pornographic interests.

Page 604: "Obscenity and pornography are symbolic of undeveloped sexuality."

He also points to the relation of these to exhibitionism.

Page 640: Karpman quotes Eliasberg, who states that interest in pornography is a symptom of psychosexual immaturity.

Thus, Karpman supports my thesis that free reign of pornography furthers the general and sexual immaturity and degradation of people. Is this what we want? Further, clearly punishment is not the way

to deal with the problem—prevention is. Education is—and legislation is—until the effects of education prevail.

In an article entitled "Sex, Censorship, and Society's Psyche," in *Medical World Tribune* of October 2, several psychiatrists and sex merchants agree that "pornography is nothing more than a representation of infantile sexual life." True—descriptively. But to stop with that is foolhardy. I ask: Is this then a necessary, valid, and desirable part of adult life? The infant wants to drink from a bottle. How would we regard an adult insisting on this? The infant wets his diapers. How would we regard an untoileted-trained adult? How can we ignore these relevancies?

Why should we foster degrading infantile sexuality?

IV. PORNOGRAPHY AND RESEARCH OF THE PRESIDENT'S COMMISSION

I return now to the report of the President's Commission. The majority report stated that no empiric evidence was found showing a casual relationship between exposure to pornography and harm to minors or adults. A more important question is: Was conclusive evidence found to show that such a relationship does not exist?

In my statement I say that the criminal study will be omitted. Although I have many criticisms, I would like to cite one criticism, since some questions were asked about this. Included in this study of sex offenders was a group of homosexuals, a group of transvestites and a group of transsexuals. Through some of my professional associations I have probably had as large a professional experience with transvestites and transsexuals as anyone else has had, although some are better known for it. I insist that transsexuals are psychotic individuals and the question that I would ask is: what are we doing when we use research based on the attitudes of people with perverted sexual problems and those indeed psychotic, and then drawing conclusions about the general public from that? As far as I am concerned, that in itself invalidates the research.

With regard to the other "research" carried out at great cost, I cannot deal with it in detail at this time. But I consider every criticism by Dr. Cline and Reverend Hill of the minority to be correct, and could add many more. In considering Dr. Howard's study of the effects of exposure to pornography on students—how absurd to think that any short-term study could offer evidence about an influence having slow, subtle, but significant long-range consequences. Further, the very nature of the student project is inherently degrading, and reflects insensitivity on the part of anyone planning and agreeing to it.

Let me tell a little more about this. The research design implies that you pour something in as if into a funnel and then see what you get out as something sifted through. It ignores the functions of the human mind, which is very complex and has all kinds of associations. You cannot put something in and expect it to pour out. Not only that, you have to examine the nature of who this is being put into and under what conditions and so on.

The associational fibers and the cerebral cortex are such that there are all kinds of interlinkages.

I want to point out that some years ago there was a study by MacLean and Ploog, who stimulated the cerebral cortex of monkeys and found the areas for penile erection. Even with this there were all kinds

of associated other responses. In other words, even with neuroelectrical stimulation you cannot pick out one particular area and think that you are getting a particular response.

To feed in pornography, which in itself is a degrading approach, to a group of students, paying them to participate, and think at the end of three weeks' time you are going to find out what effects pornography has is absurd. You may not find out the effect it has had for 20 years. Dr. Howard's is really a meaningless piece of research and it would take a great deal of time to tell you more about it. It is absolutely unscientific.

I want to point out that this research could never have occurred without the Masters and Johnson "research" which opened the door to this sort of thing.

Not knowing that this was research undertaken for the Commission, I sat listening to a report of it by Dr. Howard (*Pornography: An Experimental Study of Effects*. Reiffler, C. B., Howard, R. L. and Liptzin, M. B., Session III, May 14, 1970.) at the recent American Psychiatric Association meetings this May in San Francisco, feeling the work was both unscientific and revolting, when a group of Women's Liberation members disrupted the program shouting "obscene, obscene." While I cannot agree with their tactics, I also cannot help but reflect sadly that they were right, while an august body was so insensitive as to see nothing wrong with it—humanly or scientifically.

V. PORNOGRAPHY AND WOMEN

But this leads to another point. Apparently, it was not considered necessary to include women in such a study. Obviously, they could not be hooked up to contraptions measuring the size of penile expansion on exposure to pornography—for at least one very good reason. But women comprise at least half the population; should not their responses count?

If one wanted to go on with degrading work like this there are ways to study women's responses, though it was not apparently considered necessary. I want to say that the majority report insists that women, too, are interested in pornography and I consider if they have statistics, they are not scientifically based, because women have very little interest in it. Women go along with this, as they do with many other things, because they have little choice.

One might ask why women go to Playboy clubs with men. They do it to belong, not because they are interested in seeing Bunnies or witnessing their husbands or boyfriends ogle them. I think one has to go more deeply into some of this research.

The nature of the research is tacit acknowledgment that pornography feeds an almost completely male interest. Sexual fantasies of a visual primary and secondary sex-organ type are male. Our Playboy sexual psychology caters to this, and is destructive of sexual mutuality and harmony between the sexes—a necessary foundation for the structure of society. One result of this study was the observation that interest in pornography waned, this finding being referred to the rest of society. Overlooked is the fact that the massive exposure of the students was like a forced feeding resulting in revulsion; while the less intensive but ongoing exposure in society is a long-range conditioning to acceptance.

VI. PORNOGRAPHY AND AUTHORITY

It was reported that "to a man" the subjects of the study were in agreement, in response to questioning by the "North Carolina research team," that pornography is a minor social issue. It is interesting that they asked the subjects about their opinions of the social significance of "smut." There is a very curious scotoma—blind spot—developing in our society. We ask the subjects of a study for their opinions of the valid issues; we ask drug addicts, not doctors, how to treat drug addiction; we let an astronaut tell us that we should ignore the Russian unmanned moon flights, as being less desirable than our manned flights—as if he were the scientist behind it, rather than the trained space-monkey.

I intend no disrespect to our astronauts, brave men, but one must consider that this is a research effort in which the great thinking is not in the astronauts but in those who conceived and organized the projects and developed them.

Finally, we ask the subjects of a bizarre sex study, who have been culled out at random, for their profound opinions about pornography, ignoring their tender age, among a host of other things. To what authority do we turn for solutions? We seem to have lost our bearings.

But what about the supposed authority, Dr. Howard? He asserts that he doesn't think pornography is a problem, thereby removing himself at once from unbiased scientific approach to research. I am saying he should have no opinion about it. Can he prove that it is not a problem? If something is dubious but of potential danger, is it not imperative to reject it? Animals proceed with this caution as a survival measure.

VII. PORNOGRAPHY AND THE MILITARY

Turning to Dr. W. Cody Wilson, of the majority, who has been described as a "staunchly secretive social psychologist," one wonders initially what the meaning of this is. But ignoring my own impression on a single meeting, and considering one fact: that he has been employed by the Pentagon, this alone is sufficient to totally disqualify him. Why? Because the interests of the military are in absolute opposition to the interests of society, in sexual matters. Pornography is in the service of the military. Relationships are not. Sex must be a "catch as catch can" affair in the Army. Hostile, alienated sex and homosexuality and voyeurism are all preferable to the heterosexual ongoing relationship (especially in marriage) to the military, where men are removed from civilian life.

Further, the extent to which military concerns dominate is revealed in other ways. For example, when criminal abortion laws were reformed in the State of Hawaii, the Surgeon General refused to permit military doctors to perform abortions. Since contraceptives are routinely given, it is clear that not ethics but concern about control of venereal disease governed this position. Again, concern about women was secondary.

VIII. OPENING OF THE DOOR TO OBSCENE RESEARCH AND PORNOGRAPHY

Turning again to one last point in relation to Dr. Howard's research, I submit that without the widespread acceptance of an earlier piece of

research, this one would never have been considered. The research I refer to is the work of Dr. William H. Masters, author of "Human Sexual Response," and "Human Sexual Inadequacy."

I might add this is quoted on page 199 of the President's Commission as an authority. Dr. Masters, as you all well know, is the author of "Human and Sexual Response" and "Human Sexual Inadequacy." "The other shoe," as he describes it.

It is work I have carefully studied, and, in my opinion not only is it unscientific, leading me to speculate about the reasons why it was rejected for an NIMH grant, but the data have not been available, the work has not been duplicated by others, some of the findings are, in my best judgment, impossible and, above all, it is grossly dehumanizing. Without the persistent promotion of Dr. Harold I. Lief, of SIECUS, who brutally crushed all efforts at serious evaluation and criticism of this work, this degrading and essentially spurious research could not have been "sold" to the lay and professional community.

Why do I include this here? Because this was a major milestone, opening the door to pornography, making it "respectable." All kinds of pseudoscientific books, papers, films, followed in its wake. I include at the end of my comments a review I did of one such book: *Erotic Art*, by Drs. P. and E. Kronhausen, and another review by a Dr. Morgan, accompanied by some of the pictures, which was circulated over and over to psychiatrists by book dealers. Contrast the two reviews. The exhibit on which the books was based has been subject of a lawsuit by the U.S. Government Department of Justice against the authors, to prevent the exhibit from entering the country.

Hugh Hefner contributes to Dr. Masters' foundation, many publishers are reaping the harvest in addition to Little, Brown which has published both books by Dr. Masters. Included are Grove Press, Bernard Geis, Lyle Stuart, some of whom also have interests in the films which make direct acknowledgement to Dr. Masters. The film "Without a Stitch" is one example. Sexual gadgets of various kinds, including vibrators, have been recommended by him and widely sold, and it appears that lotions, recommended in his book, will be the next item. A new kind of film writer has become precious—the "tweeny writer" who finds words—usually of trumped-up "social significance" with which to fill the gaps between sexual scenes. Arnold Auerbach's article of January 12, 1970, in the New York Times on "How to Tweeny Up Those Orgy Scenes," was both amusing and revealing.

The point of this is that within the last year the newspapers have indicated the spread of pornography everywhere, like a thermometer registering an advancing fever, with recent reports of underworld involvement, and "pushing" comparable to drugs. This leads me to ask where we are heading. Again I refer to the repetitive assertion that "a little pornography may be a good thing." I can only ask: Is a little rape a good thing? Is a little murder a good thing? Is a little nuclear bombing a good thing? Is a little poison a good thing? Why then is a little pornography a good thing?

In a television panel discussion, when the report of the Commission was released, Dr. Otto Larsen of the majority, made the statement that if any harm does result, "sex education" will correct it. How casually he faces potential damage to people. What confidence he has in a modality that has consistency only in its title! The recommendation to

"take the antidote with the poison" is a strange one. A much better recommendation is to avoid swallowing a lethal potion.

I might add before going into my conclusions that I am singularly well qualified to talk about this because I teach sex education to medical students at the Columbia University of Physicians and Surgeons. Last year I gave the first in-service course for sex education of teachers of sex education in the New York City Board of Education school system. My findings about the teachers was so disturbing—and the superficiality of their approach; they had swallowed all the current stuff sold and yet really were unable to discuss the most simple basics with any degree of comfort, so that I gave up and did not continue it after that year.

I find that in the period of about 6 years that I have been teaching in the sex education course for medical students that the students' attitudes have changed enormously and they have swallowed the prevailing sexual milieu, which does not make them necessarily freer. I want to make the point there is a difference between sexual freedom and sexual compulsive preoccupation with pornographic erotica.

IX. CONCLUSIONS

If a degree of regulation and control is not maintained, the ultimate effects will be disastrous. As a physician and psychiatrist, I look with despair on the fact that as we become an alcoholic people, the romanticized advertising continues. The danger from tobacco, not only of neoplasms but other types of lung disease is proven—yet the industry fights to trick its victims; the drug industry has a malignant grasp upon us, in spite of the evidence of massive drug dependency of all kinds; and Kellogg's countered valid accusations of its "empty calories" by serving up one of its preparations to a congressional committee, amusing everyone and undercutting the seriousness of the charge, stating that "after all, we must offer what is palatable." Not only the cereal but the problem was sugar-coated. The fact is, they and other industries shape tastes by what they offer, and business appeals to the lowest, not the best in people. Now we face the same issues in relation to sex. What are we doing to ourselves?

Dr. Fredric Wertham has pointed out the corrosive effects of chronic exposure to violence in our society. He has also noted the interrelationship between violence and pornography. (Wertham, *F. Show of Violence, Seduction of the Innocents.*)

I would like to offer some information from a patient of mine. She is Danish, in her early thirties, and participates in sexual orgies, so she is hardly, in current parlance, "up tight." Recently she went back on a visit to her home city, Copenhagen, and visited relatives elsewhere in Denmark. She returned, saying that the pornographic environment is so omnipresent and so intolerable that she intends never to return to Denmark again.

In conclusion, I ask why we must accept unquestioningly every aggression, every incursion upon us until it proves itself bad? Have we not an equal, in fact, a more fundamental right to demand that something prove itself innocuous or even beneficial, first? Why must we ignore the signals of danger? Have we no concern for the quality of life—mental as well as physical? Sexual repression of an intensive

kind is not good, but at least it leaves a yearning and a desire. We may well live to learn that sexual license, sexual depravity and sexual obsessiveness, kill even these. We would do well to consider carefully.

Reverend Hill, a brilliant, courageous man standing firm in criticism of the majority report of the President's Commission, has risked much. So have Mr. Keating and Reverend Link, the other members of the minority report.

Swimming against the tides of special interest pressure and popular opinion, they have opened the door to serious thought and dialog on an issue of great import for our future.

Finally, I want to call attention to the fact that not once has the word "morality" or "evil" entered my statement. My concern is the optimal climate for our existence and development.

Mr. NIX. Thank you, Dr. Shainess. I want to thank you for one of the finest reports it has ever been my good fortune to listen to.

Dr. SHAINESS. Thank you.

Mr. NIX. Mr. Dulski?

Mr. DULSKI. I would like to make this one comment. I believe you have expressed extremely professional testimony here and I think that you have been most explicit. As a result anyone who reads your testimony will fully visualize the problems emanating from pornography.

Mr. NIX. Mr. Derwinski.

Mr. DERWINSKI. Thank you, Mr. Chairman.

Doctor, on page 2 of your prepared testimony you make the specific point that pornography promotes obsessive sexual self-preoccupation. Is it therefore correct to say that exposure to pornography is habit forming?

Dr. SHAINESS. It is, but there is something more than that which I think is generally not looked at. When you have someone who is very interested in pornography, you have not only the sexual problem but you have a person with, one might say, a personality or character problem as well. Very often such an individual, and I have worked with some, are extremely fearful of other human beings. Certainly fearful of the opposite sex, and therefore they tend to focus upon something that permits them some sexual excitation without relatedness. The more this is available to such a person, the less his tendency to try to reach out and overcome some of his fears, so that it turns him backward upon himself.

On the other hand, if he is someone with an antisocial orientation and he is being stimulated in this way, it is not beyond the reach of thought and not beyond reality in its occurrence to think that some of the explosive sexual crimes that occur also occur in these very remote alienated individuals, so that while my argument has not been directed to sexual crime, which I do believe pornography fosters, but more to the general quality in regard to people, I think one can say that pornography furthers the shut-inness sexually, and otherwise, of the individual. It is harmful on that basis, too.

I hope that answers your question.

Mr. DERWINSKI. This individual who is, to use your term, turned inward because of this exposure, is this impact the same on the adult as well as the juvenile? Is there a greater impact on the juvenile because of his lack of experience and lack of previous contact?

Dr. SHAINESS. I think that I would say that, of course, adolescents are always more impressionable and also more curious. They are learn-

ing about the world and therefore they are more likely to be affected by this.

I want to say that there is a very strange trend that I have observed in society today; that is, that you could skip the middle groups and go to the older age groups of say 40 and 50, who are looking back with regret on certain losses in their lives, from the repressive times they lived in. And unhappily I must say it is many such who are impressionable and who also at higher levels are fostering pornography. In other words, if your own feelings of guilt are such that it is hard for you to do certain things, if you cut away at the milieu that is repressive, it enables you to do things without feeling disturbed.

As I see it, from my practice and experience, there is a sort of divided group of the very young and then those going on into late middle age.

Mr. DERWINSKI. Doctor, our committee jurisdiction is basically directed at use of the mails by peddlers of smut. You make a very effective point here of the shocking effect of, as you refer to it, the invasion of privacy of an individual upon receipt of this mail. We have been concerned in this committee with the effect upon youngsters of the unsolicited flow of this material. This is a point that you seem to make, that the unsolicited flow, or the unsolicited receipt, is quite shocking to the individual.

Dr. SHAINESS. I think some of the things that have come through the mail, especially of late, are astonishing. A year ago I had a conversation with a main postmaster in New York City at the 33d Street and 8th Avenue Post Office because I was being bombarded with things that I—as I say, I think that I am shockproof—found disturbing and leaving an unpleasant hangover. I called to ask what was to be done. His statement to me was, "Have you any children under 19 in your home? If so, you can register a complaint."

I said, "It happens that my children are away at college, but I don't want to receive this. What can I do?"

If I have followed the report of the President's commission correctly, there is a recommendation by the majority to do some very elaborate extensive kinds of operation in which mail would be coded and then you report it and then a list is gone through. This seems to me—I don't feel in a position to judge these legalisms, and yet it seems to me a very complicated and ineffective way of trying to do anything.

I think that while it is true that young adults or children are more likely to be affected, adults have a right of privacy, too. I don't think the recommendations of the majority make any sense with regard to the mails.

Mr. DERWINSKI. One last point, Doctor.

You refer on page 7 of your prepared testimony to the book by Dr. Masters and you refer to it as being unscientific. Yet you in effect point out that despite its unscientific background it has been accepted.

Dr. SHAINESS. Yes, sir.

Mr. DERWINSKI. To what degree is your opinion of the unscientific nature of this book shared by others in professional fields?

Dr. SHAINESS. I have to answer this in several ways. First of all, I would call it a snow job that has been put over on the majority of the professionals in my field. I am not enjoying saying this because it has brought me a great deal of pain, I might add, to speak out about this. But it is a curious thing. First of all, Dr. Masters' work is illegible, so

nobody knows what is going on. As a result, they turned to a few authorities about this accepting their views. It amounts to image making. I don't know to what extent I am at liberty to speak very frankly, but since you have asked I am going to go ahead and tell you some of the things wrong with this research.

Anyone who makes the assumption that studies done upon masturbating women would have any relevance to what is going on in intercourse between a man and a woman is starting with an a priori deficit right there, because it is not the same thing. Anyone who believes that such studies can be based on persistent stimulation rather than desire is accepting an untenable assumption. You must be aware when someone goes into a laboratory to perform sex, he or she is not necessarily responding to inner need. Then anyone who goes through a series of elaborate interruptions while there are studies of the fluids and the acidity or alkalinity of them is not engaging in normal sex—one of the points that I have made in a paper I have written is that even animals wouldn't put up with this kind of thing.

There are so many areas where it is unscientific. Not only that, but I have been in correspondence with someone who is very well informed and I learned that some of the photographic claims could not have been done. It was my suspicion that they could not. So there are actually, in my view, falsified or fraudulent claims in their study.

Lastly, one thing I left out that really outrages me. It is very hard to get access to any people who have been to Dr. Masters' institute for so-called treatment. I have gotten a few. I have learned that where he has not been successful—and of course nobody has access to any information, so that he says he is successful and we have to believe it—he has given references to people in Greenwich Village and elsewhere for sexual relations.

If your scientific efforts have to depend upon making sexual referrals this does not sit well with me as far as something truly scientific is concerned.

Mr. DERWINSKI. What concerns me is if in fact the work by Dr. Masters is so thoroughly unscientific, why didn't it receive more immediate and consistent criticism from fellow professionals? Are they preoccupied or what is the reason?

Dr. SHAINNESS. Let me say, first of all, I learned a term that interests me very much. I have been called on by the district attorney of the County of Westchester to testify in a case involving some pornographic films. That was a very enlightening experience because I spent a whole day subject to them and it was ghastly. He referred to what he called handwringers. That is, the people who say this is terrible or unhealthy, but who refuse to come out and put themselves up for criticism by expressing themselves. I have had a lot of colleagues come to me privately and say they agree with me, but not one of them will speak out professionally.

Further, I myself made some serious early efforts and was attacked brutally by Dr. Lief, president of SIECUS, who I believe wanted as a basis of his so-called sex education to be able to say, "Who is really an authority on sex?"

He wanted to have some seemingly scientific research. He is a man of considerable status in the psychiatric community, and he has been there pushing Dr. Masters at every turn, striking down those who have opposed him. Beyond that, there are other things that I can surmise

but not much I can say at present. I think the time is going to come very shortly when some things are going to be revealed about Dr. Masters and some of his connections which are exceedingly unsavory. As long as you have asked me, I would like to tell you something else. I will admit that I cannot prove it at this time, but there is enough smoke for a great deal of fire. Dr. Masters has bought off many of the scientific community.

He has invited people out to his place. He has, I suspect, provided them with sexual entertainment and, as a result, their voices are still. It amounts to bribery and blackmail. That is one highly unfortunate reason that this situation prevails.

Mr. DERWINSKI. Thank you.

Thank you very much, Doctor.

Mr. NIX. Mr. Wilson.

Mr. WILSON. Thank you.

I am sorry, Doctor, but I cannot agree with Mr. Dulski or Mr. Nix regarding your statement. I find it amazing that you can so easily pass off someone who you disagree with and claim they are not authorities because they have opinions you disagree with. Do you have an opinion on the subject?

Dr. SHAINNESS. On what subject are you referring to?

Mr. WILSON. The subject of pornography, that is what I thought we were discussing.

Dr. SHAINNESS. I believe that I have been expressing an opinion. I think it is hurtful and degrading.

Mr. WILSON. Are you an authority?

Dr. SHAINNESS. It is damaging to the quality of life.

Mr. WILSON. Do you qualify as an authority under your own definition, Doctor?

Dr. SHAINNESS. May I say this: To say who is an authority is very difficult and particularly in the sexual realm. I can only tell you that I have spent 26 years of my professional life carefully observing individuals and doing some writing and teaching. I think that it makes me perhaps as much an authority as anyone else. I don't make any special claims for myself.

Mr. WILSON. Yet you dismiss everyone else who may have an opinion opposite to yours.

Dr. SHAINNESS. No; I don't think that I have.

Mr. WILSON. Then, you are an authority?

Dr. SHAINNESS. I don't think that I have dismissed the minority report. I have dismissed W. Cody Wilson. I dismissed Dr. Howard and Dr. Lief and Dr. Masters. I don't believe that includes everybody.

Mr. WILSON. Everybody that you disagree with?

Dr. SHAINNESS. You are entitled to your opinion and to your difference. I don't see any way to answer you, although I don't want to be evasive.

Mr. WILSON. You mentioned that Dr. Lief has been brutal toward you. I think that you have been rather brutal toward Dr. Masters today. You make outlandish statements that you say you cannot prove, such as Dr. Masters buying off the scientific community.

Dr. SHAINNESS. May I say this: There is currently a case in court. I recognize that it is only alleged at this point since it has not come to court, but it is public knowledge. It is on record, that a plaintiff is suing Dr. Masters for \$750,000 for using his wife with two John

Doe defendants paying her \$500 in the first instance and \$250 in the second instance. I think that it at least suggests there is some backing. I have other information. I am not at liberty to quote the sources because it would be unfair. I think it is not only hostility or surmise on my part. However, difference of opinion makes the world go round. I respect your right to say whatever you do.

Mr. WILSON. I think the difference of opinion some of these scientists and doctors have with you is their prerogative, too. They should not be dismissed as not being authorities because they differ with you?

Dr. SHAINNESS I did not say they were not authorities, nor do I dismiss their right to disagree with me. Absolutely.

Mr. WILSON. What qualifies you to teach this sex course to doctors or medical students, what is your expertise? Does being a psychiatrist qualify you?

Dr. SHAINNESS. That plus my writings on female sexuality and other aspects of sexuality. There is appended to this statement a list of some of my papers, but only those which relate to Dr. Masters. Not all my publications.

Mr. WILSON. Then, in your experience as a psychiatrist you are dealing with people with problems; you are not dealing with the average person?

Dr. SHAINNESS. No; I cannot accept that, and I will tell you why.

Mr. WILSON. You are not teaching a normal sex course?

Dr. SHAINNESS. May I just answer your first question?

It is not right. First of all, my practice is largely an analytic practice. It may surprise you and many to hear that I would consider many of my patients have a more stable and higher caliber than perhaps the norms of society. They are people who are sensitive and troubled. Many of those in society are untroubled. They are just stultified by the effects of the culture. Being searching and having problems does not necessarily make them oddballs. I would reject that.

Mr. WILSON. Doctor, I certainly hope that people like you don't prevent me from reading what I want, even if it's Playboy magazine. I think that Congress has already adopted adequate legislation that protects people who don't want to receive material that they feel is objectionable through the mail. Yet, I personally object to censorship of the things that I want to read or partake of by other means.

Dr. SHAINNESS. May I say this: I have given the benefit of my thought as a psychiatrist. I don't feel in a position to make any comment on the legal aspects, only to offer what I can as a guide or recommendation. But when it comes to Playboy, you will forgive me if I say that I do not speak out of hatred for social or sexual matters—I speak in defense of true sexual freedom and respect for sex. I cannot help but feel that Playboy is degrading to sex and sexual relatedness, and to this extent I am not for it.

On the other hand, in a statement included in the report of the President's Commission—Bantam Books, publisher—you will find that I don't take an attitude that sex before marriage is the worst sin that can happen. In fact, I believe that a degree of sexual freedom for the young is in their interest, if they treat it respectfully and if they then learn enough about human relations to settle down to some kind of commitment to a husband or wife, because without that our society will not long endure. It is the degradation of sex that I object to.

One might even say that I think sex is something that can be worshipped if it is done so in a healthy way. That is my approach.

Mr. WILSON. Thank you, Doctor.

Mr. NIX. Dr. Shainess, I am not changing my view as to the evaluation of your testimony. If called upon to sit as a jury, I would conclude there is substantial merit to the position that you have taken. I thank you very much for your appearance here.

Dr. SHAINESS. Thank you very much, Chairman Nix.

(The articles which follow are a portion of those which were furnished the subcommittee for inclusion in the hearing record by Dr. Natalie Shainess. The articles not included in this hearing record are retained in the subcommittee's files.)

The Problem of Sex Today

BY NATALIE SHAINESS, M.D.

Sexual problems, especially problems of sexual inadequacy, persist in spite of the current presumed sexual freedom. The author relates this to certain unfortunate aspects of our culture and particularly to increasing alienation and mechanization. She offers a critique of the Masters-Johnson sexual studies, feeling that these researchers have overextended the physiologic aspects of sexual response to cover the entire realm of sexuality. She concludes: We must reaffirm the fundamental connection between human relatedness and physiological sex.

J. ROBERT OPPENHEIMER, an awesome and tragic figure of whom it has been said that he was punished more for his failure to enthuse over the strategy of massive retaliation with the H-bomb than any question of disloyalty, expressed his concern about the dilemma of values, saying: "There are anti-scientists who say that science has nothing to do with values. I oppose this."

Concern with values is even more important for the psychiatrist, and perhaps nowhere more so than in relation to sexual behavior. Why, in a time of greater sexual freedom, do sexual problems continue to abound, with sexual inadequacy apparently becoming more pervasive? This question provides the framework of this paper, which considers cultural rather than ontogenetic factors in sexual problems.

Evolution of Sexual Morality and Behavior

Few will deny that patterns of sexual mo-

rality and behavior have changed considerably since the late Victorian era which was Freud's milieu. That period of guilt-laden sexual repression—a heritage from the days of the Troubadors, with their elevation of romantic love and denial of the sexual—was inevitably accompanied by the problems of impotence and frigidity, as well as perversions. Kardiner (10) has pointed out that in the past the male was terrorized as a deterrent to sexual activity only until adolescence, while the female was terrorized for life.

In a large proportion of women the pleasure function of sex was atrophied or else often jettisoned in the interests of social security. This constituted the hidden oppression of women. Kardiner noted that Freud taught us the significance of sex in relation to human happiness; Kinsey taught us that sex convention is one thing and practice another. This led to a freeing of sex from some of the guilt with which it was burdened.

But in the last 15 years or so the pendulum has moved swiftly on, from a greater freedom to a kind of libertinism. In an atmosphere where standard entertainment at many fraternity parties is the staging of a sexual exhibition, and where sex has increasingly little relation to human involvement, tenderness, love, or dignity—those elements which transform mere physiological processes into human sexual love, however transient—problems of sexual inadequacy nonetheless abound. One cannot help but wonder whether the research of Dr. William H. Masters may not be a product of it, conveying a message that sex is mechanical, just one more sensation and no longer meaningfully human.

Change, of course, is never monolithic, and opposing trends may exist, even while one trend tends to predominate. One of these changes concerns women's expectations of their sexual participation. As they have increasingly been freed from the burden

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of unwanted childbearing and have control of this function themselves, they have been less inclined to accept a dual sexual code and more aware of their own potential for sexual satisfaction, as well as less accepting of their delegated role as mere accessories to a male copulatory need. This has been called by some "sexual egalitarianism"(22), but is likely to be so viewed only when sexual activity is seen or experienced as competitive action, rather than a potentially powerful bond of reciprocal giving. On the other hand, there is a noticeable trend in which women pursue men and have become strident in their demand for sex, suggesting a diminishing femininity.

We have tended to ignore the degree to which sexuality, in its broader implications, pervades our lives; we see it as something apart, with its own morality, as if unrelated to other values, goals, and esthetics in living. But if sexuality is recognized as part of the fabric of our lives, we can ask what aspects of our culture are problematic generally, and also have bearing on the sexual. Here, one thesis is that with the generally manipulative attitudes prevailing today, the sexual engagement is also manipulative.

In the context of our times, our technological development is such that work has lost much of its meaning and reward. Time is something to "kill," and we turn increasingly to the consolation of comforts and possessions, thus becoming a consumer society mercilessly exploited by big business. In the effort to feel "alive," there is a growing search for "instant kicks"—the triumph of the pleasure principle, perhaps more appropriately termed the "immediacy principle." By-products of this are college drop-outs, out-of-wedlock pregnancies, and narcotic and alcohol addiction.

Leslie H. Farber(5), who has called ours the "addicted society," has also written a brief, biting satire on sexual noncommunication called "I'm Sorry Dear," which can be seen as part of a larger failure of communication and language disintegration. In what has been termed the "age of space-speak," this language failure is revealed in the new clichés of the adolescent's garbled language. A similar breakdown in sex identity has been noted by Greenson(7) in the fading of gender distinctions.

In short, this is in many ways a time of nothingness and demand for "instant everything." Donald S. Harrington(8), minister of the Community Church, New York City, in discussing Harold Pinter's play *The Homecoming* said that it offers a preview of what modern man is coming to:

Back to the brute. Motherhood is dead. Father (God) is not even decently dead, but a malevolent brute. Women are things—objects of sexual interest only—to be used and watched for their wiles. Caring is passé. Commercialization of all human relationships is a "workable arrangement." Here are human-like creatures from which all love, all graciousness, all caring, all morality, all pity, all consideration, all communication have disappeared.

Ashley Montagu(21) concurs, saying that "we are the new Yahoos (that Swifitian breed of creatures)—dehumanized, devoted to success at any cost, lacking the ability to feel for others."

More specifically, Jacques Baizun(1) contends that "Modern society professes much concern for the dignity of the individual and the sanctity of sexual relations, but that this dignity is fragile, and those relations delicate, is never thought to be affected by our ideas—our high scientific ideas." He concludes that "man has become a machine and it would be more honest if behavioral science defined Man as a self-programming Univac." At a stroke, he feels, the behavioral concept of "roleplaying" has wiped out the moral distinction between candor and hypocrisy. He too points to the dehumanizing trends in our society, adding that "Science tells the modern psyche to recognize the demands of the organism, no matter how gross, or selfish."

Sexual Preoccupation Today

Along with these dehumanizing trends goes our addiction, our compulsive preoccupation with sex. It is reflected in our advertising, in which practically every product sells by use of some sexual innuendo, and television and movies offer a constant parade of hostile, alienated, cruel, or violent sex. Rarely is sex portrayed as part of a warm and meaningful relationship. Long ago, Flanders Dunbar(4) pointed out

that lack of tenderness seems to be a major reason for frigidity in marital sex. Today, Marya Mannes, the writer and social critic, has said: "If anything is dead, it is the concept of tenderness." So, it might be added, is the concept of fidelity, even though apparently its breach is often less rewarding than anticipated.

One asks: why the persistent sexual problems? The paradox would seem to be that man can tamper with his humanness only so far. Reduced to its essence, the question is that of authenticity versus alienation, of the capacity to love and feel versus the mechanical. Sexual sentience is a distillate of the totality of a person, constitutional and psychic. Furthermore, sexual expression and response are the result of a complex processing, in which the summation of combinations of factors to a certain base line is necessary for appropriate response. These include: the constitutional endowment and vitality, personality traits relating to psychosexual development, the individual's value-system, cultural milieu, endocrine stimulation and libidinal awareness, relationship with the sexual partner, and motivation for the sexual activity.

Therefore it follows that no acts of intercourse are ever identical, even though they tend toward consistency. In relation to our culture, it is impossible to be mechanical in living,—to "keep the cool"—and expect that which comes from passion or heat, in sex. Martin Buber's(2) concept of "Encounter," the true openness and taking in of the other person, which permits appropriate response to him, is even more a condition for authentic sexual response than for any other human interaction. This is not to deny that some sex relations are more purely lustful than otherwise, yet they can still retain elements of mutual respect and dignity.

Validity of Sexual Research in the Laboratory

The trends in our society just described have served as a culture medium for the sex research of Masters and Johnson. Here sex seems little more than a stimulus-response reflex cycle, devoid of intrapsychic

or interpersonal meaning. This work warrants further consideration, even though it has become late in the day to question it.

Few projects have aroused such interest, and it is easy to see why. We have had little concrete information about sex and therefore greet this venture into previously forbidden lands with eagerness, perhaps taking little note of the direction in which we go. Dr. Harold I. Lief, a pioneer who has accomplished so much in furthering sex education generally and in the medical schools, expressed an early interest in this research. His support as an important member of the psychiatric community did much to stimulate further interest in it. Because of the impact this may ultimately have on our thinking, I know that he welcomes further consideration of it.

The following basic questions apply to this and any scientific research: 1) Are there special ethical considerations in doing research on humans? 2) Is the basic premise valid, and what about the methodology and design? 3) Can the work be reproduced by others? and 4) Is information offered for other (therapeutic) purposes actually derived from it, or is it merely a new type of speculation?

First, it must be acknowledged that there is something about Dr. Masters' language that sets the teeth on edge. The book *Human Sexual Response*, which is curiously less informative than the early papers(15-20), to which one must turn to really understand the research, opens with the phrase: "In view of the perversicacious gonadal urge in human beings. . . ." Why the rare and opaque word "perversicacious," which means obstinate, if the intention is to communicate, rather than to obscure? What is the meaning of the following sentence: "The somatogenic stimuli or transformer role connotes initiation or approach, rather than any concept of discriminatory ability"? There is a theme of reification running throughout: "The corporate body structure," "the orgasmic platform," etc.

With regard to doing this research on humans one asks: What is the attitude toward sex in a researcher who says, "Masturbating women concentrate on their own sexual demand without the *distraction* of a

coital partner." Distraction! Is that the meaning of a partner in sex? This points to a dehumanizing view, even as it is necessary to consider the effect on an individual of giving command sexual performances in the presence of others. May it not be ego-damaging, and therefore destructive eventually, if not immediately? This question was apparently anticipated by the researchers and answered by comparison with the sexual activities of the members of certain primitive tribes.

It must be noted that even in such groups, the Trobrianders(12) and Pilaga Indians (9), for example, various types of sexual taboos still abound. Furthermore and more significant, affectional ties between man and wife are virtually nonexistent; it is the linear family which is meaningful, and then largely in practical terms. Nor do such groups attain the intellectual and esthetic development of our civilization.

In considering the dehumanizing effect of command sexual performances, it must be observed that this is something even animals will not consent to; nor would they brook the tragi-comic series of interruptions that are in some instances required. Animals have their own timetables for sex. Ford and Beach(6) have observed that in some species of monkey, an unwilling female will not submit to copulation; while in other instances, a weak male will submit to homosexual demand by a powerful male. But this submission is not concerned with sex, it is survival that is at stake.

Lehrman(11), in an interesting experiment with the ringdove, has shown that a female in a cage with a male will lay two eggs, with a plate glass between she will lay one, alone, none. These responses in lower animals are biological, but they are also interactional.

With regard to humans, no less a person than the geneticist Theodosius Dobzhansky (3) has stated: "The cultural has taken primacy over the biological for the last 10,000 years." So that sexual performances on demand are not only culturally abnormal, they are biologically abnormal as well. What shall we learn from them? Furthermore, what criteria were used in the selection of subjects to emphasize the normal? And

might not volunteers alternate between the extremely naïve and the psychopathically exhibitionistic and voyeuristic?

But perhaps the major false premise is the assumption that studying sexual responses genitally will offer meaningful information. As Masserman(14) has demonstrated, especially in his films, the induction of neurosis in monkeys results in disturbed behavior which includes the sexual as well, and it is often the most striking change. The computer paradigm offers perspective, for what Masters' research studies is "output," the final pathway, and from this about all one can learn is that something *is* wrong. To find out *what* is wrong, it is necessary to study "input," the missing or faulty life experience and development leading to the problem. Treatment relates to what lies between the two—the processing—and it is here that interventions may be helpful. In briefly considering aspects relating to faulty input, it is relevant to note that people may be sexually adequate in one situation and not in another, again raising questions of the value of observation of genital response.

Sex is also used for many purposes. William F. Sheeley(24) has pointed out that sexual activities have roots in physiological function but also deep within the psychological being. He noted that they are affected by strivings for power, fears of abandonment, and threats to life itself. People use the promise, giving, and withholding of sex to bribe, dominate, disarm, mollify, ward off, frustrate, mislead, reassure, exploit, and comfort others. Perhaps surprisingly, humans are not alone in using sex symbolically. In some primates, the most powerful male of the group, who has priority claims on the females, exhibits his genitals as a sign of his power when intending a threatening gesture to another male.

Another questionable premise is that this research shows physiologically *normal* responses. Information from consideration of a large group of analytic patients leads to the impression that Masters' findings may in good part be pathologic and a result of prolonged overstimulation and irritation in the attempt to comply with "sex on demand." The finding of a "plateau" in response

would be one such example—a possible artifact of mechanical stimulation and delay in summation to trigger response. Is increased muscle tonus a sign of impending orgasm, or rather an indication of its failure to move along smoothly? Can it be assumed, especially for the female, that there is no difference between masturbation and coitus? There are many reasons to doubt this, too time-consuming to develop here.

Leslie Farber(5), in commenting on the film produced by Dr. Masters, noted that little could actually be observed, and that Dr. Masters seemed to prefer autoerotic to heterosexual activity; obviously it permits greater visibility, and presumably the response is more predictable. If so, how does this research validate the claim that there is only one type of female orgasm? Because it simplifies matters, some, including Marmor (13), suggest discarding the concept of a dual site and type of orgasm in women, but in a study I undertook and reported as "A Re-assessment of Feminine Sexuality and Erotic Experience"(23), there seemed good reason to retain it.

Along with physiological and anatomical data goes the significant fact that many women capable of an authentic response recall a change as they mature in sexual experience. What about the concept that normal women have multiple orgasms? Has this research offered actual proof of an observation which is probably a misinterpretation of sensations?

The importance of this work's being repeated by others cannot be overemphasized. There are numbers of findings so questionable that they need validation before they can be accepted. One example is the statement that vaginal sweating is the source of lubrication during sexual arousal, being recorded by a tiny camera inserted in a plastic phallus. How could droplets be observed forming on the walls? The vagina is not normally a hollow distended organ; its walls are collapsed until pushed apart. The very use of the described instrument would disperse the droplets as they formed.

Questions of the enormous swelling of the breast and the purplish coloration during orgasm have been greeted skeptically by many, and the finding of a "sex rash"

with impending orgasm, after a prolonged effort under hot photographic lights, brings to mind the possibility of a very simple condition—prickly heat!

Relationship to Treatment

Last, but far from least, is the relationship of this work to treatment. Have Masters and Johnson overextended the physiological aspects of sexual response to cover the entire realm of sexuality? How can it offer suggestions for treatment of sexual inadequacy? Is a kind of coaching that reduces either partner to a push-button approach, or "making the wife a member of the therapeutic team" really of value? Is it not dehumanizing? What can the study definitively state about erotic drive, which is so under the control of psychic factors(23) that neither estrogen nor androgen levels in the female tell us anything about it? How can it offer help for a husband's infidelity to his pregnant wife, as claimed? Is not that problem basically one of masculine loyalty, self-discipline, and concern for his wife? Are there not temporary substitute gratifications that a loving couple can work out? Are married people really ignorant about sex, or does simple ignorance persist only as a surface mask for anxiety and guilt? And may there not be, in the treatment that Dr. Masters offers, a strong element of suggestion which has yet to prove its durability?

It has been said that optimism is often ignorance of inhospitable reality. Perhaps we do not like the idea that there may be something about the sexual experience which defies measurement and which is elusive. Let us not think we can jump in one step from ignorance to absolute knowledge. Will sexual response, a complex mechanism of the most delicate balance, yield to push-button control? To be free of guilt in relation to sex is important, but with any freedom comes responsibility.

To experience intensely requires the development of sensibility, not through repeated mispractice, but through that kind of thought, value, esthetic, care, and practice, which leads to artistry of any kind. Sexual inadequacy in either sex is a sign of our times, and related to manifold other

aspects of our lives. We cannot turn back the clock. But we can search for what was meaningful in the past, since it is always the foundation of the present; and we can attempt to clarify concepts of where to apply therapeutic effort.

Above all, we must reaffirm the fundamental connection between human relatedness and physiological sex. Let us avoid the dehumanizing rape of sex and strive to understand the failure in ability to love freely, which T.S. Eliot concerned himself with in *The Hollow Men*, pointing out that "Lips that would kiss form prayers to broken stone" and adding that "Between the desire and the spasm . . . falls the shadow."

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(From the Journal of the American Medical Association, Sept. 21, 1970)

THE BOOK FORUM

(By Natalie Shainess, M.D.)

(A review of the book entitled "Human Sexual Inadequacy," by William H. Masters and Virginia E. Johnson, 467 pp., 10 illus., \$12.50, Boston: Little, Brown & Co., 1970)

If written concisely and unrepetitively, this book would occupy about one-third the space, be considerably clearer, and correspondingly less impressive. Part of its impressiveness is its style: not a personal pronoun anywhere; only the Foundation. The language is somewhat simpler than its earlier companion piece, *Human Sexual Response*, but it is still virtually unreadable. Sample: "Women entering therapy in a state of nonorgasmic return reflected complete failure of any effective alignment of their biophysical and psychosocial systems of influence." Meaning? The convoluted phraseology, contradictions, and reifications strike a familiar note. Like the Madison Avenue ad men who gave us "midriff bulge" and "tattletale grey," Dr. Masters offers an assortment, representative of which are "sensate focus," "endpoint release," and "coital opportunity"—joining earlier creations like "orgasmic platform."

The book contains a 56-page bibliography, but the text does not show that the listed material has been utilized within the book, in the usual scientific fashion. Reading the book is an incredibly laborious task. One begins to feel as if on a merry-go-round, as phrases and ideas are met with over and over again. A few case histories are included, and here the book comes to life. However, these histories do not relate to the treatment techniques described, and therefore, like the references, they are superfluous.

The ideas within this book can be summed up quite briefly: marital units (not couples, please!) are advised to "pleasure" (touch) each other—a leaf taken from sensitivity and encounter groups—but to delay actual coitus until given permission by the therapists; wives are taught to squeeze the penis to prevent ejaculation; husbands are taught to use metal dilators on wives who have vaginismus. In short, each is placed in the power of the other, depending on the condition. This reviewer cannot resist asking: can faulty and inadequate sex truly be corrected in this joyless way, and ignoring the psychological forces at work?

Tucked away neatly in the chapter on primary impotence comes an astonishing innovation: a section on "replacement partners" and "partner surrogates." A case is made for these women surrogates (provided for single men by the authors); they are described as "fully sexually responsive, confident, understanding, and compassionate." Apparently, a superbreed. Why are they not busy with their own confident, fully responsive men?

This reviewer was reminded of the fairy tale, the Emperor's New Clothes, in which the nonexistent fabric, alleged to be rich, lustrous, and colorful, was declared to be invisible to those who were not fit for office. Everyone, of course, "saw" the fabric and admired it. A little child spoke out the truth. Will a book reviewer serve as a child surrogate?

(From Psychology Today, July 1969)

(By Natalie Shainess, M.D.)

(A review of the book, "Erotic Art," by Phyllis and Eberhard Kronhausen, Grove Press, \$25.)

By their dedications ye shall know them: The Kronhausens extol the maturity of the Swedish and Danish people "whose democratic freedom made possible an international exhibition of erotic art." Whether this exhibition, much of which is represented in the pictures of this book, proves either Scandinavian democracy or the worth of this collection, is open to question. After all, there was a lot of sexual freedom in Nazi Germany. Further, when a book starts with: "How Nice People Like Us Got Involved in Erotic Art," the perceptive reader knows he is being conned into believing that we're all nice people no matter what we do or think—i.e., park your misgivings at the door.

Their introduction states the problem: the difficulty that many persons seem to have in distinguishing between art and pornography. They report that an artist in their presence "transformed some pornographic pictures into complicated erotic engravings in one day." Thus—to be kind to them—they reveal their own confusion about the difference, and let us acknowledge that this is at times a delicate balance.

But since it is germane to a critique of the book, let me attempt to make a distinction: pornography concentrates on the genitals and accessory organs. It emphasizes and distorts them, focuses on the varying ways that these disembodied—no! *body-possessing*—organs can be used to titillate, or stimulate or can be stimulated. They are pictures of sex-organ objects devoid of all other meaning—the personality having no place. They are by their very nature created for the voyeur, or for that which is sexually unhealthy in a person; for they represent and feed compulsive sexual preoccupation; and the deficit in the viewer—the inability to achieve mature sexual gratification—leaves him unsatisfied.

There are 400 pictures in this collection, some in color, with examples from Western art, primitive art (here the childlike organ worship is inoffensive), and representations from India, China and Japan. Many will be tempted to consider the Oriental pictures ART, since they are done in familiar art-forms of those countries, rich in color and complex of line. But true art conveys a thought, a speculation, a perception about the human condition. When sex organs and their usage are the central focus, it is *not* art, no matter how pretty the colors.

Compare some of the degraded couplings in this book with a piece of true art—Rodin's sculpture, *The Kiss*, for example. It is not simply that Rodin presents two beautiful nude figures embracing in the preliminaries of love-making. It is that he conveys their yearning and fulfillment, the first fine careless rapture, the awesome discovery of what man and woman can mean to each other. So it is too, with his work, *The Thinker*. Here the perception is not simply that of a magnificent male figure; it contains the essence of what is remarkable in man: that with all his strength and power, man can sit, lost in thought, trying to understand something.

The ugliness of all the fiddling, tiddling and piddling in this collection is not only subhuman, it is subanimal. There is a certain integrity in lower forms that are driven to coitus by inner need but are incapable of making a fetish of sex organs. These pictures paraded by the Kronhausens focus on genitalia: enlarged, distorted, introduced into every possible body cavity. They bear in upon one a sense of increasing ugliness and degradation of the human being. This is obscenity, this is pornography—for which they claim social aims. Perhaps the sexually disturbed person may at times satisfy himself with pictures, but he may also be stimulated to outside activity—not always benign.

Yet within this collection are a few pictures I would single out as art. *The Blue Goddess* by Labisse is an example. It portrays in surrealist style a strikingly beautiful Negroid woman colored blue, surrounded by stones of anatomical shapes and holding a ciliated buglike object that close inspection reveals to be a bivalve—obviously a symbolic representation of the vaginal vestibule. This picture makes a statement. Here, the artist views a beautiful woman as cold and dangerous, possibly second-class; what is more, he can see her only in fragments, in spite of the total image presented to him. *Les Jeux de la Poupée* by Hans Bellmer, in which a female torso, voluptuous, overripe, with huge breasts turning upward like cups or eyes, and with thighs and body sections hinged like a doll's, might be compared with De Chirico's portrait of wooden figures, *The Lovers*. Bellmer's perception here is of woman as a voluptuous used doll meant for sexual gratification, something to sink into, but not a person; no head, no arms with which to respond, and no legs with which to flee. Two sketches by Rembrandt show clothed figures in sexual embrace. No sex organs, no titillation; they are satire, or perhaps commentary on the pathos or absurdity of some life situations.

To promote a kind of *raison d'être* for the pictures, the book carries an interview with Folke Edwards (director of the Lund Museum (editing would have helped). Phyllis K. observes that the show makes the important point that "sex is pleasurable" (does it require a show of this kind to prove that?); Eberhard adds that "love has little to do with eroticism." Even the museum director disputes this, although the collection certainly accomplishes a total divorce. The Kronhausens state that they are not trying to change behavior, only attitudes. One is impelled to ask: in what direction? The more so since they report that they "were struck by the natural and mature responses of the young children who were brought to the show." The Kronhausens surely do not remember their childhoods. Young children often proceed with an unchanged exterior no matter

how disturbed their feelings are. But also, fortunately, what is beyond them often passes unnoticed.

Let it be clear that I am not shocked by pictures of genitals. As a young girl, I saw a life-sized sculpture of a male figure in full erection, by Hugo Robus. After the first moment of shock, I thought: Well, why not? Why shouldn't the artist portray a man in his glory, at the height of his virility, at his most vital, at the moment of his need to love? It was art, not pornography.

As man today resembles more closely the things his technocracy creates, as the *Playboy* philosophy takes over, we have a cheapening of sex. We have sexual pre-occupation, not sexual freedom. Healthy sex is wounded; love lies dead. What are the Kronhausens purveying and teaching? For what purpose? It is well, even if nostalgic, to recall another viewpoint. D. H. Lawrence, who did not degrade sex and love even when using plain language to describe its physical aspects, declared:

Let us hesitate no longer to announce that the sensual passions and mysteries are equally sacred with the spiritual mysteries and passions. Who would deny it any more? *The only thing unbearable is the degradation, the prostitution of the living mysteries in us.* Let man only approach his own self with a deep respect, even reverence, for all that the creative soul, the God-mystery within us, puts forth. Then we shall all be sound and free.

(From the Psychiatry and Social Science Review)

(A Review of the book entitled "Erotic Art," a survey of erotic fact and fancy in the fine arts. Compiled by Drs. Phyllis and Eberhard Kronhausen. 312 pages. Grove Press. 1968. \$25.00)

(By David W. Morgan, M.D., Associate Clinical Professor, Department of Psychiatry, School of Medicine, University of Southern California)

Throughout the years of censorship, the erotic arts of higher quality and beauty have been most suppressed because they are more deeply and widely stimulating. Sloppy and inferior works are permitted public exposure to aid the cause of the censors, leaving the false impression of a totality of inferior trash. *Erotic arts and literature have recorded the wisdom of the ages about how to make love and have been used for centuries to teach the young the love-making skills.* We should return this wisdom to man. This book of the Kronhausens opens this door and offers a choice and a wide sampling.

All large museums and libraries have locked warehouses containing these treasures, but now they are available only to those with the common sense to take advantage of this universal human heritage and the energy and money to overcome the public opposition to their sale and enjoyment. While you knock and wait, read the Kronhausens' words and view their beautiful collection of illustrations of erotic art. Perhaps even more to the point would be to see the Second International Exhibit of Erotic Art in our own public museums. Why should only the Europeans benefit from this research and discovery by *two beautiful humans beings*, Phyllis and Eberhard Kronhausen, psychologists from our United States?

The erotic arts have had secret showings for centuries, but it was left to the Kronhausens, pioneers in popularizing erotic art, to present the first public exhibition of erotica in our Western civilization. The exhibit was held on the favorable soil of Scandinavia, and this book celebrates the breakthrough and shares it with the world. Let us hope that this attempt to free the arts from destruction, suppression, and control will diminish censorship.

The main thesis of the censors is that erotica stimulates but does not gratify and thereby leads to more, and presumably "bad," sexual activity. Their concern for legalisms and uncovering "redeeming social values" misses the point altogether, for the goal in most erotic books is the author's attempt to arouse desire or fantasy in both himself and the audience in order to overcome fears, conflicts, and inhibitions. The reader completes the catharsis in his love-making, which is the redeeming social value, although I doubt this is what censors have in mind. The censors feel that if they exercise less control this will lead to more violence and more sex crimes. However, the reverse is the truth. My colleagues and I have many cases on record where reading about and *seeing pictures of violent and hurtful sexual behavior has helped* many poorly controlled persons to maintain control. We need to diminish censorship and study the results; sex crimes and

other crimes of violence would then probably decline. Clinical and sociological evidence supports this prediction.

Mr. Nix. Our next witness is Dr. Charles Socarides, New York City, N.Y.

STATEMENT OF CHARLES W. SOCARIDES, M.D.

Dr. SOCARIDES. Representative Nix and gentlemen, first I would like to say that with all great respect to Dr. Shainess, I don't agree with her comments about Dr. Masters and the team at Washington University in St. Louis. I think their work has had tremendous impact on our understanding of sexual physiology and its correlation with psychological factors so that we have become much richer in our scientific knowledge.

Second, Mr. Wilson, I don't consider Playboy magazine pornographic and my remarks will explain why as we proceed.

With regard to my professional background, I am associate clinical professor of psychiatry at the Albert Einstein College of Medicine in New York City. I am a fellow of the American Psychiatric Association and a member of the American Psychoanalytic Association. I have been teaching a course for a number of years entitled "Sexual Problems and Sexual Perversions" as well as a course on homosexuality and its treatment.

I also participated in developing the sex education program for the medical students at the Albert Einstein College of Medicine. I have written extensively in the area of severe sexual disorders, their psychoanalysis and their therapy and am the author of 23 articles dealing essentially with different aspects of sexual health and sexual disorder. I am the author of a textbook entitled "The Overt Homosexual." I am chairman of the Task Force on Homosexuality of the American Psychiatric Association's New York district branch. I am in private practice of psychiatry and psychoanalysis in Manhattan.

My prepared statement is not a point-by-point critique of the Presidential Commission's report but it constitutes my clinical opinion on the issue of pornography/obscenity.

Truly responsible individuals in many communities are at a loss as to what to do about pornography/obscenity. Why is this issue so difficult to understand? It seems that even language has conspired to befog the answer. The word pornography is a misnomer as it is derived from the Greek "porne" and "graphein," literally meaning "writing about whores." Obscenity comes from the Latin for "filthy" or "repulsive" and is much closer to the point.

What is vital to our comprehension of pornography is not that it arouses sexual feelings. Many of the greatest paintings, music, books, and films are great precisely because of their sexual appeal. The Titians, Renoirs, Degas, Michelangelos, the Song of Solomon, are great because the esthetic is interwoven with the sensual. This is erotic realism and should be separated from pornography.

Sex is like learning; there is "good learning" which benefits the organisms and helps it grow and "bad learning" or harmful-learning which damages functioning of the individual.

Pornography should not be censored because it arouses one sexually but because it is the wrong sort of sex stimulus, a violation of the human being. It is sneaky and sly, insulting to sex, insulting to the

body, ugly and degrading to the sexual act. Here we have our definition: When sexual excitement is mixed with the desire to humiliate, degrade, to "dirty," the very element which makes up pornography has been introduced.

The intent of pornography is to build up erotic excitement by destructive means. Recurrent themes can be summed up as seduction, incest, profanation of the sacred, perversions, pedophilia (adult-child sexuality), the use of animals. These constitute almost the entire armamentarium of the pornographer. One is hard put to find a significant variation from these stereotypes which, in themselves, are an intrinsic part of the identifying characteristics of pornography.

Seduction scenes are frequent. The women are generally shown to be as eager as men. In all deforation passages there is usually a sadistic element. When women are portrayed as resistant the typical story line emphasizes that the victim need not be coaxed after the initial experience. She then participates willingly and with gusto in all abnormal practices and excesses. The implication—especially to the adolescent—is "you don't know what you're missing if you haven't tried it." This is a real danger to those who are vulnerable because of immaturity.

Incestuous relations are guilt free. To encourage sexual relations between members of the same family by removing the barrier to guilt is, in essence, to destroy the family. The incest barrier is the product of thousands of years of evolution culminating in the family unit. Aside from preventing inbreeding or potentially unhealthy or fatal genetic combinations, its purpose is to promote family stability, group cohesion and cooperation. Freud's brilliant study, "Totem and Taboo," uncovered the profound unconscious significance of incest prohibitions and their vital function in preserving family life and promoting later normal healthy mental functioning.

In pornography the sacred and profane are intermingled; these opposites are used to heighten erotic feelings. If sex is sinful then sexual acts in a religious setting constitute a totally sacreligious profanation.

In many men with the loss of normal assertiveness in the sex act there is a frantic search for erotically aggressive material. The Marquis de Sade—who proceeded from cruelty to murder for "sexual kicks"—spent over one-half of his life in prison for the enactment of his pornographic fantasies. This infamous man eventually began to act out his impulses rather than their remaining encased in his fantasies. Thus can pornography come alive.

In all homosexual pornography there is a decisive sadomasochistic theme, an expression of the deepest primitive aggressions. Almost invariably in the psychoanalysis of male homosexuals, concealed by surface defensiveness and rationalization, we hear the plaintive cry of a little boy:

How I wanted my father to love me. But now I want to punish him, to force him to give me love, to swallow him. Then he'll never be able to leave me.

Homosexuality in males represents the disarming and conquest of the father, the first male who frustrated the boy in his wishes for normal masculine parental love and thereby deprived him of his wish to be a man. For it is by the act of loving identification with the father that the boy gains his model for masculinity.

In the sexual act the homosexual male obtains masculine identity from the partner, a substitute for the rejecting, hostile or elusive father. Experiencing orgasmic satisfaction temporarily neutralizes the intense anxiety which would otherwise destroy the shaky psychological equilibrium of the homosexual. The act must be endlessly repeated or the anxiety state becomes unbearable.

Sadomasochistic scenes, whether heterosexual or homosexual, involving psychic or bodily pain provide a vicarious punishment to the viewer or reader. Because pornography users obsessed with sadomasochism consciously or unconsciously believe they should be punished for sexual pleasure, they obtain license to experience an orgasm through the imaginary sufferings of others.

Mastery and control of the helpless sexual partner is the trademark of pornography. This guaranteed control is necessary because the consumer totally misunderstands the meaning of sex. Pornography obliges him by supporting and fixing his semidelusional conception. He believes that in order to obtain sexual satisfaction one of the partners must have complete control rather than the great degree of mutual cooperation which is essential for genuine gratification.

Underlying the chronic use of pornography is the fear of sex. Such fear arises in earliest childhood and is due to the prohibitions and intimidations by the parents with consequent development of anxiety, guilt and fear in the child. Fear of sex is not innate; it is learned behavior. The youngster would never get the idea by himself that sexual stimulation or pleasure is harmful. Fear concerning sex leads to later inhibition in the sexual sphere. Upon reaching adulthood this individual finds he is unable to function whenever he approaches a sexual situation or sexual relations without an accompanying measure of fear and guilt. He must find a circuitous way to circumvent these fears and simultaneously obtain sexual release. Pornography is utilized in an attempt to relieve sexual tension. However, it does not solve their problem and indeed may make it worse as stronger and stronger "doses" may be required to reach the orgasm with an ultimate failure of performance.

Some commentators advance the idea that pornography is helpful when used by those suffering from severe sexual disorders. I do not believe that pornography has any therapeutic value whatsoever nor does it function as a harmless release or "safety valve." Deep-rooted anxieties in the unconscious mind cannot be dissipated and removed by resorting to pornography material. Anxieties of this overwhelming intensity will return and the outlet of pornography is momentary, peripheral, and destructive to self esteem.

The proponents of pornography always declare that it is not intended for children. Further, they insist there would be no adverse effect on children or family life were pornography legalized. I wonder how this argument can be seriously put forth when a substantial proportion of hard-core pornographic literature singles out children for sexual victimization and their exploitation is a popular theme.

A luncheonette near my office in Manhattan is a gathering place for neighborhood youngsters at noon and after school. It offers for sale a large quantity of pornographic paperbacks. All of these encourage the belief that perverse sexual practices, especially pedophilia (adult-child seduction) and incest, are prevalent and rewarding. Such

unrestricted display and sale makes it impossible to realistically safeguard children and disturbed adults from the damaging influence of its concentration on perversion as a desirable basis for all sexual relations.

In July of 1969, Denmark abolished the last of the legal barriers against publishing pictorial pornography and showing "blue movies." Written pornography had been legalized 2 years earlier. The subsequent claim that there was a decline in sex crimes in excess of 25 percent is a most unlikely statistic. Not having personal access to the samplings I cannot determine the basis for the alleged decline. However, no clarification has been offered by the Danish Government officials who made this claim that would prove any connection between the sale of pornography, the incidence and seriousness of sex crimes and the correlation between them.

Just before I left, my secretary handed me an item from the New York Times of Monday, November 9, "Danish Pornography Study Finds Drop in Sex Crimes. Copenhagen, Denmark, Nov. 8 (UPI)."

I have to read all of it to be fair because it is rather self-contradictory.

"A report published today on the effects of legalized pornography in Denmark said that a sharp drop in the number of sex crimes had accompanied the easing of the laws over the last 3 years.

"Dr. Berl Kutschinsky, a Danish criminologist-psychologist who headed the study, said there was no direct proof that legalization of pornography was responsible for the decline in sex crimes.

That is the first such admission. The last paragraph goes:

"But it is pretty obvious, especially where minor offenses are concerned," he said. "The largest drop has been in voyeurism (99 in 1959 and 20 in 1969), exhibitionism (250 to 104) and indecent interference with small girls (282 to 87)."

"The 200-page report was prepared for the Federal Commission on Pornography and Obscenity, whose findings were denounced last month by the U.S. Senate and the Nixon administration."

I think this was interesting and brings us up to date as regards the situation in Denmark on this point.

In my clinical judgment, a flood of material describing sexual sadism, masochism, humiliation, incest and other comparably damaging and dehumanizing activities would lead to less impulse control and therefore to a rise in criminal acting out. Heightened impulse stimulation of an erotic nature, publicly promoted, can only serve as a force favoring explosive acts of sexual aggression rather than as a deterrent.

Above and beyond the question of whether or not pornography incites sex crimes is the more fundamental one: Is engulfment by obscenity a wise thing in general? To a clinician, equating all expressions of sexuality, however vulgar and dehumanizing some of them are, making them available to the public without restriction, is to loosen man's intellectual control over the sexual instinct. This is the rape of the universal social contract whereby men master instinctual drives by agreed upon self-restraint to serve the best interests of the community in which they all reside.

Through the millenia man has been constantly plagued by the consequences of his failure to develop appropriate controls over the sexual instinct and at the same time provide for gratifying it. Advocacy of the misuse of sex and its demeanment, the insult to the mind, body and

human relationships leveled by pornography, exacerbates the difficulties of living with our instincts.

The Danes have stated that pornography can be utilized as a medium of sex education. The so-called sex education afforded by pornography has nothing to do with reality, nor is that its purpose. Pornography is harmful because inevitably it distorts sex by exaggeration or by combining it with violence, hate and sadism. The purpose of education is to educate a child to reality.

The position that pornography acts as a safety valve for those suffering from perversions has no validity. I can testify that those deeply troubled by such disturbances cannot find an outlet for the powerful emotions which demand release except in direct experiencing of the perverse act itself. A man driven by voyeuristic impulses cannot be satisfied and quieted by viewing a nude in a magazine or on stage. In the consultation room he reveals his urge actually to invade the other's privacy without the other's knowledge, feeling that his victims are at his disposal, under his control, and thus he gains a feeling of possessing the domination and masculinity which otherwise he feels he lacks.

The decompensated voyeur, one for whom the perverse act no longer seems to reduce severe anxieties, undergoes a transformation wherein the obligatory act of observing a woman in a state of undress, in sexual intercourse, or while carrying out comparable bodily functions turns into an irresistible desire to touch—then to grab—next to rape—and, finally, to destroy. For him, pornography cannot serve; it must be a personal victimization.

The Parliament of Great Britain urged the repeal of most laws against pornography which include all except those which "protect" children and prohibit offensive public display. But one cannot have it both ways: legal but not on display. Its legalization permits its sale and, as with any merchandise, profitable transactions depend upon visibility.

The success of the first "sex fair" in history, which took place in Copenhagen, has resulted in "branch fairs" elsewhere including an oceangoing fair aboard a large steamship traveling to major ports around the world. This is another example that limits cannot be enforced. Scandinavia promulgated its "freedom" by assurances that pornography would not be flagrantly displayed. Nonetheless, the Copenhagen sex fair is a fact; a movie of it, purporting to be a "documentary," has been shown in the United States, and its in-person performers are on view wherever an audience congregates.

The committee of Parliament found that very few people have been corrupted by an "obscene work." This suggests that "no one was ever raped by a book" or is tantamount to saying "no one is ever influenced by a film or picture"—all patently false conclusions. Reading and viewing pave the way to action, for thinking is trial action.

It is conceivable that if pornography/obscenity is allowed to become culturally normative and legally valid it will unquestionably affect not only many individuals in terms of their conceptualization of sexuality, but will also influence our national standards and sexual codes. In time it will become part and parcel of mating behavior with its false representation of sex. It does not inspire young people to appropriate, realistic, and rewarding sexual desire and fulfillment and is, therefore, damaging by definition. Pornography does not treat its

subjects as human beings with needs for recognition, protection, love, and tenderness. Sexual partners are present only to be abused. There is no fear of consequences, concern or compassion for the degradation of another person.

We live in an era when we are afraid to use the word "morality" or it is used disparagingly against anyone who dares object to the cheapening of life. But we cannot escape it; the word cannot be made to disappear because we are in danger of losing our concepts and knowledge of what is right and wrong behavior, of what is good and bad for society. Morality, conscience, ethics, standards, are the traffic regulators of society. We cannot improvise a new morality from the clear blue sky, willy-nilly, irrespective of the dynamics of culture. Otherwise what promotes freedom and protects established decencies in life, what insures the viability of our cultural heritage, will be lost.

The widespread salacious literature is aimed toward teenagers. This material distorts the realities upon which sexual maturity depends. Full and passionate sexuality, under the control of a sound intellect, is intensely rewarding. But this healthy sexuality will not include any desire for violence, incest sadism or other acts extinguishing human dignity and the vital capacity to love which must remain intact for mental health.

Sexual behavior is learned behavior. A youngster is profoundly affected by what he observes. He will first engage in fantasy or trial action; that is, he will think about what he experiences, daydream about it, and then proceed to enactment. He has no understanding at his tender age of the motivational state of mating so that he can be erroneously indoctrinated and misled.

The adult, too, in his quest for sexual stimulation, may find himself engaged in a self-despising sexual pattern emulating the pornographic literature which threatens to engulf our surroundings.

Why are we handicapped in combating the assault of pornography? Perhaps it is in part a reaction to our former puritanism. But this does not mean the reverse extreme would be any improvement. We have been confused about pornography because we have been at a loss to define it. In a phrase, it is contaminated by sex characterized by dehumanization. A second reason is that we are all sexual beings which pornographers exploit for commercial gain. They know that sales are regulated by market demand and the largest market is derived from sexually crippled men and women. The agony, woe, despair, self-disgust, and depression which afflict those who require pornography are well known to psychiatrists who specialize in treating severe sexual disorders.

Pornography does nothing to enrich our lives or increase our fitness for survival. It is one of those elements in our current era of sexual change which should be done away with—it is never completely done away with. Through the centuries we have seen evidence of that, but it is controlled and certainly not sanctioned and approved by law. The only ones to profit from pornography are its purveyors. Pornography is now a billion dollar business; it is safer to peddle than dope and, perhaps, more profitable.

Rather than entertain any notion of legalizing pornography, it better behooves us to consider establishing a network of centers for sexual

rehabilitation where the deeply troubled can find the expert medical guidance they sorely need.

Such a proposal was made last year by a professor in the Soviet Union to aid thousands of sexually maladjusted citizens there. One such center has been in operation since 1966 but, according to the press report, "a person must wait for a year just to get . . . an appointment."

Surely the United States, with its wealth of scientific talent and the greatness of its tradition of caring for its weak and its ill, can best serve its people and its national ideals by providing a sound start in life for our youngsters who deserve wise sex instruction; by giving a second chance for wholesome sexual adaptation to adults who are struggling to live with the torment caused by dangerous sexual conflicts; by supporting and preserving the stability of the family unit which is the very foundation of our strength at home and thus of our creative potential in the world.

Mr. NIX. Doctor, would this be a fair estimate of your position? First of all pornography, or contaminated sex, or whatever it is called, does have redeeming social values provided it is not sneaky and sly, provided it does not destroy the agreed upon restrictions upon society. Is that what you are saying?

Dr. SOCARIDES. I think you depart from my definition of pornography which is always sly and destructive.

Mr. NIX. Whatever the definition is, it could be agreed upon. We are talking about the same thing. Whether we designate it in the way you have indicated or whether or not we call it something else it is the same thing in the mind of at least the one who is discussing it.

Dr. SOCARIDES. Perhaps you would repeat your question.

Mr. NIX. I want to know whether or not it is your view that pornography, whatever it is considered to be, does have redeeming social value providing it doesn't sneak up on you, or as you put it, is sneaky and sly and provided it does not destroy the agreed upon restraints.

Dr. SOCARIDES. I would say providing it is not dehumanizing, providing it does not deal with certain subjects such as incest, pedophilia, flagellation, and degradation of the individuals involved—then I would consider it to be erotic-realism. I would say that sexual stimuli, those which stimulate erotic responses, are not pornography and therefore should not be censored.

I think personally if I were to make a recommendation I would attempt to try to separate very carefully things that have probably been censored in the past but are not pornography.

For example, as I said before, I don't think that Playboy magazine is pornography. It does not dehumanize, it is apparently erotic for many people, it does not deal in a dehumanizing way with the sexual impulse and would not fall into my definition of pornography or obscenity.

Mr. NIX. I find it extremely difficult to separate that which dehumanizes and that which does not. I just don't know where to draw the line.

Dr. SOCARIDES. I think D. H. Lawrence said it better than anyone when he said, "You can recognize pornography by the insults it offers. . . . It offers insults to the human body, to the human mind, and to a vital human relationship."

Mr. NIX. The problem with that is he has made that decision for himself. I find it very difficult to believe that is acceptable to the great masses of people.

Dr. SOCARIDES. I don't think so. I think people do understand.

Mr. NIX. Mr. Chairman.

Mr. DULSKI. Time will not permit many other questions, but I do have one.

Is there a danger that once exposed to obscene literature, children may conclude that abnormal sex activity is in fact normal or a healthful sex activity?

Dr. SOCARIDES. I believe children would get that impression.

Mr. DULSKI. You say they would get that impression?

Dr. SOCARIDES. They could very well.

Mr. DULSKI. Do you believe, then, that children should be restricted from exposure to pornographic literature and other like material?

Dr. SOCARIDES. I believe that, yes.

Mr. DULSKI. Thank you.

Mr. NIX. Mr. Wilson.

Mr. WILSON. Doctor, What is your opinion of the Commission report?

Dr. SOCARIDES. I have about five pages written on that, I don't know whether you want that.

Mr. WILSON. No.

Mr. NIX. Would you offer that for the record?

Dr. SOCARIDES. This is my only copy. I will send it to you for the record.

Mr. NIX. Without objection, it will be made a part of the record as soon as presented by the doctor.

Dr. SOCARIDES. They certainly did a lot of work. I think the conclusion to change the laws to allow anyone to print and write anything about sex is probably misguided. I think—as Dr. Shainess pointed out—some of these experiments certainly don't prove much at all, they don't prove anything one way or the other. This might be considered a major finding.

I think another factor is that sexual difficulties are really caused probably between the ages of 3 to 5, sexual fears which lead to inhibitions in sexual functions and impair the sexual drive, the inability to achieve orgasm without great fear. Some experts believe the origin of severe sexual difficulties occur even during the preoedipal period, from birth to age 3.

For the Commission to go ahead and try to show that exposure of adults to pornographic materials does not make them perverse or cause them any harm is a severe methodological error.

There were only two psychiatrists on that Commission; I thought perhaps there should be more. Not necessarily myself or Dr. Shainess, but I am sure we could find some other psychiatric experts that should perhaps have been on the Commission.

And since causation of sexual problems and difficulties occur early in life to suddenly expose a man to pornography and say, "Will this cause him to develop severe sexual disorders?" and then conclude that pornography does not cause harm is not a very good experiment.

Psychiatrists already know that pornography cannot of itself induce sexual disorders in healthy adults. But we do know that our culture,

our sexual mores, our goals, our standards of behavior, are established by our society and they do affect our social functioning.

There have been a wave of movies in which group sex is portrayed. Now I see a number of patients who attempted group sex who never have tried it before, only to their detriment and the development of severe difficulties, anxieties, and guilts in their interpersonal relationships.

Mr. WILSON. One other question that has to do with Dr. Masters and his book. Did you say you felt there was some scientific value to his work?

Dr. SOCARIDES. Yes.

Mr. WILSON. It has been accepted among a good part of the medical profession as a scientific work?

Dr. SOCARIDES. Absolutely. There has been some talk about having people in the laboratory situation and expecting them to act as if they are not. But apparently after careful examination of their findings that has not been a serious problem. After a while apparently subjects get used to this situation.

I think what they have discovered is really quite fantastic. They have made a dozen findings on the sex response which can be extremely beneficial to our scientific understanding. I don't know whether you want me to go into one or two of those.

Mr. WILSON. I am satisfied with your answer.

Dr. SOCARIDES. In my teaching of psychiatric residents we devote 2 or 3 weeks to Masters and Johnson's work and I once wrote to him asking him for a film of some of his work and he said he would not send it to me. So that is how far we have gotten together.

Mr. WILSON. That was one of the features of his work, the anonymity of the people involved. Wasn't that expected at the very beginning, or did you feel it should be shared with the medical and scientific world?

Dr. SOCARIDES. Dr. Masters made no secret of his work. Going back to 1944 his work began as a conception clinic and then a contraception clinic and then the study of normal sexual physiology. He told everybody about his work, he published his findings regularly in professional journals, and finally he went to many medical centers showing his films freely and his techniques at many of the major medical meetings throughout the country.

It is rather difficult to see him because he is so busy.

Mr. WILSON. Thank you very much.

Mr. NIX. Perhaps it would be much better if Dr. Masters had made a secret of his work.

On behalf of the subcommittee, I want to again express our very great thanks to the chairman of the full committee for his statement concerning H.R. 19541. We express our thanks to Dr. Hobbs, Dr. Shainess, Dr. Socarides for a most excellent presentation to this subcommittee.

The subcommittee will be adjourned until tomorrow morning at 10. (Whereupon, at 12:20 p.m. the subcommittee adjourned, to convene at 10 a.m. Wednesday, November 18, 1970.)

(The item which follows, which was prepared and submitted by Charles W. Socarides, M.D., was received by the subcommittee for inclusion in the record.)

THE PRESIDENTIAL COMMISSION ON OBSCENITY AND PORNOGRAPHY

(Prepared by Charles W. Socarides, M.D.)

The findings of the President's Commission on Obscenity and Pornography may well result in our laws being revised as they have been in Denmark. The Commission was in existence for two years, expended nearly two million dollars, and was comprised of eighteen members, only two of whom are psychiatrists. They recommended that all Federal, state and local laws against pornography be repealed with the proviso that children be protected from such material, not because it is potentially harmful to them, but because the parents unjustifiably fear harm to them.

The Committee states: "There are no recorded instances of sexual aggression, homosexuality, lesbianism, exhibitionism, or sexual abuse of children attributable to reading or viewing erotic stimuli among the several hundred participants in the twelve experiments reviewed."

In our haste to change with the changing times we are making a disastrous blunder, the enormity of which may perhaps not be known for many years. Making pornography and obscenity a part of our cultural heritage, part of our institution of human courtship and mating, cannot fail to affect our youth and children, no matter what legal injunctions are placed against the young seeing a description on the printed page or depiction in film. The attitudes, ethics and behavior of adults will be transmitted to succeeding generations simply from contiguity with their parents.

Experiments were carried out by the Commission at the University of North Carolina in which instruments were used to measure the physical responses of 23 college men to prolonged exposure to erotic material. The instrument apparently was a device to measure the size of the flaccid and erect penis—the "peter meter."

(I first became acquainted with the fact that the "peter meter" actually existed in 1969, when I had to pass unfavorably on a grant request for funds to support a transsexual surgery project. Responses to individuals of both sexes were to be judged by the volume changes recorded on the "peter meter" in an attempt to "scientifically objectify" what understandably could be ascertained by simple direct observation.

The Commission's two major findings were that pornography does not cause sex crimes or corrupt minors. To dismiss the latter assertion it is obvious that these "experiments" were not made on minors; the conclusion that minors below 16 to 18 are not affected is thus automatically invalid.

It is clear to anyone dealing clinically with sexual disorders such as homosexuality, sexual sadism, masochism, exhibitionism, voyeurism, etc., that these conditions have their origin in early childhood before the age of five, and some experts would say before the age of three. Therefore, pornography cannot possibly cause the *original nuclear conflict* from which these perversions develop. But it does have an effect on the total picture of the sexual perversion and perhaps in some cases plays an intrinsic part, e.g., a man with a beating fantasy requires pornographic books which depict his perversion in order to arouse him to potency. This further leads him to a search for prostitutes or other partners with whom to enact the perversion as embellished and elaborated on in the books.

Perversions originate from two serious psychic difficulties: faulty gender identity because of excessive and fearful attachment to the mother (ages one-and-a-half to three); an intense oedipal conflict (ages three to five). Usually the perversion becomes manifest after puberty when the developing individual must find an outlet for expression of his sexual drives and discovers he cannot do so in a normal fashion. He is forced to seek the roundabout way of perverse sexual activity, perverse fantasies, sometimes aiding or buttressing his weak sexual organization with pornographic material.

Because of the foregoing factors involved in the origin and causation of perversion the experiments done by the Commission are worthless. At best they might identify some individuals already suffering from perversion but this was not their intent. Their samples not have likely to include any such individuals in any case as those so afflicted are not inclined to volunteer their services for fear of discovery. A male homosexual in such an experiment is apt to respond erotically to a picture of a nude male. On the other hand, I can state from twenty years of clinical experience that patients suffering from voyeurism will not respond erotically to pictures of nude females. Voyeurs, as earlier explained, require specific conditions for sexual arousal. They must be outside, in the dark,

and peering *uninvited* into the woman's room. The Commission could hardly duplicate these conditions. The invasion of privacy without permission, producing a silent domination of the unwilling female, is crucial to the excitement of the voyeur.

The knowledge that all of us can be "turned on" to some degree by depictions of erotic activity blinds would-be observers to both the quantitative and qualitative differences between those who have a normal response to what is erotic, and maybe even pornographic, and those who have a pathological response. Certainly they totally lacked the professional psychoanalytic training to enable them to discern each test subject's motivational state. To this lack add the absence of individual clinical examinations in depth on a systematic basis. It is the motivational state of a person, not alone the concretion of his action, which reveals his true responses in any situation and never more so than in determining the complicated emotions characteristic of sexual feelings.

That the would-be observers were handicapped from the start and could not carry out their job is vividly plain. As I see it, the real goal of our society is to allow more access to sources of sexual gratification which are basically healthy (not to interfere with civil rights) and to bar from approval and public dissemination all destructive insults to sex, to the human spirit, to the body and to human relationship.

In its experiments the Commission set up "straw men" which they then proceeded to knock down. They made crucial methodological errors in these experiments, ignoring the motivational state of the subject. By this is meant that a sexual single-mindedness would have had to be present at the outset and continuously throughout the experiments. The very fact that the basis was experimental tended to influence the subjects.

The Commission's findings are in error because psychological mechanisms of sexual adaptation are established so early in life. We know that they are established by age seven and begin to operate shortly after puberty, usually eleven to thirteen. They may be weak or frail, strong or inelastic by the early twenties.

For example, a man of twenty whose heterosexual pattern is fully formed but who has had little sexual experience is unlikely to become sexually excited by pornographic scenes of homosexual relations or by an exhibitionist revealing his penis, whether on film or in real life. A woman who desires heterosexual relations with a man in the context of tender affectivity is unlikely to become erotically aroused by scenes of heterosexual flagellation and even torture inflicted upon a woman's genitals.

These, as well as many other important psychodynamic principles, were nowhere taken into account by the Commission's procedures or else they could not have set up these faulty experimental models.

OBSCENITY IN THE MAIL

WEDNESDAY, NOVEMBER 18, 1970

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

The subcommittee met, pursuant to recess, at 10 a.m., in room 210 Cannon House Office Building, Hon. Robert N. C. Nix (chairman of the subcommittee) presiding.

Mr. Nix. The Subcommittee on Postal Operations will be in order.

Yesterday we heard from three scientists knowledgeable in the field of psychology, psychiatry and the social sciences. Each of the witnesses were critical of the experimentation conducted by the President's Commission on Obscenity and of the very firm conclusions reached based on weak or nonexistent evidence.

Today we will hear further testimony on the problem of obscenity. First from a New Jersey State Assemblyman who served as chairman of the New Jersey State Commission to Study Obscenity and Depravity in the Media, which reached different conclusions than the President's Commission. We will also hear from Dr. Bernard L. Bonniwell, a psychologist from Villanova University. We will conclude testimony by hearing from a witness holding the opposite point of view, representing the American Civil Liberties Union.

It is apparent that the President's Commission findings are not only contradicted by a minority of the Commission and individual Commissioners with their own views, but also by leading authorities in the scientific community. I think it is fair to say that the Commission's work should be carefully considered before its broad conclusions and weak experimentation are accepted as fact. The Commission's report is merely one more point of view from a group of men who have expressed themselves in like fashion in the past. It certainly should not be taken as anything but one more statement in an age-old controversy.

The idea that books and words, pictures and thoughts have no influence on human behavior is an idea with little merit.

The subcommittee will continue with its legislative program and we know that in future court tests the evidence we have gathered here will at least be given equal weight with this report. I think the action of a Federal district court's ordering of equal treatment for the minority of the President's Commission in submitting their views demonstrates that we can expect fairness from the courts on this issue.

Our first witness today is Dr. Bernard L. Bonniwell, Department of Psychology, Villanova University.

We are glad to welcome you, Dr. Bonniwell. You may take the witness chair and proceed when you are ready.

STATEMENT OF BERNARD L. BONNIWELL, Ph. D., DEPARTMENT OF
PSYCHOLOGY, VILLANOVA UNIVERSITY

Dr. BONNIWELL. Just an introductory comment, Mr. Chairman.

The approach today is not concerned with a religious or moral problem. The problem is conceived as educational and as a matter of choice for either the minority or the majority. It is a matter of choice.

THE UNCOMMON VIEW

The social issues which now confront the Nation are of extensive character and require solutions of considerable breadth. The present hearing, although directing attention to a specific topic, tends to find itself participating in the larger issues which confront society. What is apparently needed are uncommon views of common problems. Without a change in viewpoint, it is doubtful if old problems can be resolved.

With this principle in mind, it is proposed that—instead of directing our attention to the traditional view, namely, where pornography involves us in the dilemma of attempting to determine what is good and what is bad—that we attempt to free the mind of this riddle by redefining our problem: thus, by reclassifying pornography as a form of education—which it is, for it modifies human behavior—then it follows that our collective understanding of the rules, regulations, aims, and goals of education, all come to bear upon this formerly untouchable problem. With this reclassification, we drop a long standing concern with the particularity of pornography and approach it from the viewpoint that it is nothing less, and nothing more, than an aspect of education. It now becomes a question of educational choice whether or not it shall continue its massive proliferation throughout the land or, like every other commonplace educational matter, it shall be directed and reasonably controlled in terms of appropriate human goals.

In this context, the problem becomes one of decision by a large complex of individuals rather than the strangely defended right of the particular few. In the educational context, the problem ceases to be one of morality. That principle can be applied but need not necessarily be applied. Where there is available a vast array of choices—and no single criterion applies to all—the freedom to choose is widespread; but in choosing one item over another, exclusion also results. Thus, to culturally decide that we “like this data” over “that data” does not imply a moral judgment but, rather, a behavioral choice based upon a wide-ranging cultural design. We may prefer, as we routinely do throughout our life, to select one experience rather than another experience. Obviously, as a matter of choice, we may deem pornography undesirable educationally at this time and under these conditions. We may choose, in our educational design, to omit it from the public domain—and all public carriers—in precisely the same way in which we choose to limit the carrying of firearms. It is not an obscure question of morality but a routine behavioral decision related to the way in which a nation wishes to live; and that is a constitutional majority right; not, as now, a minority privilege forced upon the majority by an inadequate law.

At one time the question of pornography could be pushed aside on the assumption that it was narrowly confined, practically never in public print, only infrequently on the stage, and certainly never broadcast over TV. All that has changed with the vast changes in the communication media. In brief, pornography has become a national business in which public media and public transmission are now fully involved. When, therefore, pornography became public, it ceased to retain to itself a type of behavioral isolation that so long protected it. Now that it has become part of the public domain, the fundamental question follows: Do we want this broadly based, generalized form of education to continue? We may allow it to continue, free of all restraint; or, we may choose to control it and direct it—for what we believe to be the good of the community. This last procedure is a choice based upon reason reflecting a majority view. Human society has always functioned through the media of selective devices: the board of directors, the board of trustees, the board of health, the art commission, the zoning boards—the evaluation and decision function routinely occurring at every level—from the limited authority of local school boards to the extensive power of the House of Representatives and the Senate. In an interesting sense, when pornography became public data, it also became subject to public scrutiny and public rights. Thus, we may process it as we please—on a decision basis—as we process all educational matters.

LEARNING AND THE PORNOGRAPHIC ENVIRONMENT

The modification of human behavior is subject to certain learning conditions, among which may be mentioned repetition and emotional tone. Pornography breed upon these two prime conditions. In exerting its modifying force, it does so persistently, emotionally, and intentionally. In terms of learning it represents an unprecedented application of the conditioning process—which, in effect, is to occasion learning with or without the individual's consent. It is imposed learning. It is a form of programed learning, extending over a period of years; a form of learning which is difficult to escape, flooding the social environment via every conceivable form of communication. It is a learning factor of consequence, differentiated among individuals, but certainly not environmentally negative. Its effective learning range is over many years. The ideal research capable of measuring pornographic effects on human behavior would, at the minimum, be required to study the relationship over a 10- to 15-year period, under varying learning conditions, and with groups of different age ranges, with the different groups being drawn from different social strata. The variables involved—such as temperament, intelligence, religion, family mores, philosophy, educational level, experience, degree of sophistication, et al—would all tend to add a serious degree of vagueness to the results of even the most precise research project. It would be extremely difficult to determine just what was being measured insofar as individuals constantly change with the passage of years. Thus the significance of the time factor in this type of research. It is my careful opinion that the sincere scientist would refuse to attempt the research, noting the invalidity of the research even before the task began.

RESEARCH

Under the guise of the leadership of behavioral research, the 20th century has led its people into the wilderness of social and personal relativity. There is no behavioral tradition. There is only the momentary happening and the abortion that follows. There is no morality. There is only the flowered innocence of amorality. Love pervades the land. Perhaps so. The harshness of objective events, however, leads one to be somewhat less content. A social summary of the past decade is difficult reading.

The expected center of social orientation, the university, has also fallen prey to surface research: Limited, nonphilosophical and frequently nonrelated to man's basic needs. The university, incredibly enough, is processing laboratory technique as education, knowing full well it is not fulfilling its promise to a new generation. The university in its drive for status has forgotten the quest for humanity; the jungle of technology, well nourished with grants and technicians, has lost touch with man. Philosophically, the student finds himself isolated from a meaningful value system and becomes subject to the general mores of a disoriented society. In this time of unrest, the mores of tradition—perhaps diluted by the pornographic base of every media—have simply evaporated and the youth—blessed or damned, depending upon the philosophic viewpoint invoked—roam the off-campus world with a playful indifference to an uncertain future. The frenetic impact of pornography—which does not make it either good or bad—assaults the individual with overwhelming perversity and an extraordinary primitiveness not expected in a technological age. Now we are asked by the Commission's Report to give free rein to pornography and so possibly add to the subtle stimulation of the raw violence characteristic of this age. Regardless of research findings, the proposal seems unrealistic and unreasonable in a time of general turmoil.

HUMAN RESEARCH

In a routine way, it seems that the psychologist has attempted to study something less than the complete man, and yet has assumed that his findings are entirely appropriate for the explanation of extended value behavior. Whether the tests or measuring sticks of the psychologist are directed towards the evaluation of intelligence, learning, varieties of interests, aptitudes, personality types, or value systems, the obtained results are only fractional. Even beyond this obvious lack, the psychologist seems almost unable—as may be observed in the Commission's Report—to accept the fact that a human being is importantly influenced by other sets of factors: Such enduring factors as ethics, morality, religion, ideals, aspiration, hope and deep conviction, and even affection. Of course, it may be objected that research cannot accept these behavioral characteristics as proper items for scientific study. But if man is the object of study, these characteristics are of the essence; they are behavioral variables with which one must contend. Although man's behavior is related to each of the several sciences, as a person he is subject to none. He belongs to no science for he is, in fact, the father of all the sciences. Like Professor Lorenz's ducklings, the

various sciences and arts are subject to imprinting and follow man dutifully if not always affectionately.

Now, what other sciences do, that is their business. In the study of human beings, however, it is essential to note that basically man acts upon what he believes to be the truth. Caution and restraint, therefore, would seem to constitute the more reasonable and amenable intellectual stance. It seems reasonable to hold that a lack of research is better than misleading research for the tyranny of inadequate research is to obscure the truth. Thus, if—and I repeat if—any group, regardless of its politics, policies or seemingly compulsive goals, would indifferently insist that truth is not the final discipline of research, then the price of human betrayal—once set at 30 pieces of silver—has reached a new high. (Minority Report, Bantam Books, 1970, p. 463). Let it be desired that this observation will not be validated by events now hidden in the future. The comment of the high churchman, Jeremy Collier, 17th century, sums up the problem: "We must not let go manifest truths because we cannot answer all questions about them."

Granted that we can answer only a few of the pertinent questions concerning human behavior, nonetheless we may—by increasing the philosophic perspective—gain some further understanding by studying several of the possible dimensions (or levels) of the overall process.

THE HUMAN EQUATION

The evaluation of research is made against some form of acceptable criterias. In this instance the criteria—the dimensions of behavior—flow from the nature of the problem being researched, namely, the totality of human behavior observed over time.

THE HUMAN EQUATION AND DIMENSIONS OF BEHAVIOR

6. Perfection (Contentment).

VALUES

5. Philosophy (Reflection).

DECISION

4. Phenomenology (Awareness) (Self).

LEARNING

3. Psychology (Behavior).

CYBERNETICS

2. Physiology (Nervous System).

PSYCHOPHYSICS

1. Physics (Environment).

Figure 1. An emergent and developmental view of man. (Bonniwell, B. L., *The Universe of Man*, 1970, p. 80.) (Modified data from an unpublished manuscript.)

If I might make a quick comment. Despite the perhaps technical nature of the diagram before us, it is as commonplace as the excellence

of your child. It simply states that a child begins in the physical environment; that he is physiology; that out of the relationship between environment and physiology, emerges behavior. He develops. In terms of this developmental behavior—as the child ranges from physiology into states of awareness—he becomes a self-directed, self-understanding individual—from which emerges a value system by which he seeks contentment.

So, in quick summary, the data before us are simply the growth and development of your child. It is an emergent and developmental view of man. The child emerges from physiology into phenomenology into a philosophic being who lives by the rules of ethics, the rules of history, if you like. So, you have before you, expressed in a technical way, a statement of the fact that your child ranges from physiology to phenomenology.

The preceding figure, figure 1, is an extended view of the behavioral problem based upon the commonplace observation of the emergence and development of man, from infancy to old age. The question is: How does method relate to the various dimensions of this problem? More positively, can methodology be validly applied to the various aspects of the problem?

The application of scientific method is objectively effective at the beginning levels of the problem, that is, at dimension 1 and dimension 2—the environment and physiology. Methodology begins to lose contact with the problem at dimension 3 insofar as the behavior measured is beginning to take on a highly significant subjective mode involving, for example, attitudes, motivation, and interests. At dimension 4 and dimension 5, scientific method is, from an objective viewpoint, so diminished as to be almost worthless.

In summary: At the physical-physiological level, psychological research is meaningful, while at the phenomenological and philosophic levels it is objectively without merit. The final level, dimension 6, is as impossible to measure as the term itself, perfection.

I have indicated perfection in the chart simply to indicate that you are content with yourself as a human being in this world.

It is evident that the human equation—ranging in its demands from the objective physical world to the internal world of subjective experience—exceeds the capabilities of present research method. Thus, beginning with the environment (dimension 1), within which the individual is born, the progressive unfolding of the problem indicates a continual increase in the complexity of behavior as the individual matures. This process occurs over the succeeding years. Upon a final leveling off, at the adult level (dimensions 4, 5, and 6), the number of research variables are incredibly extensive and involve all possible combinations of the dimensions identified under 1, 2, 3, 4, 5, and 6. The life process is cumulative, and yet continually capable of change with the impact of new experiences. Thus, practically speaking, experimental control of even the known variables is impossible.

In respect to the Commission's report, there are two contrasting areas of attack. The minority report stresses history, morality, ethics, values, law, and practical observation of behavior. The majority report tends to stress empirical studies by psychiatrists, psychologists and sociologists, ultimately relying on statistical interpretation for the final directive. Where the minority report is concerned with the indi-

vidual's internal value systems (philosophy), the majority report relies on physiological, statistical behavior as its guide (psychology). Evaluated in terms of the criteria provided by the human equation (fig. 1)—that is to say, the human being—an interesting dichotomy is discernible: The minority report emphasizes dimensions 4, 5, and 6. The majority report, in contrast, emphasizes 1, 2, and 3. In this sense, then, there is an aura of incompleteness about both phases of the report insofar as an individual is not subject to being partitioned between the coworlds of objectivity and subjectivity. There is, in fact, a magnificent oneness in the spirit of man that resists the tricks of experimentation. In view of man's cohesive unity—and given a research choice—the minority report is to be favored as a more reasonable reflection of the human condition than the less comprehensive majority report. The fatal flaw in behavioral research is its pointless attempt to apply the technique of reductionism to human personality. The Gestalt psychologists had much to say about this, but they seem to have been overlooked in recent years. They would favor the phrase that personality is as indivisible as life itself.

In view of the information made available through the public press concerning the Commission's report, it would seem unnecessary at this time to present a detailed critique. Therefore, final conclusions are now stated.

CONCLUSIONS

1. The Commission should not have accepted the task. It is impossible to distill the history of individual behavior in a moment of time, experimentally or otherwise.

2. The research is painfully inadequate when related to the final directives presented to the President. It is an obscuring addition to the normlessness of a presently restless society.

3. It is a peculiarly insensitive public document based upon the specious philosophy of the behavioral sciences: Namely, there is only behavior and all other human activities are insubstantial and meaningless.

4. The scientific facade is, perhaps, the most harmful element of the majority report for it is highly doubtful that psychiatry, psychology and sociology are true sciences. And that is the implied basis for the report. (A recommendation follows in this regard.)

RECOMMENDATIONS

The initial recommendation, warranted by the manifest difficulties encountered in determining the validity of the present type of research—such as observed in the Commission's report—is proposed as follows:

a. That the American Association for the Advancement of Science be requested to devise an acceptable classification of research that would distinguish between the following terms—

(*a*) Science.

(*b*) Methodological studies—as distinguished from science.

(*c*) Nonscience.

An authoritative classification would resolve the critical question of whether or not psychiatry, psychology, and sociology, are sciences.

The possible impact upon the validity of the Commission's report is evident.

The following recommendations, concerning the communication media, are posited on the assumption that socioeducational concerns, impacting upon the entire population, necessarily involve the interest of the prime legislative bodies of the Nation. Further, insofar as there is no meaningful evidence to suggest that significant voluntary modification will occur on the part of the total communication media, the tentative proposals follow:

1. That an appropriate cluster of national educational monitoring centers (NEMOC) be established for the continuing evaluation and selective modification of data related to TV, radio, motion pictures, books, magazines, and all advertising media.

2. That the legal authority of NEMOC be derived from a statement of legal principle rather than a specific set of laws so as to permit flexibility in the application of its authority to a highly diverse and changing field.

3. That the imposition of NEMOC's authority shall be expressed directly and not through the courts. In principle, direct warning shall be followed immediately by specific penalties involving the temporary or permanent withdrawal of the licensing rights granted by the Federal Government, or State, or municipalities, to those processing the presently unacceptable data.

4. That the authority of NEMOC be invested in a board of public trustees, elected to office from within the geographic area that they shall represent, and charged with the task of interpreting the majority will relative to the data monitored. Continuing use of the professional polls—of the type employed in the recent national elections—would be used to project the probable fluctuations in community attitudes.

5. That the public press—specifically, the newspapers—be free of the authority granted the national educational monitoring centers. The continuing assumption is that the press recognizes its responsibilities and evinces a willingness to control itself for the common good.

SUMMARY

It is the intended purpose of this brief paper to suggest that the evaluation of human behavior should no longer be subject, in the paralogical sense, to the minutia of the behavioral sciences—for they are, I believe, seriously incomplete and frequently misleading—and that the Nation would do well to return Democracy to the base of human reason where human choice is the factor of consequence.

Mr. NIX. Thank you, Dr. Bonniwell.

I make the observation this is one of the most pointed presentations that I have had the pleasure of listening to. It gives direction where there was no direction before. For myself, I am deeply grateful that you were able to come here to present this paper, Dr. Bonniwell.

Are there any questions, Mr. Chairman?

Mr. DULSKI. No questions.

Mr. NIX. Mr. Wilson?

Mr. WILSON. Thank you, Mr. Chairman.

Dr. Bonniwell, I want to apologize for not being here for your full statement. I have glanced at your conclusions and a few of the statements you have made here.

I would agree with you that the Commission should not have been put in business, and it should not have been continued by President Nixon after he came into office. I feel no good will come from the report.

Again, I regret that I was not here for your entire statement. I shall read it.

Dr. BONNIWELL. Thank you, gentlemen.

Mr. NIX. Our next witness is the Honorable William E. Schluter, assemblyman, Sixth District, State of New Jersey, a member of the New Jersey Obscenity Commission.

Will you please take the witness chair. You may proceed whenever you are ready.

**STATEMENT OF HON. WILLIAM E. SCHLUTER, ASSEMBLYMAN,
DISTRICT 6a, STATE OF NEW JERSEY, AND CHAIRMAN, NEW
JERSEY COMMISSION TO STUDY OBSCENITY AND DEPRAVITY
IN PUBLIC MEDIA, TRENTON, N.J.**

Mr. SCHLUTER. Thank you, Mr. Chairman.

Gentlemen, I am happy to be here today to present certain observations about a subject which has been receiving considerable national attention during recent months. My testimony will be relatively brief, dwelling only on major points and the evidence supporting these points. Additional information on areas of particular concern to your subcommittee is available to you in the report of the New Jersey Commission to Study Obscenity and Depravity in Public Media, which was released for publication on August 17, 1970—and I will be happy to answer any questions following my direct testimony.

Incidentally, it is important to note, I think, that the New Jersey report was published 1 full month ahead of the Federal Commission report.

In order that you evaluate my comments in light of my own personal background, let me state that I am 43 years old, married, and the father of six children. I am not a lawyer, having been involved primarily in manufacturing business before my election to the New Jersey Assembly in 1967. My religious background is Protestant.

My basic mission today is to present to you the observations, findings, and recommendations of the New Jersey Commission to Study Obscenity and Depravity in Public Media, and I will attempt to represent the composite position of our commission instead of a "personal" viewpoint.

In New Jersey our commission undertook its task in August of 1969. Our specific charge was to (I quote from our enabling legislation)—

conduct a comprehensive survey and study of the dissemination in this State of obscene and depraved matter through the public media, and of the actual condition of law and law-enforcement activities designed to control such dissemination; to compile, review, and evaluate the legal, psychological and sociological knowledge bearing upon the accurate and objective definition of materials whose dissemination should and legally can be prohibited or controlled in the interest of public morality, decency and order; to recommend to the Legislature what, if any, new legislation or changes in existing legislation ought to be enacted in order to place the State's regulation of such material upon a sound, rational and beneficial basis . . . (with) particular attention to: . . . evaluating, on the basis of available data and knowledge, and to the extent that such data and knowledge make such evaluation feasible, the degree of actual danger which

may be anticipated from the tendency of obscene and depraved material disseminated through the public media to incite its audiences—and in particular juvenile and immature audiences—to violent or immoral acts, or to corrupt the character and judgment of such audiences; . . .

It is important to understand the basic complexion of our commission. It contained nine members, including two State senators, two assemblymen, and five from the general public. The New Jersey report contains biographical sketches of all the commission members and the staff. The entire spectrum from the so-called liberal to the so-called conservative viewpoints was represented on our commission. For a more descriptive and simpler label to describe these classical positions, I choose to use the terms "dove" and "hawk." It is safe to say that all shades of opinion were given prominent voice in our work. Of prime importance, all members of our commission undertook their responsibility with open minds—a fact which was proven when most of us admitted that our basic beliefs on this subject changed considerably during the course of our work.

We were blessed with an excellent staff. Our chief counsel combines experience as a prosecutor and as a public defender to maximum advantage. Our consultant, Mr. Richard Pugh of New York City, is a recognized expert in this field, having written many articles on this subject, including a book which is considered an anthology by many. Finally, our secretary did a masterful job. After all, he reconciled the views of nine individualists into a near unanimous report which all members enthusiastically support.

In my view, the New Jersey report represents a true situation where the collective wisdom and judgment of the commission as a whole was tremendously more meaningful and more valid than the aggregate contributed by individual members.

When one considers the New Jersey report in the light of the report of the (Federal) Commission on Obscenity and Pornography, it is important to be reminded of the fact that there are two basic differences in scope. First, the New Jersey commission was concerned with New Jersey law and those matters which could be affected by New Jersey law. The Federal Commission, on the other hand, concerned itself with the laws of all the States and with Federal postal regulations. Second, New Jersey had to consider the effect that changes in its own laws would have with respect to out-of-State visitors coming to New Jersey—in other words, in respect to its relationship to neighboring States. The Federal Commission concerned itself with national policy.

Among the more significant findings and recommendations coming out of the New Jersey report are the following (these are only the major ones):

There is growing concern over the increased existence and severity of "pornography" by virtually all segments of New Jersey's population.

I might add, we all have trouble with the definition of obscenity and pornography, so if you will allow me to use this in the general context in my written testimony here, I put quotation marks around the term "pornography" to best express the difficulty we all have in defining the term.

It was observed in the New Jersey report that some of this pornography is particularly debasing to women.

Imprecise wording of the statutes and diverse court opinions have made prosecutions in New Jersey exceedingly difficult.

With respect to minors, there were three basic reasons, unanimously agreed to by your commission, which justified our recommendation for restrictions and prohibitions: (a) evidence that there is a potential for, or a "high probability of", psychological harm; (b) to paraphrase Justice Brennan—since there is no provable connection of harm between "pornography" and delinquent behavior, there was also no convincing evidence that harm does not exist. Consequently, it is better to err on the side of caution; (c) finally, again referring to minors, it is generally recognized that society has the right to pass laws which are supportive of parental authority.

It was unanimously agreed that public displays of "pornography" should also be prohibited on the basis of the reasoning outlined above for minors and because it is appropriate to legislate to prevent the obtusion of this kind of material on an unwilling public.

The majority of our commission—five members—recommended that there be laws prohibiting the exposure to adults of a very few types of "hard-core" material. Specifically, the "hard-core" material as found in our report involves live public shows and pictorial displays only when applied to proscriptions for adults. This position was justified by the majority's view of the danger of "social" harm. The minority—four members—felt that there should be no proscription whatever with respect to adults.

The commission unanimously agreed that there was no provable causal connection between exposure to "pornography" and antisocial criminal sexual behavior for adults. This is a very important finding of our New Jersey commission. We all considered it significant. It has been pointed out that this "lack of provable harm to adults" would also apply to the fact that there is a "lack of proof" that there is no provable harm. The New Jersey commission was also presented with much professional evidence that the present state of science and psychological inquiry is inadequate to actually measure this relationship.

The commission unanimously agreed that its recommendations, including the optional section for adults, were completely constitutional.

Despite the split view on an obscenity statute for adults, the commission was in unanimous agreement that this matter be left to the New Jersey Legislature, and that, if the legislature determined to legislate in this particular area, the proposed statutes were appropriate.

The New Jersey commission drafted a proposed "pandering" statute, but did not recommend its enactment. This matter would be left to the option of the legislature.

In all of the proposed statutory language, abstract and intangible terms, such as lewd, lascivious, lustful, prurient, vulgar, and so forth, were omitted in the proposed New Jersey statute. Instead, the particular act and depiction which are intended to be prohibited are explicitly described. The traditional, and sometimes questionable, three-pronged approach of Roth was left out of the proposed New Jersey statutes for this reason.

Although I have not read the Federal report in its entirety (certain of the background materials are not yet available in printed form), it is obvious from the edition published by Bantam Books and from newspaper reports that there are a number of significant similarities with our report—as well as dissimilarities. Among the similarities are

(I now refer to points of the Federal commission report) :

A recommendation by the Federal commission for statutes governing the sale of "pornography" to minors.

A recommendation of prohibiting certain public displays of "pornography."

An approach to the law which omits the use of abstract and intangible terms, such as lewd, lascivious, prurient, and so forth.

An admission that present laws throughout the United States are difficult to enforce.

A lack of any provable casual connection between exposure to pornography and antisocial criminal sexual behavior for adults.

No prohibitions on the exposure of minors to material which is "sexually" explicit but which is presented in a scientific or cultural context * * * also, no restrictions on exposure to minors if occurring under the guidance of parents.

On the other hand, there were a number of significant dissimilarities between the two reports. The Federal report stated :

That there be no restrictions whatsoever in the exposure of adults to "pornography." (In this instance, exposure implies commercial sale, in both reports.) Mere possession by adults should not be actionable, according to both the Federal and New Jersey reports, as you all probably know, according to the recent Supreme Court decision in *Stanley v. Jordan*.

The Federal report said, and we disagree, that there is no overwhelming public consensus that restraints should be applied to adults.

That the Danish "experiment" has resulted in a decrease in sex crimes in Denmark, which fact is disputed by the New Jersey report.

That there be no prohibitions on printed (nonpictorial) materials for minors (seven of the 18 members of the Federal Commission disagreed with this view).

Finally, in the Federal report no consideration was given to live public shows as a medium of disseminating so-called "pornography."

Instead of detailing a rather lengthy list of various points which compare favorably or unfavorably in both reports, we have prepared a separate listing which is herewith presented to your subcommittee for your further review. This list, which was forwarded to your counsel several weeks ago, has been revised as recently as yesterday. This listing not only points up additional items of significance, but it also makes citations and references to the exact material in the Federal report which is being questioned.

Perhaps the most important final point to bring to your attention concerns the reasons which the majority of the New Jersey commission used to justify their advocacy of laws inhibiting the sale of hard-core pornography to adults. Basically, the reasoning involves society's right and interest in preserving certain minimal standards of public decency. All civilized cultures, furthermore, have found it necessary to invoke certain minimum standards in order to maintain a basic, cohesive structure of that particular society. We find manifestations of this concept in our laws governing bigamy, gambling, Sunday sales, and many other human relationships. A legal interpretation of the Supreme Court's decisions, furthermore, would indicate that society

has every right to invoke these proscriptions. In other words, pornography is not protected by the first amendment.

A very significant comment was made by Mr. Clyde Barnes of the New York Times in the introduction of the Federal Commission report. Mr. Barnes referred to the ostensible classic conflict between the right of free speech and the distaste that we feel many Americans have for the purveying of pornography. I quote:

Artists should not be censored—but neither should they imagine that their own standards of taste are universal. To impose such standards unilaterally, without concern or regard for the audience, savors rather nastily of fascism. Our arts must be free, but they also must be careful.

The Federal report, on the other hand, declined to involve itself in this basic moral proposition, the one I explained just a moment ago as background for the majority opinion for a statute governing exposure to adults. I quote from the preface of the Federal Commission report, as follows:

It was impossible during the brief life of the Commission (Federal) to obtain significant data on the effect of the exposure to pornography on nonsexual moral attitudes. Consequently, the Commission has focused on that type of antisocial behavior which tends to be more directly related to sex. This includes premarital intercourse, sex crimes, illegitimacy, and similar items.

New Jersey did concern itself with “nonsexual moral attitudes,” and I submit to you that it is not only necessary but it is essential in our present society to do so. We must address ourselves to the basic moral standards of our society, and evaluate pornography in its relationship to these standards.

Speaking now more personally than for the commission, I say we must address ourselves to the basic moral standards of our society and evaluate pornography in its relationship to these standards.

I thank you.

(The analysis of reports follows:)

GENERAL ANALYSIS OF THE REPORTS OF NEW JERSEY COMMISSION TO STUDY
OBSCENITY AND DEPRAVITY IN PUBLIC MEDIA AND FEDERAL COMMISSION ON
OBSCENITY AND PORNOGRAPHY

(By Assemblyman William E. Schluter, chairman, New Jersey Commission)

I. SCOPE

Federal	New Jersey
Two year study.	One year study (Started as a 6-month study).
Budget of \$2,000,000.	Budget of \$15,000 plus legislative staff services.
Studied sources, the pornography “industry”, and interstate traffic in pornography.	Studied only “existence” of pornography in New Jersey.
Excluded consideration of “live” public shows.	Included “live” public shows.
Concerned with national approach.	Concerned primarily with the “problems” of pornography within New Jersey; i.e., if New Jersey liberalizes its prohibitions against pornography, will it become a “mecca for smut” if surrounding states keep their restraints?
Considered subject of sex education, and made recommendations in this area.	Intentionally refrained from considering sex education. Sex education was under study by a joint legislative committee at the same time.

II. PROCEDURE

Federal	New Jersey
A Presidential Commission; no Congressional appointments.	A Legislative Commission, with appointments by legislative and executive departments: 4 legislators, 5 "public" members.
Enabling legislation expressed Congress' concern about "traffic in obscenity and pornography" (P.L. 90-100).	New Jersey Legislature indicated the "great and growing public concern over the dissemination (of offensive materials)."
Held 2 public hearings late in the Commission's work.	Developed most of its work on the basis of 5 public hearings held shortly after organization.
Commission subdivided into "panels", with heavy reliance on staff; also procured many "outside" studies.	Commission acted primarily as a committee-of-the-whole, and was completely involved with staff on all deliberations.

III. FINDINGS

Federal	New Jersey
No overwhelming public consensus that there should be restraints.	Hearings and public survey in New Jersey indicate considerable concern and desire for sanctions (Also, see New Jersey report, pp 21-22, Postmaster Benucci of Newark).
"* * * there did not seem to be any social harm or any personal harm resulting from the use of these materials or being exposed to them" * * * UPI, Washington, D.C., 10-19-70 Dr. W. Cody Wilson Also, last paragraph, Part One, Section II, B.	Majority (5 of 9) concluded social harm to adults * * * also, unanimous agreement that there is evidence of a potential for or a "high probability" of psychological (personal) harm to minors.
No causal connection between exposure to pornography and anti-social criminal sexual behavior for adults.	(Unanimous agreement with this finding in Federal report).
Survey showed one-half of public laws are impossible to enforce.	New Jersey survey did not record this attitude (New Jersey report, Appendix E, pp. 96-113).*
"There is no consensus among Americans regarding what they consider to be the effects of viewing or reading explicit sexual materials."	New Jersey survey registered public's concern over "social" harm and exposure to minors.
The Danish "Experiment" has resulted in a decrease in sex crimes in Denmark (Part One, Section II, B).	The results of the Danish "Experiment" are questionable (New Jersey report, pp. 37-38).

*Prosecuting officials indicated that imprecise statutes and diverse court opinions make prosecution difficult under existing obscenity laws.

IV. RECOMMENDATIONS

Federal

New Jersey

No restraints on exposure of pornography to adults.

Federal Commission implies that "public morality" is not just cause for *considering* antipornography laws for adults. Part Two, Section II, A, 9 only refers to "anti-social or criminal behavior".

No limits on printed (non-pictorial) materials for minors. (Majority conclusion; 7 members dissenting).

Confusion over definition of "obscenity" is eliminated . . . approach statutes by precise description of legally prohibited materials and acts (sales). The vague definitions using abstract, emotional phrases such as lewd, lascivious, filthy, prurient, lustful are avoided.

Urges continuing study.

Recommended declaratory judgment procedure allows prosecution to downgrade a case from criminal to civil status.

Silent on recommended age for minors.

Availability to minors through parents or certain educational or cultural institutions.

*Note that prohibitions extend to *commercial* activities with a public or quasi-public nature, and that "truly private enjoyment" is not proscribed.

Majority (5 of 9) favored restraints in exposure of "hard-core" materials to adults. New Jersey Commission left final decision on this issue to the Legislature and unanimously recommended the limited area of "hard-core" material to be proscribed if the Legislature chooses to do so. This "hard-core" area includes depiction of explicit sexual conduct in "live" shows and pictorial materials.

With respect to sanctions covering obscenity and adults, the majority of the Commission reasoned ". . . that society has . . . (a) . . . legitimate interest in preserving certain minimal standards of public decency . . ." and that ". . . basic moral values, fundamental to the cohesion of society, may legitimately be expressed in the form of legal prohibitions."* New Jersey report, pp. 39-41.

Recommends and proscribes restraints of printed "textual" materials for minors.

(New Jersey uses the same approach).

Rejects need for a continuing New Jersey Commission . . . expresses preference for use of obscenity "specialist" in State Attorney General's Office for uniformity of law enforcement. Testimony reveals doubt that future testing of public attitudes will ever provide definite data of harm or lack of harm to society caused by pornography.

Defendant can waive right to indictment procedure and jury trial, but criminal penalties remain the same . . . prosecution can use present downgrading procedure.

Suggests "under 17" as the standard for a minor.

(New Jersey uses the same approach).

Mr. NIX. The report from the New Jersey Commission was released on August 17, 1970.

Mr. SCHLUTER. Yes, sir. It was released for publication on that date, and it was finally printed on August 31.

Mr. NIX. Has the legislature acted to the extent of presenting any legislation on this subject?

Mr. SCHLUTER. A bill has been introduced. The legislature has been in session only on 5 occasions, and on the last day a bill with the recommendation of the commission was introduced, but it has not had time to act.

Mr. NIX. To some extent, you reviewed the report filed by the President's Commission, is that correct?

Mr. SCHLUTER. Yes, sir.

Mr. NIX. Do you think, after having concluded this review, limited as it might have been, that the President's Commission's report had any effect except to point up dramatically its inadequacy?

Mr. SCHLUTER. I think, Congressman, that the Federal Commission report did have some effect. It left many questions unanswered, as has been pointed out. I think any study of this general subject matter brings us a little closer and gives us a little more knowledge as members of society to this so-called problem. In that respect, I think it was helpful.

I indicated concurrence by our commission on some rather substantial and basic concepts of the Federal Commission report, but I do not think that it gave basic answers, no.

Mr. NIX. I consider the expenditure by the President's Commission of \$2 million as one of the most outrageous expenditures that it has been my misfortune to witness in Government.

You listened to the presentation made by Dr. Bonniwell, the witness just before you, did you not, who seems to be critical of reports which result from consideration of this subject over a short period of time. Do you agree that more time is required in the consideration of a subject matter such as this, in order to come up with the kind of recommendation that is worthwhile?

Mr. SCHLUTER. I have two thoughts on that, Mr. Chairman. More time is always helpful. This looks like the most extensive review of this subject that has ever been undertaken, certainly in this country. Your results will be considerably better if they are based on a longer period of study. However, as indicated in my testimony today, this is a subject which not only do I believe, but testimony by experts presented to us in New Jersey indicates it is very nearly impossible to measure if you are trying to do it empirically.

I made the statement earlier that psychological inquiry in many people's opinion has not advanced to the point where valid conclusions can be made about the relationship of exposure to pornography and criminal or antisocial sexual behavior. It is questionable, in my mind, that experiments can be developed which can validly gage this relationship.

I hope I am being responsive to your basic question, Mr. Chairman. Certainly more time would be helpful in any endeavor such as this, but some of the basic moral issues, I think, are before us right now.

Mr. NIX. Do you think society is imperiled more from pornography at this time than it has been in the past, considering the fact that I seem to feel pornography has been with us since the very beginning?

Mr. SCHLUTER. I think it has grown, yes, sir. If you can call it a peril, I think it is becoming a greater peril.

Mr. NIX. Mr. Dulski?

Mr. DULSKI. Mr. Schluter, reading your testimony on page 4, at the bottom of the page you say, "The majority of our Commission—five members—recommended that there be laws prohibiting the exposure to adults of a very few types of 'hard-core' material." Did the other members abstain?

Mr. SCHLUTER. The other four members recommended no laws pertaining to exposure to adults. They really concurred in the Federal Commission majority opinion.

However, I would like to qualify that, if I may, sir, that the whole commission, the entire New Jersey commission, all nine members, concurred this is rightfully a legislative decision. If the legislature is of a mind to legislate in the field of adult pornography, we unanimously agreed in the recommendations of the report to cover a very narrow area, that it was not inappropriate to do so.

Mr. DULSKI. On page 5 you state that the commission drafted a proposed "pandering" statute but did not recommend its enactment. Why did you draft a proposal and then not recommend its enactment?

Mr. SCHLUTER. Pandering is a major concern in this entire area of obscenity and pornography. To be very precise, our pandering statute, which is section 17 of our proposal, hung on one word, and this one word is "morbid". The commission felt that the use of this subjective, intangible term was getting away from our basic need and the direction if the commission to be explicit.

Mr. DULSKI. What was the purpose of drafting proposed legislation and then not recommend its enactment?

Mr. SCHLUTER. According to our charge, we might have very logically left it out, sir, but we felt we had a little bit of expertise in this field, and we more or less gratuitously put it in.

Mr. DULSKI. As you know, the bill I have introduced contains the definitions as used in this chapter—lewd, lascivious, prurient, and so forth. On page 5, of your statement, in the last paragraph, you say that in all the proposed statutory language, abstract and intangible terms were omitted. It would seem then that you are not in accord with the legislation that has been proposed and on which you are testifying today.

Mr. SCHLUTER. I am sorry, sir, I have not had a chance to review the legislation that you have before you.

Mr. DULSKI. From your entire investigation and the hearings you have had, could you—with your expertise on this matter—give us a definition of pornography? A witness once told us that part of the word came from Greek and part from Latin. The derivation of the word certainly cannot help us toward legislation that will survive a constitutional test. May I have your comments?

Mr. SCHLUTER. Yes, sir. The most vital question, really, in the entire study is a definition of obscenity or what is pornography.

We did not define it by giving certain words to describe it. We attempted to proscribe certain actions, all of which involve a commercial and public or quasi-public act where this material is sold or allowed to be exposed to certain people or certain classes of people.

Then we went further to describe what material was prohibited by physically describing it.

The context of the sale, the context of the exposure, had to be taken into consideration, we felt, in order to make the particular act actionable.

Mr. DULSKI. In other words, as long as you keep a book which is hard-core pornography, under the shelf and I come up and whisper that I want that book your Commission is not opposed to selling that book, is it?

Mr. SCHLUTER. No, on the contrary, it is. We proposed statutes governing exposure to minors—

Mr. DULSKI. I did not say minors.

Mr. SCHLUTER. We proposed statutes on public display. We proposed statutes on hard-core pornography which is sold in a public or quasi-public surrounding to adults, whether it be under the table, whether it be a stag on the second floor of a fire company, or any particular proceeding, if it fits into the definition of what we call hard-core by description.

Mr. DULSKI. Somewhere in your statement—I do not find it right now—it says you are opposed to display of hard-core pornography? Why are you not opposed to hard-core pornography per se?

Mr. SCHLUTER. We could do as you suggest and say we are opposed to any hard-core. Then on nonhard-core material, we are opposed to a greater definition, being subject to public display.

Mr. DULSKI. In substance, I gather from your report you believe the State legislature should have sole discretion in these matters is that correct?

Mr. SCHLUTER. This is correct.

Mr. DULSKI. Will you present this report?

Mr. SCHLUTER. I am the sponsor of the bill, sir, yes.

Mr. DULSKI. Will you go beyond your recommendations in trying to enact legislation in this area.

Mr. SCHLUTER. My bill, sir, will include the majority position. It is in committee now. In the last few months there are certain minor refinements which all legislation undergoes. I would hope and expect that it will be reported out of our committee to which it has been assigned.

Mr. DULSKI. Thank you, and I want to commend you and wish you every success.

Mr. SCHLUTER. Thank you.

Mr. NIX. Mr. Derwinski.

Mr. DERWINSKI. Thank you, Mr. Chairman.

Mr. Schluter, I am especially intrigued with one point, the preference of your Commission that your State attorney general's office have a specialist in uniformity of law enforcement in this area of obscenity.

It strikes me as being extremely practical in that we have a legislative problem but frankly the courts have added to complications in this field.

If, in fact, you can uniformly apply practices of law, you would perhaps bring some clarity to the totally confused judicial arena.

Without making an absolute prophecy, do you think your attorney general or legislature might implement that portion of your recommendations?

Mr. SCHLUTER. This, sir, I think would be an administrative implementation, and I think that the legislature through the budget process hopefully would set up this standard.

I might add, sir, we had a very thorough survey questionnaire, which is included in the appendix of our report, and it was the overwhelming consensus, in New Jersey anyway, that obscenity laws should have some central coordination and liaison with State laws.

In other words, New Jersey should not be pockmarked by local ordinances all over in the different municipalities which set up different standards. It was a universal conclusion almost this be done on a State level.

Mr. DERWINSKI. That strikes me as being extremely practical.

Since 1957 when the Supreme Court first addressed itself to this subject, the court decisions have tended to cause complete confusion in the field due to various interpretations.

We have passed numerous laws here at the Federal level and the States have, and municipalities have passed ordinances, but the judicial complications are multiplying.

I believe you are making a very practical and commendable step toward simplicity in this field.

If I may ask you to expand one other point, you note that your Commission, a majority at least, reasoned that there were basic moral values fundamental to cohesion of society that may be legitimately expressed in the form of legal prohibitions. That is on page 4 of your general analysis. Would you care to expand at all on that theme?

Mr. SCHLUTER. I might, sir, refer to pages 40 and 41 of our report which put this in more detail. I might also in complete fairness refer to page 38 and 39 which expresses the minority view of our Commission which indicated basically that they felt that perhaps threats to freedom of expression by laws of this type were so great it was not worth the theoretical benefit that might accrue to society, to our particular State, to have these.

It is difficult to oversimplify.

First, let me explain that the majority only applies this principle to the commercial exploitation of "hard core pornography". By that, there must be some type of sale or exposure involving a commercial transaction. We all know that private enjoyment, if you want to put it in that term, of pornography has been upheld by the Supreme Court. It is a little like the analogy of bull fighting.

I don't think this is too remote. Bull fighting is outlawed by many States by their State law and so was bear baiting in ancient England.

It is in our report that the judges that ruled on laws about bear baiting said that it was not because it does harm to the dumb animal that these laws should be upheld because the harm comes from citizens getting their kicks, so to speak, from watching cruelty to animals. It is the same general concept.

Even in the Federal Commission report it is pointed out by one of their majority members that, if there is an overwhelming consensus in society to have laws such as this, it is perfectly correct and perfectly appropriate to do so. This was in a footnote by Mr. Gill who was with the majority.

Of course, the Federal report hangs on the assumption which they make, and I think it is an incorrect assumption, that only 35 percent, I

think they say, or a minority of the people in this country are concerned with this subject.

We found, certainly in New Jersey, this is not the case. People are concerned.

So, therefore, really I have in general terms said about all that can be said without going into the details and background of gambling laws, Sunday sales, and other laws involving so-called public morality and the right for society to legislate in this area because society must sustain itself.

Mr. DERWINSKI. What precedent or perhaps New Jersey legal pattern did you follow in reaching the suggestion that under 17 be considered the standard age for a minor in this respect?

Mr. SCHLUTER. This is a difficult question, sir.

The Federal report is silent on the particular phase. There are some members of the Commission who advocated 16 and some who advocated 18. It represents a compromise but it represents a true compromise in that we all agreed on 17. This is birthday 17, meaning anybody under 17 is prohibited.

In respect to 17 as opposed to another age, in New Jersey at age 17 you can operate a car, you can operate a motor vehicle. It is easier to ascertain someone's age from a driver's license.

There are other factors which come in which seem to indicate 17 as preferable to 18 or 16. Basically this is the rationale.

Mr. NIX. Mr. Wilson.

Mr. WILSON. Thank you, Mr. Chairman.

Mr. Schluter, I think the work that was done by your Commission is commendable.

Has anything been developed, however, that will prove that this really is a serious problem or are we involved in an emotional issue that is being built up way beyond its real nature?

Mr. SCHLUTER. This is a value judgment on my part, sir.

The amount of mail I get as a legislator in New Jersey would indicate to me it is a major concern of a number of people.

Mr. WILSON. You mean from people who say we need new laws?

Mr. SCHLUTER. We need more restraints; it is becoming too available, it is becoming more expressive.

I just received from a constituent a piece which he got in the mail. I don't know if your committee has seen this. We made a very extensive investigation of what was available, what you had to buy under the counter and what was available through completely legal channels.

This particular piece was sent from an address in New York City and it contained a brochure and right off the bat in its label it said that the return address on the envelope from New York City was really a false address and when you write for these films or magazines, whatever it was, you write to another box. And then they communicate with Denmark who sends this material over.

It is based on the premise that this is educational or, really, I don't know what. But this shows you what is available in Denmark. It had pictures of every aberration you can imagine and very, very explicit.

When people see this they are alarmed. Unfortunately I don't have a sample with me. I can only gage it, sir, on the alarm, because we, as

I said in my testimony, did not make a finding that there was a clear and present danger that this material is corrupting or causing anti-social and criminal behavior in adults. So it is a moral concern.

Mr. WILSON. There is no doubt in my mind that some forms of pornography are being sent through the mails because people say they receive it. But I must be on every mailing list in the world and I have four boys, my youngest is 14, and if there is a mailing list available he is going to be on it.

Yet, we have never received a piece of pornographic literature at our home. I don't know why I should be excluded from this material but we are. I am wondering if we aren't exaggerating the extent of this thing.

Again, it is a personal opinion. I think the right of a person to be able to read what they want to or to go to the movie of their choice—you don't have to go into the movie houses, you don't have to stand and look at the depraved displays or the material that you find offensive—is fundamental.

I feel this is our right. If there is any evidence that people are committing rape or murder or any other crime as a result of the books they read or the movies they see, then we should take some serious action, but I don't think that any proof has been developed yet that this has happened.

Mr. SCHLUTER. To answer your question, no. And we concluded, and unanimously so, including all members of the Commission who represent all of the hawk and dove scale, the whole spectrum, there was no provable cause of relationship.

However, the majority of our Commission makes its recommendation on the hard core material and only the very, very hard core material on basic moral standards of society.

Mr. WILSON. What do we mean by "hard core"? Will you define that?

Mr. SCHLUTER. As defined in our proposed statute, hard core would apply to live public shows in which there are acts of sexual conduct with, generally speaking, exposure of genital organs.

For example, the play Hair I don't think would be proscribed by our particular statute.

The other area is pictorial matter where it shows acts of sexual conduct with the exposure of organs in a pictorial manner and excessive concentration in pictorial displays on genital areas. This is the only thing.

Mr. WILSON. I know this is a matter that some church groups have been concerned about through the years and that there is real concern. So often though, as when we had the Supreme Court prayer decision, there was so much misinformation circulated as to what the Supreme Court actually said.

They never did deny anybody the right to pray but many people thought they had. I think in this line there is a lot of confusion among the people as to what the laws are and what, if any, new legislation is needed.

I think Congress has already passed a good law that gives a person the right to have his name stricken from the mailing lists of a mailer if the recipient finds the material objectionable.

This law gives the people the right of privacy in their own home.

It concerns me when we get all stirred up about some issue and then offer as a solution the infringement of our civil liberties and civil rights.

That is all I have, Mr. Chairman.

Mr. NIX. Thank you, Mr. Wilson.

Assemblyman Schluter, I want to, on behalf of the committee, thank you for your appearance here today and wish you success in your pursuit of a very difficult objective.

Thank you very much.

Mr. SCHLUTER. Thank you.

Mr. NIX. Our next witness is Mr. Lawrence Speiser, director, Washington, D.C. office, American Civil Liberties Union.

Mr. Speiser, it is a pleasure to see you here.

**STATEMENT OF LAWRENCE SPEISER, DIRECTOR, WASHINGTON,
D.C. OFFICE, AMERICAN CIVIL LIBERTIES UNION**

Mr. SPEISER. It is a pleasure to see you, Mr. Chairman.

Mr. NIX. You may proceed.

Mr. SPEISER. I am Lawrence Speiser, director of the Washington office of the American Civil Liberties Union. I come here today to oppose enactment of both H.R. 19541 and S. 3220. The President's Commission on Obscenity and Pornography has just issued a comprehensive study on this controversial issue. There certainly has not been a sufficient opportunity to read and evaluate its findings and recommendations. The report deserves serious consideration. After all the Commission was created by an act of Congress. This same Congress should not now rush to legislate without studying the report more thoroughly than it could possibly have done in the short time since its publication.

The previous witnesses before the committee I think have focused on the Commission on Obscenity and Pornography Report whereas the invitation from the subcommittee counsel sent me indicated they wished my views on two specific pieces of legislation pending before the subcommittee. Therefore, the focus of my testimony will be on these two pieces of legislation. As far as I know, none of the other witnesses have testified on these proposed laws before me. The two bills are H.R. 19541 and S. 3220. We oppose the enactment of both.

H.R. 19541 would broaden the definition of "obscene" matter which can be banned from the mail. The proposed definition falls far short of the standards enunciated by the Supreme Court to identify those materials beyond the protection of the first amendment. The drafters of this bill must be aware of these constitutional requirements. The bill is thus a blatant attempt to overturn the Supreme Court's interpretation of the Constitution.

S. 3220 would require the sender to label "sexually oriented" advertising. Any addressee who received an unrequested sexually oriented advertisement could then return it to the sender at the sender's expense. The Postal Reorganization Act, section 3010, already permits an addressee to stop the flow of such mail to his home. The Postal Service has just put out a press release indicating that this existing law will provide blanket protection for those who do not wish to receive sexually oriented advertising.

The major distinction I can see between the bill, presently under consideration and existing law is the imposition of what would be ruinous financial penalties on senders who have to make the difficult judgment whether the material falls within the definition of sexually oriented advertising.

To return to consideration of H.R. 19541, I would like briefly to outline the legal standards by which the Constitution permits matter to be excluded from the mails as "obscene". As the Supreme Court has said, the portrayal of sex, for example, in art, literature, and scientific works, is entitled to first amendment protection. *Roth v. United States*, 354 U.S. 476 (1957). The standard, as first defined in *Roth* for drawing the line between protected and "obscene" matter, is "whether to the average person, applying contemporary community standards, a dominant theme of the material taken as a whole appeals to the prurient interest." This standard was elaborated in subsequent cases, so that the present test for judging "obscenity" is the following:

Three elements must coalesce: It must be established that (a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the matter is utterly without redeeming social value. *Memoirs v. Massachusetts*, 383 U.S. 413, 418 (1966).

H.R. 19541 seeks to alter this constitutionally-required definition in three important respects. Incidentally, H.R. 19541 does not get into the question of privacy versus first amendment freedom. This is simply an attempted definition of obscenity as to what is nonmailable, what would be illegal to place in the mail irrespective of anyone's desire to get it or to object to it.

First, paragraph (b) of the proposed section 1466 provides that:

Any matter which is obscene under this section shall be deemed conclusively to be utterly without redeeming social importance. Any slight social value in such matter shall be deemed outweighed by the social interest in order and morality.

The present three-part standard gives great deference to the respect which society gives to art, literature, and science by requiring that material be "utterly" without redeeming social value. And yet it is obvious that one of the purposes of this proposed law would be to eliminate that last factor in the three-part definition of obscenity.

Under the standard in H.R. 19541, works which have a predominant appeal to the prurient interest would be outlawed no matter what their contribution to society's knowledge and culture. That could include—I would think—such works as the works of Rabelais, Ulysses, and many of the works which have been exempted from the definition of obscenity. If this law were passed, many of the great works of art would be declared to be judicially obscene and could not be sent through the U.S. mails.

Moreover, there is no "rational" connection between a determination that something is obscene and the presumption that it is without redeeming social importance. Cf. *Leary v. United States*, 395 U.S. 6, 33-34 (1969).

Second, the definition of "obscene" in H.R. 19541 is limited to matter which has "its predominant appeal to the prurient interest." This standard drops any reference to the second part of the three-part test, that is, the requirement that matter be "patently offensive" because it affronts contemporary community standards.

The bill, in its definition of "prurient interests" refers to an interest in sex and other such matters which goes "substantially beyond customary limits of candor" can still fall short of being "patently offensive" as required by the three-part test.

I suppose even the works of Masters and Johnson might be encompassed by this law. Their studies, as well as the Kinsey report, focus on sex, yet they are scientific studies which ought to be available.

Whether you agree or disagree with the studies is immaterial. But it certainly seems if this law were passed those works could not be sent through the mail.

The definition in H.R. 19541 seeks to change the constitutionally-required definition of "obscene" in one final respect. In the case of *Mishkin v. New York*, 383 U.S. 502 (1966), the Supreme Court permitted a modified definition of obscenity by recognizing that, in some circumstances, the nature of the material need not be judged by the "average person." It held that:

"Where the material is designed for and primarily disseminated to a clearly defined deviant sexual group, rather than the public at large, the prurient-appeal requirement of the Roth test is satisfied if the dominant theme of the material taken as a whole appeals to the prurient interest in sex to the members of that group." 383 U.S. at 508.

The drafters of H.R. 19541 would apparently substitute for this language a new standard: where matter is:

Designed for, or directed to, an especially susceptible audience, the matter shall be judged with reference to such audience.

The use of the phrase "especially susceptible audience" is far more ambiguous and goes well beyond the concept of a "clearly defined deviant group." It thus looks very much like an effort to return to the Hicklin test, which grew out of a decision of the Court of Queens Bench in England in 1868 (*Queen v. Hicklin*, L.R., 3 Q.B. 360) and was considered the definition of obscenity, at least as far as this country was concerned, until the Supreme Court Roth definition in 1957.

In the years before the *Roth* decision, this case was interpreted to require that the determination of obscenity for all persons be made by judging the effect of material on the most susceptible persons, including children.

In other words, the definition of obscenity was defined by looking at the effect of the materials on any group that might possibly get ahold of the materials. This drags the adult reading level down to that of children. Our Supreme Court has said you just cannot do that, *Butler v. Michigan*, 352 U.S. 480 (1957).

The ACLU has long believed that obscenity legislation prohibiting adults from obtaining obscene material ought to be repealed. However, where that cannot be accomplished, we strongly believe that the Constitution will not permit broadening of the existing definition beyond the current three-part test. Indeed we doubt whether the Congress can so rewrite the definition of obscenity, as the requirements enun-

ated by the Supreme Court in its responsibility to interpret the Constitution cannot be overturned by legislation but only by a constitutional amendment amending the first amendment.

In moving to consideration of S. 3220, we shift our attention from the definition of those "obscene" matters which can be barred from the mail entirely to an examination of a more limited bill which seeks to assert the individual's right of privacy to bar the unsolicited mailing of "sexually oriented advertisements" which, as has been indicated, is already largely covered in the Postal Reorganization Act which was passed by Congress this year.

S. 3220 provides that any "sexually oriented advertisement" must be sent by first-class mail in an envelope stating:

The Enclosed Material Is Sexually Oriented Advertising, And May, If Unrequested By the Addressee, Be Returned to the Sender Unopened At No Cost to the Addressee."

Any addressee who receives an unrequested sexually oriented advertisement may then return it to the sender who must pay return postage plus a service charge of at least 50 cents for each piece. In addition, he can also be subjected to a \$5,000 civil penalty for each piece unmarked or refused.

S. 3220 would rely on the definition of "a sexually oriented advertisement" already in the Postal Reorganization Act which states: "any advertisement that depicts, in actual or simulated form, or explicitly describes, in a predominantly sexual context, human genitalia, any act of natural or unnatural sexual intercourse, any act of sadism or masochism, or any other erotic subject directly related to the foregoing."

As I indicated above, we oppose this bill on a number of grounds. In the first place, existing law already provides the individual with a comprehensive mechanism to guarantee his privacy against the intrusion of sex-related matter.

In 1968, Congress passed the Pandering Advertising Act, 39 United States Code No. 4009, which has become No. 3008 of the Postal Reorganizational Act, Public Law 91-375, passed last August.

Incidentally, Congressman Wilson, you raised the question about whether there have been a lot of complaints. There have been a lot of complaints under the Pandering Advertisement Act in which people have written the postmasters giving notice that they did not want to receive materials from particular senders. All they have to do is to say they find it to be erotically arousing or sexually provocative, even if it has no connection with sex at all.

I understand from the Post Office that the number of complaints filed has dropped dramatically in the past 6 or 8 months. I am not entirely sure of the reasons. My impression is that it is partially the result of criminal prosecution against the major mailers of materials that do meet the judicial definition of obscenity. The Postmaster General and his General Counsel, in testimony before, I believe, this subcommittee and other committees, have indicated that in their view 90 percent of the complaints could be attributed to about 15 mailers. Of those 15 I think all of them either are under indictment or have had criminal prosecution completed against them.

So I think that the furor about the problem has diminished a great deal; partly because of the criminal prosecutions, and partly because there is just not that much material of that kind going through the mail now.

In addition to the Anti-Pandering Act, Congress included, within the Postal Reorganization Act section 3010 which enables the individual to indicate to the Post Office, without ever having received any such mail, that he desires to receive no "sexually oriented advertisements" through the mails from any sender.

S. 3220 would take existing law one step further. It would allow the recipient to return any unsolicited sexually oriented advertisement to the sender at a cost of at least 50 cents plus the return postage.

In so doing, the bill places the entire burden on the sender who must guess at his peril whether his advertisements are covered by the definition. Failure to make the right judgment may result in ruinous financial losses. Such a result goes far beyond any need to protect individuals who seek to secure their privacy from sexually oriented advertising and thereby interferes with the ability of those persons who, in fact, wish to receive such unsolicited advertisements.

Existing law already permits the individual to give his name to the Post Office and get off any mailing list he may be on. That same law also requires such advertising to be labeled. It is enforced by stiff penalties. For those few advertisements which might still get through, the individual can protect himself by just throwing them away unopened. While the ACLU opposed the adoption of the existing law, we have far stronger objections to its extension in the way contemplated by S. 3220.

S. 3220 shares with the existing law section 3010 of the Postal Reorganization Act, Public Law 91-375, a common defect which we believe will lead the Supreme Court to invalidate both sections. In *Rowan v. U.S. Post Office Department*, 38 U.S.L.W. 4343 (May 4, 1970), the Supreme Court upheld the constitutionality of the Pandering Advertising Act (presently § 3008 of the Postal Reorganization Act), it made it quite clear that the Postmaster General should not serve as a censor of the mails. In holding that the act barred all subsequent mailings to a person who had his name placed on the Post Office list, the Court noted that any other interpretation: that is, that only similar subsequent advertisements would be barred, would require Government censorship. The Court said, "an interpretation which requires the Postmaster General to determine whether the subsequent material was pandering and/or similar would tend to place him 'astride the flow of the mail * * *'" *Lamont v. Postmaster General*, 381 U.S. 301, 306 (1965)." 38 U.S.L.W. at 4345 n. 4.

S. 3220, in a manner similar to existing § 3010, authorizes the Government to seek the imposition of stiff civil penalties on a sender who fails to identify sexually oriented advertisements with the required mark. This puts the U.S. Government in the position of having to determine whether and when an advertisement is sexually oriented. It is precisely this function which the Supreme Court looked at with great suspicion in the *Rowan* decision.

S. 3220, also like existing § 3010, fails to afford the sender the constitutionally required opportunity to be heard which was essential to the Court's decision in *Rowan*. There, before a sender could be penalized, he had to violate a previously issued order from the Postmaster General. Penalties for violating the order, could not be imposed until after both an administrative hearing and a judicial hearing on a compliance order. Here the sender will have no warning until the Government actually sues to collect the civil penalties. This is especially bur-

densome on the sender who merely guesses wrong about the need to label a particular piece of advertising. Without any notice he becomes the defendant in a suit to collect a \$5,000 fine on each piece of what in most cases will be a mass mailing. By the time suit is filed he could have mailed enormous numbers of a given advertisement without any inkling that he might be penalized. To make matters worse, no individual addressee need complain. The Government can sue to impose the civil penalties on its own initiative.

Now a couple of months ago Life magazine had an issue which was labeled "Pornography" discussing the current furor in the country about the standards in obscenity and about the freer availability of materials that had not been available before. There were included in the issue of Life some indications of sexual activity.

But if Life magazine had wanted in advance to send out advertisements for that particular issue or to induce subscribers, I think they could have been in very serious financial difficulty considering the mailings and subscriptions that Life magazine has.

What I am suggesting is that even perfectly respectable publications by participating in the debate on the question of obscenity and pornography and communications media may run afoul of a law of this kind because they don't want to label their advertising when asking for subscriptions or orders of special editions.

Such publications certainly do not want to put on sexually oriented advertising. If you suggest that it is unlikely or improbable any action will be taken against publications of that kind, I quite agree.

I think it is unlikely. All I am saying is that if the law is to be a single standard law to apply to everybody I think you have to consider the potential impact. And who knows, it may very well some day be utilized perhaps not against the magazines of this size and political power of Life magazine and Reader's Digest, but against lesser publications that are merely discussing something that should be considered in the public debate and dialog, including scientific art and educational magazines.

They could be subject to the penalty even though they don't fit within the popular impression of commercial pornographers but nevertheless run afoul of that definition of sexually oriented advertising.

The very size of the civil penalties possible under S. 3220 create an effect which we certainly hope was not intended by the drafters. This scheme of regulation, which can result in astronomical penalties, will have an impact on much advertising which is only arguably sexually oriented. The scope of the penalty will make the sender his own self censor.

With the stiff civil penalties hanging over him if he guesses wrong, he will necessarily be a very conservative censor—something which the Supreme Court found intolerable in *Smith v. California*, 361 U.S. 147 (1959).

While that case dealt with the requirement of "scienter" in a criminal case, the impact is no less here where the civil penalties are prohibitive. It is one thing to say that individuals who do not wish to receive such material may reject them and even obtain an order directing the sender to refrain from mailing any further material to that individual. It is quite another to require the sender to censor his own material at the risk of high expense and stiff penalties.

Even if all he risked were having to pay service charges and return postage, the sender will have no way of knowing which individuals will reject his labeled material. Obviously some people will return this mail. If there are too many, how long will he be able to stay in business via mail advertising?

Limitation of the bill to unsolicited advertising is really meaningless, as all advertising is generally unsolicited. It is thus important to remember that we are not talking about the goods or materials but only the advertising for them. Placing burdens on the sender which really are not necessary to protect the individual's privacy looks very much like an effort to curtail all such mail advertising—a result which ignores the rights of many others.

This bill, which could well have the effect of stopping all unsolicited advertisements of materials which could even arguably be considered "sexually oriented" goes too far toward protecting the right of privacy at the expense of the freedom to send and to receive material protected by the first amendment.

The Supreme Court's recent decision in *Stanley v. Georgia*, 394 U.S. 557 (1969), held unconstitutional a statute making mere private possession of even obscene matter a crime.

I will refer to the Commission on Obscenity and Pornography report which has generated much controversy and which I assume initiated this particular hearing. It would be tragic if all the furor were allowed to obscure the Commission's contributions to greater knowledge and greater enlightenment on this issue.

There are those who disagree with the Commission's end product. There are those who disagree with the value of what the Commission did and with the study it made. There are those who disagree with the methods utilized in the studies. Fine and dandy.

But to reject out of hand the Commission efforts to focus more light on a very difficult, emotional, and explosive problem, ignores the service they have performed.

The Congress created the Commission. It was funded by Congress. If you are unhappy with the work product you have a perfect right to be. But it seems to me that the Commission's report is something that should be studied and given consideration.

I certainly don't think that legislation at this stage so soon after the Commission report is proper. I don't think that many people have had a real opportunity to study the Commission's reports—both majority and dissent. I think they should be studied if we are going to go further into this field.

There is no dearth of legislation in the obscenity field. Each new piece of legislation seems to stimulate more legislation rather than ending the problem. If the Commission report will have the impact, even if the ultimate judgment of Congress is to disagree thoroughly with the recommendations, of having Congress look into the problem with more facts, more knowledge available than it had before, then I think the Commission's report is well worth what has been expended for it and I trust the Congress will act in that way.

Thank you very much.

Mr. Nix. Mr. Speiser, the basic thrust of your opposition to H.R. 19541 and S. 3220 is first that it offends against constitutional protection; second, that the "Three elements must coalesce: It must be estab-

lished that (a) the dominant theme of the material taken as a whole appeals to prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the matter is utterly without redeeming social value."

That in substance is the reason why you object to both bills?

Mr. SPEISER. Yes. That factor is also true with regard to S. 3220, but as I indicated there is an additional factor of financial penalties which I think create additional problems. There are due process problems and not just first amendment problems.

Mr. NIX. That I can understand thoroughly because it is a purely legal approach.

Mr. SPEISER. That is correct.

Mr. NIX. Now, your conclusion, "The Report of the President's Commission on Obscenity and Pornography has generated much controversy."

I agree with you. "It would be tragic if all the furor were allowed to obscure the Commission's contributions to greater knowledge and greater enlightenment on this issue."

You referred to the report and I find it difficult to discover.

Mr. SPEISER. Mr. Chairman, even if you don't accept any of the recommendations of the Commission, even if you find disagreement with the methods of some of the studies that were made by the Commission, even if you find the Commission conclusion to be worthless in your view, it seems to me that the Commission has gone into the subject with a methodology which hasn't previously been done. It has looked at many aspects of the problem of obscenity in a way that I don't think was previously done. Even if you don't feel they had the basis for coming to the conclusions that it did, it seems to me they have contributed not only to Congress' ability to view the problem with more facts at its disposal but also the ability of the public to evaluate congressional action.

The fact that there are dissents to the Commission's majority report, I think is all to the good, because they add to a discussion of a problem which often is viewed with great emotion. It is a very sensitive area and I think everyone is aware of it.

Mr. NIX. I can agree its approach to the subject is bringing forth a new method, and I think it results in an example of the greatest inefficiency I have ever seen in a congressional commission.

I think it demonstrated that greater care or more detailed instruction should be given to any commission that is charged with the responsibility of considering any subject of this magnitude.

So far as I am concerned, I consider it absolutely zero.

Mr. SPEISER. I have heard criticisms of the efficiency of congressional committees as well, and that the method of getting legislation through Congress is a very inefficient method. I think there is much merit to that.

Mr. NIX. I think we should, after having heard the presentation of Dr. Bonniwell, consider very, very seriously a new approach to these matters.

Mr. SPEISER. Let me make one suggestion, if Congress is unhappy with the Commission in the work it has done. Very often it seems Congress or the President create commissions in order to study prob-

lems and then are criticized because often commissions don't resolve anything. But Congress does have with it the power to study more specifically the problem of obscenity by specifying in appropriation bills the kind of studies it wants made to look into the problem. Those studies could be made through universities or other agencies through education bills. You have the mechanism to do studies of this kind in other ways and not by the commission method.

Mr. NIX. Perhaps we have too many mechanisms.

Mr. Wilson?

Mr. WILSON. Thank you, Mr. Chairman.

Mr. Speiser, as you probably know, I find myself very much in agreement with your philosophical approach to this matter.

One thing I do disagree with, though, is when we discuss the question of constitutionality. I am one who feels that you get about as many opinions on the constitutionality of a law as there are lawyers participating in the discussion.

Mr. SPEISER. Let me just interject, I testified before committees of Congress on the then proposed Pandering Advertising Act that it would be held unconstitutional by the Supreme Court. The Supreme Court unanimously upheld it. So don't feel embarrassed at all.

Mr. WILSON. I feel that our job as legislators is to adopt legislation that we feel is necessary and leave it to the courts to determine the constitutionality.

Mr. SPEISER. I think there are limits on that, Congressman Wilson. I don't think you can ignore the Constitution. I recognize that not all Members of Congress are lawyers. But I think there are various stages of responsibility in which judgments of constitutionality have to be made and this is one of them.

You really do have to make a judgment about constitutionality. There are murky areas undoubtedly. But I don't think that Congress can say in all cases, "We will pass this law and leave it to the courts to determine if it is constitutional." I think you do really have the responsibility to make a threshold judgment about a bill's constitutionality.

Mr. WILSON. What really disturbs me about this whole issue is that we have to depend on individuals to interpret what is good or evil. I wish you had been here to hear Dr. Shainess. She appeared to be a very lovely lady but I wouldn't want her censoring anything that I might want to read or see. She is a very strong willed and strong minded person. I feel she is very emotionally involved in the issue of pornography to the point of losing all objectivity.

Mr. SPEISER. This is an area that, like religion, does bring out strong emotions. I well recognize that. If you want to retain friends there are perhaps some subjects you shouldn't discuss with them.

Mr. NIX. Mr. Dulski.

Mr. DULSKI. On the statement you made a few minutes ago regarding constitutionality, Congress recently passed voting rights for 18-year-olds, and you know the President signed the bill. None of us now knows whether it is constitutional or not but are leaving this question for the courts to decide. Why should not this same rationale apply here?

Mr. SPEISER. I quite agree, and I think the 18-year-old vote is a very good example in which there was a great deal of debate as to whether

or not it was constitutional. It was a judgment that had to be made by Congress.

I suppose I may make judgments differently than perhaps you or Mr. Wilson or Mr. Nix as to where the congressional responsibility lies in making that judgment. It may be the myopia of my having worked for an organization that has been opposing censorship for many years that causes me to believe that Congress should take a good deal more care in passing legislation that I think might infringe on first amendment freedoms than one which would extend the franchise.

I recognize that you might be using standards that would be affected by your own personal inclinations or proclivity. However, all that does not alter my belief that there does have to be a congressional judgment about whether something is constitutional or not. You just can't say we will leave it to the courts.

Mr. DULSKI. Thank you, Mr. Chairman.

Mr. NIX. I note that Justices Warren, Brennan, and former Justice Fortas say that the elements must coalesce, and that is the position you take. Justices Clark and White say the material may be restricted if its dominant appeal taken as a whole in an appeal to the prurient interest.

Since that time Justices Fortas and Clark have left the court to be replaced by Chief Justice Burger, Justice Blackmun, and Justice Marshall.

Would you hazard a guess as to how many schools of thought are represented in the Court at this particular time?

Mr. SPEISER. There are many. I am not sure whether I could tell you right now how many different ones, but I recognize there are different views. The answer may be forthcoming or we may have perhaps more disagreement, because as you may know there are a number of cases before the court this term in which they will have an opportunity to reexamine the definition of obscene. We thus should have an opportunity to see where Chief Justice Burger stands and where Justice Blackmun stands.

But the three-part test has been referred to in subsequent opinions since *Memoirs*. Justice Stewart points to the fact there were disagreements and some factors are more important than others to some Justices. The matter is again before the Court.

On whether they can arrive at a more widely recognized definition for the entire Court, I don't know.

Mr. NIX. It seems that I cannot escape the conviction that after the next decision there will be as much obfuscation around as there is now as to what the law actually is. I am not sure whether things will be cleared up or will be more confused.

Mr. SPEISER. I would say that the judgment of 435 Congressmen and 100 Senators isn't going to add to clarity.

Mr. NIX. I would agree to that wholeheartedly.

I want to thank you very much on behalf of the committee, Mr. Speiser, for your appearance here again and it is good to see you again.

I want to again thank Dr. Bonniwell for coming down and giving us the benefit of his testimony. Thank you very much.

Mr. Schluter, thank you for coming over.

The subcommittee stands adjourned.

(Whereupon, at 12:05 p.m., the subcommittee adjourned.)

(The statements and letters which follow were received by the subcommittee for inclusion in the record.)

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., December 1, 1970.

B-163867.

HON. ROBERT N. C. NIX,

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

DEAR MR. CHAIRMAN: By letter dated September 30, 1970, you requested that we conduct an audit of all expenses incurred by the President's Commission on Obscenity and Pornography. At a subsequent meeting, our representatives were informed by your office that an analysis of the various costs incurred by the Commission would satisfy your request and the needs of the Subcommittee.

The Commission was created by Public Law 90-100, dated October 3, 1967, and funds for the Commission's work were first appropriated in June 1968. Through September 30, 1970, the Congress had appropriated \$1,750,000 for the Commission's work, and at that date the Commission had incurred obligations totaling \$1,748,628, as follows.

Salaries (see enclosure 1)	\$454, 178
Government share of salary benefits	30, 103
Research contracts	879, 685
Travel (see enclosure 2)	128, 795
Printing	109, 049
Payments to GSA and other agencies (space, accounting services, etc)	77, 574
Typing and duplicating equipment rental	40, 037
Telephone and telegraph	12, 708
Other (office supplies, postage, etc.)	16, 499
Total obligations	1, 748, 628

NOTE.—These obligations are subject to adjustment after costs are finalized.

We understand that your Subcommittee is particularly interested in obtaining information on the Commission's research contracts, salaries, travel, and telephone calls. A listing previously prepared by the Commission, which includes most of its research contracts and which shows for each contract the contractor's name, the scope of its work, and the contract amount, was provided to your office on October 13, 1970. A table of the salaries through September 30, 1970, of the individual Commissioners and the Commission staff is included as enclosure 1.

The travel costs incurred by each Commissioner and Commission staff member are presented in enclosure 2 and include \$7,669 for travel in foreign countries. A schedule of this foreign travel, showing each traveler's name and his points of travel, is presented in enclosure 3.

We are unable to furnish information on telephone calls because available records do not show the names of the individual callers or the names of the persons called. Our review of the long-distance telephone numbers listed on the Commission's telephone billings did not indicate any significant recurrence of telephone numbers other than the number of the Commission's Chairman in Minneapolis, Minnesota.

We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

Enclosures.

*Enclosure 1.—Commission on Obscenity and Pornography
salaries through Sept. 30, 1970*

<i>Name</i>	<i>Amount</i>
Commissioners:	
Elson, Edward E.....	\$2, 961
Gill, Thomas D.....	2, 024
Greenwood, Edward D.....	2, 436
Hill, Morton A.....	5, 022
Jones, G. William.....	2, 698
Keating, Charles H., Jr.....	225
Keating, Kenneth B.....	600
Klapper, Joseph T.....	3, 973
Larsen, Otto N.....	4, 160
Lehrman, Irving.....	1, 649
Lewis, Freeman.....	2, 586
Link, Winfrey C.....	2, 923
Lipton, Morris A.....	2, 998
Lockhart, William B., chairman.....	10, 326
Lynch, Thomas C.....	2, 099
Scott, Barbara.....	2, 399
Spelts, Cathryn A.....	3, 973
Wagman, Frederick H., vice chairman.....	1, 612
Wolfgang, Marvin E.....	1, 424
Subtotal.....	56, 088
Staff:	
Abell, Anthony F., writer-editor.....	10, 072
Banister, Virginia P., administrative officer.....	35, 450
Bender, Paul, general counsel.....	22, 768
Bitting, Jane L., secretary.....	1, 732
Bott, Joyce Y.....	6, 340
Carter, Alfred S., administrative assistant.....	14, 777
Deister, Kathy I., secretary.....	9, 939
Friedman, Jane M., attorney advisor.....	21, 860
Gaskins, Claudia P., secretary.....	2, 517
Gooding, Dorothy A., secretary.....	11, 015
Green, Karen I., research psychologist.....	11, 389
Hackett, Lynn, secretary.....	1, 628
Higgins, Barbara, secretary.....	1, 964
Horowitz, Bernard, research psychologist.....	30, 457
Jacobs, Sylvia H., psychologist.....	9, 064
Johnson, Weldon T., sociologist.....	22, 110
Kupperstein, Lenore R., criminologist.....	25, 938
Mitchell, Carol A., secretary.....	1, 505
Montgomery, Muriel L., secretary.....	21, 594
Reed, Eva, secretary.....	1, 882
Sampson, John J., attorney.....	27, 752
Sergeant, Diane O., secretary.....	6, 041
Wallin, Bobbie J., writer, editor.....	3, 255
Wilson, W. Cody, executive director.....	72, 359
Zerega, Anna M., administrative assistant.....	24, 682
Subtotal.....	398, 090
Grand total.....	454, 178

Enclosure 2.—Commission on Obscenity and Pornography travel through
Sept. 30, 1970

Name	Amount
Commissioners:	
Elson, Edward E.....	\$4, 606
Gill, Thomas D.....	1, 335
Greenwood, Edward D.....	4, 289
Hill, Morton A.....	2, 800
Jones, G. William.....	4, 256
Keating, Charles H., Jr.....	186
Keating, Kenneth B.....	180
Klapper, Joseph T.....	3, 114
Larsen, Otto N.....	10, 239
Lehrman, Irving.....	2, 433
Lewis, Freeman.....	3, 406
Link, Winfrey C.....	4, 223
Lipton, Morris A.....	2, 841
Lockhart, William B.....	7, 571
Lynch, Thomas C.....	3, 586
Scott, Barbara.....	2, 598
Spelts, Cathryn A.....	5, 911
Wagman, Frederick H.....	1, 642
Wolfgang, Marvin E.....	1, 039
Subtotal.....	<u>66, 255</u>
Staff:	
Abell, Anthony F.....	540
Banister, Virginia P.....	3, 493
Bender, Paul.....	5, 740
Carter, Alfred S.....	153
Friedman, Jane M.....	1, 051
Green, Karen I.....	598
Horowitz, Bernard.....	4, 442
Jacobs, Sylvia H.....	465
Johnson, Weldon T.....	3, 992
Kupperstein, Lenore R.....	1, 896
Montgomery, Muriel L.....	1, 517
Sampson, John J.....	5, 640
Wallin, Bobbie J.....	456
Wilson, W. Cody.....	7, 767
Zerega, Anna M.....	643
Others (contractors, consultants, etc.).....	1, 741
Subtotal.....	<u>40, 134</u>
GSA motor pool services.....	1, 078
Total expenditures.....	<u>107, 467</u>
Unliquidated obligations.....	<u>21, 328</u>
Total obligations.....	<u>128, 795</u>

ENCLOSURE 3

COMMISSION ON OBSCENITY AND PORNOGRAPHY—FOREIGN TRAVEL

Traveler and period of travel	Points of travel		Amount
	From—	To—	
Barbara Scott, Commissioner: Aug. 1 to 5, 1970. ¹	Rome-----	New York, N.Y., Washington, D.C., and return...	\$1,024
Otto Larsen, Commissioner:			
May 2 to 5, 1970 ² -----	Copenhagen-----	Seattle, Los Angeles, and Seattle-----	463
May 10 to 15, 1970-----	Seattle-----	Los Angeles, Washington, D.C., and Copenhagen-----	652
May 25 to 28, 1970-----	Copenhagen-----	Washington, D.C., and return-----	667
June 28 to 30, 1970-----	Barcelona-----	do-----	637
Aug. 2 to 5, 1970-----	Billund, Denmark-----	do-----	624
Aug. 23 to 28, 1970-----	do-----	do-----	732
Total-----			3,775
W. Cody Wilson, Executive Director:			
May 24 to 31, 1969-----	Washington, D.C-----	London, Stockholm, Copenhagen, and return--	899
Nov. 20 to 24, 1969-----	do-----	Copenhagen, and return-----	657
Total-----			1,556
Virginia P. Banister, adminis- trative officer: May 24 to 31, 1969.	Washington, D.C-----	London, Stockholm, Copenhagen, and return--	959
Lenore Kupperstein, criminologist: Sept. 7 to 10, 1969.	Traveler, while in Europe on vacation, visited Amsterdam, Hamburg, and Brussels on Com- mission business.		355
Grand total-----			7,669

¹ Mrs. Scott was in Rome on vacation when called back for Commission business.

² Mr. Larsen was in Copenhagen on sabbatical leave when called back for Commission business.

Contractor	Scope of services	Amount
Prof. Martha Alschuler, University of Pennsylvania, Law School, Phila- delphia, Pa.	(1) A brief history of obscenity regulation in Anglo-American law; (2) A description of the evolution of jurisprudential thinking regarding the legitimacy of and justification for obscenity laws; (3) A brief history of laws in areas closely related to obscenity; (4) A bibliography containing references to existing relevant historical and jurisprudential studies, articles, and books.	\$2,000.00
American Association of Sex Educa- tors & Counselors, Washington, D.C.	Prepare and render a report which will provide data on mem- bers' estimates of childrens sources of sex information, the amount of exposure to pornography on the part of children and adolescents, the relationship between sex education and interest in and effects of pornography, and related information.	750.00
The Assist Corp., Annandale, Va-----	(1) To provide additional specified tables based on the data supplied to Assist by the Commission. (2) To provide a set of statistical tables from data to be punched into cards; related summary statistics and tables of those those statistics.	4,500.00
Mr. Garry Amo, Washington, D.C-----	Report on self-regulation in the mass media, eroticism and responsibility. Report will consider: (1) Codes in the several media. (2) How these codes have been honored in the past and in areas other than the erotic. (3) The thinking within the industries regarding their responsibility in the area of potentially offensive eroticism. (4) How the mass media industry is likely to react under the cross pressures of profits and politics.	1,000.00
American Institutes for Research, Silver Spring, Md.	The contractor will render a report based on empirical research, on the response of male sex offenders to erotic stimuli. The report will be based on data obtained from approximately 160 subjects, half of whom will be sex offenders and half of whom will be inmates with offenses unrelated to sexual behavior who are matched on selected demographic variables with the sex offenders. The report will compare sex offenders with nonsex related offenders, compare various types of sex offenders and compare subjects with different degrees of experience with erotic materials, in terms of response to erotic stimuli and demographic variables.	41,985.00

Contractor	Scope of services	Amount
Baylor University Research Center, Waco, Tex. (Dr. C. Eugene Walker).	The contractor will provide a report, based on empirical research on the reaction to, interest in, and experience with, erotic materials on the part of sexual offenders. The data collection instruments will include: (a) a structural interview regarding the individual's experience with and reactions to erotic materials; (b) objective questionnaire items dealing with attitudes and values in the sexual realm; and (c) projective tests such as inkblots and ambiguous pictures. The subjects will be individuals who have been hospitalized or imprisoned because of aggressive sexual offenses, and control groups of nonsexual offending patients and prisoners, and noninstitutionalized individuals.	\$25,000.00
Richard Ben-Veniste, New York, N.Y.	The contractor will prepare and submit a report based on empirical research on the relationship between availability of pornography and the evidence of sex crimes in Copenhagen, Denmark. A. A final report, to be completed by May 1, 1970, will include— (1) Refine the records regarding sex crimes of the police department in Copenhagen, Denmark, over the period 1958-68. (2) Refine estimates of the dissemination of pornography in Denmark over the period 1958-68. (3) Analyze the data on sex crimes and distribution of pornography in Copenhagen over the 10-year period in order to define the statistical relationship between the 2. (4) Search the recent social history of Denmark for alternative explanations to the reported decrease in sex crimes in recent years. (5) Study Danish attitudes toward pornography, sex, and crime to provide an interpretive context for the findings in (3) above. B. The contractor shall identify the sources used for the study, and where necessary, comment on their reliability. The sources shall be listed in a bibliography. The final report will consist of 3 separate reports: A. Analysis of sex crimes and distribution of pornography over a 10-year period in Copenhagen. B. Danish attitudes toward pornography, sex, and crime. C. Characteristics of customers of pornography shops in Copenhagen and other studies. The 2d and 3d reports will be produced by a subcontractor who is a native of Denmark and a research fellow at the Institute of Criminal Science, University of Copenhagen, Mr. Kutschinsky.	21,300.00
Boston University, Boston, Mass.	The contractor, through its constituent center for criminal justice, will render a report on an analysis of the obscenity and pornography marketplace. This report shall provide a definition of the apparatus for the commercial exploitation of erotic material at both the production and distribution stage in the New England region, and shall delineate the relationship, if any, between these activities and professional and organized crime. This report will be based on examination of arrest, conviction, and criminal records, interviews with law enforcement officials, businessmen, and criminals, inspection of public corporate records, and collection and analysis of available statistical data.	22,500.00
Timoth Brock, Ohio State University, Columbus, Ohio.	To submit a report which will review briefly the commodity theory of communication, report briefly the empirical evidence supporting the theory, and use the theory to analyze the potential consequences of restricting access to erotic materials.	800.00
Dr. Donn Byrne, professor of psychology, Purdue University, Lafayette, Ind.	A. The contractor will prepare and submit a report based on exploratory empirical research concerning people's reactions to sexual stimuli. The research will focus on background and personality variables as determinants of the individual's response to a variety of pictorial or verbal sexual stimuli. The responses of interest include judgments of the degree of offensiveness of the stimulus, and reports of the degree of sexual arousal of the stimulus, reports of the changes in attitudes and behavior resulting from the experience of being exposed to the sexual stimuli. B. The contractor shall identify any literary sources used for the study and, when necessary, comment on their reliability. These sources shall be listed in a bibliography.	3,745.00
Dr. Robert B. Cairns, Department of Psychology, Indiana University, Bloomington, Ind.	To prepare a report which will cover the period of 1961 to the present updating a review of behavioral science literature and the effect of obscene and pornographic literature on people.	1,000.00
Prof. Harry M. Clor, Department of Political Science, Kenyon College, Gambler, Ohio.	Written report analyzing and commenting on the constitutional issues involved in the legal control of obscenity and pornography.	1,000.00
Dr. Mirjan Damaska, Zagreb, Yugoslavia.	Prepare and deliver a report on the law and obscenity in Yugoslavia, the Soviet Union, West Germany, Italy, and France. The report will focus on the legal provisions and the nature	1,000.00

Contractor	Scope of services	Amount
Miss Barbara Engel, Philadelphia, Pa.	and problem of enforcement of these provisions. It should highlight similarities and differences among the various nations. In addition, the paper will consider any significant obscenity reform movements and the contractor will attach a translation of the relevant statutory provisions. Prepare a report in tabular form covering a study of the entertainment industry publications in the United States for the period March 1968 through March 1969, to determine the number of legal actions based on obscenity statutes reported during that period, the materials proceeded against, the enforcement procedure used, the result of the action, and other relevant background.	\$90.00
Mr. Ellsworth Fersch, Department of Social Relations, Harvard University, Cambridge, Mass.	To provide a report on students attitudes toward restricted access erotic materials based on a "questionnaire on censorship" previously developed by the contractor and administered to several groups of high school and college students. The report will focus on the differential experience of students with erotic materials and the relationship between such experience and reported attitudes and behaviors.	900.00
Dr. Carol Gilligan, West Newton, Mass.	Prepare a draft of an interview instrument designed to elicit moral reasoning about sex, administer this instrument to 50 high school students, and tape the protocols. Deliver to the Commission a brief report which includes a copy of the interview schedule, a description of the sample interviewed, and a transcription of 1 interview. The taped protocols are to be delivered to Dr. L. Kohlberg, Harvard University, for analysis in fulfillment of a contract with the Commission.	2,500.00
Dr. Phillip K. Hastings, the Roper Public Opinion Research Center, Williams College, Williamstown, Mass.	3 tabulations----- (1) 47a crosstabulated with 47b. (2) 47a crosstabulated with questions 19, 101, 102, 103, 104, 105, 108, 109, ethnic group, city size (col. 4) and, response on section of country. (3) 47b crosstabulated with same questions as listed in (1) above.	345.75
Peter Hocker, Esq., Keio University, Mita, Minatoku, Tokyo, Japan.	Prepare and deliver a report on the law and obscenity in Japan. The report will focus on the legal provisions and the nature and problems of enforcement of these provisions. It should highlight similarities and differences between the various nations. In addition, the paper will consider any significant obscenity reform movements and the contractor will attach a translation of the relevant statutory provisions.	250.00
Dr. Norman N. Holland, State University of New York, Buffalo, N.Y.	Prepare and deliver a report that: (1) Presents briefly a theory of literary response. (2) Outlines the empirical data, both published and unpublished, that supports the theory. (3) Presents an analysis of the response of hypothetical persons or types upon exposure to selected erotic passages or pictures.	700.00
Indiana University Foundation, Bloomington, Ind.	To prepare a report which will include an analysis of the extent to which adolescents are exposed to various pornographic and erotic materials as well as the social and psychological circumstances of that exposure. Approximately 25 male and female adolescents, ranging in age from 12 to 18 will be interviewed by the staff of the Institute for Sex Research and the interview records as well as related analysis will be included in and be a part of this report.	1,263.00
Institute for Juvenile Research, Chicago, Ill.	The contractor will render a report to be prepared under the direction of Dr. William Simon on the correlates of differential exposure to pornography among college students based on data acquired in a recent survey of a national random sample of students in 4-year colleges sponsored by the National Institute of Child Health and Development. A. A final report to be completed by Sept. 1, 1969, will include— (1) A description of the differential exposure of college students to sexual stimuli often referred to as pornography. (2) Results of attempts to produce a scale or index of exposure to pornography. (3) An analysis of the correlates of exposure to pornography that will focus on both potential antecedents and consequents of exposure; antecedent variables will include, but not be limited to demographic variables and social-psychological characteristics; consequent variables will include, but not be limited to, sexual attitudes, sexual behavior, general mental health, social adjustment, and academic performance.	11,712.00
Institute for Social Evaluation and Design, Chicago, Ill.	B. The contractor shall identify the sources used for the study, and where necessary, comment on their reliability. The sources shall be listed in a bibliography. The contractor will conduct research and render a report based on empirical research, on the correlates of exposure to erotic materials in an adolescent population. The research will study 500 to 700 adolescents in the age range of 15 to 18	20,000.00

Contractor	Scope of services	Amount
Prof. Paul G. Kauper, University of Michigan, Ann Arbor, Mich.	years served by the northwest youth Outreach Program of the metropolitan Chicago YMCA. The research will collect data on the amount of exposure to erotic materials, the context of this exposure, the reactions to the materials, sexual knowledge, attitudes and behaviors, social and demographic variables, social participation, and criminal behavior. Written report analyzing and commenting on the constitutional issues involved in the legal control of obscenity and pornography.	\$1,000.00
Indiana University Foundation, Bloomington, Ind.	Prepare and render a report on the hard-core pornography business designed to cover: (1) History of the business. (2) Nature of current operation. (3) Estimates of current size.	300.00
Institute for the Advancement of Criminal Justice, Kew Gardens, N.Y.	The contractor will render a report to be prepared under the direction of Associate Sociologist James Elias, of the Institute for Sex Research, Inc., on empirical research regarding adolescents exposure to erotic materials. The report will be concerned with research on junior and senior students in a single high school district in Metropolitan Chicago and will utilize both the questionnaire and interview data. The report will describe the types of erotic materials to which the sample of adolescents have been exposed, the context for this exposure, and the adolescents' evaluation of the experience. The report will also describe the personal and social characteristics which differentiate adolescents who have and who have not been exposed to erotic materials. The contractor shall identify the sources used for the study, and where necessary, comment on their reliability. The sources shall be listed in a bibliography.	4,677.00
Institute for the Advancement of Criminal Justice, Kew Gardens, N.Y.	The contractor will render a report, based on empirical research, concerning the history of exposure to erotic materials of adolescents who have engaged in antisocial behavior to the extent that they have been apprehended by the law and sentenced to a correctional institution. The report will be based on data from a minimum of 400 inmates under the age of 21 in the New York City reformatory. The data will be collected principally by means of a written questionnaire that will inquire into experience with erotic materials, social and sexual attitudes, demographic background, and character. Peer ratings of the individual's character will be secured for a sub-sample of 50 subjects. Oral interviews using the Institute of Survey Research "Opinion Survey on Current Social Issues: Adolescent Questionnaire" will be obtained from a sample of 15 which will include sex offenders. The research will be under the direction of Dr. Propper as principal investigator.	14,900.00
Dr. Lawrence Kohlberg, Harvard University, Cambridge, Mass.	The contractor will conduct research and render a report concerned with the measurement of moral thinking about sexual relations. A. The final report will include— (1) An interview schedule consisting of a set of verbally presented sexual dilemmas with accompanying probing questions. (2) A scoring system for coding responses. (3) Criteria for assigning coded responses to stages of moral development. (4) A discussion of the background for developing this measuring instrument. (5) A discussion of the methods used in the development and pretesting of the instrument.	5,000.00
Prof. Berl Kutschinsky, North Woodmere, N.Y.	The report will be based on interviews with at least 50 high school students. For a report on visitors to a Danish sex fair. The report will describe the visitors to the fair, their motives for visiting the fair, their reported prior experience with pornography, and their reactions to the fair. The descriptions of the visitors to the fair will be compared to the general population of Copenhagen and to a description of people who enter pornography shops in Copenhagen.	1,800.00
Legal and Behavioral Institute, Beverly Hills, Calif.	A. The contractor will render a report that will include----- (1) Copy of a pretested clinical interview research instrument designed to measure experience with obscene and pornographic materials, and related sex history, attitudes, and knowledge; and (3) Background information on the development and pretesting of the instrument. The part of the interview schedule concerned with obscenity and pornography will elicit information concerning the particular nature of the material, the circumstances of exposure, the feelings aroused by exposure, and any action stimulated by exposure. The instrument will focus most intensively upon the earliest experiences and the most recent experiences but will also survey the extent and history of exposure. The interview instrument will be designed for use by persons who do not have extensive clinical training and experience, in an interview approximately 1-hour long. The schedule will	29,500.00

Contractor	Scope of services	Amount
Legal and Behavioral Institute, Los Angeles, Calif.	<p>also be designed for use with a variety of socioeconomic groups of adult and adolescent ages. The progress of the development of the interview instrument will be critically reviewed periodically by an advisory committee of outside experts.</p> <p>The contractor will conduct research and render a report based on empirical research concerning the relationship between experience with erotic materials and sexual deviance. The research will compare the experience with erotic material of 3 groups: (1) institutionalized sexual deviates (including rapists, child molesters, and homosexuals); (2) noninstitutionalized sex deviates (including transsexuals, transvestites, and homosexuals); and (3) normal subjects matched with the sex deviates in terms of sex, age, ethnic group membership, socio-economic status, etc. Each group will contain approximately 60 subjects. The data on experience with erotic materials will be collected by use of a clinical interview schedule previously developed for this purpose by the contractor.</p>	\$39,000.00
Do-----	<p>The contractor will conduct empirical research and render a report on the experience with the uses of erotic stimuli in selected populations. The data will be collected by means of an individually administered clinical interview. The report will be based on data from approximately 25 adult subjects from 5 different populations—</p> <ol style="list-style-type: none"> 1. Middle-class blacks. 2. Ghetto blacks. 3. People whose names are on a mailing list identified as buyers of 8 mm. erotic movies. 4. Customers of adult book stores. 5. Patrons of "skin flick" movie theaters. <p>The report will describe the experience with erotic materials of each of these samples and compare with each other and with a sample of "normal" whites.</p>	35,000.00
Do-----	<p>The contractor will render a report comparing the data on experience with erotic materials elicited by a survey research interview and a clinical research interview. The report will be based on empirical research that will involve interviewing the same individuals at 2 different times with 2 different interview schedules: 1st, a survey research interview questionnaire used in a national survey financed by the Commission, and 2d, a clinical interview developed and used in research by the Legal and Behavioral Institute. The survey interview schedule should be administered by a female interviewer in circumstances approximating a survey research situation. The clinical interview should be administered in accordance with procedures developed and utilized by the Legal and Behavioral Institute in previous research. The final report will include a brief description of the subjects, a brief description of the interview situations, a presentation of data obtained by the procedures in the areas of amount of exposure to erotic materials, age of exposure to erotic materials, and circumstances of exposure to erotic materials, and a statement evaluating the comparability of the data obtained by the 2 procedures.</p>	17,500.00
Franklin D. Laven, Los Angeles, Calif. 90014.	<p>The contractor will prepare and render a report, based on empirical research, on the volume of production of paperback books, books, and magazines which are typically marketed through secondary wholesale distributors and typically sold at the retail level in self-labeled "adult book stores." The contractor's report shall contain, but shall not necessarily be limited to the following data—</p> <ol style="list-style-type: none"> (1) Name of publisher. (2) Business address. (3) Book lines, e.g., Ace Books, Mondo Magazines, etc. and cover price of each. (4) Number of titles monthly, 1969. <ol style="list-style-type: none"> (a) Average for 1969. (b) Classification, such as nudist, girlie (perhaps into split and boy-girl split): boy, etc. (5) Total number of titles, 1969, by class if possible. (6) Current rate of new titles monthly, and class. (7) Average press run per title, monthly, 1969. (8) Total press run for all titles, 1969. (9) Current press run per title. (10) Estimated average sales per title, 1969. (11) Total sales, 1969. <p>The report will include a discussion of methods and presentation of data.</p> <p>Amendment to contract: the contractor by virtue of circumstances beyond his control was only able to complete 1/2 of the empirical research on the volume of production of paperback books, books, and magazines which are typically marketed through secondary wholesale distributors and typically sold at the retail level in self-labeled "adult book stores."</p>	1,250.00

Contractor	Scope of services	Amount
Dr. Jack Levin, Boston University, Boston, Mass.	A manuscript which describes the methodology and findings of a content analysis of sexual themes in selected underground newspapers. The content of the manuscript will examine quantitative and qualitative dimensions of sexual themes found in widely circulated Underground Press Syndicate periodicals. The manuscript will focus upon the degree to which manifest sexual themes have been represented in advertising and nonadvertising content, and will identify the variety of such sexual content.	\$1,500.00
Linguistic Research Institute, Boulder, Colo. (Dr. Peter G. Ossorio).	<p>The contractor will conduct research and render a report on the effects of erotic materials in the development of character and deviant behavior. The report will be based on (1) a retrospective questionnaire study and (2) a field experiment—</p> <ol style="list-style-type: none"> 1. The retrospective questionnaire study will be directed toward the questions (a) to what degree is a prior history of exposure to pornography associated with (i) general deviance (ii) sexual deviance and crimes, and (iii) defects in moral judgment and in the quality of interpersonal relationships; and (b) to what extent may exposure to pornography be assigned an initiating or stimulating role in the development of deviant behavior and sexual practices. The report will be based on the responses of several hundred subjects, covering a wide range of personal histories of deviance and sexual experience and of putative moral character, to a variety of research instruments designed to assess character, family background, history of exposure to pornography, exposure to deviance-producing circumstances, and deviance, including sexual practices. 2. The field experiment will be oriented toward the research questions how do personal characteristics affect the immediate impact of exposure to erotic materials. The report will be based on the responses of "normal" and "high" deviance samples to controlled exposure to erotic materials. 3. The research and preparation of the report will be under the direction of Drs. Keith Davis and George Braucht as principal investigators. 	31,500.00
Dr. Ernst Livneh, Jerusalem, Israel.....	Prepare and deliver a report on the law and obscenity in Israel. The report will focus on the legal provisions and the nature and problem of enforcement of these provisions. It should highlight similarities and differences among the various nations. In addition, the paper will consider any significant obscenity reform movements and the contractor will attach a translation of the relevant statutory provisions.	300.00
Ephraim London, Esq., New York, N.Y.---	Written report analyzing and commenting on the constitutional issues involved in the legal control of obscenity and pornography.	
Dr. Jay Mann, Palo Alto, Calif.-----	<p>The contractor will conduct research and render a report on the effects of viewing erotic motion pictures upon overt and covert sexual behaviors of 80 married couples. The report will be based on an experiment in which data will be collected over a period of 12 weeks.</p> <ol style="list-style-type: none"> (1) Subjects, i.e., principals from 80 marital dyads, will be assigned randomly to 1 or 4 groups: a control group and 3 experimental groups. Baseline data will be collected from daily rating logs for a 4-week period, and a sexual attitude and marital satisfaction scale administered during the 4-week period. During a 2d period of 4 weeks, subjects in all groups will view 1 film per week. Control subjects will view nonerotic films and experimental subjects will view erotic films. Daily rating logs will be continued during this period. A final study phase of 4 weeks will be devoted to continuing daily rating logs and readministering sexual attitude and marital satisfaction questionnaires. (2) The report will be based on a comparison of experimental with control subjects in frequency of various categories of behavior between baseline and experimental period, baseline and followup, and experimental period and followup. Sexual histories will be compared with rating sheet data in order to ascertain whether viewing the films introduced any novel sexual behaviors into the participants' repertoires. The sexual attitude scales and the marital satisfaction questionnaires will be analyzed for prepost changes. 	22,000.00
	The research and preparation of the report will be under the direction of Dr. Jay Mann as principal investigator.	

Contractor	Scope of services	Amount
Dr. Jay Mann, Palo Alto, Ca'if.....	The contractor will conduct research and render a report which will review, summarize, and evaluate a body of scientific literature which will attempt to describe and measure human sexual arousal. A detailed discussion of physiological measurement, projective techniques, subjective assessment, behavioral measures, and clinical applications will indicate the major advances and shortcomings of each approach, as well as the general direction of current research efforts in this area. In addition, certain substantive findings will be summarized. Some of these findings are, for example: (a) A significant proportion of both male and female humans exhibit changes in somatic processes when exposed to pictures or literary descriptions or erotic material; (n) males and females tend to differ in the qualitative nature of somatic response to these materials; (c) differences in certain background and demographic characteristics are associated with differences in response; responses to erotic material are affected by characteristics of the stimuli as well as the conditions under which persons are exposed to these materials, and (d) these somatic responses are themselves modifiable through subsequent manipulation of environmental circumstances.	\$700.00
Dr. Morris E. Massey, Boulder, Colo. . . .	A. The contractor will conduct research and render a report on the pornography market in Denver, Colo., during the summer of 1969, from the point of view of the business operations stressing a market orientation of the analysis. The report will cover: the production and distribution of pornographic materials; the links between pornography and other activities not primarily related to pornographic materials; and consumer profiles and community adaptation level. The report will be based primarily on interview data and direct observation but will utilize records and other sources as they are available. A description of the methods used will be included in the report.	15,250.00
Marriage Council of Philadelphia, Philadelphia, Pa.	The contractor will conduct research and render a report based on empirical research concerning the experience of married couples with erotic materials. The empirical research will involve approximately 40 subject couples: 10 who come for counseling with primary sexual problems; 10 who come for counseling but who have only secondary sexual problems; 10 who come for counseling but who manifest no sexual problem; and 10 who have not sought counseling. Data will be collected by means of clinical interview inquiring into experience with erotic materials, a marriage adjustment schedule, and a sex knowledge and attitude test. Both members of a married couple will be interviewed separately. The principal analysis of the data will be a comparison among the 4 subject groups on the basis of certain variables regarding experience with erotic materials derived from the clinical interview. Secondary analyses will explore the correlation between these variables derived from the interview and variables from the other 2 tests.	9,500.00
Dr. John Money, Johns Hopkins University, Baltimore, Md.	A report on the use of erotic materials in sex education and sex counseling. The report will be based on contractor's experience in using these materials in his teaching and clinical activities. The focus will be on the potential functions of the materials and on evaluation of the success in their fulfilling these functions.	2,000.00
National Sex and Drug Forum, The Glide Foundation, San Francisco, Calif.	The contractor will render a report, based on its experience and upon empirical research, on the effect of erotic stimuli used in the Forum's training courses on human sexuality. The report will contain 3 sections— <ol style="list-style-type: none"> <li data-bbox="460 1224 866 1287">(1) A descriptive account of the development of the Forum's training courses on human sexuality during the past 2 years including how various types of erotic stimuli were tested, selected and used. <li data-bbox="460 1287 866 1319">(2) An evaluation of the training experiences, including the exposure to erotic materials, by participants. <li data-bbox="460 1319 866 1446">(3) The results of an empirical (questionnaire) study of effects of the erotic materials on 5 groups of people (directors and ministers of Christian education, students in a social ethics class of a seminary, participants in a regularly scheduled Forum course for professional workers, students and faculty at a mid-western university, and students and advisers at a west coast university). 	9,000.00
	Amendment to contract: Scope of services to include the collection of data on 2 additional groups, approximately 30 black males and approximately 30 black females. These subjects will be of approximately the same socioeconomic status as other groups.	

Contractor	Scope of services	Amount
V. Rene Nelson, Salt Lake City, Utah	2 copies of computer printout, consisting of frequency distributions and percentages for questionnaire items, on a reading survey conducted previously by the supplier on 5,258 respondents.	\$2,500.00
Ohio State University Research Foundation, Columbus, Ohio.	<p>The contractor will prepare and deliver a report on the attitudes toward pornography and their correlates in Sweden based on a secondary analysis of data collected by the Swedish Institute of Public Opinion Research. The analysis of the data and the preparation of the report will be under the direction of Prof. Hans L. Zetterberg. The report will have 2 foci—</p> <ol style="list-style-type: none"> <li data-bbox="449 389 860 516">(1) Attitudes toward the spread of pornography. This section will compare those who accept and those who oppose pornography. The comparison will (a) describe the location of proponents and opponents of pornography in the social structure in terms of demographic characteristics and (b) relate attitudes toward pornography with attitudes toward sexual morality, sex education, religion, and welfare state politics. <li data-bbox="449 516 860 663">(2) Profile of the consumer of pornography. This section will study (a) the demographic and household characteristics of consumers and nonconsumers of pornography, (b) the social, economic, and religious background and the sexual biography (including exposure to sex education) of the consumers and nonconsumers of pornography, and (c) the present sexual practices, norms, attitudes, and knowledge of consumers of pornography. <p>The contractor shall identify any literary sources used for the study and when necessary, comment on their reliability. These shall be listed in a bibliography.</p>	7,273.00
Quality Educational Development, Washington, D.C.	<p>The contractor will conduct research and render a report based on a survey of the literature and firsthand examination of curriculum materials, evaluating sex education programs in the public schools of the United States. The report will describe the goals and purposes of sex education programs, the curriculums for these programs, and the methods in terms of the goals and purposes. The programs should also be evaluated in terms of their potential for reducing adolescent interest in nonlegitimate sexual materials (pornography) and in inculcating the individual against potential harmful effects of later exposure to pornography.</p>	13,545.00
Richard S. Randall, New York University, New York, N.Y.	<p>The contractor will conduct research and render a report concerned with the evaluation and effectiveness of the motion picture association's current movie rating system as industry self-regulation. The report will consider: (1) the impetus to self-regulation; (2) the rating process; (3) rating criteria; (4) the enforcement of the rating recommendations; and (5) the effects of the rating system. Especial attention will focus on the validity of the published ratings and exhibition enforcement of restricted ratings.</p> <p>Amendment to contract: Scope of services to include (1) a survey of movie advertising in daily papers; and (2) a survey of movie editors in major newspapers and periodicals; (3) to conduct additional analysis of data collected in survey of movie advertising in daily newspapers and incorporate the results in final report.</p>	22,370.00
Richard S. Randall, New York University.	<p>Gather reported financial data, or other box office experience, from trade press (Variety, Box Office, Motion Picture Herald) for all rated and unrated pictures released after the rating system began:</p> <ol style="list-style-type: none"> <li data-bbox="449 1192 860 1227">(1) Average box office experience for all reported films will be included. <li data-bbox="449 1227 860 1289">(2) The report will contain reported figures of top grossing films rated G, GP, R as well as all reported box office receipts for rated and unrated X films or self-rated X films. <li data-bbox="449 1289 860 1333">(3) Box office experience of top grossing films by rating will be reported for the key cities included in the Variety box office reports. <li data-bbox="449 1333 860 1368">(4) Detailed explanation of methodology in compiling figures will be supplied. 	1,500.00
The Research Foundation of California State College, Hayward, Calif.	<p>The contractor will conduct research and render a report, based on empirical research, describing the pornographic market place in the San Francisco Bay area. The research will be under the direction of Prof. Benjamin Carmichael and Mr. Harold Nawy. The report will describe and analyze the economic and social milieu of pornographers, distributors, and consumers, and will study the factors influencing and regulating both supply and demand for pornographic material. The research will use the snowball sampling techniques with key informants and field observation.</p>	21,993.00

Contractor	Scope of services	Amount
Response Analysis Corp., Princeton, N.J.	The contractor will conduct a national survey and render a report on the public's attitudes toward and exposure to erotic materials. In conducting the research the contractor will be responsible for: specifying hypotheses; constructing and pre-testing an interview schedule; developing an analysis plan; developing a field work plan; formatting the questionnaire for the field; selecting a national probability sample; selecting and training interviewers; preparing training materials and interviewer instructions; obtaining interviews; validation of interviews; editing questionnaires; coding free-response questions; processing and analyzing data; preparing reports. The questionnaire will be responsive to the three major objectives of the study—	\$219,000.00
	(1) To describe community standards and norms pertaining to distribution, consumption and control of erotic materials;	
	(2) To identify the amount, frequency, and circumstances of the public's exposure to erotic materials;	
	(3) To describe the correlates of exposure to erotic material. The sample will be a national probability sample of approximately 3,000 adults and 1,200 adolescents ages 15 to 20. The report will consist of three parts: (a) a substantive report of findings and their scientific interpretation; (b) a methodological section which will describe the procedures used so that the study may be subjected to independent critical analysis and replication; and (c) an appendix presenting all the questions contained in the interview schedule with a tabulation of the responses to these questions. The contractor shall provide the Government with 2 copies of the unanalyzed data from this survey in magnetic tape form in a format that makes recovery of the data by others than the contractor's relatively straight forward and easy with generally available equipment.	
Prof. William J. Roach, Good Counsel College, White Plains, N.Y.	To provide a report, in a quality and style appropriate for publication in a professional or scientific journal, on college student's views of pornography. The report will be based on data from approximately 1,000 students at 4 colleges in Westchester County, N.Y. The data will be collected with a research instrument based on an interview schedule developed by David Manning White.	1,000.00
St. Louis University, St. Louis, Mo	The contractor will render a report to be prepared under the direction of Dr. Marshal Katzman on photo characteristics which influence judgments of obscenity. The analysis will be based on data acquired in a recent study of 285 adult subjects engaged in a variety of occupations who were asked to rate 90 selected photos of women on degree of arousal experienced, and degree of obscenity present.	3,000.00
	A. A final report will include—	
	(1) Construction of a reliable set of photo characteristics which may have relevance for judgments of obscenity.	
	(2) Assignment of scale values to each of the 90 photographs on each of these characteristics.	
	(3) Correlation of these scale values for each photo characteristic with the judgments of obscenity made by each of the subjects in the original sample.	
	(4) Calculation of mean characteristic judgment correlation coefficients for each of the photo characteristics.	
	(5) Comparisons among groups of subjects in terms of the characteristics which are correlated with judgments of obscenity.	
Do	To conduct research and render a report on the relationship of socioeconomic background to judgments of sexual stimulation and the correlation with obscenity judgments. The report will be based on data, previously collected, from 285 male judgments of 90 photographs of individually posed females.	540.00
Dr. Patricia Schiller, Washington, D.C.	Prepare and deliver a research report on erotic stimuli that often accompany adolescent dating behavior. The report will be based on information provided by 2 populations: (1) unmarried pregnant high school girls in Washington, D.C., and (2) students in a private junior college for girls in Washington, D.C. The report will focus on the types of erotic stimuli that are present in heterosexual dating during the high school and immediate post high school period, as reported by girls, and the relationship between the presence of such stimuli and the occurrence of sexual behavior in the situation. A 2d focus will be on similarities and differences in the experience of the 2 populations.	750.00

Contractor	Scope of services	Amount
Godfrey P. Schmidt, Esq., New York, N.Y.	Written report analyzing and commenting on the constitutional issues involved in the legal control of obscenity and pornography.	\$1,000.00
Prof. Helen Silving, Rio Piedras, P.R.	Prepare and deliver a report on the law and obscenity in Mexico and Argentina. The report will focus on the legal provisions and the nature and problem of enforcement of these provisions. It should highlight similarities and differences among the various nations. In addition, the paper will consider any significant obscenity reform movements and the contractor will attach a translation of the relevant statutory provisions.	500.00
Alexander B. Smith, John Jay College of Criminal Justice, New York, N.Y.	The contractor will prepare and submit a report based on empirical research regarding the police response to the problem of obscenity and pornography in the local community. The research will involve interviews with police, prosecutors, and others in approximately 15 cities across the Nation and questionnaires administered to police from a variety of locations. The interviews will be designed to secure information regarding the police evaluation of the seriousness of the problem of obscenity and pornography in their community, the degree of cooperation between the police and other agencies, both public and private, in dealing with this problem, police attitudes toward the issue of pornography, the problems and issues involved in the enforcement of existing obscenity laws, and police perceptions of the relationship between pornography and other crime. The questionnaire will be designed to secure information regarding the attitudes of police toward erotic materials and their perceptions of its effects on various types of people exposed to it.	20,000.00
Dr. William N. Stephens, Florida Atlantic University, Boca Raton, Fla.	<p>The contractor will render a report of a survey of the ethnographic literature concerned with modesty rules.</p> <p>A. A progress report to be completed by June 1, 1969, concerned not with substance but with an evaluation of the availability and quality of the basic data sources.</p> <p>B. A final report will include—</p> <ol style="list-style-type: none"> (1) Statements about relative cross-cultural frequency of variables relating to public sex display and modesty. (2) The relationship between 1 or more variables relating to public sex display or modesty and antisocial behavior such as crime. (3) An assessment of sexual references in mythology and folktales. (4) A delineation of modesty code patterns as revealed by intensive studies of specific cultures. 	4,000.00
Dr. Percy H. Tannenbaum, The Annenberg School of Communications, University of Pennsylvania, Philadelphia, Pa.	The contractor will conduct experimental research and render a report on human response to erotic stimuli. The research will be primarily oriented toward investigating the following drive model: heightened physiological arousal, however it is induced, leads to higher levels of response, whatever particular response behavior is called for by the response situation. Arousal will be induced by films with differing content (erotic, aggressive, neutral) and both "hurting" and "helping" responses will be observed. A secondary orientation of the research will be to investigate the effect of variations in erotic stimuli in producing arousal and, according to the above model, response. Variations of movie stimuli to be studied are: (1) an accompanying erotic sound track; (2) an accompanying aggressive sound track; (3) the interpolation of brief aggressive cues in an erotic movie; and (4) the deletion of more explicit scenes from erotic movies.	8,000.00
Terence P. Thornberry, University of Pennsylvania, Philadelphia, Pa.	The contractor will prepare and render a report, based on empirical research, on "the relationship between exposure to pornography and juvenile delinquency as indicated by juvenile court records." The report will be based on approximately 500 cases to be drawn from the files of the neuropsychiatric division of the Philadelphia juvenile court. The cases will be divided into 3 groups: (a) sex offenses; (b) nonsex offenses; and (c) cases where sexual activity is implied, but the charge is not sex related. The case records will be examined for evidence of exposure to pornography and the 3 groups compared on this variable. The report will include a discussion of methods, presentation of data, analysis of findings, and a full description of those cases involving pornography.	3,000.00
University of Connecticut, Storrs, Conn.	<p>The contractor will prepare and submit a report based on empirical research, concerning 2 different aspects of individuals' reaction to pornography—</p> <ol style="list-style-type: none"> (1) He will explore the affective responses of men and women to viewing erotic stimuli as a function of the nature of the situation, past sexual histories, psychological maladjustment and sex guilt. (2) He will investigate the influence of sexual arousal due to viewing erotic stimuli on verbal aggressive behavior of males when that aggression is instrumental in leading to further sexual stimulation. 	21,136.00

Contractor	Scope of services	Amount
The University of North Carolina, North Carolina Memorial Hospital, Chapel Hill, N.C.	<p>In addition, an attempt will be made to provide data on the following topics—</p> <ol style="list-style-type: none"> (1) The possible relationship between viewing erotic stimuli and male sexual aggression. (2) The possible relationship between viewing erotic stimuli and sexually callous behavior toward women on the part of males. (3) The possible effect of exposure to erotic stimuli on the social behavior of individuals. <p>The contractor will render a report on the psychological and physiological effects of repeated exposure to erotic materials prepared by and based upon research conducted by Clifford B. Reifler, M.D., M.P.H., James Howard, Ph. D., and Myron Liptzin, M.D. The research report will be based upon not less than 20 adult male subjects and will include both psychological and physiological data based on pretests, posttests and followup tests as well as subjective reports collected throughout the experiment. The experimental treatment will involve approximately 15 periods of 90-minute duration exposure to erotic materials in a "free browsing" situation. The following period will be approximately 2 months. The data will be analyzed to provide information about the degree of satiation and changes in attitudes and behaviour over the course of the experiment.</p>	\$21,679.00
University of Texas, Austin, Tex.	<p>Amendment to contract: The report will present data from pre and post test procedures on 9 "control" subjects who will not receive the "experimental treatment" and compare the changes in these control subjects that occur in the experimental subjects. The report will also present information on individual differences in response to erotic material in addition to information about average group effects of the experimental procedure.</p> <p>The contractor will conduct research and render a report concerned with "confession" magazines as an example of contemporary American popular female oriented erotica. The research will consider the range of "confession" magazines that are available to the general public in the Texas region. The research will include content analyses of the sample of magazines interviews with a sample of consumers of these magazines, and interviews with the publishers of these magazines. The content analyses will be carried out at 3 levels: (1) a descriptive analysis in inventory the content and format; (2) a linguistic analysis aimed at describing the emotional tone or valuations of the various contents; and (3) a structural analysis that will reveal the articulation of various value patterns or constellations. The reader interviews will be aimed at determining the reader's characteristics and at determining the nature of their involvement and motivations. The publisher interviews will attempt to determine how content and style of the magazines are selected and the extent to which the magazines represent reader demands and reflect active popular cultural values.</p>	8,055.00
Do	<p>The contractor will render a report, to be prepared under the direction of Dr. Louis Zurcher, Jr., on the development of ad hoc citizens action groups to deal with issues relating to obscenity. This research will expand and be based on previous preliminary research conducted by Dr. Zurcher and his associates and will incorporate a comparison of the 2 situations.</p> <p>A. A final report will include—</p> <ol style="list-style-type: none"> (1) A description of the events, organizations, and people involved in 2 community actions that move at the symbolic level of issues, values, and roles focusing on questions relating to obscenity and pornography. (2) A description of the psychosocial processes that operate in these actions. (3) A comparison of the 2 actions for the purpose of drawing generalizations. (4) A brief description of the methods used in the data collection. <p>Amendment to contract: The final report will also include a comparison, in terms of social and psychological variables, of active participants in ad hoc citizens groups (formed to deal with obscenity in the community) with other groups who either opposed the ad hoc citizens groups' action or were not involved in the issue.</p>	17,202.00

Contractor	Scope of services	Amount
University of Waterloo, Department Psychology, Waterloo, Ontario, Canada.	The contractor will prepare and submit a report based on empirical research dealing with the effects of arousal and the presence of others on voluntary exposure to erotic material. The research will focus on the nature of the relationship between the willingness of people to expose themselves to erotic stimuli and their level of arousal. Information will also be collected on background and personality variables which may have some influence on arousal level and viewing behavior. In addition, an attempt will be made to collect empirical information on possible changes in behavior of individuals as a result of exposure to erotic material.	\$20,000.00
Prof. H. Richard Uviller, Columbia University in the City of New York, School of Law, New York, N.Y.	Written report analyzing and commenting on the constitutional issues involved in the legal control of obscenity and pornography.	1,000.00
Prof. Knud Waaben, Denmark	Prepare and deliver a report on the law of obscenity in Denmark, Norway, and Sweden. The report will focus on the legal provisions and the nature and problem of enforcement of these provisions. It should highlight similarities and differences among the various nations. In addition, the paper will consider any significant obscenity reform movements and the contractor will attach a translation of the relevant statutory provisions.	600.00
Dr. Gerald Wehmer, Wayne State University, Detroit, Mich.	The contractor will conduct research and render a report based on empirical research concerning the judgments, along several dimensions, of a range of pictorial erotic stimuli by various segments of the public. The report will focus on the dispersion of the distribution of judgments, the differences among different groups in the central tendency of the distribution of judgments, and the correlations between various attributes of the subjects and their judgments.	10,000.00
Dr. Charles Winick, City College of the City University of New York, New York, N.Y.	The contractor will render a report, based on empirical research, on the characteristics of consumers of erotic materials. Observational data will be collected on demographic and behavioral characteristics of a minimum of 4,000 persons entering adult exploitation film theaters and a minimum of 1,000 persons entering bookstores in a half dozen urban settings of widely varying characteristics. Observations will also be made on actual practices used in checking the age of patrons. In addition, approximately 125 in-depth interviews will be held with a systematically selected group of patrons of erotic materials.	9,500.00
World University, Hato Rey, P.R.	Report on erotic materials in Metropolitan San Juan, P.R. The report will be based on the impressions of knowledgeable people who have lived in the geographic area for some time. It will focus on— (1) The changes in the availability of erotic material in San Juan during the recent past. (2) The changes in Puerto Rican society which may account for the change in availability of erotic materials. These changes in society should include— (a) The establishment of a relatively prosperous middle class. (b) Urbanization with a consequent lessening of the influence of traditional family contacts. (c) The immigration of large numbers of young males from the Caribbean Islands and Central America to work in San Juan. (d) The development of a new kind of transit industry with a new kind of clientele.	2,400.00
Dr. David Manning White, Boston University Boston, Mass.	Pilot study of university students views on the experience with obscenity and pornography. The report will be based on interviews with a representative sample of students at 2 large urban universities. The interviews will cover such items as— (1) Personal definition and parameters of obscenity and pornography. (2) Experience with obscenity and pornography as personally defined above. (3) Experience with erotic materials as objectively defined by investigator. (4) Access to materials as defined in 1 and 3. (5) Relevant social and sexual attitudes and values.	2,500.00
Dr. Marvin Zuckerman, Albert Einstein Medical Center, Philadelphia, Pa.	Prepare and deliver a report containing an evaluative review of literature on physiological indices of sexual arousal. This report will attempt to assess the available evidence concerning the reliability and validity of these indices, as well as the extent of their specificity for sexual arousal. In addition, practical problems regarding the feasibility of using various physiological measures as dependent variables in the Commission's program of research will also be considered.	1,000.00
Total		1851,110.75

¹ Includes \$9,500 subject to adjustment, uncompleted contract.

STATEMENT OF HON. DAVID A. NELSON, GENERAL COUNSEL, POST OFFICE
DEPARTMENT

Mr. Chairman, the recently-published Report of the Commission on Obscenity and Pornography has added an additional highly controversial element to public consideration of the complex problem of obscenity in American life.

The most widely-publicized portion of the Report has been the recommendation that all laws prohibiting the sale, exhibition or distribution of obscene material to consenting adults be repealed. Among the laws that the Commission recommends repealing are the Federal statutes prohibiting the sending of obscene matter through the mails.

The Post Office Department does not agree with this recommendation; we believe that the postal obscenity laws contribute to the preservation of the kind of society that most Americans want for themselves and their children, and we urge that these laws be retained.

This Committee has asked about Postmaster General Blount's personal views on the subject. The following excerpts from a recent talk by the Postmaster General may be of interest in this connection:

In any discussion of the problem of pornography, the effect of pornography on the young always seems to emerge as the central issue. Certainly it is of critical concern. But, personally, I am deeply concerned about the effect of pornography on any human being, and on the civilization of which each human being is a member.

If we consider for a moment those values which underlie our American institutions, we find that what America is all about can be summed up in two words: human dignity.

As a people we believe that each man has a spark of divinity within him; we accept the sanctity of the human spirit and of the human body. And as we preserve and sustain these, we preserve and sustain human dignity.

As we violate these for sensation or for profit, we act against the dignity of man, and we act against all that we have suffered and struggled to build for more than two centuries on this continent.

Pornography is not simply a threat to the best interest of our children.

It is an act of violence against the human spirit.

In speaking before the annual convention of the National Association of Postmasters of the United States last month, Postmaster General Blount observed that:

Violence, physical and spiritual, has become the opiate of too many Americans. We have become inured to physical violence and we continue that way at least partly because of our entertainment; now we are asked to legalize pornography and begin the more subtle process of becoming inured to spiritual violence. I don't think we ought to accept this. I think we can do better in America.

Turning to some of the limitations which the Commission itself recognized in its studies, the Postmaster General noted that:

The report states that "it was impossible during the brief life of the Commission to obtain significant data on the effects of the exposure to pornography on nonsexual moral attitudes."

In other words, we simply do not know, and the Commission does not know, and admits that it doesn't, whether those who break the law in the acquisition and the use of pornography might be inclined to similar attitudes toward other provisions of the law.

The Commission also confesses that time limitations prevented any adequate investigation of the long-term effects of pornography. It may be understandable then that "research * * * found no evidence to date that pornography plays a significant role in the causation of delinquent or criminal behavior * * * "That is a curious choice of words—"a significant role"—one wonders if there was evidence of an "insignificant," and just what is considered to be significant here. In any event, when long-term evidence seems so potentially vital, how are we to accept a recommendation for short-term action?

As to the suggestion that laws like the postal obscenity statutes are no longer supported by a majority of the American people, Mr. Blount had this to say:

[The] Commission based its conclusions on a finding that "a majority of American adults believe that adults should be allowed to read or see any sexual materials they wish." Now either those individuals polled had no idea

about what passes for "sexual materials"—or this finding is absolutely dead wrong.

While our legislative system doesn't always function with total perfection, it does generally reflect the will of the people. There are presently some seven anti-pornography bills pending passage in the Congress, but there have been over *four hundred* bills of this kind sponsored in this session of Congress. I think it would be amazing if the Congress of the United States were so thoroughly and completely out of touch with the people of the United States that they should be unanimously persuaded in one direction, while a majority of their constituents were persuaded in a direction diametrically opposed.

If it is true that a majority of Americans want pornography legalized, then I think they ought to vote men into office who will legalize it. But until that happens, until we have candidates running on a smut platform, until the people decide to embrace the politics of pornography, we are not going to raise legislative monuments to human degradation.

We are not going to put a price tag on human dignity—because human dignity is the essential meaning of America. It is priceless. We're not going to debate that. We're going to stand on it, and defend it.

If, as we believe, the American people are opposed to legalizing the pornography business, one important factor in that opposition may well be a sense that the forces by which our civilization is held together will be weakened by the widespread commercial glorification—in the most graphic, vulgar, and sensational ways imaginable—of sex without love. Perhaps, as the Commission's report suggests, it is impossible to prove a direct correlation between the spread of pornography and the increase in crime; but the absence of such proof hardly means that our individual self-respect, our family relationships, and our attitude toward other people generally will not suffer if we are inundated with explicit pornographic materials that seem to cheapen and debase our humanity, to promote selfishness and self-indulgence, and to inculcate the view that human beings are merely objects of sexual gratification as to whom love and respect are irrelevant.

No one can prove, perhaps, that there is a direct correlation between high crime rates and the graphic portrayal of physical violence that have become so familiar on television; yet how many thoughtful Americans, having reflected on the extent to which television encourages us to accept mindless violence as normal, can avoid an intuitive feeling that this phenomenon is subtly corroding our sense of values and damaging the ethical underpinnings of our commonwealth? If the moral tone of our society can be influenced by the pictorial stimuli that constantly bombard us, the imposition of legal limitations on the depths to which such stimuli may be permitted to sink in depicting sexual degradation need hardly be defended by reference to statistics on crime.

Insofar as the postal obscenity laws are concerned, moreover, it is worth pointing out that the repeal of these laws would put the Government in a position of actively contributing to whatever demoralization might result from the wholesale distribution of obscene material through the mails. It is disappointing that the Commission made its recommendation on repeal of the postal obscenity statutes without giving greater consideration to the role of the Postal Service as a Government instrumentality—one that has been, and will continue for some years to be, paid for in part by tax revenues. It is one thing to say, as the Supreme Court has said, that Government must not punish an individual for the mere possession of obscene materials in the privacy of his own home; but it is something quite different to say that the people of the United States, through a tax-supported Government agency like the Postal Service, must lend active assistance to the commercial traffic in such materials, regardless of the fact that such traffic falls outside the protection of the First Amendment and regardless of the effect the traffic may have on the quality of American life.

Rather than following the course laid out by the Commission, we think that Congress should continue its efforts to insure that the American people are not subjected to a flood of obscene materials or other unwanted sex-related matter delivered by mail.

The criminal postal obscenity laws (18 U.S.C. 1461 and 1463) represent the first and most significant line of defense that Congress has provided in this area. The Post Office Department and the Department of Justice have been cooperating closely to see that these laws are vigorously enforced, and the Postal Inspection Service reports 14 convictions and 60 indictments of commercial obscenity dealers during fiscal year 1970. The indictment figure represents an increase of 160% over that for the preceding fiscal year.

The constitutionality of the civil postal obscenity laws (39 U.S.C. 4006 and 4007) is currently under consideration by the Supreme Court. On November 10 the Court heard oral arguments in companion cases wherein one or both of these statutes had been held unconstitutional by the lower courts, and the Supreme Court's resolution of the issues thus presented may have an important bearing on the question of what additional legislation, if any, might be appropriate to strengthen the ability of the Postal Service to take administrative action against mail order pornography.

Earlier this year, as the Committee knows, the Supreme Court upheld the constitutionality of the pandering advertisements statute, 39 U.S.C. 4009, which permits the addressee of an advertisement offering for sale material which the addressee in his sole discretion considers to be erotically arousing or sexually provocative to obtain from the Postmaster General an order directing the mailer to refrain from further mailings to the addressee and to delete the addressee's name from his mailing lists. The Department has issued over 400,000 prohibitory orders under this statute. While most mailers have voluntarily complied with these orders, we have been forced to obtain judicial enforcement decrees in some 670 cases.

A series of provisions incorporated in the recently passed Postal Reorganization Act, Public Law 91-375, also deals with unwanted sexually oriented advertisements. These provisions, which will be codified as 39 U.S.C. 3010 and 3011 and 18 U.S.C. 1735-1737, are largely based on a bill initially recommended by the President in May of last year. The new provisions, which will become effective on February 1, 1971, provide a means by which citizens who desire not to receive sexually oriented advertisements, as defined in the statute, can act before receiving any such advertisements to keep such matter from being mailed to them or to their minor children from any source.

We have been asked to comment on two additional pieces of legislation now pending before the Committee, H.R. 19541 and S. 3220.

The Department supports the purpose of H.R. 19541, which is to clarify the definition of obscenity as that term is used in the postal laws. If enacted, the bill would reflect a Congressional determination that the so-called "redeeming social value test" is not an independent element of the definition of obscenity, the absence of such social value simply being a necessary consequence of the finding of obscenity.

In the landmark case of *Roth v. United States*, 354 U.S. 476 (1957), where 18 U.S.C. 1461 was held to be constitutional, the Supreme Court explained its conclusion that obscene material is not entitled to Constitutional protection by noting, among other things, that such material is without redeeming social importance. The Court's opinion indicated that the material was without redeeming social importance because it was obscene, not that it was obscene because its characteristics included a lack of social importance. Some subsequent opinions, however—most notably that of Mr. Justice Brennan and two others in the *Fanny Hill Case*, 383 U.S. 413 (1966)—have suggested that utter lack of social value is a discrete element of the test of obscenity. Other opinions have suggested the contrary. Neither position has so far commanded the approval of a majority of the Court, and there is real uncertainty as to the extent to which the *Roth* definition of obscenity ought to be considered as having been modified by subsequent cases. The Post Office Department believes that it would be a desirable clarification of the law if lack of "redeeming social importance" were recognized as simply a result of obscenity, rather than being incorporated in the definition of the term. The appropriateness, from a technical standpoint, of attempting to define a constitutional standard by statute is a matter peculiarly within the expertise of the Department of Justice, however, and on this question we must defer to that Department.

S. 3220, as passed by the Senate, would amend the recently enacted section 3010 of revised title 39, United States Code, by permitting recipients of unsolicited sexually oriented advertisements to return them to the sender at the latter's cost, such cost to include a service charge of at least 50 cents per item, in addition to the return postage. The Post Office Department believes that those who use its services should be free of unwanted sexually oriented advertisements—an objective which S. 3220 is clearly intended to advance. We have some doubt, however, as to whether S. 3220 should be enacted before Section 3010 has become effective and before its practical efficacy and constitutional validity have been tested. We believe that in its present form Section 3010 represents a workable and constitutional means of protecting the privacy of our customers from unwanted invasion by sexually oriented advertisements, and we would hope

that the statute might be given a fair trial, in the field and in the courts, before major amendments are adopted.

If the Committee decides to proceed with S. 3220 at this time, however, it may wish to consider several perfecting amendments.

First, it is suggested that proposed 39 U.S.C. § 3010(a) (2) be amended to provide that such material be "... returned to the sender *unopened*. . . ." The Senate apparently intended to limit the return privilege to unopened mail, inasmuch as the notice prescribed by proposed 39 U.S.C. § 3010(a) (1) provides that such material may be "... Returned to the Sender Unopened. . . ." However, the controlling language in paragraph (2) of that subsection does not contain such a limitation.

Second, it is suggested that the parenthetical language in lines 10 and 11 of page 2 of S. 3220 be deleted. A 50 cent minimum service charge might exceed the actual costs involved in returning the material. We believe the bill would be more likely to withstand a constitutional challenge if the service charge were fixed by the Postal Service at cost, without reference to a statutory minimum that might be punitive in effect. The Committee may also wish to consider whether constitutional problems are not posed by Section 2 of the bill, which provides for the recovery of a \$5,000 civil penalty for each violation.

In conclusion, the Post Office Department, like this Committee, is deeply concerned about the use of the mails to transmit obscene and offensive sex related materials. We believe that repeal of the postal obscenity statutes, as recommended by the Commission on Obscenity and Pornography, would be a mistake, and we hope that the report of the Commission will not deter Congress from retaining the existing postal obscenity laws and giving careful consideration to any additional legislation for which there may appear to be a demonstrated need in this field.

STATEMENT OF IRWIN KARP, COUNSEL, THE AUTHORS LEAGUE OF AMERICA, INC.

My name is Irwin Karp. I am counsel to The Authors League of America, a national society of professional writers. The Authors League is deeply concerned with legislation that affects freedom to speak and read. These freedoms are essential to the author; more important, they are the foundations of a democratic society. The Authors League believes that these freedoms must be carefully guarded against restraints that can impair their effectiveness. Furthermore, prohibitions against the right to use the mails, although aimed at "obscene" materials, may prevent distribution of literary works that are entitled to First Amendment protection. We believe that the two Bills under consideration by your Committee would have that unfortunate result. Therefore we submit this statement.

The Bill, H.R. 19541, contains a new definition of "obscene" to be incorporated in the Federal criminal statutes prohibiting the transportation of "obscene" material and in Sec. 3006 of the Postal Code. Essentially the definition would rule "obscene" any work "which has its predominant appeal to the prurient interest." We submit that this definition violates the First Amendment. We believe a Constitutionally acceptable new definition of "obscene" can be drawn; and we submit one in this statement.

The Supreme Court has made it clear that "the portrayal of sex, e.g., in art, literature and scientific works" is entitled to First Amendment protection. *Roth v. United States*, 354 U.S. 476, 487 (1956). The Court has emphasized that to insure this protection, the definition of "obscenity" must be so narrowly drawn that it cannot restrain any work entitled to freedom of expression. *Roth v. United States*, at p. 488; *Winters v. New York*, 333 U.S. 507, 509 (1947).

The Bill's definition—"appeal to prurient interest"—is constitutionally defective. As Mr. Justice Harlan noted in *Manual Enterprises v. Day*:

"(For) one would not have to travel far even among the acknowledge masterpieces in any of these fields to find works whose 'dominant theme' might, not beyond reason, be claimed to appeal to the 'prurient interest' of the reader or observer." (370 U.S. at 487)

Under H.R. 19541's definition, these masterpieces would be proscribed. Indeed, the Bill invites this by eliminating the second and third rules of the "Roth" Test: "patent offensiveness" and "utter" absence of "redeeming social importance". Unquestionably the definition would not satisfy the 3-step "Roth" Test (*Memoirs v. Massachusetts*, 383 U.S. 413, 418-419 [1966]). Certainly it would not meet the stricter tests of Constitutionality applied by four other members of the

Court to Federal restraints on freedom of expression in this area. See, *Redrup v. New York*, 386 U.S. 767, 770-771 (1967).

Moreover, the Bill's "prurient interest" test is Unconstitutional because it is so vague that it "fails to give fair notice of what acts will be punished." (*Winters v. New York*, 333 U.S. 507, 509) This vagueness will cause "self censorship", by publishers, which the Court has held repugnant to the First Amendment. *Smith v. California*, 361 U.S. 147, 164 (1959). It will also cause the prosecution and punishment of works entitled to First Amendment protection. As the House Judiciary Committee has emphasized, the "prurient interest test" is "imprecise" and "speculative"; and "there is no reliable information as to what will appeal to the prurient interest in sex, and for whom." (*Report No. 19-1353*; 91st Cong. 2d Sess.) The Bill's definition is excessively vague because it omits the second and third *Roth* tests. Indeed, even the complete *Roth* standard sometimes has proven too vague to safeguard Constitutionally protected works from the prosecution and harassment which effectively curtails their distribution, even though the work is ultimately rescued by the Supreme Court.

One example is Henry Miller's TROPIC OF CANCER, published in Paris in 1934, first issued here in 1961, and ultimately held not obscene by the Supreme Court in 1963 (*Grove Press v. Gerstein*, 378 U.S. 577). Before the Court's ruling, TROPIC was the target of more than 65 obscenity prosecutions. The *Roth* test obviously did not provide sufficient guidance for some courts, and for dozens of prosecutors. The highest Courts of New York and Florida held it obscene; the highest Courts of California, Wisconsin and Massachusetts held it was not obscene. The New York Judges divided 4 to 3; the Wisconsin Judges divided 4 to 3. The two unanimous Courts, California and Florida, disagreed with each other. To underline the vagueness of even the complete *Roth* test—the New York Court which ruled TROPIC obscene (4 to 3) held that FANNY HILL was not obscene (4 to 3); and the Massachusetts Court which held that TROPIC was not obscene (4 to 3) ruled that FANNY HILL was obscene (4 to 3).

As the House Judiciary Committee stated, "it is preferable (in a criminal statute) to substitute explicit prohibition for broad generality" (*Report No. 19-1353*, supra). Obviously, H.R. 19541 retreats in the opposite direction. It substitutes an even vaguer test for the present *Roth* standard. However, a guide to a more explicit, and Constitutional, definition is available to the Committee. Mr. Justice Stewart has pointed out that there is "a distinct and easily identifiable class of material" in which the 3 elements of the *Roth* standards coalesce. It is "hard-core pornography"; and it is that category of materials "alone, which I think government may constitutionally suppress, whether by criminal or civil sanctions." *Ginzburg v. United States*, 383 U.S. 463, 499 (1966).

Mr. Justice Stewart gave this description of "hard-core pornography":

"Such materials include photographs, both still and motion picture, with no pretense of artistic value, graphically depicting acts of sexual intercourse, including various acts of sodomy and sadism, and sometimes involving several participants in scenes of orgy-like character. They also include strips of drawings in comic-like format grossly depicting similar activities in exaggerated fashion. There are, in addition, pamphlets and booklets, sometimes with photographic illustrations, verbally describing such activities in a bizarre manner with no attempt whatsoever to afford portrayals of character or situation and with no pretense to literary value." (*ibid*)¹

If the Congress wishes to redefine "obscenity", we submit it could achieve the necessary explicitness and comply with the First Amendment by adopting a definition—for adults—patterned on Mr. Justice Stewart's description, with certain modifications, to wit:

"'Obscene material' consists of photographs, motion pictures, television broadcasts, paintings, drawings or sculpture graphically depicting acts of sexual intercourse, including sodomy—when such material is disseminated by methods which thrust it on individuals unwilling to receive the same."

For reasons indicated below, we believe this definition serves one of the two constitutionally permissible purposes for which government may prohibit the dissemination of obscene works. The second purpose, the protection of minors,

¹ In testimony submitted to Subcommittee No. 3 of the House Judiciary Committee (Dec. 1969), we suggested that Mr. Justice Stewart's description could be reworded as a definition in the following form: "Obscene materials, paintings, drawings or sculpture, with no pretense of artistic, scientific or social value, graphically depicting acts of sexual intercourse, including various acts of sodomy and sadism; and pamphlets and booklets, verbally describing such activities with no portrayals of character or situation and with no pretense of literary, scientific or social value."

is served by statutes patterned on the New York "minors" law held constitutional by the Supreme Court in *Sam Ginsberg v. New York*, 390 U.S. 629 (1968). Thus, our proposed definition does not include the text of books or other non-graphic works, since they cannot be "thrust" on unwilling adults. This makes it unnecessary to attempt the impossible task of formulating an explicit definition for determining whether a book is "obscene".

Printed works cannot be thrust on adults unwilling to read them. They cannot be forced to buy a book, or read it. As Justice Whittemore of the Massachusetts Supreme Court said of *FANNY HILL*:

"Freedom to read as I construe it, means that such a book as this is to be available to those who wish to read it and that the persisting urge of others to bar its publication is effectively restrained. *There is, of course, no obligation upon any member of the general public to read this book.*" *Attorney General v. A Book, etc.*, 206 N.E. 2d 403, 408 (emphasis added).

Every adult is completely protected against having "obscenity" in printed form thrust upon him. In *McCauley v. Tropic of Cancer*, 20 Wis. 2d 134, the Supreme Court of Wisconsin said that "while some words would not be tolerated if inflicted on unwilling listeners . . . an offended reader need only close the book in order to escape." (20 Wis. 2d at p. 145)

In proposing the foregoing definition, we do not suggest that any photograph or motion picture which depicts an act of sexual intercourse is, per se, obscene; or that "obscenity" in the graphic media can be detected by explicit criteria. However, our definition does explicitly describe a certain category of pictorial materials—so that anyone publishing or distributing a work in that category would know he could not disseminate it by means which thrust it on adults unwilling to receive it. On the other hand, the definition would not prevent adults willing to receive such works from obtaining them.

Our definition is based on the view that there are only two constitutionally permissible purposes for prohibiting the distribution of "obscene" materials: to prevent distribution to minors; and to prevent distribution by methods which thrust such materials on adults unwilling to receive them. *Redrup v. New York*, 368 U.S. 767 (1967); *Stanley v. Georgia*, 394 U.S. 557 (1968).

In *Stanley v. Georgia*, the Supreme Court held that a state could not prevent an adult from possessing or reading "obscene" materials. Georgia had claimed the right to impose the prohibition on the theory that "obscenity may lead to deviant sexual behavior or crimes of sexuality". The Supreme Court said:

"There appears to be little empirical basis for that assertion (citing authorities). But more importantly, if the state is only concerned about literature inducing antisocial conduct, we believe that in the context of the private consumption of ideas and information we should adhere to the view that among free men, the deterrents ordinarily to be applied to prevent crimes are education and punishment for violations of the law . . ." (394 U.S. at p. 566).

If an adult is entitled to possess any material he chooses, even though "obscene", then logically he is entitled to acquire them. And his right to read and possess them would be meaningless unless publishers cannot be restrained from selling them to him. In *Stanley v. Georgia*, the Court said that one of the problems created by the "public distribution of obscene materials" was "the danger that obscene material might fall into the hands of children." See *Ginsberg v. New York*. Another was "that it might intrude upon the sensibilities or privacy of the general public. See *Redrup v. New York*, 368 U.S.C. 767, 769 (1967)." (394 U.S., p. 567) It said: "No such dangers are present in the case." The "prurient interest" definition of H.R. 19541 would prohibit distribution in circumstances where neither of these dangers were present.

In *Sam Ginsberg v. New York* and *Butler v. Michigan*, the Supreme Court emphasized that the protection of minors should be achieved by "specific and limited" statutes that do not confine adults to reading only literature suitable for children. In *Redrup v. New York*, the Court indicated the extent to which statutes Constitutionally could protect unwilling adults against the intrusion of "obscene" materials. It indicated that government could prohibit "an assault (of obscene material) upon individual privacy by publication in a manner so obtrusive as to make it impossible for an unwilling individual to avoid exposure to it." (386 U.S. at p. 769).

The Court's analysis leads to the conclusion that when a work is distributed to adults willing to receive it, and is not thrust on adults unwilling to receive it, the First Amendment prohibits government from interfering with its distribution. The Constitutional basis for this view was stated by Mr. Justice Marshall in *Stanley v. Georgia*:

"If the First Amendment means anything, it means that a state has no business telling a man, sitting alone in his house, what books he may read or what films he may watch. Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds." (394 U.S. at p. 565).

Mr. Justice Stewart put it this way in *Ginzburg v. United States*:

"In the realm of expression (those who wrote the First Amendment) put their faith, for better or for worse, in the enlightened choice of the people, free from the interference of a policeman's intrusive thumb or a judge's heavy hand. So it is that the Constitution protects coarse expression as well as refined, and vulgarity no less than elegance. A book worthless to me may convey something of value to my neighbor. In the free society to which our Constitution has committed us, it is for each of us to choose for himself." (383 U.S. 498).

The "prurient interest" definition of H.R. 19541 does not put its faith in the choice of each adult to decide what he will read. It would compel the Federal Government to remain in the futile and wasteful business of "telling a man" what he can read. Our definition complies with the fundamental Constitutional principle that "it is for each (adult) to choose for himself" what he will read. And it protects any adult unwilling to receive obscene materials against intrusion of such works on his privacy. This, together with statutes to protect minors (conforming to the standards of *Ginsberg v. New York*), fulfills the Constitutional obligation of the Congress in this area—and reaches the outer boundaries of its Constitutional power to impose restraints on freedom of expression there.

The Bill, S. 3220, would require the labelling of envelopes containing, "sexually oriented" advertisements. The existing law (39 U.S.C. 3008) permits any individual to prevent the invasion of his privacy by sexually oriented advertisements. This section was held Constitutional by the Supreme Court because it did not intrude the Government as a censor, and permitted each person to decide for himself what materials he did not wish to receive. S. 3220 has the very defect which the Court found Sec. 4009 to be free of—the Government is given the role of censor.

S. 3220 invades the privacy of persons who wish to receive advertisements for books, paintings and other works which are not obscene, but which may be labelled as "sexually oriented" by publishers too timorous to risk the heavy, and probably unconstitutional, penalties imposed by the Bill. The "Scarlet Letter" labelling on envelopes containing these materials will brand the recipients as persons choosing to accept "sexually oriented" advertising (and materials), and thus expose them to public disapproval in their communities. This pressure will lead some people into self-censorship—into refusing to accept materials they wish to have, for fear of incurring the disapproval, shame or scorn of their neighbors. Moreover, the heavy penalties imposed by the Bill create a grave threat which will lead some publishers into self-censorship. They will refrain from mailing unsolicited advertising for some books and materials which are fully protected by the First Amendment because they would not wish to label the envelopes and thus become known as firms which disseminate "sexually oriented" advertising; and, on the other hand, they would not risk mailing the advertising without the labelling for fear a Judge or Jury might later disagree with their evaluation, and hold that they violated the law by omitting the label.

STATEMENT OF WEIL, GOTSHAL AND MANGES, COUNSEL, ASSOCIATION OF AMERICAN PUBLISHERS, INC.

This statement is submitted on behalf of the Association of American Publishers, Inc. in opposition to H.R. 19541.

The function of the Association is to advance conditions affecting the publication of books and other educational materials. Its membership consists of approximately 250 firms, comprising most publishers of hard and paper cover editions of general and text books published in the United States, including art and university press books directed to both adult and juvenile audiences. The Association's concern with the problem of obscenity is as great as that of any business group in the United States, and it appreciates this opportunity to express its strong opposition to this bill.

Since several sections of Titles 18 and 39 of the United States Code deal with the advertising, importing and mailing of "obscene" matter, a uniform and consistent definition of the word "obscene" is not only desirable but is indeed

imperative to meet the demands of due process and equal protection. The proposed statutory definition of "obscene" in H. R. 19541 will, however, defeat that goal and create untold confusion. But beyond that, it would repudiate and in fact destroy the constitutional standard developed by the Supreme Court as to what matter falls beyond the protection of the First Amendment. It would furthermore reimpose a nineteenth century standard.

The present Supreme Court test for judging obscenity is:

"[T]hree elements must coalesce: it must be established that (a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value." *Memoirs v. Massachusetts*, 383 U.S. 413, 418 (1966)

This standard was not hastily determined. The Supreme Court laid a foundation for the above definition nine years before in the leading case of *Roth v. United States*, 354 U.S. 476. Although *Roth* held that obscenity is not protected speech, the Court emphasized the value of the First Amendment protections to our free society.

"The fundamental freedoms of speech and press have contributed greatly to the development and well-being of our free society and are indispensable to its continued growth. Ceaseless vigilance is the watchword to prevent their erosion by Congress or by the States."

The court cautioned that the exception for obscenity must be sharply delineated and restricted.

"The door barring federal and state intrusion into this area cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests."

Additionally, the Court said:

"All ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests.

Following the dictates of its opinion in *Roth*, the Supreme Court has increasingly refined its definition of "obscene" matter which in *Roth* was held to depend on "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest". In *Manual Enterprises v. Day*, 370 U.S. 478 (1962) the Court added the requirement that the material be "patently offensive"—that is so offensive on its face as to affront current community standards of decency. Then in *Memoirs*, the Fanny Hill case, the Court clarified the requirement that an obscene work also be "utterly without redeeming social value". The Court specifically stated that the Massachusetts Court "erred in holding that a book need not be 'unqualifiedly worthless before it can be deemed obscene'".

Passage of H.R. 19541 would destroy this constitutionally required definition of obscene. Our opposition to H.R. 19541 is based upon its purposeful and outright obliteration of the Supreme Court's constitutional standard in the following three respects.

(1) The bill eliminates the second element of the Supreme Court's present three part test of obscenity, to wit patent offensiveness. Subsections (a) (1) and (2) of the proposed Section 1466 blatantly destroy that element, which was announced in *Manual Enterprises* and subsequently followed. In its place the bill uses the broader and more ambiguous phrase of matter "which goes substantially beyond customary limits of candor," thereby prohibiting material which may be unusually candid but not offensive.

(2) The bill also completely eliminates the third constitutional requirement of the present definition, to wit, utter lack of redeeming social importance. Paragraph (b) of the proposed Section 1466 states that: "Any matter which is obscene under this section shall be deemed conclusively to be utterly without redeeming social importance." This would completely destroy this element of the test and, in effect, would reinstate the standard of the Massachusetts Court in the Fanny Hill case specifically rejected by the Supreme Court in that case as unconstitutional. Such abolition of this third requirement would deny responsible citizens, including educators and students, access to many existing and many possible future works of social, historic, or artistic importance.

(3) Finally, although in general thrust H.R. 19541 ostensibly follows at least the initial *Roth* requirement that matter is obscene "which has its predominant appeal to the prurient interest when considered as a whole by contemporary

community standards," in fact the bill even falls short of that preliminary constitutional requirement. Sub-subsection (A) of paragraph (a) (2) of proposed Section 1466 which concerns reading matter for adults (rather than minors) sets up a different standard when "matter is designed for, or directed to, an *especially susceptible audience*," and runs contrary to both *Roth* and the even earlier case of *Butler v. Michigan*, 352 U.S. 380 (1957) as applied to adult reading matter. In *Butler* the Court, by Frankfurter J., ruled that a Michigan statute which created an offense of making available for the general reading public a book found to have a potentially deleterious influence upon youth was unconstitutional. Refuting the State's argument that it was thereby promoting the general welfare, the Court said: "Surely, this is to burn the house to roast the pig."

The *Butler* case was one of the earliest Supreme Court repudiations of the old English standard for testing obscenity set forth in *Regina v. Hicklin L. R.*, 3 Q.B. 360 (1868). The *Hicklin* test was based upon the effect of the material upon the most susceptible persons in the audience. While this test was formally constitutionally rejected in *Roth*, sub-subsection A in this bill appears to be an effort to return to this old and basically unAmerican standard. Furthermore, since the following sub-subsection, "B", in the bill specifically treats minors, the only obvious group of greater susceptibility, the problem of labeling some group "especially susceptible" may create further grave problems of unconstitutional vagueness and discriminatory classification.

Because of these principal defects in H.R. 19541, the Association of American Publishers feels that passage of this bill would result in constitutional invalidity and in a great injustice to our society which has thrived on the traditional American protections of free speech and press.

STATE ATTORNEY,
Miami, Fla., November 25, 1970.

SUBCOMMITTEE ON POSTAL OPERATIONS,
House of Representatives,
Congress of the United States,
Washington, D.C.

GENTLEMEN: Enclosed is a portion of a report on pornography by the Dade County Grand Jury filed November 10, 1970. Perhaps you would wish to include this in your records regarding your hearings on obscenity.

Very truly yours,

LEONARD RIVKIND,
Special Assistant State Attorney.

Enclosure.

PORNOGRAPHY

Acting upon the recommendation of the Fall Term 1969 Dade County Grand Jury, we have continued a probe into the sale of obscene and pornographic books, magazines and films. We find that pornography has escalated from mere nudity on the stage and girlie magazines to every known form of erotic human sexual behavior, known and imagined, and aberrancies of sadism and masochism. This obvious proliferation of filth, now a two billion dollar a year business, will surely manifest itself in other media and become the rule rather than the exception, if not stopped.

When you have gone as far as you can go, what is left? History has proven the undermining of the dignity and sanctity of the home preceded the demise of great civilizations. Apparently the lessons of history have fallen on the deaf ears of some of our judiciary. Absolute freedom of behavior and expression of the pornographic results in the degeneration of a social system and a total eclipse of the arts. Civilization and animal standards of behavior cannot long co-exist.

Is there a solution? Can morals be legislated? We think so. As a nation of paternalistic laws, we require our citizens to save for their old age, although some would live for today; gambling is sanctioned only under state control; marijuana is forbidden; ready and willing prostitutes are barred by law; even cutting your own throat is a criminal act. This Grand Jury is not interested in dissipating décolletage nor setting forth upon a witch hunt concerned with a puritanical purification of American virtue.

We do feel that we have gone as far as we can go.

Can liberal and conservative, literati and Philistine, urban and rural citizens co-exist? Various alternates to enforcement of existing obscenity laws have been offered, among them:

1. Legalize obscenity for adults. The logic, apparently, legalize it and it will go away by itself. We have only to look at Denmark, the only country to completely legalize pornography, to view the appalling and degrading results.

2. Apply a double standard. Legalize a certain level of obscenity for adults and another for juveniles. This alternate appears politically sound but begs the question. The smut pedlar sells to an adult audience and avoids sales to juveniles. If obscenity is legalized for adults, it must find its way to the young, whether from Dad's dresser drawer or a Boy Scout paper drive. Such a double standard would be impossible to enforce.

The *only* workable alternative is stricter enforcement of existing obscenity laws which have been consistently recognized as constitutional by the United States Supreme Court and which make it a criminal offense to produce, distribute or sell obscenity to adults or juveniles. Into each and every law there should be included definitions which describe that material which to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole, appeals to the prurient interest.

Juries, in their wisdom, can then determine whether or not a specific book, magazine, film or other subject is or is not obscene.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF PUBLIC WELFARE,
PHILADELPHIA STATE HOSPITAL,
Philadelphia, Pa., August 13, 1970.

HON. ROBERT N. C. NIX, Sr.,
8325 Stenton Avenue,
Philadelphia, Pa.

DEAR SIR: You are perfectly right in your opposition to the testimony given by the three doctors on the President's Commission on Pornography, as reported in the Evening Bulletin of August 11, 1970. The claim that pornography is not harmful is not true. I am a psychiatrist, a Clinical Director at Philadelphia State Hospital, and have been in practice in State service for over thirty years. I have seen many patients who would not have become mentally ill if they had not been exposed to pornography or overt sex acts in early life. Premature exposure to overt sexuality renders a person unable to develop maturity and, therefore, unable to enter into a normal marital relationship even though reaching an adult age chronologically.

Every psychiatrist sees in his patients the *long term* effect of pathological sexuality. How the individual psychiatrist interprets what he sees depends upon his personal philosophy. To cure the mental patient it is necessary to recover the early memories of the sexual trauma and give him a mature understanding of his early problem.

The report of the doctors from the University of North Carolina that prolonged exposure to pornography becomes "boring" is only partially true. There is a much deeper *pathology*. Pornography often makes the male impotent sexually, and the female frigid.

Rollo May, in his recent best selling book, "Love and Will", points out that the exposure to blatant sex, which has become a cultural characteristic in our society, is responsible for many of the cases of impotence and frigidity.

Pornography has been a great concern to me because I have seen the great harm which has come from it. Being a cause of sexual maladjustment, it is indirectly responsible for broken homes and the resultant confusion of the children of separated and divorced parents.

Please continue your forceful stand in opposition to this terrible social menace.
Respectfully yours,

W. EARL BIDDLE, M.D.,
Clinical Director.

MARION, OHIO, August 17, 1970.

Congressman ROBERT NIX,
Congressional Offices,
Washington, D.C.

DEAR SIR: As a concerned citizen, I wish to offer the following unsolicited opinions regarding the subject of pornography. I am in favor of legislation to limit its publication and distribution.

The findings of the President's Committee on this subject are inadequate. On the face of it, the distinction they make between pictorial and live presentations is artificial and illogical. The effects on viewers would be essentially the same. Further, to conclude that pornography is harmless to adults because they found no evidence of its harmfulness is irrational. Neither do they have sufficient evidence to show that it is *not* harmful.

Even normal persons may be harmed by exposure to pornography. The viewing of normal heterosexual relationships may abnormally increase the male's marital sexual appetite, and thus contribute to marital discord. (Incidentally, the limits of normal heterosexual behavior have not been established.) Or, such viewing may stimulate desire for extramarital behavior.

In psychologically healthy adults—but especially in the maladjusted—the stirring up of unconscious factors, such as latent homosexuality, exhibitionism, voyeurism and sado-masochism by pornography is probably potentially quite harmful, whether or not it contributes to antisocial behavior.

In fact, even on the conscious level, it is probably not advisable to have vivid visual impressions of normal or perverse sexuality in one's mind, not because of the subject matter *per se*, but because the intensity and memory may be disturbing. The same could be said of vivid verbal descriptions or movies of torture. It is one thing to obtain essential knowledge about sex, torture or other realities by reading factual discussions, but quite another to read detailed verbal descriptions or to view visual presentations designed to emphasize emotional or shock effects. This point is especially relevant in view of the fact that unprincipled persons will go the limit. The definition of pornography must ultimately be more or less arbitrary—a matter of informed judgement; it is better to be conservative than to establish a limit far down the line.

It is illogical to say that there should be no limits on pornography for adults, just for youth. Youth will find access to it if great quantities are produced. Furthermore, youth will resent the double standard.

I strongly urge strong and effective legislation against pornography.

Respectfully yours,

S. W. KLINGENSMITH, PH. D.,
Clinical Psychologist.

STARR COMMONWEALTH FOR BOYS,
Albion, Mich., August 13, 1970.

Representative ROBERT NIX,
Chairman, House Postal Operations Subcommittee,
House of Representatives, Washington, D.C.

DEAR MR. NIX: While reading of the rough draft of the findings of the Presidential commission that investigated the effects of pornography on sex crimes, illegitimate births, delinquency, etc., I felt that not only was the 2 million dollars wasted but the factual truth which is known by most of us who are involved day and night over a number of years with emotionally and socially maladjusted youngsters was ignored. That truth is that children are definitely affected by pornography, by violence on television and in films and books. Some day we are going to pay a high price for carelessly liberalizing and accepting decadence and the rise of those destructive forces which have helped to undermine and destroy great civilizations throughout history.

I have spent the last twenty years working with juvenile delinquents and emotionally disturbed children as a professional child care worker, therapist, and psychologist. I know about their lives, their families, their conflicts, their fantasies and their reality from first hand experience. It is very difficult in a short letter to deal with all of the findings which I have collected over the years but, some day, when I can steal a little time from these unfortunate boys I shall produce these facts in book form.

Please allow me to mention a few examples drawn from case histories of children with whom I have worked.

1. Sixteen boys, aged 10-13, from a residential center for emotionally disturbed children, went to see a film called "The Vikings". During the film there were scenes of killings, the burning of cities, the raping of women on a wholesale scale. A day or so later these same children attacked the girls in an adjoining cottage at the institution, setting fires, beating up their peers and tearing off the dresses of the girls.

2. After viewing sexually exciting films on a late show twenty-three out of twenty-five boys in a group felt compelled to masturbate.

3. The number of incidents of masturbation increased in a group of boys after they had examined pictures in certain pornographic magazines obtained in a nearby book store. In addition these boys sneaked into the girl's dormitory of the institution. They were preoccupied with sex and sexual relations.

4. Pornography in books and on film induced dreams, nightmares, and fantasies that were very high in sexual components. Evidence of this was collected from their drawings, clay modeling, and their talks and discussions with staff members and their peers.

5. Over a three year period I experimented with small groups of young children in the age range from 5 through 10. I observed their reactions after watching cartoons which were high in violence such as Popeye. When the television was turned off the children showed aggressive outbursts of punching, fighting, pushing, and running around. On the other hand, peaceful cartoons did not elicit a heightened level of aggression.

It seems to me that exposure in early childhood to large amounts of violence and sex condition our youngsters to accept violence and sex as near normal. Girls, or women become simply pleasure machines to boys and are often considered less important than a car, getting drunk or sniffing glue or driving too fast. While the Jesse James television series was shown 91 boys out of 100 questioned chose Jesse James as their hero and expressed a wish to be like him. The already deformed minds of emotionally and socially maladjusted children are easily aroused and are unable to defer fulfillment of desires or postpone the need for gratification. Such minds are encouraged to seek instant satisfaction of any and all desires by the content of pleasure arousing films, pictures, and books.

I feel that the seams of society are coming apart. Many can see the writing on the wall but some of us are making fantastic profits by poisoning the minds of children in an age which is already experiencing a grave moral crisis and a frightening rise in lawlessness.

I am sending this letter to you to assure you of the support of myself and numbers of my colleagues in your struggle against too great a liberalization of the pornography laws.

Yours sincerely,

LESLIE DEFINTA, M.A., M.F.A.,
Staff Psychologist.

MADISON, WIS., October 27, 1970.

COMMITTEE ON POSTAL AFFAIRS,
U.S. House of Representatives,
Washington, D.C.

GENTLEMEN: Although circumstances have kept me from appearing before you personally, I consider it a privilege to present this statement for your consideration.

As the writer of nine books of history, including the "Child's Story of the Human Race," I have studied the slow, sometimes painful progress of mankind from the Old Stone Age up to modern times.

In the twentieth century, we are going through the most amazing transformation in transport, the greatest forward step in medicine, and the most remarkable increase in scientific knowledge in all history.

That is on the plus side, but concurrently we are suffering from grave difficulties. We are threatened by nuclear war which may, or may not, materialize, and we have the present fact of pollution. There is pollution of the air and pollution of the waters, and we must meet these evils with the might which is inherent in our race.

In addition we are confronted, oh so needlessly, with Pollution of the Mind. Driven by greed for money, without consideration for the good of our country, there are individuals who have started the introduction of obscene books and motion pictures, and now these purveyors have had the temerity to demand that our laws be loosened to permit the spread of these injurious things far and wide over the land.

A commission which was intended to serve as an honest group to study the obscenity problem was infiltrated with individuals who, in various cases, knew in advance what they would report as their conclusion, and knowingly or otherwise were prepared to assist the purveyors to garner hundreds of millions of dollars by marketing their products. In the course of this "work," the controlling members of this group were guilty of the shameful procedures at the University of North Carolina. In addition they put forward the fantastically erroneous

assertion that having studied the reactions of some college students, they were justified in assuming that the same reactions to obscene material would be true for children.

I assail this "commission" for its patently unscientific procedures and conclusions in regard to university students. To what extent were typical students tested? With the reputed spending of two million dollars, there were ample funds to learn the exact background of each student tested. If the students had been prevailingly loose in their background, could they be proper subjects for scientific evaluation of their reaction after a bath of obscenity?

As to the child mind being like the college student, let me refer you to the teachers in elementary schools, to pediatricians, in short, to anyone who knows children. In my own work as a teacher of children, as a lecturer who has spoken in hundreds of schools throughout the United States and who has answered questions in classrooms as well as auditoriums, let me assure you that I have found wholesome children everywhere, boys and girls who are sincerely interested in history, science and human progress. To repudiate those children, to engulf them in a world of indecency would be a crime of the first magnitude.

But the protection of children from obscenity is only part of the problem. Obscene publications and obscene motion pictures should be barred from every method of transport across interstate lines. Whether carried by mail, by express, by freight, by truck or by any other conveyance, these sources of injury should be stopped to the utter limit within the power of the federal government.

Before closing, I wish to urge that Congress provide every possible help to state and local governments in regard to their laws against the vending and spreading of obscene or pornographic material. Since the federal government has control over interstate commerce, it seems that those who transport materials across state borders must be forbidden to mail, send by express or otherwise transmit such material to any state in which its delivery would violate state law. Here is an important, even vital, battle against Pollution of the Mind.

Sincerely yours,

RAMON COFFMAN.

STATE OF INDIANA,
APPELLATE COURT,
Indianapolis, September 30, 1970.

HON. ROBERT NIX,
*House of Representatives,
Washington, D.C.*

DEAR CONGRESSMAN: You will find enclosed a copy of a letter which I wrote recently to President Richard M. Nixon in regard to the majority report of the Presidential Commission on Obscenity and Pornography. I would appreciate your consideration of its contents.

Thank you.

Very truly yours,

ALLEN SHARP.

September 30, 1970.

HON. RICHARD M. NIXON,
*President of the United States,
The White House,
Washington, D.C.*

DEAR MR. PRESIDENT: As the father of two little girls, ages 5 and 4, and as a public official with a responsibility in the Judiciary, I am deeply concerned about the announced report of the Presidential Commission of Obscenity and Pornography. I realize that this Commission was appointed in January 1968, by President Lyndon B. Johnson and that attorney Charles H. Keating, Jr., of Ohio is your only appointee on this Commission.

My concern in this letter centers around two matters. First, I am deeply concerned about the manner in which the majority of this Commission rode roughshod over Mr. Keating, Father Hill and the minority members in regard to the conduct of the Commission's business. It is shocking, and a little sad, that Mr. Keating was forced to file a case in the United States District Court for the District of Columbia simply to obtain the right to file a minority statement. It is perfectly obvious that a majority of this Commission, and especially its selected staff, were predisposed to suppress the views of Mr. Keating and Father Hill from the very outset. When the legislation that created this Commission was pending before the Congress only the American Civil Liberties Union appeared

against it. After its creation, strangely enough, both the Commission's Chairman and Executive Director turn out to be members of the only organization to oppose its creation. This can hardly be termed accidental! Secondly, and more importantly, I am astounded at the Commission's substantive conclusion that pornography is harmless.

It is also perfectly apparent that a majority of the Commission and its staff, several of whom are members of the American Civil Liberties Union, were clearly committed to the so-called "scientific proof" concept and rode rough-shod over the minority on the Commission to justify their own conclusions. It is very strange how unconcerned our friends in the American Civil Liberties Union become about minority rights when they are in the driver's seat. I believe this is called repression.

The psychological techniques and their testing procedures used by the Commission are highly questionable from a standpoint of good investigative procedures and in some instances were possibly a violation of the law. Such distinguished authors as Professor Kenneth E. Davis of Rutgers University and George N. Breichert of the University of Colorado, in presentations before the American Psychological Association in Miami, Florida, raised serious questions about the techniques and the conclusions of the Commission's majority.

Dr. Natalie Shainess, a distinguished authority on psychoanalysis, issued an extensive statement criticizing both the techniques and the conclusions of the Commission on August 23, 1970. In part, Dr. Shainess stated: "In advertisements, films and books, pornography washes over us all like a great wave of sewage. It corrupts the body and numbs the mind and senses. So overwhelming is this tide that nobody—not myself, a practicing psychoanalyst—can remain untouched by it. From my own professional practice, I know that the more we are exposed to things that are degrading, the more we are degraded. Despite the 'research' of the President's Commission on Pornography and Obscenity, this observation should not come as a shock to anybody, especially social scientists."

Another distinguished psychologist, Dr. Victor B. Cline of Salt Lake City, stated on August 11, 1970, in part, "While this report represents itself on the surface as a fairly truthful, rational review of scientific evidence, it, in fact, is a gross mixture of truth and error, part simply fiction, and certainly a travesty as a scientific document." Dr. Cline further stated that the draft Commission report was full of the selective use of statistics, bases conclusions on inadequate data, makes no mention of such negative effects as extracurricular sex and draws conclusions, "which represent an almost 'Alice in Wonderland' type of distortion of the actual evidence."

Perhaps the most damaging faults and failures of the Commission's reports have been stated publicly and extensively by Commissioners Charles H. Keating, Jr. and Father Morton A. Hill. I assume that you will carefully consider the minority report prepared under Federal court order by Mr. Keating, Father Hill and the minority of the Commission.

I'm sure you realize that the Commission itself did not hold any public hearings, although Mr. Keating and Father Hill held such hearings, the expenses for which were incurred and paid for privately.

Aside from the expert criticism of the techniques and conclusions of the majority of this Commission, it is my own deep conviction that this Commission has ignored the fundamental inter-relationship between our moral and political values. It is perfectly apparent that the Commission's majority commenced its investigation from an amoral premise. If I understand anything about the origins of this country, it commenced on a highly moral premise and moral values are deeply embedded in its public tradition. The majority of the Commission has simply ignored this premise.

Senator Mike Mansfield recently stated that, "The growth of pornography in the United States was the number one pollution problem." As evidenced by this, there are in the Congress more than 200 bills pending dealing with the subject, including the Administration's own program.

There is a wide range of opinion which extends far beyond sectarian religious thought which is highly relevant to the problem of obscenity and pornography in our society. The problem of reconciling our freedom with the problem of obscenity and pornography was recently well stated by Mr. Ralph Graves, managing editor of Life Magazine, where he stated in the July 4, 1970, issue, "I am well aware of the fact that any publicity, any comment of any kind, can be turned to advantage. As I write this, I can imagine the ads: "Slit your throat—LIFE."

"Most vulgar movie ever made—LIFE." No doubt they will sell tickets. And yet I feel that at some point we should make an effort to draw the line—not in censorship but in disgust. Freedom to create in all fields of American life has become broader and broader, and this freedom should be precious to all of us. But the freedom to reject is important too. Vulgarity and freedom are not synonymous. Obscenity and freedom are not synonymous. Freedom gives us the opportunity to do and be many things, and it can take many forms."

Mr. O. N. Wilson, former superintendent of the Chicago police, and a distinguished authority on police procedure, stated, "Obscene literature is a primary problem in the United States. Sexual arousals from obscene literature have been responsible for criminal behavior ranging from vicious assaults to murder." In this same vein, Mr. Herbert Cass, former Detroit police inspector, stated, "There has not been a sex murder in the history of our department in which the killer was not an avid reader of lewd magazines."

In regard to the ill effects of pornography on children, Dr. Nicholas G. Fragmita, Chief Psychiatrist of the Philadelphia Municipal Court, handling juvenile delinquency, has stated, "Our prisons, correctional institutions and mental hospitals are jammed with unfortunates who are a prey of pornography. Others may never recover their mental health, others may never have freedom. Pornography is an instrument for delinquency. It is an insidious threat to moral and mental and physical health. It debases the true meaning and function of sex. It leads to eroticism and morbid preoccupation with sex and incites to immoral, and anti-social activity. The purveyor of pornography is an immoral, corrupt, degenerate individual who completely disregards the harm he causes to public morality and decency . . . The viciousness of his trade can be equaled to a pestilence." The most dangerous conclusion of the Commission's majority is that pornography is not harmful, even to children.

The distinguished novelist, James A. Michener, who is certainly not in favor of censorship and is not known as a puritan, had this to say. I am enthusiastically in favor of sex. It is one of the finest of all human experiences, the somewhat mystical means whereby our race perpetuates itself. And it is also the source of enormous human pleasure. I have found sex to be enabling, hilarious, tender, ribald and creative, and I would never agree to anything which diminished its free exercise. As a writer I am professionally interested in sex, since it provides the artist with a large portion of his best material. In my novels dealing with the great conflicts that engulf men and women in love, I have written about some fairly robust situations and have never held back from using four-letter words to describe the actions of my characters when such words were germane to the situation. The older I grow, the more impressed I am with the marvelous force of sex in art, from Shakespeare's stunning tragedy of Romeo and Juliet through Verdi's Aida and on the powerful novels and plays being offered today. I would deplore any act of my society which deprived artists of this greatest of subject matters. I am constitutionally opposed to censorship. *Nevertheless, today's traffic among our teen-agers in books of perverted sex and violence should be stopped. If present laws are unable to handle this problem, new ones should be passed. And if present constitutional or judicial interpretations make more difficult the enforcement of such laws, then changes must be made in either the Constitution or the judicial interpretation, or both. If you ask, "Are you then recommending censorship?" I will have to reply, "Yes." But I want to make one point very clear. I am against this flood of sex-sadism for one specific reason, a reason so solid that I cannot imagine opposition to it. It is wrong, and terribly dangerous, to put into the hands of young people—who are in the process of establishing the guidelines for their sexual behavior—books and pictures which would pervert or prevent the development of satisfactory habits. I do not want young boys seduced into homosexual relations before they have even had a chance to discover for themselves how satisfactory heterosexual relations can be. I do not want girls to be taught that whips and chains are normal concomitants of sex before they find out for themselves that they are not. I realize, of course, that chances are small that permanent damage will result from just a passion exposure to pornography. That's not my point. My point is that such material has absolutely no place in the lives of children. Children under certain ages cannot buy cigarettes or whiskey. They are forbidden to drive cars, can't have guns, contract bills or get married. Yet in this most difficult of areas, our nation has failed to set clear and enforceable standards to prevent the sale of sexually destructive material to minors." (My emphasis.)*

David Merrick, a highly successful Broadway producer, recently stated, "Hard-core pornography is nothing new, but rarely in modern history has this kind of

material paraded as legitimate theater. Now, for the price of a Broadway ticket, the audience may be lured into a converted garage or loft, seated on wooden chairs and, in an atmosphere redolent of a gymnasium, watch a stage full of zombies mime sexual acts without reference to love or affection or joy. It is mechanical performing, and therefore not even lewd. It is no turn-on. It is a bore. I am concerned about this because live theater, while small compared to some of the other arts, is wide in influence. It is a seed-bed of our culture. The theater translates many important novels into the spoken word; we pass on to the movies our visions, the fruits of our talent. What we do in the theater affects the texture of our society, influences the moral and, yes, political attitudes of our nation. Since the days when Romans were entertained by hired actors performing scenes of sodomy, rape and incest, the theater has labored to shed the ancient stigma of immorality. Only within the past few decades has that battle been won. And now, this!

David Merrick is not a prude and neither am I. He does manifest a far greater understanding of the values that are involved in our society and its entertainment media, which values apparently were either ignored or not understood by the Commission's majority. Dr. Max Rafferty, State Superintendent of Schools in California, recently stated, "Venereal disease among our California youth has more than doubled in five years. Premarital pregnancies are running off the top of the graphs. Sex crimes, especially against children, are proliferating in such ghastly profusion that many California parents are afraid to send their youngsters to the grocery store. Law-enforcement officers in my state tell me that they find stacks of printed nastiness in the possession of almost every juvenile sex offender they pick up. If you doubt this, I suggest that you ask your own police chief. No, I can't prove definitely that pornography *causes* such tragedies, any more than I can prove beyond peradventure that fleas cause a dog to scratch. But the evidence is overwhelming. For almost 30 years I've been an educator and worked among the young, and never have I seen a direr, dirtier danger to our youth than this avalanche of obscenity that is now burying us. In its own way, this material is as dangerous for them as a diet of strychnine." Strangely enough, a recent statement by Dr. Benjamin Spock, who is a world apart from Max Rafferty on most questions, almost exactly paralleled the above quotation from Dr. Rafferty. In a book published just this year, Dr. Spock stated: "For decades I was an uncompromising civil libertarian and scorned the hypocrisy involved in the enforcement of obscenity laws," he says, "But recent trends in movies, literature, and art toward what I think of as shock obscenity, and the courts' acceptance of it have made me change my position . . . particularly in view of other brutalizing trends. In our so-called emancipation from our Puritan past I think we've lost our bearings. Many enlightened parents still have inner convictions but are afraid that they don't have a sure basis for teaching them to their children. Some of their children are quite bewildered, as child psychiatrists and school counselors report. Sophisticated justices are afraid of being considered illiberal." (Decent and Indecent, McCall, 1970.)

Jenkin Lloyd Jones, editor of the Tulsa Tribune and immediate past president of the United States Chamber of Commerce, has pointedly remarked, "I think it's time for the proprietors of the press, the lords of television, the moguls of the screen and the producers of plays looked upon the social wreckage around them and faced up to their own culpability." Professor Harry Clor has added, "Obscenity is a way of looking at man which dehumanizes human purposes and human beings. Civilized society cannot be neutral toward a perception of life which undermines its efforts to make man something more than a creature of elemental passion and sensations."

It is my further view that the Commission's report doesn't even represent a semblance of compliance with Public Law 90-100, which created it and, in fact, wholly fails to conform to the mandate of that law.

In short, it seems very clear that the public has financed a study to justify the pre-conceived conclusions of the American Civil Liberties Union that pornography is harmless. This is contrary to psychology, basic morality and just plain common sense.

Your Administration owes it to the country to disassociate yourself with the majority report and to explicitly embrace the minority views of Mr. Keating, Father Hill and others. I commend attorney John Mitchell for his statement in this regard at the District Attorney's meeting and the recent statements of Postmaster General Blount and other officials in this regard. However, I believe that the dimensions of this problem are of such nature that it demands a very clear and explicit statement from you. I urge you to make such a statement.

Further, I believe that it would be in order for the Congress to pass a resolution declaring that the majority of the Commission has utterly and completely failed to live up to the Legislative mandate which has imposed upon it by the Congress. I think that such a measure should be introduced and passed. I also strongly recommend that appropriate committees of the Congress thoroughly investigate the appointment, conduct and report of this Commission.

Notwithstanding your rejection of the majority report, by a majority of the Congress, and indeed by a majority of the public, this report is still an official document of the United States of America and prepared at public expense and therefore enjoys and will enjoy some considerable prestige. As lawyers, you and I know that this report, however discredited it may be, will be waved in front of every court in the United States in every obscenity and pornography case. For example, the August 19, 1970, issue of the Wall Street Journal indicated that a Federal judge in Baltimore had postponed a ruling on a major pornography case until he could see the final report of the Commission of Obscenity and Pornography. It is not an overstatement to suggest that however discredited this report may be, it has already done substantial harm to the cause of decency in this country.

I think that Father Hill has put his finger on the sensitive nerve when he recently said, "This cause-effect relationship to crime is a smoke screen libertarian extremists have been throwing up for years to cloud the basic issue. That issue is this: pornography erodes public morality." These same sentiments were echoed by Pope Paul VI when he called pornography a drug that perverts men's morals. He stated: "The very delicate and serious question involves not only the spiritual and moral dignity of your consciences before God . . . but also the protection of man's most sacred values faced with daily spreading of an unbridled license never equalled in the history of journalism. It infiltrates subtly, unconsciously, deadening and wrecking the conscience, particularly of youth and of persons who lack will power."

Shortly before his death, Senator Everett McKinley Dirksen supported Senate Bill 1077 which, as you know, is one of the major anti-obscenity bills pending in the Congress. In an article written before his death and published thereafter, he stated, "For my part, I intended to use every means at my disposal to see that my bill is enacted. But I need the backing of an aroused citizenry. Every one of you can help, individually and through civic groups and local organizations, by writing your Congressman and both of your Senators expressing your outrage at the filth now engulfing our land and urging their support of S. 1077. If all of us pull together, we can win this fight."

I know that I need not lecture you on the moral dimensions of the Presidency; however, I believe the statement of General Eisenhower is in point in the last paragraph of the last article that he ever wrote for publication in which he says: "The President of the United States should stand visible and uncompromising for what is right and decent—in government, in the business community, and in the private lives of our citizens. For decency is one of the main pillars of a sound civilization, and an immoral nation invites its own ruin."

Mr. President, I know that you carry intense and heavy burdens of this nation and I know that you are deeply aware of your responsibilities. As a citizen, a public official and particularly as a father, I also feel a deep responsibility to speak strongly on this most important of issues. I urge you to speak to it forthrightly and without equivocation.

In 1953 and 1954, while a student at George Washington University, I was a mail carrier for the United States Senate and delivered your mail to Room 361 in the old Senate Office Building. At that time, and ever since, I have had deep respect for your character and moral sensitivity. Your conduct of the Presidency has extended that respect. May God bless you.

Respectfully yours,

ALLEN SHARP,
Judge, Appellate Court of Indiana.

STATEMENT BY MELVIN ANCHELL, M.D., PRESIDENT, EMERITUS, SIECOP,
LOS ANGELES, CALIF.

Recently, leading proponents of sex education met in Washington to appear before the Presidential Commission on Obscenity and Pornography (May 13, 1970). Their mission was to convince this authority that classroom sex instruction was a means of counteracting the adverse effects of pornography on young people. The educators' assumption is alarmingly fallacious. Contrary to their

theory, such education adds to the sexual distortions to which young people are already subjected.

Direct experience with these programs reveal the sex courses provide the same type information that overwhelms the child from the pornographic media. Because teachers act as parent substitutes what the student learns in school is usually accepted as correct sexual information. The same material presented in under the counter magazines is frequently regarded as fantasy. Consequently, the results from schooling are more serious.

The notion that schoolteachers presiding over coeducation sex classes can correctly develop a child's sexuality is not in accord with the science of the mind. Indoctrination with sexual knowledge, either early or late in life, is by no means a prerequisite for a normal sexual development affording an appreciation for *mature* heterosexuality. Nor, is knowing about intercourse and genital anatomy a means of preventing sexual maladjustments. Similarly, textbook sex information is not needed for a child's sexual maturation. These instructions interfere with natural responses to sensual impulses linked with early stages of sexual growth.

Only parents, or those responsible for a child's total care, can, in reality, influence the child's latent sexual instinct and sexual growth. Through child-parent relationships, the young person learns that physical love is inseparably entwined with affectionate love. By example, the mother and father show that sex is a one woman—one man affair. Of course, all families do not provide ideal circumstances for a child's sexual maturation. Nevertheless, emotional alliances with the parent are indispensable for a mature sexuality.

Civilized societies derived from family life are entirely dependent on maintaining the intimate nature of sex. Only in a horde culture can sex be accepted as an entirely open matter, freely exposed.

Most contemporary youths are informed about the mechanics of mating, and many have a medical understanding of gestation and of how to deliver a baby. In my experience as a physician with not an inconsiderable number of young patients, I find that overly informed youths are, in fact, the ones most likely to have sexual problems. These young people are the ones, too, who most frequently regress to and become advocates of primitive horde type groups bent on destroying family derived societies.

Group participations in sensual sex whether by means of actual sex acts, through the use of the pornographic media or with the help of classroom sex programs are contrary to the normal *intimate* nature of sexuality. Anyone responsible for teaching people how to have intercourse should be aware of this intimacy. However, sex educators seem to ignore the unnaturalness of learning about sexual experiences in the schoolroom. In this attitude, they are bolstered by some modern psychiatrists who have been trained in the peculiar setting we call the psychiatric hospital. These teachers and psychiatrists proclaim intimacy is not an integral part of the sex instinct. They say intimate feelings are reflections of "hang ups" due to the rigidity of society's established codes. Sexual morality that has served man's adjustment for survival is declared as an obsolete man-made system unrelated to sexual urges.

To further substantiate their points of view, they often cite the "scientific" studies of university sex professors. The published works of these academicians, devoid of any real medical experience, are derived from their note jottings taken while they watch male and female "volunteers" perform sex acts. From such data, the sex scientists adduce, for their worshippers of scholasticism, what sex is all about. However, observations obtained from everyday clinical practice, and judgments based on reason and personal introspection fail to support the sex experts. Instead, these genuine findings attest to the truth in Freud teaching that intimacy is an inborn part of human sexuality.

In his writings Freud stressed that:

"The more important sexual love becomes for the human, the more urgently it requires it be limited to two people . . .

"Two people coming together for sexual satisfaction are making a demonstration against the group feeling . . . Their rejection of the group's influence is expressed in a sense of shame, and feelings of jealousy . . .

"It is only when the affectionate factor gives place entirely to the sensual one, that it is possible for two people to have sexual intercourse in the presence of others or for there to be sex acts in a group. But at that point a regression has taken place to an early stage in sexual relations, at which being in love as yet played no part . . .

"All the ties upon which family structure depends are of the character requiring inhibition of direct sexual aims."

Two people in love will share affectionate feelings with family and others; but, normally, they are intolerant about sharing their physical love with anyone else. This intolerance is the very crux of human sexuality. It has existed from man's beginning.

The blatant discussions, demonstrations, and glorifications of carnality in sex classrooms and the brazen use of obscene language to bridge "the generation gap" between students and teachers are educational perversities.

Regarding perversion, the student's conscience is desensitized to promote an abnormal tolerance for perverts in the name of humanism. Removing feelings of disgust toward perversion destroys the subconscious defense against contamination, and leaves the normal individual unprotected from the effects of perversion.

Young patients, whom I see in my office, scoff at the sex tutoring given by school teachers who in many cases are less sexually experienced than the students. They say that to be accepted by the school's affluent "in group" it is mandatory to first engage in the detailed sex instructions provided in the courses. The more they are taught, the more they do.

Because I have testified as an expert witness in court cases involving libertine sex programs, I have had an opportunity to examine a significant number of sex curricula used in public schools. I find that though the courses make a pretense of teaching morality, invariably, family values based on Judeo-Christian ethics are undermined and students are encouraged to set up their own standards devoid of sexual sublimations.

Perverted type sex education is antithesis to the mature sexuality which depends on an affectionate, monogamous relationship with a loved member of the opposite sex. Joining pornographers by taking obscenities out of the street and into the classroom is no way to lick them.

REV. MORTON A. HILL, S.J.,

MEMBER, PRESIDENTIAL COMMISSION ON OBSCENITY AND PORNOGRAPHY,

New York, N.Y., November 19, 1970.

HON. ROBERT NIX,
Chairman, House Subcommittee on Postal Operations,
207 Cannon House Office Building, Washington, D.C.

DEAR CONGRESSMAN NIX: In reply to a statement made by the Washington director of the American Civil Liberties Union, at your hearing yesterday, (as reported in the New York Times), that the definition of obscenity proposed in H.R. 19541 would be unconstitutional, I should like respectfully to request that the enclosed pages from the Legal Appendix of the Hill-Link (Keating concurring) Minority Report of the Commission on Obscenity and Pornography be included in the record.

Thank you for your attention in this matter.

Sincerely,

MORTON A. HILL, S.J.

(m) *A Book Named * * * Memoires of a Woman of Pleasure v. Attorney General of Massachusetts* 383 U.S. 413, 16 L. Ed. 2d 1 (Decided March 21, 1966).

In a proceeding instituted in a Massachusetts state court by the state attorney general, the book commonly known as "Fanny Hill" was declared obscene. On appeal, the Supreme Court reversed. The Court Reporter, at 16 L. Ed. 2d 1, states: "The * * * members of the Court * * * *did not agree upon an opinion*" [italic supplied].

Justices Brennan, Warren and Fortas stated that the Massachusetts court erred in holding that a book need not be "unqualifiedly worthless before it can be deemed obscene," and they stated their opinion at 16 L. Ed. 2d. 5 that:

"Three elements must coalesce: it must be established that (a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex: (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters and (c) the material is utterly without redeeming social value. * * *

"Even on the view of the court below that *Memoirs* possessed only a modicum of social value, its judgment must be reversed."

Justice Clark's opinion appears at 16 L. Ed. 2d 18:

"While there is no majority opinion in this case, there are three justices who import a *new test* into that laid down in Roth [emphasis supplied], namely that

'a book cannot be proscribed unless it is found to be *utterly* without redeeming social value.' I agree with my Brother White that *such a condition rejects the basic holding of Roth* and gives the smut artist free rein to carry on his dirty business. My note in that case—which was the deciding one for the majority opinion—was cast solely because the Court declared the test of obscenity to be: 'whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.' I understood that test to include only two constitutional requirements: (1) the book must be judged as a whole, not by its parts; and (2) it must be judged in terms of its appeal to the prurient interest of the average person, applying contemporary community standards. Indeed, obscenity was denoted in Roth as having '*such slight social value as a step to truth that any benefit that may be derived . . . is clearly outweighed by the social interest in order and morality*' [emphasis supplied by Justice Clark]. Moreover, in no subsequent decision of this Court has any 'utterly without redeeming social value' test been suggested much less expounded [italic supplied]. The first reference to such a test was made by my Brother Brennan in *Jacobellis v. Ohio* * * * seven years after Roth in an opinion joined only by Justice Goldberg. * * *

Justice White, in his opinion at 16 L. Ed. 2d 29, stated:

"In *Roth v. United States* * * * the Court held a publication to be obscene if its predominant theme appeals to the prurient interest in a manner exceeding customary limits of candor. Material of this kind, the Court said, is "utterly without redeeming social importance" and is therefore unprotected by the First Amendment.

"To say that material within the Roth definition of obscenity is nevertheless not obscene if it has some redeeming social value is to reject one of the basic propositions of the Roth case—that such material is not protected *because* it is inherently and utterly without social value.

"If 'social importance' is to be used * * * obscene material, however far beyond customary limits of candor, is immune if it has any literary style, if it contains any historical references or language characteristic of a bygone day, or even if it is printed or bound in an interesting way. Well written, especially effective obscenity is protected; the poorly written is vulnerable. And why shouldn't the fact that some people buy and read such material prove its social value?

"A fortiori, if the predominant theme of the book appeals to the prurient interest as stated in Roth, but the book nevertheless contains here and there a passage descriptive of character, geography or architecture, the book would not be 'obscene' under the social importance test. I had thought that Roth counseled the contrary: that the character of the book is fixed by its predominant theme and is not altered by the presence of minor themes of a different nature. The Roth Court's emphatic reliance on the quotation from Chaplinsky * * * means nothing less: * * *

"*Such utterances are no essential part of any exposition of ideals, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.*" [Emphasis supplied by Mr. White].

"In my view 'social importance' is not an independent test of obscenity but is relevant only to determine the predominant prurient interest of the material, a determination which the court or the jury will make based on the material itself and all the evidence of the case, expert or otherwise."

COMMENT

The promotion of the opinion of Brennan-Warren and Fortas as a Court opinion that modified the *Roth* case has been both deceitful and insidious. Many states were urged to and did modify their obscenity statutes to build in a rule that actually contradicted the Supreme Court's holding in the *Roth* case and the Roth test and today we are paying ten-fold for our lack of vigilance. Justice Clark's prophetic statement in the *Fanny Hill* case we know now is true. He said such a condition "gives the smut artist free rein to carry on his dirty business." It is quite obvious that Justices Clark and White are correct when they say in "Fanny Hill" that there is no such test. We submit that "utterly without redeeming social importance" is not part of the definition of the word "obscene" no part of the test for obscenity for the following reasons:

(1) There is no Court opinion in "Fanny Hill" and the opinions of three Judges out of nine do not constitute a binding precedent so as to require any court or legislature to follow their suggestions. It is not the law of the land.

(2) *Roth* is a Court opinion and it does not use the phrase as part of its test for obscenity.

(3) Once the *Roth* test is applied to a disputed work and it is decided to be "obscene" then *Roth* conclusively presumes the material to be utterly without redeeming social importance.

(4) *Roth* says obscenity has social value, but that value is outweighed by the interest in morality. Three Justices in "Fanny Hill" say if it has any social value it is not obscene. This contradicts *Roth* in an essential manner and is in error.

(5) The charge to the Jury approved in the *Roth* case did not have a "social value" or "social importance" or "utterly without redeeming social value" test or phrase. Since *Roth* is still the *only Supreme Court opinion* on the definition of obscenity, then no social value "test" need be given to any Jury nor be made part of any statute. If it were a necessary charge, *Roth* would have insisted upon it.

(6) The more recent lower court decisions have recognized that *Roth* is still the test unencumbered by subsequent "no majority" opinions, for example.

If further proof is needed that the *Memoirs (Fanny Hill)* three Justice opinion is not a precedent binding on anyone, it may be found in opinions of the United States Supreme Court itself. In 29 American Jurisprudence Second at Section 195 of the topic "Courts", we find the following:

"A decision by an equally divided court does not establish a precedent required to be followed under the stare decisis doctrine. And where the members of the court unanimously or by a majority vote reach a decision but cannot even by a majority agree on the reason therefor, *no point of law is established by the decision and it cannot be a precedent covered by the stare decisis rule.*" [Italic supplied]

As authority for this statement, American Jurisprudence quotes the United States Supreme Court case of *United States v. Pink, Superintendent of Insurance of the State of New York*, 315 U.S. 203, 86 L. Ed. 796 (1941).

Referring to that case, we find the following rule:

"Nor was our affirmation of the judgment in that case by an equally divided court an authoritative precedent. * * * The lack of an agreement by a majority of the court on the principles of law involved prevents it from being an authoritative determinate for other cases. *Hertz v. Woodward*, 218 U.S. 205, 213-214."

In the *Hertz* case the United States Supreme Court made it crystal clear when it said:

"The principles of law involved *not having been agreed upon by a majority of the court sitting prevents the case from becoming an authority either in this or in inferior courts.*" [Italic supplied]

Applying this to the *Memoirs* case, it is quite clear that three is not a majority and therefore, in the words of the United States Supreme Court, this prevents that case "from becoming an authority either in this or in inferior courts."

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., November 23, 1970.

HON. ROBERT N. C. NIX,
*Chairman, Subcommittee on Postal Operations, Post Office and Civil Service
Committee, Cannon Building.*

DEAR MR. CHAIRMAN: In line with our conversation today, I am forwarding the correspondence I have received from my good friend, Walter V. McLaughlin. Kind personal regards.

Sincerely,

JAMES A. BYRNE, M.C.

PHILADELPHIA, PA., November 21, 1970.

HON. JAMES A. BYRNE,
*U.S. Congressman,
Washington, D.C.*

DEAR JIM: I enjoyed speaking to you and Regina—it has been so long since I have seen either of you. I retired from the FBI on August 1, 1970, after thirty-six years of service.

I am enclosing a résumé of my background which was printed in the Pennsylvania Chiefs of Police magazine at the time of my Thirty-Fifth Anniversary,

September, 1969. You will note that I have specialized in the field of the sex offender and have had constant exposure to the effects of pornography in that particular area.

I am also enclosing a program of the type of school that I am presently conducting for the Pennsylvania Chiefs of Police Association, and am associated as a Police Consultant with the University of Delaware, General Electric Company, Pennsauken, New Jersey Police Department, and the Pennsylvania Chiefs of Police Association.

In August of 1969, I spoke before the Annual Convention of the District Attorneys Association at the Bellevue-Stratford Hotel in Philadelphia on the subject of the effect pornography has upon the sex offender. I am also enclosing a copy of that talk.

I would be interested in appearing before the Commission on Pornography inasmuch as I feel from my research, interviews, and investigations throughout the years, that pornography has a very definite influence on sex offenses and offenders. I would appreciate any assistance you can give me in this regard.

Sincerely,

WALTER V. McLAUGHLIN.

Enclosures.

[From the Pennsylvania Chiefs of Police magazine]

FBI WALTER McLAUGHLIN CELEBRATES 35TH ANNIVERSARY

On September 24, 1969, Special Agent Walter V. McLaughlin, Associate Life Member, celebrated his 35th anniversary with the FBI, and his 25th anniversary of association with the Pennsylvania Chiefs of Police Association.

Walter has served as police training coordinator in the Philadelphia office of the FBI since 1945, and during that period of time through his activities in police training and public relations has become known to every police officer in Pennsylvania.

In 1948, he was appointed chairman of the Public Relations Committee and during his term in office completely revolutionized the format of the PCPA quarterly bulletin and introduced for the first time photographs and pertinent features dealing with our conventions, programs, and individual activities.

Since 1948, he has acted as a consultant on the PCPA Educational Committee and for 15 years handled our publicity at the annual conventions, and has contributed innumerable articles to our quarterly magazine.

Through his newspaper experience—McLaughlin was a rewrite man and reporter with The Philadelphia Evening Bulletin for ten years before joining the FBI. It was through his newspaper experience he was instrumental in the revitalization of the then bi-monthly magazine, experience and ability which also earned widespread publicity for the PCPA Conventions.

Featured as the subject for the cover of the Winter (1959) Issue of the PCPA Bulletin, the accompanying article recognized that McLaughlin during the time he has been associated with the Association has conscientiously striven for the best interests of law enforcement officers in the state. The article also stated:

"During this period of time, Mr. McLaughlin secured nationwide publicity for the Association through stories on juvenile delinquency, the social drinking drivers, the obscene comic book and numerous other pertinent police matters. For four years Mr. McLaughlin wrote and directed the official PCPA radio program entitled 'The Police Spotlight'."

"As expected, we know very little concerning Mr. McLaughlin's exploits and achievements in the FBI. However, everyone in the Association should be aware of the important part Mr. McLaughlin has played in the educational, public relations, and publicity fields of our organization . . ."

Special Agent McLaughlin is nationally known in the field of police training and is a recognized national expert in the field of police investigation of the abnormal sex offender.

He has pioneered in this particular area and has received awards for his research and study from the police chiefs associations of Pennsylvania, Delaware, Montgomery, Bucks, and Southeastern.

He is a guest lecturer at the FBI National Academy and has spoken on this particular subject before the Law Enforcement Institute, University of Maryland, the Philadelphia Police Academy and the State Police Academies of New York, Delaware, Pennsylvania, Georgia, and the Royal Canadian Mounted Police, Ottawa, Canada.

Specialized courses on the sex offender have been given by the FBI veteran to the Atlanta and Kansas City metropol squads, and for seminars in Miami, Rochester, Kansas City, Buffalo, Montgomery, Atlanta, St. Petersburg, and numerous other areas in the country.

In 1963, he was assigned to train the "strangler squad" in Boston after six women had been strangled to death by an unknown assailant. He received a commendation from Boston Police Commissioner Edward McNamara for his services in this regard.

In his bureau career, he has served as Special Agent in Charge at Huntington, West Virginia; Buffalo, New York; as a supervisor in New York City, and Assistant Special Agent in Charge in Philadelphia. Since 1940, he has been assigned to the Philadelphia office of the FBI.

One contribution which will always be remembered in Eastern Pennsylvania is his initiation, organization, and supervision of the Intercounty Detective School.

SA McLaughlin held the initial session in 1957 of what was then as it is today the only detective school in the United States. It consists of three weeks training and covers approximately 100 hours of detailed instruction. It is safe to say that every detective in Eastern Pennsylvania is a graduate of this course.

Classes are limited to 20 men from as many departments and are held twice a year.

The curriculum is constantly updated and the purpose is to train detectives and criminal investigators to be a self-contained investigative unit. It answers a vital need in the field of police training and has graduated 400 men.

The PCPA executive officers have had occasion to attend the graduation exercises of the 20 sessions which started in 1957, and feel that there is no ceremony to equal it in impressiveness, enthusiasm, and a feeling of accomplishment.

The PCPA wishes to congratulate Walter V. McLaughlin, Special Agent of the FBI and Life Associate Member of the PCPA. Unfortunately, his accomplishments in the field of police training cannot be estimated in statistical figures, but there is no doubt that his efforts throughout the years are reflected in the achievements of numerous Pennsylvania law enforcement officers.

[From the Pennsylvania Chiefs of Police Association Bulletin]

OBSCENITY AND THE SEX OFFENDER

(By Walter V. McLaughlin, Special Agent, FBI, Philadelphia Office,
Retired Aug. 6, 1970)

(In view of the continual question of obscenity and sexual assault, the accompanying article by Walter V. McLaughlin, Special Agent of the Federal Bureau of Investigation, Philadelphia Office, is of particular importance and significance, and is based on an address made last fall by Mr. McLaughlin before the 20th Annual Convention of the National District Attorneys' Association held in Philadelphia. A 35-year veteran with the FBI (see Fall 1969 Issue of PCPA Bulletin) and an Associate Life Member of the PCPA, SA McLaughlin, nationally known in the field of police training, is recognized as an expert in the field of police investigation of the abnormal sex offender.)

The subject of the sex offender, obscenity and its provocation to sexual assault is a fascinating and complex topic on which there are a vast variety of opinions.

It is a picture that can never be presented in black or white inasmuch as it comes in a series of many shades of gray. One can point to many outstanding authorities who will substantiate his theory and at the same time there will be a vast number who will disagree and in turn advance those of their own.

In order to effectively consider a problem, one must first establish that it exists. Therefore, today we will examine the sex offender and police responsibility; second, obscenity and its various ramifications; and third, whether or not both are vitally and pertinently connected with the sexual assault.

The sex offender and his abnormal offenses constitute one of the most serious problems facing law enforcement and the public at the present time.

The normal reluctance of police investigators, the courts, and the general public to face and understand the abnormal is largely responsible for the continued lack of progress and success in this field. Unfortunately, all concerned insist upon proceeding along established, logical lines. This cannot be done in the investigation of the sex offender, who is influenced by strange, twisted, intricate motivations.

WAY OF LIFE

There are numerous speculations advanced by many authorities as to the reasons and influences which cause individuals to rape, beat, slash, murder, burn, and terrorize women and children.

In my opinion there is no doubt as to the cause. These acts are committed because they sexually satisfy the perpetrator. With him, this is a way of life, and he commits these deeds in order to gratify his uncontrollable sexual appetite.

Many times the real facts involved are obscured by a hodge-podge of medical terms, psychiatric theories, maudlin sympathy, and a total lack of knowledge. In case after case, the main issue becomes smothered under a mass of confusing details so that in the end everyone concerned has lost contact with the salient features involved.

Police, unfortunately, are not in a position to leisurely study and analyze the sex offender in order to determine if he possesses a dangerous potential.

We find that numerous theories of prevention and cure advanced by so-called authorities cannot even be considered in practical police action. Law enforcement should not be forced to face the discouraging task of having to arrest the same individual over and over again as he continues to brutalize a community.

WALKING BOMB

The sex offender is a walking time bomb of violence, constructed in such a manner that even the most skillful in the field of prevention and cure are never certain when and if the detonating influences have been removed, and no one has the authority, ability, or knowledge to know what circumstances will trigger his mechanism of passion. It is impossible to determine when they will go from their dark world of fantasy into reality and satisfy their perverted desires by terrorizing, torturing, or even murdering innocent victims.

Throughout the years, law enforcement has been reluctant to fulfill its obligation in this important phase of their work through understanding, training, and knowledgeable action.

Too often, there has been a dependence on individuals who are totally ignorant of police procedures, principles of investigation, and who refuse to recognize the dread realities of this immoral crime. On too many occasions we have seen habitual sex offenders sentenced to non-existent curative facilities; be placed under inadequate supervision; or released time and time again to repeat in even more deadly fashion their shocking pattern of life.

POLICE RESPONSIBILITY

Police responsibilities in this field are very clear-cut. They are responsible for:

1. Prevention

Unfortunately, this is a dirty word in police language because in this type of offense, police find it difficult to move until the act is committed. Many times police are certain that an individual in their community, particularly a youth, will commit a sex offense because of the pattern of his activities, but it is impossible to bring this fact home to parents, teachers, clergy, or civil authorities.

2. Recognition

The sex crime is the most difficult to identify. Invariably, it is committed by abnormal people and the accepted elements of sex may not even be remotely present. The basic ingredient may be fire, hanging, slashing, beating, stabbing, or strangling, all of which are listed as other police offenses. It is only through proper training that the police officer can secure the ability to understand and recognize.

3. Determination of the offender's identity

This calls for the maintenance of adequate records regarding sex offenders, and a general knowledge regarding pertinent community conditions on the part of the investigating officer.

4. Ability to conduct a thorough investigation

Sex offenses are most difficult to prove. Therefore, they should be investigated by men who have the ability to effectively search the scene of the crime, secure all vital evidence, and trace every possible clue to its source.

5. *Comprehensive interview*

This is the moment of truth and there is no crime which offers finer rewards of accomplishment to the experienced, capable interviewer.

The crime committed is this person's way of life, and he must return to it time and time again in order to satisfy his sexual inclinations. Therefore, a knowledgeable interviewer can possibly not only solve the crime under investigation, but many which have been committed in the past and are even contemplated in the future.

And finally,

6. *The presentation of a well prepared case in court*

The presentation of a sex crime case is known to police as "heartbreak hill." To begin with, they are handicapped by the fact that there is usually only one witness.

A timid, frightened child or a terrified, injured woman, who must undergo the cross-examination of high-priced attorneys, who must take the unfamiliar stand and tell a crowded court room of their degrading experiences.

It is useless for anyone to quote statistics regarding the sexual offender inasmuch as there is no way possible in which their activities can be recorded.

Figures regarding rape, sodomy, and offenses against children can be tabulated, but there is no way in which police can list the sexual offenses of flagellation, pyromania, piquerism, lust mutilation, fetish burglaries, and many others which originate as a result of a sexual impulse.

It is not difficult to establish the fact that there is an abnormal sex offender.

I am ably assisted in this task by the black, startling newspaper headlines which daily record their frightening operations in every section of the country. I am aided by the motion pictures and television which have turned the most dramatic offenses into a permanent record.

ALLURING WORDS

However, it is going to be more of an assignment to establish that such a thing as obscenity exists, and judging by the trend of recent judicial opinions, it may almost be an impossibility.

Obscenity, it seems, is a most alluring word, as are its brothers and sisters, pornography, eroticism, sensuality, lasciviousness, lewdness, lust, and the step-child smut.

We in law enforcement have seen pornography progress from the smiling nudes of the sunshine clubs to the blatant displays of intercourse, sodomy, fetishism, bondage, and homosexuality on today's stage, screen, newsstand, and in the sidestreets smut establishments.

Pornography operates on the same principle as the homosexual or the prostitute. Give them an inch and they take a mile.

We have seen pornography progress from the early nudes with their backs to the cameras to where the hands are strategically placed. We have seen the appearance of pubic hair—the showing of male and female genitalia—the open spread—the mingling of the same sex—the intermingling of both sexes—and finally, to hard core which can shock the most experienced individual.

LUCRATIVE RACKET

Law enforcement's efforts to put a stop to this visual perversity constantly remind one of a wagon going rapidly downhill with the authorities in the role of a futile group holding onto the rear in an effort to stop a runaway, which relentlessly drags them through the muck.

Obscenity is one of the most lucrative rackets in the country today, and involves over two hundred companies in the United States who daily produce books, magazines, gimmicks and films, which are then sold to thousands of outlets throughout the country. It has been estimated that they gross over five hundred million dollars a year.

In Philadelphia, smut store after smut store has been hit time and time again by the district attorney's office and the police but the proprietors will tell you that the profits they are reaping are sufficient incentive to reopen almost immediately.

Obscenity must cater to a variety of individuals and the operators have determined, just as educational leaders in teaching school, that there are those who must see the picture—those who must read the words—those who must do it

themselves—and, the most to be feared, those who utilize all this to kindle the fires of fantasy in their unspeakable imaginations.

CONFUSING IMAGE

The image of obscenity is a most confusing one, for invariably the normal individual with his conception of sex immediately visualizes female nudes, with particular emphasis on those areas of popular attraction. They might also expect photographs or films depicting various incidents of recognized sex activity.

The abnormal sex offender wants none of this; he lives in a world of cruelty which involves sadism, masochism, torture, bondage, chains, ropes, gags, the knife, the whip.

The fetishist has tendencies toward leather, rubber, the black silk stocking, the exaggerated French high heel, gloves, hair, girdles. The symbolist is inclined along the same lines and fantasy is interested in them all.

You may be certain that the pornographer is well aware of every inclination, every desire, every aberration, and that today within a stone's throw of where I am speaking there are a dozen furtive nooks at which film, magazines, photographs, and accouterments can be purchased to satisfy even the most far-out tastes and propensities.

DIVERGENT OPINIONS

There are a great number of individuals interested in this situation, such as the sociologist, psychologist, psychiatrist, physician, the courts, probation, parole, the public, and the police, and they have all formed divergent personal opinions regarding what is obscenity, as well as its influence upon people; and from my association with them, I feel it would take extremely strong arguments to move them from their present stand.

As a law enforcement officer of 35 years service with the FBI, and as one who has specialized in the police investigative field of the sex offender since 1948, I strongly feel that obscenity or pornography, or whatever name you wish to call it is responsible for a great number of sexual assaults, particularly in the area of the abnormal offender.

In the field of abnormal sexology, there are four very pertinent areas which are not present in other crimes.

They involve symbolism, fetishism, ritual, and fantasy, each of these factors constitutes a real mystic need in the life of the sex offender. Through the years they have found what exhilarates them, what best titillates their perverse personality, and provides the incentive they need.

This is a vast rich market and the pornographer with his expertise makes certain that the many varied demands are satisfied. He provides at a price the film, photographs, and instruments which are so necessary to satisfy the appetite of the abnormal offender and to advance him along the pathway of degenerate progression.

DEMAND GREAT

If obscenity is not connected with the sexual offender, and if it is not needed as an incentive to activity on his part, why is there such a demand for this far-out, weird material? And, why when apprehended does the pervert always have his personal collection of obscenity?

Let us understand here and now that the obscenity of the sexual criminal is not the Girly-Girly cheesecake that the normal person visualizes. It consists of film, photographs, magazines and instruments which the untrained, unknowledgeable mind cannot even associate with sex such as they know it.

There is a certain school of thought which advances the theory that an individual who commits a certain perversity has this within them and would have committed the same crime whether or not he was stimulated by the obscenity. This is a conjecture, as are so many, which cannot be refuted, but to which I do not subscribe.

Students who have attended my courses on police investigation of the sex offender cry out in amazement at the fantastic, unbelievable activities of those involved, and their perpetual question is, "how do they find out about these things?" "How do they determine their participation in these aberrations?" And there is one conclusive answer. They see the picture, they read the word, and it answers a responsive chord in their sexual alignment.

Speak to any child molester, and he will tell you how much easier it is to seduce children by showing obscene photographs and suggesting their participation in similar activities. They continually quote the old newspaper motto that a picture is worth a multitude of words.

An excellent proof of the contention that obscenity arouses an abnormal individual to sexual assault is given in a study of normal, every-day love life.

It is an established fact that even in normal love, one needs "a shot up the hill." This comes in the form of a new hairdo, a change of perfume, a second honeymoon, a new dress, a varied approach. These methods are not within the scope of the abnormal offender who needs raw meat incitement involving sadism, erotic fantasy and grotesque symbols.

In their investigation of sex murders, police will come across the torn, twisted body of a child; the bloody, slashed body of a woman, and they will stare in disbelief and horror and wonder what kind of man could come by and commit a crime such as this.

You may rest assured that the murderer did not suddenly perpetrate this deed, but has fed upon it in his world of fantasy and committed it a hundred times. Then, one day he wonders whether it will feel as good in reality and suddenly we have a horrible crime.

The law enforcement officer's position in the case of the sex offender and obscenity is possibly different from that of any other individual or organization.

—We cannot afford the luxury of determining through tests, discussion or research whether or not the individual is dangerous.

—We cannot debate as to whether the offender has reached his plateau of saturation, or whether he will proceed to more vicious and sadistic acts.

—We are not concerned with the cause that impels him to commit the deed, nor are we concerned with the possible cure.

Our responsibility is to protect, to detect, apprehend, and present effective evidence in a court of law.

As police officers and as responsible citizens, we are offended, disgusted, and nauseated by the pornography which today is not only made available, but which is practically forced upon the public by open exhibition and a persistent mail sales campaign. We realize our limitations in this particular field, but you may be certain that we feel there is a definite connection between the abnormal sex offender, obscenity, and the vicious sexual assault.

These situations will continue to be a police problem and we realize there is no simple solution.

We can only hope to protect our community by understanding the facts involved and acting accordingly. Reluctance or failure to recognize and live up to our responsibilities could well amount to criminal action on the part of law enforcement.

(For Immediate Release, August 17, 1970)

STATEMENT OF CHARLES H. KEATING, JR. (MEMBER OF THE PRESIDENTIAL COMMISSION ON OBSCENITY AND PORNOGRAPHY)

Charles H. Keating, Jr., today issued a rebuttal to the report of the Presidential Commission on Obscenity and Pornography.

Mr. Keating, in a point-by-point rejection of the Legal Panel Report of the Commission, said the Chairman and Staff of the Commission had not followed the Congressional mandate in creating the Commission to "regulate" the flow of obscenity but, indeed, its (the Staff) "efforts have been directed toward increasing the flow."

Mr. Keating said: "When one considers that Paul Bender, the author of the report and William Lockhart, the Chairman of the Commission and sponsor and hirer of Bender, are both ACLU members, the transparency of this attempt to change the law becomes apparent . . . Having failed to bring the American public over to its views, an attempt is now being made by this ACLU oriented activity to project the Black-Douglas-ACLU philosophy via this Legal Panel Report."

President Nixon's only representative on the eighteen-member Commission then proceeded to make the following comments as part of his 107-page (plus exhibits) documented Minority Report:

"The author of the Legal Panel Report is attempting to rewrite history by glossing over the historical development of obscenity controls. See *Roth v. U.S.*, 354 U.S. 476, 482, 1 L.Ed.2d 1498, 1505, for a more accurate account. History

demonstrates such controls are basic and at the very foundation of our society. Obscene or indecent exhibitions of a nature to shock the public sense of decency were public nuisances and indictable under the English Common Law."

* * * * *

"The unusual slant of this historical report, noted above, is not accidental. Inasmuch as the guiding philosophy behind this 'legal panel report' is directed toward a destruction of the Nation's obscenity laws, one can understand the author's desire to play down the long-standing tradition which supports such prohibitions."

* * * * *

"The report is a gross distortion of the purpose and legal basis for governmental controls of obscenity. Obscenity controls do not attempt to reach *private morality*—such as what a person may read or see. The proscription of obscenity is grounded upon the legitimate governmental aim of controlling and regulating '*public morality*'—public conduct, which affects the people as a whole . . . *Public morality* is to be distinguished from *private morality*, as to which it is often said, the law does not concern itself. On the other hand, our law has always recognized the importance of maintaining a high *public morality*."

* * * * *

"The existence of the vice of obscenity is the symptom of a disorder which probability tells us, will lead to ruin. Arnold Toynbee, the historian, tells us that 19 out of the 21 great civilizations which flourished in world history, crumbled into ruin . . . not because of armed aggression from without but because of moral decay from within."

* * * * *

"A nation which is preoccupied with sex is thought to be sick. The ultimate evil would be a society in which sex pictures, novels and magazines are available at every store, sex pictures on every marquee, sex movies in every theater, sex pictures in every art gallery, and sex language in every dialogue. To the extent that we approach this status by degrees, we recognize we are losing control of public order and we are closing the gap on the community of 'Sodom and Gomorrah.' The antisocial conduct of today's society becomes the socially acceptable conduct of the new community. Recognizing that the evolution of man in civilized society is a slow-moving process, it would be well for all of us to remember that in the biblical days of Sodom and Gomorrah there must have been justices like Black and Douglas and attorneys like Bender and Lockhart, whose counsel led to the destruction of those two cities. It is indeed alarming to find not one trace of the above philosophy (Judeo-Christian philosophy) expressed in this panel report. The fact that it is not there is strong evidence that the persons preparing the report are guided by principles which are revolutionary in nature and must be rejected."

* * * * *

"It is a fundamental of the criminal law that the state does not go after the seduced, but moves against the seducer. To say that the state should not and cannot make a criminal out of the seduced does not say that the state cannot and should not go after the seducers. This philosophy of the law was expressed by the crown prosecutor in the first obscenity case, *Rea v. Curl*. In *Curl* the prosecutor pointed out that, while fornication was not a crime, because it involved only the personal morality of the individuals concerned, the maintenance of a bawdy house (fornication for profit) was, because of the recognition that where private conduct interferes with and affects public morality, such activity may be proceeded against."

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"The Staff engages in proselytizing for the three-part Brennan, Warren, Fortas test for the reason that so long as Justices Black and Douglas remain on the Court 'no application of a general prohibition which does not employ their test' can be upheld on appeal. What the Staff is saying is that since Justices Black and Douglas will not recognize the law to be what it is (i.e., that obscenity is *not* protected) only seven Justices will ever cast votes on that issue and it will be impossible to win five of the seven Justices to a different rule. There is a more optimistic way of looking at this impasse. With Warren and Fortas no longer on the Court, the Brennan-Warren-Fortas view has been deprived of its vitality.

Further, a coalition of three Justices has recently been formed which will accept the Harlan view. See Justice Blackmun's dissenting opinion in *Hoyt v. Minn.*, CCH, U.S. Supreme Court Bulletin at page B2716 (June 29, 1970). If as much publicity is given to this fact as was given to the Brennan, Warren and Fortas opinion in the Fanny Hill case, the tide can be turned in the opposite direction. In terms of history, it should be noted that the reigns of Justices Black and Douglas on the Court are rapidly drawing to a close. It is not unreasonable to expect that with the passing of these recalcitrants, a majority of five may very well blossom out of the triumvirate recently formed on this issue by Justices Blackmun, Burger and Harlan."

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"I am intimately acquainted with the uproar in Congress when the motion picture documentary, 'A Report on the United States Supreme Court and Its Recent Decisions in Obscenity Cases' was brought to their attention. That outrage led to positive and forthright action in refusing to confirm Associate Justice Fortas as Chief Justice. I also recognize that the above paperbacks and magazines make the subject matter involved in those 1966 Term cases look like kindergarten material. I have but one comment to make—and that is, that if the American public can be educated to the nature of the Supreme Court action in *Hoyt* and *Bloss*, above, there is no doubt in my mind but that a responsible movement can be successfully undertaken either (1) to remove from the bench the Justices responsible for such actions, . . . or (2) to remove the appellate jurisdiction of obscenity cases from the United States Supreme Court, as per the bill introduced by the late Senator Dirksen and Senator Mansfield at the time of the Fortas hearings, and presently pending in the United States Congress. (Senate Bill 1077.) I therefore ask that copies of these books and magazines and the factual histories of those cases be made a part of this public record, so that all of the cards may be placed upon the table for examination. Further, for the record, I ask that monies be allocated from the monies appropriated to the Presidential Commission to film a motion picture documentary which would record for the study of Congress (1) the history of these two decisions, (2) the materials involved, (3) the opinions of the state court justices on such matters, and (4) voting of the present Supreme Court Justices in those matters."

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"Bearing in mind that Congress in Public Law 90-100 [creating the Presidential Commission] made a specific finding that 'the traffic in obscenity and pornography is a matter of national concern' the above 'purported analysis' is so distorted as to warrant the label of 'fraudulent.' Chairman Lockhart and Counsel Bender have avoided the true facts and have willfully and wantonly refused to go into a quantitative analysis of the rulings of the individual Supreme Court Justices on specific subject matter, . . . I am sure that it is obvious to those attorneys that, if the same were undertaken, they and the Staff of this Commission would be unable to complete their sale of the Emperor's Clothes to the American public, an attempt which is clearly evidenced in this 'Legal Report.' It is crystal clear that the results being reached in the United States Supreme Court do not flow from community acceptance, for the mounting community reaction is rapidly approaching the explosive point, with the focus of attention being placed upon the arbitrary actions of the United States Supreme Court Members . . . My own personal survey and contact with the pulse of this Nation demonstrates conclusively that the conscience of the American public is in the opposite direction, and that the opinions voiced in this Legal Report are those of a very slight majority of the Commission, namely, the ACLU and their camp followers. To suppress facts which are documented on the record and conceal the source of the proliferation is nothing short of a fraud on the American public which should not be permitted to stand."

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"We are a Nation dedicated to the rule of law and the will of the people. It seems to this Commissioner that the record, reflected in the legislative acts of the people in the forty-eight states described above, and the fact finding of the Federal Congress that the traffic in obscenity is a matter of national concern is so overwhelmingly against the position taken by the very small minority group which prepared this Legal Staff Report, that this alone should relegate its work product to the trash heap."

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"It is strange indeed that the Staff should fail to devote any portion of its report to the overriding issue in the obscenity field today—the problem of federal interference with state obscenity prosecutions. The letter is the prime deterrent to effective criminal law enforcement in the obscenity area today. An examination of the heading 'Obscenity' in the General Digest for the past two years discloses an extraordinary number of federal cases involving interference with state prosecutions. At least one-third of the 34 obscenity cases on file in the United States Supreme Court during the October Term 1969 were cases originating in the Federal District Court attacking, collaterally, criminal cases filed in state courts."

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"The Staff devotes 15 pages of its report to a consideration of whether obscenity laws should be applied to consenting adults in the absence of proof of effects. There is no justification whatsoever in Public Law 90-100 for this gratuitous unwarranted and unauthorized allocation of the Staff involvement and money. While it is true that Section 5(a)(3) authorized an 'effects' study, there is no grant of authority to distort this study in a manner designated to increase the flow of such material. To the contrary Section 5(a)(4) asks for advice as to action to be taken *'to regulate effectively the flow of such material.'* The time and involvement of the Staff in this area is an unwarranted encroachment on the duties and prerogatives of the state and federal legislatures. It is not a legal matter within the purview of Chairman Lockhart and Counsel Bender and their ACLU oriented staff to advise the states on how they should act under the circumstances. Certainly it was not the intention of Congress in passing Public Law 90-100 that they should arrogate to themselves this task."

"I have repeatedly stated in this reply that ACLU-Chairman Lockhart and ACLU-Counsel Bender entertain pre-conceived ideas as to what the findings of this Commission should be. They have a bias which is a matter of record. Notwithstanding that Congress has found in Public Law 90-100 that the traffic in obscenity was a matter of national concern, these revolutionaries have set about to prove just the opposite. The findings of their rigged public opinion survey have no basis whatsoever in fact. An obvious question which comes to my mind is, what is an opinion survey doing in a legal panel report? The orthodox way to resolve this issue would be (1) to make a study of the obscenity cases which have gone or trial on the merits and (2) to conduct a statistical analysis of the materials involved and the jury results reached in those cases. There should be little doubt that the results reached in the courtroom, after an adversary hearing in which both sides are heard, are far more trustworthy than a paid public opinion survey sponsored by ACLU-Chairman Lockhart and ACLU-Counsel Bender and under the direction of their ACLU oriented Staff . . . Further, the findings of Congress that the traffic in obscenity is a matter of national concern is solidly supported by several other recently conducted public opinion polls. . . . The Gallup Poll of June 1969 showed 76-85% wanted stronger laws. In San Francisco the poll was 13-1 against the obscenity wave. During the past 4½ years, a nationwide clipping service on obscenity trials and public opinion has kept me informed of the Nation's pulse. An accurate scrapbook account, 12" x 15" x 8" thick, maintained as a running record, disproves completely the conclusions reached by this Staff's public opinion poll. The actual facts determined inside the courtroom is so at variance with the Staff's public opinion poll, as to label the latter a fraudulent report."

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"Consensual vice crimes are not "victimless crimes." The victim in such matter is the community at large. What the Staff is really saying, . . . is that since there is no "victim" in prostitution, prostitution should be permitted because law enforcement problems incident to holding prostitution in check are so fraught with difficulty. That such a mentality should be permitted to seize control of the thinking of the Presidential Commission is a travesty of justice . . . Whether or not vice crimes should be done away with because 'of the many existing problems caused by crimes which do have victims and which cause immense harm to our society today,' as suggested here, is a function of the State Legislatures and certainly beyond the authority of Public Law 90-100 which was to find ways of dealing effectively with such problems. It must be borne in mind—a factor never suggested by the Staff—that this so-called 'consensual' crime (commercial sale of obscenity to a person willing to purchase it) is aimed at the *seducer*, not the per-

son seduced. It isn't a crime to 'purchase' obscenity. The crime is aimed at the person who publishes, distributes, exhibits, sells, etc."

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"I am in complete disagreement with the Staff Report that legislation withdrawing appellate jurisdiction from the Supreme Court is dangerously unwise. Such legislation or an equivalent remedy from a different source is a virtual necessity. In the final analysis there are only two ways in which this disastrous situation can be corrected: (1) Through an expansion of the coalition of Chief Justice Burger, Associate Justice Blackmun, and Associate Justice Harlan into a majority of five, either by a change in position of Associate Justices White and Brennan, or by the addition of two new Justices to replace Justices Black and Douglas. By adopting the view of Justice Harlan expressed in *A Book Named Memoirs of a Woman of Pleasure v. Attorney General of Mass.*, 16 L.Ed.2d 1, at page 26, primary responsibility would be entrusted to the state supreme courts where it belonged; (2) adoption of Senate Bill 1077 or a modification thereof, so as to deprive the United States Supreme Court of jurisdiction in obscenity cases where, as under the Harlan test above, the state has applied criteria rationally related to the obscenity crime."

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"I am of the opinion that Congress expected that the Commission should study and analyze the decisions of the United States Supreme Court and the materials and trial facts involved in each of the cases. I consider it a gross failure on the part of the Chairman to refuse to examine such subject matter and to educate the public as to the facts in such cases—cases like the reversals in *Hoyt v. Minn.*, (5-to-3), supra, and *Dykema v. Bloss* (4-to-3), supra. I consider these latter results to present a scandal of major proportions which warrant a special investigation, or in the alternate, support for Senate Bill 1077 and ousting the Supreme Court of jurisdiction in obscenity cases as per the suggestion of Senator Dirksen in his bill, Senate Bill 1077."

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(The above comments are excerpted from: Reply of Commissioner Charles H. Keating, Jr. (only appointee of President Richard M. Nixon) to the eighteen-member Commission on Obscenity and Pornography) to the first draft of the legal panel report, dated August 16, 1970.)

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