Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	Frederick S. Ansell to Dr. William Galston (2 pages)	11/24/1993	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Stephen Warnath (Civil Rights)
OA/Box Number: 9591

FOLDER TITLE:
Child Pornography

ds72

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

THE WHITE HOUSE
WASHINGTON

Bill –

This may be helpful.

Let's discuss.

– Cliff Sloan

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 18, 1993

The Honorable William V. Roth, Jr.
Unites States Senate
Washington, D.C. 20510

Dear Senator Roth:

Thank you for your letter of November 4 inquiring about the impact of the position taken by the government in the Supreme Court in Knox v. United States.

The Attorney General has asked me to communicate to you our commitment to vigorous enforcement of child pornography laws. The position taken in Knox will have no adverse effect on our ability to prosecute effectively in this area. To eliminate any conceivable misinterpretations, we have proposed an amendment to the statute to cover all forms of child pornography, including the materials involved in this unique and unprecedented case. We solicit your support for the proposed amendment to the legislation.

In response to your specific questions, we answer as follows:

1. While it is generally against Department policy to discuss proposed strategy in a pending litigation, we can advise you that we intend to pursue this case in the lower courts in accordance with the remand by the Supreme Court. You may note that our Supreme Court brief states that "we believe that petitioner's videotapes may be deemed to be unlawful under what we view as the correct statutory standard." (Brief for the United States, p. 20)

2. Prosecutors in future cases will follow the standards to be established on remand by the Court of Appeals and other binding precedents or those set forth in the proposed amended legislation, if enacted. The Department's view remains that nudity is not required under the statute. In our view, under the current statute to establish a "lascivious exhibition" of private parts where the children are clothed, the genitals or pubic areas must be discernible. Additionally, the Department will take the position in all cases that the intent, thoughts or understanding of the children depicted are not relevant.

3. Not a single prosecution of which we are aware will be terminated because of the standards suggested in the Knox brief.

4. Not a single investigation of which we are aware will be terminated because of the standards suggested in the Knox brief.

5. The Department has no plan under consideration to eliminate or merge the Child Exploitation and Obscenity Section of the Criminal Division.

As you know, the Attorney General, the Department of Justice and this Administration are deeply committed to the protection of children. Sexual exploitation of children and child abuse cases will continue to be vigorously prosecuted by this Department.

We believe this responds fully to your inquiry. With the enactment of the amendment that we have proposed, we hope to work constructively with you to achieve our common goal to protect our nation's children.

Sincerely,

Sheila Anthony

Sheila Anthony
Assistant Attorney General

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S. Report 95-438
H. Report 95-696

and nature of such classifications to the Executive branch to determine and implement. If experience from the studies and evaluations now underway demonstrates that legislation is required, that experience would also provide a better foundation for formulating legislation than we have now.

Accordingly, I must withhold my approval of S. 1437.

GERALD R. FORD.

The WHITE HOUSE, *October 22, 1976.*

PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION ACT OF 1977

P.L. 95-225, see page 92 Stat. 7

Senate Report (Judiciary Committee) No. 95-438, Sept. 16, 1977 [To accompany S. 1585]

House Report (Judiciary Committee) No. 95-696, Oct. 12, 1977 [To accompany H.R. 8059]

Senate Conference Report No. 95-601, Nov. 4, 1977 [To accompany S. 1585]

House Conference Report No. 95-811, Nov. 4, 1977 [To accompany S. 1585]

Cong. Record Vol. 123 (1977)

Cong. Record Vol. 124 (1978)

DATES OF CONSIDERATION AND PASSAGE

Senate October 10, November 4, 1977

House October 25, 1977; January 24, 1978

The Senate bill was passed in lieu of the House bill. The Senate Report (this page) and the House Conference Report (p. 69) are set out.

SENATE REPORT NO. 95-438

[page 1]

The Committee on the Judiciary, to which was referred the bill (S. 1585) to amend title 18, United States Code, to make unlawful the use of minors engaged in sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, or magazine, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill as amended do pass.

* * * * * * * * * *

[page 3]

II. PURPOSE

The Committee bill, as amended, will fill several voids in current Federal law. There is presently no Federal statute that prohibits the

use of children in the production of materials that depict explicit sexual conduct. The Committee bill would prohibit the production of such materials for this purpose if the materials involved were to be mailed or otherwise transported in interstate commerce.

Similarly, there is presently no Federal statute prohibiting interstate trafficking in boy prostitutes. The Committee would extend the Mann's Act provision against juvenile female prostitution to include juvenile males.

Finally, the Committee bill will strengthen present obscenity statutes to provide much more severe penalties for the distribution and sale of obscene materials that depict sexual conduct by children.

III. Legislative History

In the first months of the 95th Congress four bills dealing with sexual exploitation of children were introduced in the Senate. Three of the bills—S. 1011, S. 1499, and S. 1585—were referred to the Committee on the Judiciary. One bill—S. 1040 was referred to the Committee on Human Resources.

On May 6, 1977 the Committee on Human Resources passed the following resolution:

> Whereas the Committee on Human Resources has a deep and abiding concern for the health and welfare of the children and youth of the United States; and
>
> Whereas such concern repeatedly has been demonstrated through legislation developed by such Committee to protect and benefit such children and youth; and
>
> [page 4]
>
> Whereas it has come to the attention of the Committee on Human Resources that there is a substantial amount of trafficking in the United States today in pornographic materials in which children as young as three (3) years of age are used and exploited for pornographic purposes; and
>
> Whereas legislation has been introduced in the United States Senate and in the United States House of Representatives to impose criminal and civil sanctions on persons who engage in the production, transportation, and marketing of material exploiting children for pornographic purposes; and
>
> Whereas the Committee on Human Resources condemns such base and sordid activities which may permanently traumatize and warp the minds of the children involved; now therefore be it
>
> Resolved, that the Committee on Human Resources herewith urges the Committee on the Judiciary to hold hearings at the earliest possible time, either singly or in conjunction with the Committee on Human Resources, for the purpose of considering legislation designed to eliminate the exploitation of children in pornographic materials; and be it further
>
> Resolved that a copy of this Resolution shall be sent to each Member of the Committee on the Judiciary.

On May 27, 1977, on the authorization of the Chairman of the Committee, the Subcommittee to Investigate Juvenile Delinquency held its first hearing into the sexual exploitation of children in Chicago, Illi-

nois. The hearing was chaired by Senator Culver and attended by Senators Mathias, Wallop, and Percy.

The Subcommittee heard testimony from nine witnesses—most of whom had either been directly involved in the business or else had conducted investigations of it. The witnesses included two convicted child pornographers, Guy Strait and Gerald Richards; a 17-year-old boy (whose real name was not disclosed) who had worked the streets for two years as a prostitute and who had acted in several pornographic films; a police sergeant, Ronald Kelly, who had conducted one of the few successful arrests of persons engaged in the production of pornographic movies involving children; and an undercover investigator, Jack Lehman, who had infiltrated an interstate boy prostitution ring. The Subcommittee also heard from local officials, Chicago Acting Mayor Michael Bilandic and Cook County States Attorney Bernard Carey who explained some of the law enforcement and prosecution problems of dealing with sexual exploitation of children. Finally, the Subcommittee heard from two reporters for the *Chicago Tribune*, George Bliss and Michael Sneed, whose in-depth investigation of child pornography and prostitution have done so much to bring the problem to the attention of the Congress and the nation.

On June 13, 1977, S. 1011, S. 1499, and S. 1585 were jointly referred to the Subcommittee to Investigate Juvenile Delinquency and the Subcommittee on Criminal Laws and Procedures. On June 16, 1977, there was a joint hearing of the two Subcommittees in Washington, chaired by Senator Culver and attended by Senators Mathias and Wallop. The Subcommittee heard from Senator Roth, the chief sponsor of S. 1011, from Deputy Attorney General Peter Flaherty, who

presented the position of the Department of Justice, and from two constitutional experts, Professor Paul Bender of the University of Pennsylvania Law School and Assistant Professor Martin Guggenheim of the New York University Law School and who is associated with the ACLU's Juvenile Rights Project.

On June 28, 1977, the Subcommittee to Investigate Juvenile Delinquency reported out by poll S. 1585 with a committee amendment. The Chairman of the Subcommittee on Criminal Laws and Procedures, Senator McClellan, subsequently indicated that his Subcommittee did not plan to consider the legislation and would not object to consideration of the Juvenile Delinquency Subcommittee's report by the full Judiciary Committee.

On September 14, 1977, the Committee on the Judiciary considered S. 1585 and unanimously agreed to report S. 1585 with an amendment in the nature of a substitute with a recommendation that the bill as amended do pass.

IV. The Need for Federal Criminal Statutes To Prohibit Sexual Exploitation of Children

The hearings and staff investigations conducted by the Committee have led us to the following conclusions:

—That child pornography and child prostitution have become highly organized, multimillion dollar industries that operate on a nationwide scale.

—That the use of children as prostitutes or as the subjects of pornographic materials is very harmful to both the children and the society as a whole.

—That such prostitution and the sale and distribution of such pornographic materials are carried on to a substantial extent through the mails and other instrumentalities of interstate and foreign commerce, and

—That existing Federal laws dealing with prostitution and pornography do not protect against the use of children in these activities and that specific legislation in this area is both advisable and needed.

A. THE NATURE AND EXTENT OF CHILD PORNOGRAPHY

Since the production, distribution and sale of child pornography is often a clandestine operation, it is extremely difficult to determine its full extent. At present, however, a wide variety of child pornography is available in most areas of the country. Moreover, because of the vast potential profits involved, it would appear that this sordid enterprise is growing at a rapid rate.

Recently a number of estimates of the extent of child pornography have appeared in the press and other media. Most of these estimates are mere guesses. However, one researcher, Robin Lloyd, the author of *For Money or Love: Boy Prostitution in America*, has documented the existence of over 260 different magazines which depict children engaging in sexually explicit conduct. These publications bear such names as "Torrid Tots," "Night Boys", "Lolita," "Boys Who Love Boys," and "Children-Love."

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Such magazines depict children, some as young as three to five years of age, in couplings with their peers of the same and opposite sex, or with adult men and women. The activities featured range from lewd poses to intercourse, fellatio, cunnilingus, masturbation, rape, incest and sado-masochism.

Such magazines, however, are only one of the forms of child pornography that are currently available in the United States. Other forms include ten to twelve minute films known as "loops", still photographs, slides, playing cards, and video cassettes.

Such pornographic materials are usually sold either in adult bookstores or by mail order catalogues. In some bookstores the materials are on open display while in others they are kept below the counter for special customers. However, many pedophiles—those whose sexual preference is for children—prefer to purchase such materials through mail order catalogues. This is because often these catalogues permit the pedophile to order materials depicting specific sexual deviations, to establish contact with other pedophiles, and even to establish liaisons with some of the child models.

To date, police have uncovered major production centers for child pornography in Los Angeles, New York, Chicago and several other large cities. However, since such photographs or films are usually taken in private homes or hotel rooms, it is possible to produce such materials in any community. For example, the police have also arrested smaller, independent producers in such unlikely places as Port Huron, Michigan and Winchester, Tennessee.

The committee also found that some child pornography available in the United States is produced in foreign countries. Indeed it is quite common for photographs or films made in the United States to be sent to foreign countries to be reproduced and then returned to this country in order to give the impression of foreign origin.

It should also be remembered that in reproducing these materials thousands of copies can be made from a single negative. As a result, the cost of producing child pornography are minimal but the profits are often enormous.

For example, magazines that retail for $7.50 to $12.50 per copy can be produced for 35 to 50 cents. Similarly, a cheap home movie camera can be used to produce a film that will sell thousands of copies for $75 to $200 each.

One graphic example of the economics of child pornography was presented at the Committee's Chicago field hearing. A police officer testified how undercover officers of the Chicago Police Department were able to infiltrate a group that was using two fourteen year old boys to make a pornographic film for national distribution. The cost of producing this 200 foot film was $21 per copy and the retail selling price was to have been $100. At the time of their arrest, the producers of the film stated that they might have been able to sell as many as 10,000 copies of the film over a six-month period.

In summary, then, it should be remembered that because of the clandestine nature of child pornography it is probably impossible to be precise in determining its present scope. It is clear, however, that it is a large industry—representing millions of dollars in annual revenue—that operates on a nationwide scale and relies heavily on the use of the

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mails and other instrumentalities of interstate and foreign commerce. Finally, as noted earlier, it appears that because of the vast potential profits in child pornography, these sordid enterprises are growings at a very rapid rate.

B. CHILD PORNOGRAPHY AND CHILD PROSTITUTION

The Committee has found a close connection between child pornography and the equally outrageous use of young children as prostitutes. The precise relationship between these two forms of child abuse, however, can take many different forms.

The committee heard the testimony of a 17-year-old Chicago youth who had sold himself on the street for some two years and had also acted in a number of pornographic movies. In order to protect the identity of this young man, it was arranged for him to testify from a separate room over a two way speaker telephone system. For the purposes of the hearing, his real name was not disclosed and he was referred to as 'Marty'.

Marty testified that in Chicago many young boys—often referred to as "chickens"—served as prostitutes for older men known as "chicken hawks." On any given night as many as fifty of these "chickens" varying in age from 12 to 19 years old would congregate in the areas of Clark and Diversy streets waiting to be picked up by a "chicken hawk." On an average night, Marty might be picked up by two or three different "chicken hawks" and engage in various sexual

acts with them or pose for pornographic pictures or both. In the process, he often could earn close to $500 in a week.

There have been numerous other recent examples of young persons, perhaps less sophisticated than Marty, being exploited for the profit of adults.

One such case involved the Reverend Claudius (Bud) Vermilye, Jr. who operated a home for wayward boys in Winchester, Tenn. The Reverend Vermilye encouraged the young boys in his charge to engage in orgies and filmed the orgies with a hidden camera. He then sold the films to certain "sponsors" of the home and also arranged for some of the sponsors to come to the farm and have sex with the boys.

In another recent case, two men in New Orleans started a Boy Scout Troop with about forty boys as members. From that group, they selected about ten boys to go on Scout trips during which the boys engaged in various sexual acts with adult males. To date, 19 adult males have been charged in this case.

In another recent case brought to light at the Chicago field hearing, the Committee heard the testimony regarding a prostitution ring known as the Delta Project. An undercover investigator presented evidence that the leaders of this Delta Project planned to establish "Delta Dorms" in large cities around the country. Each dorm was to house an adult pedophile known as the Delta Don and four or five young boys known as Delta cadets.

Working primarily through the mails, the Delta Project solicited money from a number of adult males who were encouraged to become Delta sponsors. For a fee, a sponsor was to be able to visit one of the dorms or arrange to have a cadet sent to his home. Although appar-

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ently no Delta Dorms were established, several cadets were sent on multi-state trips in which they visited one sponsor after another.

At the present time, such shipment of boys across state lines for prostitution does not violate any federal law. The Mann Act, 18, U.S.C. 2423, only prohibits the interstate transportation of minor females for the purposes of prostitution and does not include young males.

C. PROFILE OF THE EXPLOITED CHILDREN

Who are the exploited children and how do the pornographers and prostitution ring organizers lure them into these activities? From evidence gathered by the Committee it often appears to be a very easy process.

The child victims are typically runaways who come to the city with no money or only enough to sustain themselves for two or three days. It is estimated that 700,000 to one million children run away from home each year so it is not very difficult for pedophiles to find child models or prostitutes. Often adult exploiters pick them up at bus stations, hamburger stands and amusement arcades and offer them money, gifts or drugs for sexual favors. With small children, even candy or a free meal may be sufficient.

Not all of the exploited children are runaways. Many of them live with their families, attend school, and conduct what appear to be normal lives. One convicted child pornographer testified before the Committee that he was able to recruit approximately 30 young male models over a two year period, most of whom were not runaways. Although

they were living with their families, they were boys whose fathers were absent from the home—either physically or psychologically—and who had no strong moral or religious beliefs.

It should be noted that this testimony corresponds with a profile of boy victims that has been compiled by the Los Angeles Police Department from their interviews with pornographers. Specifically the Los Angeles police found that the typical boy victim was:

—Between the ages of 8 and 17
—An underachiever in school or at home
—Usually without previous homosexual experience
—Came from a home where the parents were absent either physically or psychologically
—Had no strong moral or religious affiliations
—Usually had no record of previous delinquency
—Suffered from poor sociological development

In most situations the parents or foster parents are unaware of what their children are doing. However, in some of the worst cases, the parents themselves lead the children into this depravity. There are several documented cases where prostitutes sold their own children for sexual purposes.

Of deep concern to the Committee is the effect of child pornography and prostitution on the children who become involved. Generally they are highly vulnerable children in the first place, making them easy prey.

Frequently they are victims of child abuse, or of broken homes, or of parents who simply do not care. Such children have no self-pride

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or confidence and very little resistance. An offer of money, food, or shelter, or even a few friendly words or a show of concern can lead them, unquestioning, into the hands of exploiters for purposes of pornography or prostitution. Where there was no love or encouragement in their lives before, they finally achieve approval, encouragement and money for sexual favors.

Such encounters cannot help but have a deep psychological, humiliating impact on these youngsters and jeopardize the possibility of healthy, affectionate relationships in the future. Indeed such children often grow up in an adult life of drugs and prositution. Even more tragic, however, is the fact that many adults who were molested as children tend to become child molesters themselves, thus continuing the vicious cycle.

It should be emphasized that child pornography and prostitution are just individual aspects or symptoms of a larger context of social problems that confront the nation. Broken homes, alienated and runaway children, emotionally disturbed juveniles, alcohol and drug abuse among the very young, and wide spread child abuse are among the national problems that help create the milieus in which child pornography and prostitution can thrive.

Against the backdrop of the breakdown of the family and the fundamental values of our society, questions must be asked regarding the adequacy of our educational system, the effectiveness of our social agencies, our ability to deal with poverty and unemployment, and the quality of our justice system. Child pornography and prostitution are deadly serious problems. But even more menacing is the fact that these are only tips of an iceberg.

D. THE NEED FOR ADDITIONAL FEDERAL EFFORTS TO COMBAT CHILD PORNOGRAPHY AND CHILD PROSTITUTION

The federal effort to combat child pornography and child prostitution is conducted primarily by the Department of Justice, the Federal Bureau of Investigation, the Postal Service and the Customs Service. These agencies are responsible for enforcing existing federal statutes that prohibit the mailing,[1] importation,[2] and interstate transportation [3] of obscene materials, and the interstate transportation of young females for the purposes of prostitution.[4]

The Committee's investigation established that, for the most part, these statutes provide federal investigators and prosecutors with adequate weapons to combat child pornography and child prostitution. However, certain changes in federal legislation and in federal enforcement procedures would greatly enhance these efforts.

For example, the experts who testified before the Committee felt that virtually all of the child pornography currently on the market could be prosecuted under the existing federal obscenity statutes. Until recently, however, federal authorities initiated pornography investigations only if the case involved a large manufacturer or distributor or if the case involved a connection with organized crime. Thus

[1] 18 U.S.C. 1461.
[2] 18 U.S.C. 1462.
[3] 18 U.S.C. 1465.
[4] 18 U.S.C. 2423.

many of the sources of child pornography never came within the purview of federal investigators.

The Committee is pleased to note that in recent months federal authorities have begun a much more extensive crackdown on child pornography. For example, rather than just investigating large scale dealers in child pornography the Postal Service now investigates every complaint and every mail order advertisement for pornographic materials that depict children. In addition postal inspectors around the country have been ordered to reopen any case involving child pornography that had been closed in the last year because it did not involve large scale dealers or organized crime.

As a result of these recent efforts the number of child pornography cases being investigated by the Postal Service has risen from 13 to 38. Similarly the Federal Bureau of Investigation is conducting a number of investigations into child pornography, and the Customs Service is participating in 6 investigations. In fact, five of the investigations by the Postal Service have already resulted in indictments, and one defendant was convicted on September 1, 1977.

It is the Committee's wish that these investigations and prosecutions be given the highest priority. Indeed, in order to insure that these efforts continue to receive top priority, the Committee believes the existing federal obscenity laws should be amended so as to greatly increase the penalties if the obscene materials involve the depiction of children engaging in sexually explicit conduct.

It should also be noted that at the present time federal obscenity laws deal only with the sale, distribution and importation of obscene materials. No federal law deals directly with the abuse of children that is inherent in the production of such materials. It is the opinion of the Committee that such a federal law is urgently needed.

The need for Federal legislation in this area is highlighted by the small number of states that have statutes which ban the use of children in the production of pornographic material. According to a recent study of the Congressional Research Service of the Library of Congress, entitled "Federal and State Law Regulating Use of Children in Pornographic Material" (March 1977), only six states have statutes proscribing the use of children in the production of pornographic materials. While the Committee fully expects that this number will rise in response to the calls for effective state laws, it is our belief that the breadth and nature of this form of a child abuse requires the effective involvement of the Federal government.

In addressing this issue, the Committee is well aware of the delicate balance that must be maintained between federal and state and local law enforcement efforts to curb criminal behavior. It is quite true that the general responsibility for dealing with criminal activity is normally not a matter of Federal concern. At the same time, however, the Committee is convinced that the use of children in the production of pornographic materials is a matter that cannot be adequately controlled by state and local authorities. What is needed is a coordinated effort by Federal, state and local law enforcement officials aimed at eradicating this form of child abuse.

Finally, the Committee's investigation into child prostitution found one other deficiency in the existing federal laws. Specifically current

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federal laws prohibit the interstate transportation of young women for the purposes of prostitution. There is no similar provision, however, for young men. Since the Committee's investigation found a number of interstate prostitution rings that dealt in young men, there is a clear need to amend the existing law so as to prohibit the use of any child for the purposes of interstate prostitution.

V. Legislation Considered by the Committee

A. The Roth Proposal—S. 1011

The first Senate bill introduced to deal with problems of child pornography was Senator Roth's proposal—S. 1011. The Committee believes that Senator Roth should be recognized for bringing the problems to the attention of the Senate and the nation and for taking the lead in offering legislation to prohibit this outrageous form of child abuse.

The Subcommittee to Investigate Juvenile Delinquency heard testimony from Senator Roth and the Subcommittee staff consulted with members of Senator Roth's staff during the consideration of child pornography legislation.

It was the decision of the Committee, however, not to report S. 1011. This decision was based in large part upon an opinion from the Department of Justice that noted a number of severe problems in S. 1011. Specifically, their opinion (which is reproduced as appendix A of the Committee report) focused on the following five objectives:

(1) *A number of the definitions in S. 1011 were so vague as to include everyday activities that clearly were neither pornographic or an abuse of children.* For example, among the conduct prohibited by S. 1011 is the depiction of "any other sexual activity."

This phrase is so broad that it could conceivably prohibit such innocent conduct as hugging and kissing.

Similarly, S. 1011 would prohibit the depiction of "Nudity, if such nudity is to be depicted for the purpose of sexual stimulation or gratification of any individual who may view such depiction." Once again their language is so broad that it could conceivably prohibit such innocent scenes as "skinny dipping" or even nude snapshots of babies that were mailed to grandparents. This is particularly true since the proposed test for offensiveness is the sexual stimulation or gratification of *any* individual rather than using the standard of the *average* individual as required by the Supreme Court in *Roth* v. *United States* 354 U.S. 476 (1957)[1] and *Miller* v. *California* 413 U.S. 15 (1973)[2].

(2) *The scope of S. 1011 only covers "photographs or films" and therefore might be unsuccessful in prohibiting a wide variety of pornographic materials such as books, magazines, slides and negatives.*

(3) *The prohibition of S. 1011 would only apply to interstate mailings of such materials even though the Congress has the power to ban any mailing of obscene materials.*

(4) *The penalties in S. 1011—which in certain cases provide for fiines of up to $50,000, or imprisonment of up to 20 years, or both—were excessive to the point of making convictions extremely difficult to obtain except in the most aggravated cases."*

1. 77 S.Ct. 1304, 1 L.Ed.2d 1498.
2. 93 S.Ct. 2607, 37 L.Ed.2d 419.

[page 12]

While the Committee can certainly understand the desire to severely punish child pornographers, it was the opinion of the Department of Justice that the penalty provisions of S. 1011 would do exactly the opposite. Thus rather than punishing child pornographers the provision of S. 1011 might actually make it more difficult to prosecute and convict child pornographers.

(5) *Finally the Justice Department concluded that since the section of S. 1011 prohibiting the sale or distribution of materials depicting explicit sexual conduct involving children would cover both obscene and non-obscene materials, there was a very strong possibility that the courts would declare this section unconstitutional on its face.*

Since the question of constitutionality is so essential to the effectiveness of the bill, it deserves further discussion.

The problem with S. 1011 that most concerned the Justice Department as well as the other expert witnesses that testified before the Committee is that it would prohibit the sale and distribution of both obscene and non-obscene materials that contained any actual or simulated depiction of children engaging in sexually explicit conduct. Thus the bill would obviously cover the types of actual child pornography that the Committee wishes to prohibit. At the same time, however, S. 1011 would prohibit the sale and distribution of a small number of non-pornographic materials that contain brief scenes of actual or simulated sexually explicit conduct involving children.

For example the film "The Exorcist" contains a brief scene in which a minor simulates masturbation. Similarly the film "Romeo and Juliet" contains a brief scene in which a minor appears in the

nude. It should be pointed out that all of the bills considered by the Committee would ban the use of children in the actual production of any such scene in the future. Such a ban would be aimed at the actual conduct on the grounds that such conduct is a form of child abuse. S. 1011, however, would also ban the sale or distribution of any film containing such a scene. Since this ban would be aimed at a form of speech rather than at conduct, it would have to comply with the Supreme Court's current standards on obscenity.

Under these current standards as laid down by the Supreme Court neither "The Exorcist" nor "Romeo and Juliet" would be considered obscene. This is because under these standards as applied in *Miller* v. *California*, the test for obscenity is whether, *inter alia*, " 'the average person, applying contemporary community standards' would find the work, *taken as a whole*, appeals to the prurient interest . . . and whether the work, *taken as a whole*, lacks serious literary, artistic, political, or scientific value." 413 U.S. at 24 (emphasis added).

To summarize briefly then—while certain scenes may be of questionable taste, it is clear that neither "The Exorcist" nor "Romeo and Juliet" are obscene when taken as a whole. It is equally clear, however, that the sale and distribution of these films would be prohibited under S. 1011. As a result there is a very strong possibility that S. 1011 would be found to be unconstitutional. Indeed, according to the opinion of the Justice Department:

> The Court has held that, as a general rule, a criminal statute which would reach protected expression as well as obscenity is void on its face for overbreadth. See *Erzonznik* v. *City of*
>
> [page 13]
>
> *Jacksonville*, 422 U.S. 205 (1975)[3]; and *Butler* v. *Michigan*, 352 U.S. 380 (1957)[4]. Although the Court has modified this doctrine in the case of a statute dealing with distribution to children only, see *Ginzburg* v. *New York*, *supra*, the proposed bill would prohibit distribution to anyone. In the face of the strong contitutional protection accorded material which is not obscene, we cannot say with any certainty that the proposed legislation would withstand constitutional challenge.

In the judgment of the Committee, the enactment of such a questionable provision would be unwise. Indeed the result might be not to punish child pornographers, but rather to grant them a certain immunity since there is a substantial chance that any convictions for the sale and distribution under S. 1011 would be overturned.

The Committee also believes that the enactment of such a provision would be unnecessary. It was the opinion of the experts who testified before the Committee that virtually all of the materials that are normally considered child pornography are obscene under the current standards. Thus they can be prohibited under the existing federal obscenity statutes. Indeed as was noted earlier, federal authorities have already begun an extensive crack down on child pornography.

In comparison with this blatant pornography, non-obscene materials that depict children are very few and very inconsequential. Thus it would be extremely unwise to jeopardize the effectiveness of any federal effort to combat hard core child pornography by also attempting to prohibit the sale and distribution of such non-obscene and relatively innocent materials as "The Exorcist" and "Romeo and Juliet".

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B. THE MATSUNAGA PROPOSAL—S. 1499

The Matsunaga proposal—S. 1499 was essentially identical to the Roth bill—differing only in the severity of penalties provided for offenses.

Moreover, it was drafted as an amendment to the Child Abuse Prevention and Treatment Act which is within the jurisdiction of the Human Resources Committee. It was, therefore, not considered by the Committee.

C. THE MATHIAS/CULVER PROPOSAL—S. 1585

S. 1585 was introduced by Senators Mathias and John Culver on May 23, 1977. Originally their bill concentrated only on the production of materials depicting children in sexually explicit by prohibiting the actual production of any such materials that were going to be mailed or transported in interstate commerce on the basis of protecting the children involved from sexual exploitation and abuse. At the time of its introduction, the bill left the sale and distribution of such materials to be handled by the existing obscenity statutes.

S. 1585 also was drafter so as to correct a number of the faults that the Justice Department had found with S. 1011. Specifically, the definition "esxually explicit conduct" was more tightly drawn so as to include only those activities where the child was engaged in sexually-oriented acts. Similarly, the type of materials covered was expanded to include negatives, slides, books, magazines and other print or visual

3. 95 S.Ct. 2268, 45 L.Ed.2d 125.
4. 77 S.Ct. 524.

[page 14]

media in addition to photographs and films. Finally, the act was written so as to cover any mailing of materials involving children engaged in sexually explicit conduct rather than just interstate mailings.

On June 9, 1977, in response to the Juvenile Delinquency Subcommittee's first hearing in Chicago, Senators Mathias and Culver offered Amendment 380, an amendment in the nature of a substitute, which made minor revisions in their original bill and which also included a section revising the Mann Act 18 U.S.C. 2423. This was done because at the Chicago hearing the Subcommittee discovered that there was a substantial interstate traffic in young boys for the purposes of prostitution but the current Mann Act was only applicable to females. Therefore, the S. 1585, as amended, would revise the Mann Act to include young males. At the suggestion of the Justice Department, this proposed amendment to the Mann Act also clarified certain archaic language in S. 2423.

Finally, the committee amendment to S. 1585 added provisions to deal with the sale and distribution of child pornography. In doing so, it avoided the constitutional problem inherent in the approach in S. 1011 by simply amending current obscenity statutes 18 U.S.C. 1461, 18 U.S.C. 1462, and 18 U.S.C. 1465 to provide for greatly increased penalties if the materials adjudged "obscene" under those statutes involved in their production the use of children in sexually implicit conduct.

In the opinion of the Committee such an approach is far preferable to the provisions on sale and distribution in S. 1011 that were

discussed earlier. As was noted in that earlier discussion, the Committee feels that virtually all of the materials that it would wish to prohibit are obscene under these current statutes. Thus these statutes, as strengthened by the additional penalties provided for in S. 1585, should give prosecutors a strong and effective weapon against child pornographers. Moreover, since the courts have indicated that they will read the standards of Miller v. California 415 U.S. 15 (1973)[5] into these existing obscenity statutes there is no possibility that these provisions of S. 1585 will be found unconstitutional because they conflict with Miller v. California. Hence there is much less chance that the provisions of S. 1585 as opposed to those in S. 1011 will be declared unconstitutional and unenforceable.

In this regard the Committee feels that by greatly increasing the penalties for the sale and distribution of obscene materials—if those materials involve the depiction of sexually explicit conduct by children—the Congress is clearly expressing its abhorrence of child pornography. Specifically the current penalties for such an offense is a fine of not more than $5,000 or imprisonment of not more than 5 years, or both, for the first such offense, and a fine of not more than $10,000, or imprisonment of not more than 10 years, or both, for each such offense thereafter. Under the provisions of S. 1585, however, if such an offense involved materials depicting children engaging in sexually explicit conduct, the penalties would be a fine of not more than $10,000, or imprisonment of not less than 2 years nor more than 10 years, or both, for the first offense, or a fine of not more than $15,000 or imprisonment of not less than 5 years nor more than 15 years, or both, for each such offense thereafter.

The Committee feels that such penalties will provide adequate deterrence especially since the maximum penalty could be assessed for

5. 93 S.Ct. 2607, 37 L.Ed.2d 419.

[page 15]

each violation and the most offensive cases would normally involve multiple violations. At the same time, however, these penalties are not so excessive as to actually prevent the obtaining of prosecutions and convictions in appropriate cases.

VI. Explanation of the Committee Amendment

S. 1585 would make three major changes in Title 18 of the United States Code to enhance the ability of the Federal government to combat two closely related and equally insidious forms of child abuse: the use of children in pornographic material and juvenile prostitution. Specifically, S. 1585 would:

—add a new section 2251 to Title 18, making it a Federal offense for anyone to use children under the age of 16 in the production of pornographic materials;

—amend 18 U.S.C. 2423 to proscribe the interstate transportation of persons under 18 years of age for the purpose of engaging in prostitution; and

—amend the penalty provisions in those sections of title 18 dealing with the mailing (section 1461), importation or transportation (section 1462) and transportation for sale or distribution (section 1465) of obscene materials to in-

crease the penalties where the materials adjudged obscene involved the use of children under 16 years of age engag- in sexually explicit conduct.

A. PRODUCTION OF PORNOGRAPHIC MATERIALS

Current Federal laws dealing with pornography focus almost exclusively on the sale, distribution and importation of obscene materials, and, do not directly address the abuse of children inherent in their participation in the production of such materials. By favorably reporting S. 1585, the Committee intends to fill the existing gap in Federal law by declaring that the use of children in the production of such materials is a form of child abuse.

Section 3(a) of S. 1585 would address this issue by adding a new chapter, chapter 110, to title 18, entitled "Sexual Exploitation of Children." This new chapter consists of a new section, section 2251.

Section 2251(a) would prohibit any person from knowingly employing, using, persuading, enticing, or coercing any minor to engage in or assist in any sexually explicit conduct the purpose of which is to promote various forms of print or visual media, if such person knows or has reason to know that the material will be mailed or will be traveling in interstate or foreign commerce. Section 2251(b) would make it a Federal crime for the parent, guardian, or other person having custody or control over a covered minor to knowingly permit such minor to engage in such sexually explicit conduct. Section 2251(c) defines several of the terms employed in 251(a) and (b), including "sexually explicit conduct," and "minor."

B. SCOPE

It is the Committee's intention that the use of the word "knowingly" in both Sections 2251(a) and (b) will require that the person

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charged under these provisions have knowledge or reason to know the purpose for which the minor was being used in the production of the material in question.

It is the Committee's intention that the government will have the affirmative burden of showing that the person charged knew or should have known that the materials described under 2251(a) and (b) will be transported in interstate or foreign commerce or mailed. While the Committee recognizes that the jurisdictional element is often a difficult one to prove, it nonetheless believes that this requirement is necessary to preserve the balance between the law enforcement responsibilities of Federal officials on one and, and their state and local counterparts, on the other.

In addition, the Committee intends that the issue of whether the jurisdictional element has been met will be a question decided on a case-by-case basis. The Committee intends that in deciding this jurisdictional issue, substantial weight shall be accorded: (1) the purpose of the production; (2) the nature and size of the operation; (3) the relationship of the person charged to the subsequent use or destination of materials described in Section 2251; and (4) the past practices and customs of the person charged both with regard to the production of such materials in 2251(a) and the relationship of the person charged to the subsequent use or destination of such materials in 2251(b).

By incorporating Section 2251(b) into S. 1585, the Committee intends to carefully set forth the limited circumstances under which a parent, legal guardian or person having custody or control of a minor and who permits such minor to engage in the conduct proscribed under the bill, shall be subject to criminal prosecution. Liability under 2251(b) would only attach to those persons who are charged by law with control over the minor, or, have been delegated and voluntarily accepted such control by the person charged by law with such responsibility. Section 2251(b) is not intended to reach persons who have some knowledge of the proscribed activity, but do not have the requisite control or dominion over the minor.

The Committee is aware that Section 2251 may literally encompass isolated, individual acts involving the use of children in the production of sexually explicit materials. Section 2251 is not intended to reach all such isolated incidents, which often are more appropriately the subject of state or local concern. The Committee fully intends that federal prosecutors will wisely exercise their discretion to reach only those cases which are the proper subject of Federal concern (See, *Redmond* v. *U.S.* 384 U.S. 264 (1966)[6]).

C. JUVENILE PROSTITUTION

Section 4(a) of S. 1585 addresses a form of child abuse, which like the use of children in the production of pornographic materials, has only recently attracted national attention: juvenile prostitution. The Committee has received substantial evidence to indicate that the issue of juvenile prostitution is one of national dimensions and that one of the major difficulties in combatting this insidious form of child abuse is the absence of adequate Federal laws proscribing this practice.

6. 86 S.Ct. 1415, 16 L.Ed.2d 521.

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Section 4(a) would address this form of child abuse by making it a Federal crime for any one to transport any persons under 18 years of age across state lines to engage in prostitution.

As presently written, the appropriate provision of Federal law, 18 U.S.C. 2423, prohibits the transportation across state lines of females under the age of 18 to engage in prostitution, debauchery, or other immoral acts. At the present time, however, there is no similar provision regarding the interstate transportation of males under the age of 18. Section 4(a) of S. 1585 is intended to fill this gap in the Federal law and apply the general proscription now found in 18 U.S.C. 2423 to any person under 18 years of age.

At the suggestion of the Justice Department, Section 4(a) deletes the language in 18 U.S.C. 2423 concerning debauchery and other immoral acts, and would pertain only to the interstate transportation of a person under 18 years of age for purposes of engaging in prostitution. The Committee amendment does not define the term "prostitution," which is also not statutorily defined in any of the provisions of the Mann Act, 18 U.S.C. 2421-23. The Committee intends, rather, that the term prostitution shall mean what is commonly understood by the term—the exchange of sexual favors for something of value. The definition of the term "prostitution" is neither dependent upon the definition found in various state laws nor upon whether prostitu-

tion is illegal in the state to which the minor is transported for such purposes.

Moreover, the Committee amendment would delete the requirement in Section 2423 that the minor be transported across state lines in a common carrier. It is the Committee's intention that the proscription set forth in these sections shall apply regardless of the mode of transportation employed by the party charged.

Finally, the Committee amendment would retain the present penalty provision now found in Section 2423 of not more than 10 years and not more than $10,000, or both.

D. AMENDING THE PENALTY PROVISIONS OF 18 U.S.C. 1461, 1462, 1465

In addition to proscribing the use of children in the production of sexually explicit materials, the bill would also attempt to increase the deterrent effect of current Federal statutes dealing with the sale and distribution of such materials through interstate or foreign commerce. To do this, the Committee has chosen to amend Sections 1461 (mailing), 1462 (importation or transportation), and 1465 (transportation for sale and distribution) of title 18 United States Code to greatly increase the penalties where materials subject to the provisions of these sections use children in the manner proscribed by Section 2251. It is the belief of the Committee that existing Federal statutes which deal with the interstate or foreign commerce sale and distribution of obscene or pornographic matter are sufficient to address the problem on a substantive basis.

The Committee has carefully considered the suggestion that the Federal laws be extended to make illegal the sale and distribution of materials whose production involved the use of minors in sexually explicit conduct as defined in Section 2251. The Committee recognizes, however, that the sale and distribution of such material cannot

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be approached in the same manner as its production. Attempts to prohibit the sale and distribution of such material necessarily involve an evaluation of the content of the materials in question. Consequently, the Supreme Court in *Miller* v. *California*, 413 U.S. 15 (1973)[7] has held that in determining whether material is obscene and loses its First Amendment protection, the material must be judged in its entirety. Therefore, the Committee is of the view that an attempt to make illegal the sale and distribution of material regardless of whether such material when taken as a whole is obscene, would run counter to present Federal constitutional law as ennunciated by the Supreme Court in *Miller*.

Finally, while the Court has indicated that different standards may apply to the dissemination of allegedly obscene material to juveniles, it has not intimated that different standards should apply to the dissemination of materials which portray juveniles in sexually explicit conduct, and the Committee believes that such an approach would not pass constitutional muster.

In light of the foregoing, the Committee has chosen to simply amend the appropriate existing obscenity laws to provide a much more severe penalty for the sale and distribution of obscene materials depicting children in explicit sexual conduct.

VII. Conclusion

The Committee believes that S. 1585, as amended, will allow effective prosecution of sexual exploiters of children.

The proposed 18 U.S.C. § 2251 will find a void in Federal law and will attack the production of materials depicting children in sexually explicit conduct as a form of child abuse.

The proposed amendment to the Mann Act, 18 U.S.C. § 2423, will extend the existing prohibition on the interstate trafficking of juvenile females to include young males and thus attack the problem of juvenile male prostitution.

Finally, the proposed amendments to 18 U.S.C. § 1461, 18 U.S.C. § 1462, and 18 U.S.C. § 1465 will go as far as constitutionally possible to ban the sale and distribution of child pornography. The passage of these amendments will strengthen the weapons available to prosecutors and will send them a clear signal that it is time for them to use these weapons.

VIII. Cost Estimation of Congressional Budget Office

Hon. James O. Eastland,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Office has reviewed S. 1585, the Protection of Children Against Sexual Exploitation Act of 1977, as ordered reported by the Senate Committee on the Judiciary, September 14, 1977.

Based on this review, it appears that no additional cost to the government would be incurred as a result of enactment of this bill.

Sincerely,

Alice M. Rivlin, *Director.*

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7. 93 S.Ct. 2607, 37 L.Ed.2d 419.

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IX. Tabulation of Votes Cast in Committee

Rollcall vote on Hatch amendment to substitute the provisions of S. 1011 (with modifications) for the committee amendment.

YEA	NAY
Allen	Kennedy
Thurmond	Bayh
Laxalt	Biden
Hatch	Culver
	Metzenbaum
	DeConcini
	Mathias
	Wallop
	Eastland

Rollcall vote on motion to report S. 1585, as amended in the nature of a substitute.

YEA	NAY
Kennedy	None
Bayh	
Byrd	
Abourezk	
Allen	
Biden	
Culver	
Metzenbaum	
DeConcini	
Thurmond	
Mathias	
Scott	
Laxalt	
Hatch	
Wallop	
Eastland	

X. Section-by-Section Analysis of S. 1585, As Amended by the Proposed Amendment in the Nature of a Substitute

Section 1 of the bill provides that the act may be cited as the "Protection of Children Against Sexual Abuse Act of 1977".

Section 2(a) contains the following findings of Congress: (1) that the use of children as subjects in the production of pornographic materials is very harmful to the children and to society as a whole; (2) that the production and sale of such pornographic materials is a multi-million dollar industry carried on to a substantial extent through interstate and foreign commerce; and (3) that existing Federal laws dealing with the interstate distribution of pornographic materials do not protect against the use of children in the production of such materials and that specific legislation in this area is both advisable and needed.

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Section 2(b) determines that the provisions of chapter 110 of Title 18, United States Code, are necessary and proper to establish uniform and effective laws on the subject of sexual exploitation of children.

Section 3(a) adds a new chapter, chapter 110, to Title 18 of the United States Code. The title of this new chapter is "Sexual exploitation of children" and the text of the new chapter consists of a new section, section 2251.

Section 2251(a) makes it a federal crime for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in, or to have a minor assist any other person to engage in, any sexually explicit conduct, for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, if such person knows or has reason to know that such film, photograph, negative, slide, book, magazine, or other print or visual medium will be mailed or otherwise transported in interstate or foreign commerce.

Section 2251(b) makes it a federal crime for any parent, legal guardian, or other person having custody or control of a minor to knowingly permit such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, if such parent, legal guardian, or other person knows or has reason to know that such film, photograph, negative, slide, book, magazine, or other print or visual medium will be mailed or otherwise transported in interstate or foreign commerce.

Section 2251(c) contains three definitions. Specifically, it defines:

—a 'minor' as any person under the age of 16;

—'sexually explicit conduct' as actual or simulated sexual intercourse (including genital-genital, oral-genital, anal-genital, or oral-anal) whether between persons of the same or opposite sex, bestiality, masturbation, sado-maschoistic abuse, and the lewd exhibition of the genitals or pubic area; and

—'promoting' as producing, directing, manufacturing, issuing, publishing, or advertising for pecuniary profit.

Section 2251(d) provides that anyone who violates section 2251 will be subject to a fine of not more than $10,000, or imprisonment of not less than two years nor more than ten years, or both, for the first offense, or a fine of not more than $15,000, or imprisonment of not less than five years nor more than fifteen years, or both, for each such offense thereafter.

Section 3(b) is a conforming amendment that would amend the table of chapters in Part I of Title 18, U.S.C., by inserting a reference to the new chapter 110.

Section 4(a) amends Section 2423 of Title 18, U.S.C., which prohibits the interstate transportation of females under the age of 18 for the purposes of prostitution. The amendment would prohibit the interstate transportation of any person under the age of 18 for the purposes or prostitution. The penalty for such conduct would be a fine of not more than $10,000, or imprisonment of not more than ten years, or both.

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Section 4(b) is a conforming amendment that would amend the table of sections of chapter 117 of Title 18, U.S.C. by striking out the word 'Female' from the item relating to Section 2423.

Section 5(a) amends Section 1461 of Title 18, U.S.C., which prohibits the mailing of obscene or crime-inciting matter. The amendment would increase the penalty for mailing any such matter if the matter involved the use of any person under the age of 16 engaging in sexually explicit conduct as defined in Section 2251(c). The current penalty in Section 1461 is a fine of not more than $5,000, or imprisonment of not more than five years, or both, for the first offense, or a fine of not more than $10,000, or imprisonment for not more than 10 years, or both, for each such offense thereafter. The proposed penalty for mailing matter involving the use of minors engaging in sexually explicit conduct would be a fine of not more than $10,000, or imprisonment of not less than one year nor more than 10 years, or both, for the first offense, and a fine of not more than $15,000, or imprisonment of not less than two years nor more than 15 years, or both, for each such offense thereafter.

Section 5(b) amends Section 1462 of Title 18, U.S.C., which prohibits the importation or interstate transportation of obscene matters,

The amendment would increase the penalty for importing or transporting such obscene matter if the matter involved the use of any person under the age of 16 engaging in sexually explicit conduct as defined in Section 2251(c). The current penalty in Section 1462 is a fine of not more than $5,000, or imprisonment of not more than 5 years, or both, for the first offense, or a fine of not more than $10,000, or imprisonment for not more than 10 years, or both, for each such offense thereafter. The proposed penalty for importing or transporting obscene matter involving the use of minors engaging in sexually explicit conduct would be a fine of not more than $10,000, or imprisonment of not less than one year nor more than 10 years, or both, for the first offense, and a fine of not more than $15,000, or imprisonment of not less than two years nor more than 15 years, or both, for each such offense thereafter.

Section 5(c) amends Section 1465 of Title 18, U.S.C. which prohibits the interstate transportation of obscene matters for sale or distribution. The amendment would increase the penalty for transporting any such obscene matters if the matters involved the use of any person under the age of 16 engaging in sexually explicit conduct as defined in Section 2251(c). The current penalty in Section 1465 is a fine of not more than $5,000, or imprisonment of not more than 5 years, or both, for the first offense, or a fine of not more than $10,000, or imprisonment for not more than 10 years, or both, each such offense thereafter. The proposed penalty for transporting for obscene matter involving the use of minors engaging in sexually explicit conduct would be a fine of not more than $10,000, or imprisonment of not less than one year nor more than 10 years, or both, for the first offense, and a fine of not more than $15,000, or imprisonment of not less than two years nor more than 15 years, or both, for each offense thereafter.

Section 6 provides that if any provision of the Act or the application thereof to any person or circumstance is held invalid, the re-

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mainder of the Act or the application of such provision to other persons not similarly situated or to other circumstances shall not be affected.

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XII. Appendix

Department of Justice,
Washington, D.C., June 14, 1977.

Hon. James O. Eastland,
Chairman, Committee on the Judiciary, U.S. Senate,
Washington, D.C.

Dear Mr. Chairman: This is in response to your request for the views of the Department of Justice on S. 1011, a bill "To amend Title 18, United States Code, to prohibit the sexual exploitation of children and the transportation in interstate or foreign commerce of photographs or films depicting such exploitation."

The bill amends Title 18, United States Code, by adding proposed sections 2251, 2252 and 2253. Section 2251 provides a fine of not more than $50,000 or less than $10,000 or imprisonment for not more than

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twenty years or less than four years or both for any individual who causes or knowingly permits a child to engage in a prohibited sexual act as defined in the bill or the simulation of such an act if such individual knows, has reason to know or intends that such act may be photographed or filmed and that the resulting photograph or film may be transported, shipped or mailed through interstate or foreign commerce or may affect such commerce. The same penalty would apply to any individual who photographs or films a child engaging in a prohibited sexual act or in a simulation thereof if such individual knows, has reason to know, or intends that any resulting photograph or film may be transported, shipped, or mailed through interstate or foreign commerce or may affect such commerce. Section 2252 provides that any individual who knowingly transports, ships, or mails through or in such a manner as to affect interstate or foreign commerce any photograph or film depicting a child engaging in a prohibited sexual act or in the simulation of such an act, or any individual who receives for the purpose of selling or sells any such photograph or film which has been transported, shipped, or mailed through or in such a manner as to affect interstate or foreign commerce shall be fined not more than $25,000 or less than $5,000 or imprisoned not more than fifteen years or less than two years or both. Section 2253 defines "child" as any individual who has not attained age sixteen and defines "prohibited sexual act" to include sexual intercourse, anal intercourse, masturbation, bestiality, sadism, masochism, fellatio, cunnilingus, "any other sexual activity" or "nudity; if such nudity is to be depicted for the purpose of sexual stimulation or gratification of any individual who may view such depiction."

We share the concern of the Congress with regard to the production of films and photographs portraying sexual abuse of children. However, we think that the proposed legislation needs to be modified in certain ways in order to deal with the problem.

In the first place, the bill is, in our opinion, jurisdictionally deficient. It is well settled that Congress may bar articles it deems undesirable from interstate or foreign commerce or from the mails. *E.g.*, *United States* v. *Orito*, 413 U.S. 139 (1973)[8]; *United States* v. *Darby*, 312 U.S. 100 (1941)[9]; and *Periara* v. *United States*, 347 U.S. 1 (1954)[10]. Leaving aside for the moment the effect of the First Amendment, there is little doubt that the Commerce Clause authorizes the enactment of criminal penalties for persons who mail or ship in interstate or foreign commerce or receive in the mail or from interstate or foreign commerce for sale films or photographs of the type in question.

It is also settled that Congress may prohibit the manufacture of an article within a state if the article will enter or affect interstate or foreign commerce. *E.g.*, *United States* v. *Darby*, *supra; Wickard* v. *Filburn*, 317 U.S. 111 (1942)[11]; and *United States* v. *Wrightwood Dairy Co.*, 315 U.S. 110 (1942)[12]. Congress may also punish conduct which has only a potential effect on commerce. *E.g.*, *United States* v. *Addonizio*, 451 F.2d 49 (3d Cir. 1971); and *United States* v. *Prano*, 385 F.2d 387 (7th Cir. 1967). Congress could, therefore, prohibit the manufacture of the films or photographs in question if the producer knows, has rea-

son to know or intends that they will move in or affect interstate or foreign commerce.

8. 93 S.Ct. 2674, 37 L.Ed.2d 513.
9. 61 S.Ct. 451, 85 L.Ed. 609.
10. 74 S.Ct. 358, 98 L.Ed. 435.
11. 63 S.Ct. 82, 87 L.Ed. 122.
12. 62 S.Ct. 523, 86 L.Ed. 726.

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Congress could also prohibit causing or knowingly permitting a child to perform a prohibited sexual act where the person responsible knows, has reason to know or intends that the acts will be filmed or photographed and will be placed in or will affect interstate or foreign commerce. Congress could rationally conclude that children below age 16 are incapable of making a free and understanding decision to participate in the acts which the bill prohibits. See *Ginsberg* v. *New York*, 390 U.S. 629(1968)[13]. Moreover, adults who permit children to participate in these activities play an essential role in the production process somewhat akin to the supplier of an essential material. See *United States* v. *Perry*, 389 F.2d 103 (4th Cir. 1968); and *Call* v. *United States*, 265 F.2d 167 (4th Cir. 1959), wherein suppliers of sugar and containers to illicit distillers were convicted under 26 U.S.C. 5686(a), which forbids possession of property with intent to violate the internal revenue laws.

However, the bill extends liability to cases where a child "may" be filmed or photographed and the resultant material "may" enter the mailstream or enter or affect interstate or foreign commerce. Since what "may" occur also may not occur, the bill could cover a purely local act of child abuse in which there is, in fact, no filming or photographing and no possible effect on interstate or foreign commerce. The bill, therefore, would reach situations not properly cognizable under the Commerce Clause. This defect can be remedied by changing the word "may" where it occurs in the bill to "will".

The words "affect interstate commerce or foreign commerce" should also be deleted from the bill. Without this change the bill would cover a purely intrastate photographing and distribution operation on the theory that commerce is "affected" in that the processing of the film or photographs utilize materials that moved in interstate commerce. See *United States* v. *Addonizio*, *supra*, and *United States* v. *Prano*, *supra*. In our opinion, the investigation or prosecution of purely local acts of child abuse should be left to local authorities with Federal involvement confined to those instances in which the mails or facilities of interstate commerce are actually used or intended to be used for distribution of the film or photographs in question.

The same language which renders the bill jurisdictionally questionable also poses problems with regard to intent. Under the proposed legislation, a person may be convicted if he "intends" that the act in question "may" be photographed any "may" be shipped in interstate or foreign commerce or mailed. We suggest that a person may intend that something happen or that it not happen. The standard of intent used in this bill, which is based on the mere possibility that certain acts will occur would seem to be an insufficient basis on which to predicate criminal liability. An individual may also be convicted if he "intends" to "affect interstate commerce or foreign commerce." While an individual may intend to mail or ship an article, which is a physical act,

the question of whether an action "affects commerce" is an ultimate conclusion based upon the assessment of physical acts rather than a matter of intent. For these reasons also, we recommend that the bill be limited to situations in which a person knows, has reason to know or intends that the act in question will be photographed and mailed or shipped in interstate or foreign commerce.

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13. 88 S.Ct. 1274, 20 L.Ed.2d 195.

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Secondly, the bill does not distinguish between material which is obscene and material which is protected by the First Amendment. In *Miller* v. *California*, 413 U.S. 15 (1973)[14], the Supreme Court required that material be evaluated as a whole in determining whether it is obscene. However, the present bill would forbid the manufacture and distribution of a film containing one brief scene of prohibited conduct and otherwise innocuous. For example, the bill would apply to the film "The Exorcist", which contains a scene in which a minor simulates masturbation but is clearly not legally obscene.

I would like to emphasize at this point two very significant results which would follow from the enactment of this legislation. First, an existing motion picture, such as "The Exorcist", could no longer be distributed in interstate commerce so long as the simulated scene involving the minor is retained in the film, and second, any future production of a motion picture film which contains a depiction of a minor engaged in a prohibited sexual act would be criminally proscribed even though, as in the case of "The Exorcist", the offensive scene is merely a small part of the film which, taken as a whole, would not be legally obscene under the standards set forth by the Supreme Court in *Miller*. This would be a clear statement of public policy by the Congress which would undoubtedly create severe problems for the courts, particularly in situations where the offensive material is merely a small part of what is otherwise a socially acceptable product.

Certain infringements on protected expression have been justified under the principle expressed in *United States* v. *O'Brien*, 391 U.S. 367 (1968)[15], wherein the Court ruled that a regulation is sufficiently justified if it is within the constitutional power of the government, if it furthers an important or substantial governmental interest unrelated to the suppression of free expression, and if the incidental restriction on alleged First Amendment rights is no greater than is essential to the furtherance of that interest. Viewed against the background of this principle it would appear that the bill would further government's legitimate interest in protecting the welfare of children. See *Ginsberg* v. *New York*, *supra;* and *Prince* v. *Massachusetts*, 321 U.S. 158 (1944)[16].

On the other hand, the Court has held that, as a general rule, a criminal statute which would reach protected expression as well as obscenity is void on its face for overbreadth. See *Erznoznik* v. *City of Jacksonville*, 422 U.S. 205 (1975)[17]; and *Butler* v. *Michigan*, 352 U.S. 380 (1957)[18]. Although the Court has modified this doctrine in the case of a statute dealing with distribution to children only, see *Ginsberg* v. *New York*, *supra*, the proposed bill would prohibit distribution to anyone. In the face of the strong constitutional protection accorded material which is not obscene, we cannot say with any certainty that the proposed legislation would withstand constitutional challenge.

Thirdly, certain of the definitions of "prohibited sexual act" set forth in section 2253 do not appear to be appropriate to deal with the conduct sought to be prohibited. "Sadism" and "masochism" are broad enough to cover activities which are not necessarily sexually oriented. They could include filmed episodes of physical mistreatment of orphans, child laborers or inmates of a juvenile detention facility or a child inflicting injury upon himself. Such portrayals would have no sexual appeal except, perhaps, to some tiny segment of society.

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14. 93 S.Ct. 2607, 37 L.Ed.2d 419.
15. 88 S.Ct. 1673, 20 L.Ed.2d 672.
16. 64 S.Ct. 438, 88 L.Ed. 645.
17. 95 S.Ct. 2268, 45 L.Ed.2d 125.
18. 77 S.Ct. 524.

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These terms should be deleted or should be modified to refer to sexually oriented sadism and masochism. If the terms are retained as modified, the legislative history should state what forms of conduct are intended to be covered. The term "nudity . . . depicted for the purpose of sexual stimulation or gratification of any individual who may view such depiction" is also troublesome. This definition differs from the "average person" text for obscene material set forth in *Miller* v. *California*, *supra*, and it would be difficult to determine by what standard the "sexual stimulation or gratification" could be assessed. We would suggest as an alternative definition "lewd exhibitions of the genitals", a phrase used by the Chief Justice in *Miller* v. *California*, *supra*, to describe one of a variety of types of conduct which could be prohibited under state obscenity statutes. Congress could make clear in the legislative history of the bill what types of nude portrayals of children were intended to be encompassed within this definition.

Fourthly, the bill should be expanded in two respects. First, the coverage of the bill is limited to "photographs or films" of prohibited sexual acts. Since photographs may very well end up as inclusions within magazines before they are mailed or shipped in commerce, the title of the bill and subsections 2251(a)(2), 2251(b), 2252(a)(1) and 2252(a)(2) should be amended to include "printed matter containing photographs" in order to avoid possible problems of admissibility at trial based on the contention that the bill does not include such magazines. Second, since we view the bill as an attempt to deal with the commercial exploitation of sexual activity involving children, subsection 2252(a)(2) should be amended to include any individual who manufactures, reproduces or duplicates the subject films or photographs with the requisite intent as well as those who receive or sell such films or photographs. This will enable the bill to cover film processing laboratories and others who are instrumental in the distribution process and who are aware of the nature of the material and the use of the mails or facilities of interstate or foreign commerce.

Fifthly, there will be difficult problems of proof under the bill. The bill is limited in its application to activities involving children, and the term "child" is defined to mean "any individual who has not attained age sixteen." Since in a great many cases the age of the subject will not be readily apparent from an observation of the film or photograph, the Government will not be able to sustain its burden of proof in such cases unless the actor himself is identified and produced in court or other competent evidence of his age is available. In light of

the clandestine fashion in which many of these films and photographs are produced, it will often not be possible for the Government to produce this necessary evidence. In addition, the Government will not be able to prove interstate transportation unless it can establish where the films or photographs were made.

Sixthly, the word "knowingly" in the second line of section 2251 is unnecessary and should be stricken. It can be established that the defendant knew that he was permitting a child to engage in a prohibited sexual act by proving, as the Government is required to do, that the defendant knew, had reason to know or intended that "such act" would be photographed and transported in the mail or in interstate or foreign commerce. In the context in which it appears, "such

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act" clearly means a prohibited sexual act. Unless "knowingly" is deleted here, the bill might be subject to an interpretation requiring the Government to prove the defendant's knowledge of everything that follows "knowingly", including the age of the child. We assume that it is not the intention of the drafters to require the Government to prove that the defendant knew the child was under age sixteen but merely to prove that the child was, in fact, less than age sixteen. In this respect, the bill would resemble 18 U.S.C. 2423, that portion of the White Slave Traffic Act which makes it an offense to knowingly induce or coerce girls under the age of eighteen to travel by common carrier in interstate commerce for immoral purposes. There is no requirement under that statute that the Government prove the defendant knew the girl's age. See *United States* v. *Hamilton*, 456 F.2d 171 (3d Cir. 1972).

On the other hand, the use of the word "knowingly" in subsection 2252(a)(1) is appropirate to make it clear that the bill does not apply to common carriers or other innocent transporters who have no knowledge of the nature or character of the material they are transporting. To clarify the situation, the legislative history might reflect that the defendant's knowledge of the age of the child is not an element of the offense but that the bill is not intended to apply to innocent transportation with no knowledge of the nature or character of the material involved.

Finally, the penalties are excessive to the point of making convictions extremely difficult to obtain except in the most aggravated cases. We suggest that the penalties should be comparable to those found in 18 U.S.C. 2423, namely, a fine of not more than $10,000 or a prison sentence of not more than ten years or both. Moreover, and consistent with the Department's general policy, we do not feel that mandatory minimum penalties are appropriate in this legislation. They interfere unduly with the trial judge's discretion and present unnecessary problems at trial.

As noted above, we have concerns about the bill, as to both its constitutionality and the problems of proof it creates. We also believe its utility would be limited. Nevertheless, if the changes we recommend are incorporated, the Department of Justice would not object to this legislation.

It is our understanding that many of the photographs and films the legislation would attempt to cover are in fact produced abroad; the legislation would not apply to such materials except for that portion of subsection 2252(a)(2) which punishes receipt from foreign

commerce. Moreover, with regard to material which is produced in the United States, recent newspaper accounts have indicated that law enforcement agencies who have investigated in this area for years have had little if any success in ascertaining where and how the films and photographs are made and in discovering the persons responsible for making them. Finally, to the extent that such investigations may prove fruitful, there are appropriate local statutes and ordinances, such as child abuse laws and laws prohibiting contributing to the delinquency of a minor, which would apply to the conduct made criminal in section 2251 of the proposed bill: and we do not think it likely that local prosecutors would hesitate to bring charges. The principal advantage to be

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gained from enactment of this legislation would be to provide the Federal Bureau of Investigation and the Postal Service with investigative jurisdiction in an area that is basically a local law enforcement problem.

To the extent that section 2252 deals with obscene material, the offenses are covered by existing Federal statutes. See 18 U.S.C. 1461–1465. The Postal Service and the FBI have informed us that they presently have several cases dealing with obscene material involving the use of children under investigation. In one respect, the proposed bill is more restrictive than present law because it requires mailing across state lines. The offense denominated in 18 U.S.C. 1461 is complete once material is deposited in the United States mail. Of course, to the extent that the bill deals with material which is not obscene, it is an extension of present law.

The Department of Justice has no objection to enactment of this legislation if it is amended as suggested above.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

PATRICIA M. WALD,
Assistant Attorney General.

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XIII. ADDITIONAL VIEWS OF MR. HATCH

In this age of sordid enterprises, child pornography surely reaches the depths of human depravity. Here is a business—and it is widespread—that must certainly inflict irreparable damage on the victims for the rest of their lives.

It is a business, of course, which has its origins in the Roth Case, when the Supreme Court released the floodgates of pornography that now engulf our society. We may deplore the fact that the polluted waters have reached the playgrounds of our youth; but no one—at least no one has followed the rulings of our High Court and seen the public displays and orgies they inspire—can honestly say that he is surprised. Child pornography is an inevitable result of the adult pornography which flourishes openly and aggressively in our streets, our stores and, yes, even in our homes.

S. 1585 cannot reverse these trends, but it is a step in the right direction. The members of this committee are agreed, I believe that Congress does have a responsibility to the American people to step in and assist the States in dealing with the problem of the sexual abuse of children because of the serious nature and national scope of the problem. Whatever our differences, then, they involve the issue of how we should end child pornography. Our differences, in other words, involve means, not ends.

The proponents of S. 1585 insist that the best way to put a prompt and effective end to the mischief is to make the production of child pornography a Federal crime. Accordingly, the bill provides, under section 2251, that it shall be unlawful for anyone knowingly to persuade or force any minor to engage in "sexually explicit conduct" for the purpose of promoting any film, book, or magazine, if this person knows or has reason to know that such material will be mailed or otherwise transported in interstate or foreign commerce.

The term "sexually explicit conduct" is the key to an understanding and appreciation of this legislation, because it extends beyond more obscenity, as defined by the Supreme Court, and includes every form of sexual behavior, whether actual or simulated. This bill, in other words, does not forbid simply the production of obscene materials, but all materials which portray the kinds of "sexually explicit conduct" that are proscribed under section 2251.

With regard to the sale and distribution of these materials, however, S. 1585 attacks the problem simply by increasing the penalties for the distribution of obscene materials where children are depicted. Thus the bill contains a double standard, one for the producers of child pornography ("sexually explicit conduct") and another for the distributors (obscenity as legally defined).

This double standard is, in my judgment, a fatal weakness of the bill that will undermine our effort to eradicate child pornography. I agree with my distinguished colleague from Delaware, Senator Roth, who took the lead on this issue when he introduced S. 1011, that an increase

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in penalties, though needed, does not go far enough. It is my view that the problem of child pornography will not be effectively handled unless the same standard is applied to the producers and the distributors of these materials.

It is also my view that the supporters of S. 1585 agree, in principle, that the standard that is applied to the producers should also be applied to the distributors. They hesitate to do so, however, because they believe that this would create a constitutional problem.

In the committee report, they make this observation:

> The committee recognizes that the sale and distribution of such material cannot be approached in the same manner as its production. Attempts to prohibit the sale and distribution of such material necessarily involve an evaluation of the content of the materials in question. Consequently, the Supreme Court in *Miller* v. *U.S.* has held that in determining whether material is obscene and loses its first amendment protection, the material must be judged in its entirety. Therefore, the Committee is of the view that an attempt to make illegal the sale and distribution of material regardless of whether such

material taken as a whole is obscene, would run counter to present Federal constitutional law as enunciated by the Supreme Court in Miller.

In response to this statement, I wish to make the following observations:

First, the constitutional interpretation that the Committee has adopted is based, as stated elsewhere in the Report, "in large part upon an opinion from the Department of Justice that noted a number of severe problems in S. 1011." What the Report fails to mention, however, is that the American Law Division of the Library of Congress, also noted a number of errors in the letter from the Department of Justice. There is considerable doubt, in other words, as to the reliability of the Justice Department's interpretation of the constitutional issues arising under this legislation.

Second, I do not share the Committee's confidence that the case law supports the proposition that the double standard is necessary because the distributors of pornography enjoy a higher standard of First Amendment protection than the producers.

In this connection, I am also puzzled by the Committee's statements on page 11 of the Report concerning the effect of Senator Roth's bill on such Hollywood productions as "The Exorcist" or "Romeo and Juliet." The committee states that "it is clear that neither 'The Exorcist' nor 'Romeo and Juliet' are obscene. It is equally clear, however, that the sale and distribution of these films would be prohibited under S. 1011. As a result there is a very strong possibility that S. 1011 would be found to be unconstitutional."

What the Report fails to mention, however, is that a film such as "The Exorcist" would not be tolerated under the committee's bill, S. 1585, because one of the forms of "sexually explicit conduct" which cannot be produced under this legislation is simulated masturbation—the very scene depicted in "The Exorcist."

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Third, the Committee's view of the constitutionality of the distributorship section of the Roth bill is wholly speculative. There are no Supreme Court decisions dealing with the unique situation we are confronting in this legislation.

Fourth, the Committee seems to assume that the Supreme Court's standards for obscenity are absolute and fixed in concrete. As a matter of fact, however, "The Court's approach has changed and it has formulated new standards, giving government, federal, state and local, greater power than it previously possessed to outlaw the sale and dissemination of materials found to be pornographic." ("Constitution of the United States of America: Analysis and Interpretation." Washington, D.C.: Library of Congress. 1976 Supplement).

As an example of the Court's change of attitude in recent years, I point to the case of *Miller* v. *California*, where the Court specifically rejected the old standard for obscenity that the material in question must be "utterly without redeeming social value" before it may be suppressed. In short, the Court's standards for obscenity are in a state of flux, and they do not preclude Congress from giving assistance to the Judiciary in dealing with the problem of child pornography.

Fifth, the Committee's reluctance to tighten the standards of obscenity with regard to the distribution of pornographic materials because the Supreme Court may have preempted the field overlooks an

important point stressed by the Court in the Miller case—namely, that First Amendment values "are adequately protected by the ultimate power of appellate courts to conduct an independent review of constitutional claims when necessary."

Sixth, and most significantly, the Court has consistently maintained that the standards for obscenity are not uniform in all respects, as applied to all individuals or places, particularly where children are involved. As the Court stated in *Ginsberg* v. *New York* (1968), narrowly drawn proscriptions of distribution or exhibition of materials to children which would *not* be obscene for adults are permissible under the First Amendment.

I am aware, of course, that the Ginsberg case and others dealing with the sale of pornographic material to children are not directly applicable to the situation we confront here, where the obscene material depicting children is being sold to adults rather than children.

But I submit that children are involved at the distribution stage, even though the materials are being sold to adults. I would also point out to my colleagues that the Supreme Court has consistently and strenuously emphasized the point that cases involving children present special questions in that the governmental interest in protecting children overbalances the interest of the adult to receive and possess pornographic material and the interest of a distributor to satisfy the willing adult's inclination to receive it.

As the Court said in Ginsberg, the New York law prohibiting the sale of material to children which would be permissably sold to adults "simply adjust to social realities." And that is all the Roth bill seeks to accomplish—to adjust this legislative effort to social realities. On this very point, the Court stated in the Ginsberg case: "That the State has power to make that adjustment seems clear, for we have recognized that even where there is an invasion of protected freedoms,

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'the power of the state to control the conduct of children reaches beyond the scope of its authority over adults.' "

In the final analysis, the only question is whether this Committee might rationally conclude that only by proscribing the distribution of "sexually explicit materials" can the abuse of our children be effectively curbed—abuse and exploitation. I remind Senators, which occurs prior to distribution but which is nevertheless an incentive for, and an integral part of, the distribution process.

I think we would make a serious error, and one we don't have to make as I read the constitutional law that has been developed by the Court, if we separated the production and the distribution processes in this issue. To do so would take us back to the old law of the Court which once held that manufacturing is not part of interstate commerce, because it is an activity prior to the flow of commerce. That view has long been rejected by the Court because it is simply an unrealistic view of what actually takes place in the field of commerce. For the same reason, it is, in my judgment, wholly unrealistic to look at the commercial exploitation of children without realizing that the manufacture and production of these materials cannot be divorced from the sale thereof.

Insofar as children are involved, there is, in reality, no meaningful distinction between production and distribution because only at the distribution stage, where the material is finally brought out into the light of day, can the government effectively protect children.

For these reasons, I shall support Senator Roth's amendment from the floor to apply the "sexually explicit conduct" standards to both the producers and distributors of child pornography. If the Supreme Court rules it to be unconstitutional, so be it; for such a ruling would leave S. 1585 intact as it now stands.

HOUSE CONFERENCE REPORT NO. 95–811

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[page 5]

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the Senate and House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1585) to amend title 18, United States Code, to make unlawful the use of minors engaged in sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, or live performance, and for other purposes, submit the following joint statement to the Senate and the House in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report: The House amendment to the text struck out all of the Senate bill after the enacting clause and inserted a substitute text. The Senate receded from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The House amendment to the title changed the title to reflect the changes to the Senate bill by the House amendment to the text, and the Senate receded from its disagreement to the House amendment to the title.

The principal differences between the Senate bill, the House amendment and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

The "long titles" differ as between the House and Senate versions. The conference substitute adopts the House provision.

The Senate bill has a "short title." The House amendment does not. The conference substitute adopts the Senate provision.

The Senate bill has a "Findings" section. The House amendment does not. The conference substitute adopts the House version.

The Senate bill contains an express requirement in proposed section 2251(a) that the crime be committed "knowingly." The House amendment does not. The conference substitute accepts the House provision with the intent that it is not a necessary element of a prosecution that the defendant knew the actual age of the child.

The House amendment prohibits the transportation of visual or printed matter actually transported in interstate or foreign commerce or mailed, whether or not the accused knew or had reason to know of such transporting or mailing. The Senate bill does not. The conference substitute accepts the House provision.

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The Senate bill contains an amendment offered by Senator Bayh to prohibit certain activities relating to "live performances." The House amendment contains no comparable provision. The conference substitute omits the Senate provision in light of the fact that the Conference substitute contains amendments to 18 U.S.C. 2423 which would prohibit the interstate transportation of any minor for the pur-

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pose of engaging in prohibited sexual conduct as defined in that section, if the conduct will be commercially exploited. The conferees believe that in most cases these provisions would cover the sexually explicit conduct of minors during live performances as drafted in the Bayh amendment.

Both the Senate bill and the House amendment contained an express "knowingly" requirement relating to the liability of any parent, legal guardian, or person under proposed section 2251(b). It is the intent of the conference committee that such parent, legal guardian or person have control over the actions of the child when permitting the child to engage in sexually explicit conduct. The proposed criminal act is not passive but is to be an expression of knowledge and control. This contrasts with the decision of the conference committee to omit the "knowingly" requirement in the first subsection of proposed section 2251 as was discussed previously.

The Senate bill and the House amendment contained identical definitions that were placed in different sections. In the conference substitute the definitions are unified for all sections of the new chapter 110 and placed at the end of the chapter. It is the intent of the conference committee that the definition of "print and visual medium" be interpreted broadly, i.e. "film" may include but not be limited to electronic visual images or videotapes. It is also the intent of the conferees that the definition of "sexually explicit conduct" be interpreted so as to apply only to conduct that is sexual in nature. For example the term bestiality as used in this definition would only apply to sexual bestiality.

The Senate and House versions differ in their penalty provisions as follows:

(a) The Senate bill provides—

(i) for production, a $10,000 fine, or a two year minimum and a 10 year maximum imprisonment, or both, for the first offense; and for subsequent offenses, a $15,000 fine, or a 5 year minimum and 15 year maximum, or both;

(ii) for transportation etc., a $10,000 fine, or a one year minimum and a ten year maximum imprisonment, or both, for the first offense. For subsequent offenses, a $15,000 fine, or a 2 year minimum and a 15 year maximum, or both;

(iii) for the "Mann Act," a $10,000 fine or 10 years imprisonment, or both, the same as existing in law.

(b) The House amendment provides a $10,000 fine or 10 years imprisonment, or both, throughout.

The conference committee agrees that any person who violates proposed sections 2251 and 2252 of title 18 dealing with production and transportation will be fined not more than $10,000 or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under these sections such person shall be fined not more than $15,000

or imprisoned not less than 2 years nor more than 15 years, or both. A minimum sentence has been agreed to therefore for the second conviction.

The Senate bill contains a section on the prohibition of transportation, sale or distribution for sale of material depicting sexual exploitation of minors. The House amendment does not. The conference

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substitute adopts the Senate provision with the modification that the visual or printed matter must be obscene and with the requirement that the production of the matter involved the use of a child engaging in sexually explicit conduct. It is the intent of the conference committee that if a minor has engaged in this sexually explicit conduct and there was a production of material using any printed or visual medium depicting such conduct that persons who knowingly transport, ship, or mail for the purpose of sale or distribution, or knowingly thereafter receive for sale or distribution, or knowingly thereafter sell or distribute for sale any such material are liable whether or not they have contact with the minor or the original production of the material.

Both the Senate bill and the House amendment contain amendments to section 2423 of title 18, United States Code. Although each version differs somewhat in form, the substantive provisions are very similar with two exceptions: (a) The House amendment does not include "simulated" sexual conduct within its prohibition. (b) The House amendment requires that there be some commercial exploitation of the prohibited sexual conduct. The Senate bill does not. The conference substitute adopts the House provisions.

The Senate bill amends existing Federal obscenity law to increase the penalties of each violation that involves the sexual exploitation of a minor. The House amendment does not. The conference substitute accepted the House provision because a version of section 2252 (relating to transportation and distribution of explicit material) was agreed to with an obscenity standard.

The Senate bill contains a "severability" section. The House amendment does not. The conference committee accepts the Senate provision.

JOHN CONYERS,
ELIZABETH HOLTZMAN,
LAMAR GUDGER,
HAROLD L. VOLKMER,
ALLEN E. ERTEL,
DALE E. KILDEE,
JOHN ASHBROOK,
TOM RAILSBACK,
PETER W. RODINO,
Managers on the Part of the House.

JOHN CULVER,
EDWARD M. KENNEDY,
BIRCH BAYH,
DENNIS DECONCINI,
CHARLES MCC. MATHIAS, JR.,
MALCOLM WALLOP,
STROM THURMOND,
Managers on the Part of the Senate.

Cong. Record
S.1585 & H.R.8059

In rural areas of the country there are pockets of poverty containing people in need of legal assistance.

Section 10 of the bill allows the legal services corporation to make grants for model projects on behalf of certain identifiable groups.

I understand the list is not intended to be exhaustive, but I do feel quite strongly that people in rural areas need to be mentioned in order that they may be thought of in the grant-making process, and that is the only purpose of this amendment.

My amendment simply adds rural people to that list. We have come a long way in our concerns for rural areas. But there are places where life is very hard because of harsh climates and inadequate transportation.

I wish to be sure that the legal services corporation focuses on these people, for they are the ones who are the most invisible members of our society.

I have consulted with the floor manager of the bill as well as the minority manager on the bill, and I understand that neither of them has any objection to this amendment.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. NELSON. Mr. President, I have no objection to the amendment. If it were up to me to interpret the amendment that was adopted by the Human Resources Committee this year, I would expect the administrators of this law would have considered the people the Senator from Maine is concerned about as eligible clients with "special difficulties of access to legal services or special legal problems." Although the Senator's amendment is more specific, the committee's amendment does make it clear that it applies to the circumstances of an indigent person in a sparsely populated area.

I think Senator HATHAWAY's language is a good idea. It accomplishes clearly what I thoguht to be the intent of the committee's amendment, so I am perfectly willing to have it clarified and delineated more specifically by the amendment of the Senator from Maine.

I have no objection to it.

Mr. CHAFEE. There is no objection on this side, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine.

The amendment was agreed to.

ORDER FOR YEAS AND NAYS ON NOMINATIONS

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask for the yeas and nays on the two nominations.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION ACT OF 1977

The PRESIDING OFFICER. Under the previous order, the hour of 3 p.m. having arrived, the Senate will temporarily lay aside S. 1303 and proceed to the consideration of S. 1585 which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (S. 1585) to amend title 18, United States Code, to make unlawful the use of minors engaged in sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, or magazine.

The Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with an amendment on page 1, beginning with line 5, strike through and including line 8, page 4, and insert in lieu thereof:

SEC. 2. (a) The Congress finds that—

(1) the use of children as subjects in the production of pornographic materials is very harmful to both the children and to society as a whole;

(2) the production and sale of such pornographic materials represent many millions of dollars in annual revenue and that the sale and distribution of such materials are carried on to a substantial extent through interstate and foreign commerce and through the means and instrumentalities of such commerce; and

(3) existing Federal laws dealing with the interstate distribution of pornographic materials do not protect against the use of children in the production of such materials and that specific legislation in this area is both advisable and needed.

(b) The Congress determines that the provisions of chapter 110 of title 18, United States Code, are necessary and proper for the purpose of carrying out the powers of Congress to regulate commerce and to establish uniform and effective laws on the subject of sexual exploitation of children.

SEC. 3. (a) Title 18, United States Code, is amended by adding immediately after chapter 109 the following:

"Chapter 110—SEXUAL EXPLOITATION OF CHILDREN

"Sec.

"2251. Sexual exploitation of children.

"§ 2251. Sexual exploitation of children

"(a) It shall be unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in, or to have a minor assist any other person to engage in, any sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, if such person knows or has reason to know that such film, photograph, negative, slide, book, magazine, or other print or visual medium will be mailed or otherwise transported in interstate or foreign commerce.

"(b) It shall be unlawful for any parent, legal guardian, or person having custody or control of a minor to knowingly permit such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, if such parent, legal guardian, or person knows or has reason to know that such film, photograph, negative, slide, book, magazine, or other print or visual medium will be mailed or otherwise transported in interstate or foreign commerce.

"(c) For the purposes of this section, the term—

"(1) 'minor' means any person under the age of sixteen years;

"(2) 'sexually explicit conduct' means actual or simulated—

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) masturbation;

"(D) sado-masochistic abuse (for the purpose of sexual stimulation); and

"(E) lewd exhibition of the genitals or pubic area of any person; and

"(3) 'promoting' means producing, directing, manufacturing, issuing, publishing, or advertising for pecuniary profit.

"(d) Any person who violates this section shall be fined not more than $10,000, or imprisoned not less than two years nor more than ten years, or both, for the first offense, or fined not more than $15,000, or imprisoned for not less than five years nor more than fifteen years, or both, for each such offense thereafter."

(b) The table of chapters of part I of title 18, United States Code, is amended by inserting immediately after the item relating to chapter 109 the following:

"110. Sexual exploitation of children.. 2251".

SEC. 4. (a) Section 2423 of title 18, United States Code, is amended to read as follows:

"§ 2423. Coercion or enticement of minor

"(a)(1) It shall be unlawful for any person to transport, or to cause to be transported, in interstate or foreign commerce or within the District of Columbia or any territory or possession of the United States, any minor for the purpose of such minor engaging in prostitution or with intent to induce, entice, or compel such minor to engage in prostitution.

"(2) For purposes of this section, the term 'minor' means any person under the age of eighteen years.

"(b) Any person who violates this section shall be fined not more than $10,000, or imprisoned not more than ten years, or both.".

(b) The table of sections of chapter 117 of title 18, United States Code, is amended by striking out in the item relating to section 2423 the word "Female".

SEC. 5. (a) Section 1461 of title 18, United States Code, is amended by inserting immediately before the period in the eighth paragraph a comma and "except that if such thing involved the use of any person under the age of sixteen years engaging in sexually explicit conduct (as defined in section 2251 of this title), the punishment shall be a fine of not more than $10,000, or imprisonment of not less than one year nor more than ten years, or both for the first offense, or a fine of not more than $15,000, or imprisonment of not less than two years nor more than fifteen years, or both, for each such offense thereafter".

(b) Section 1462 of title 18, United States Code, is amended by inserting immediately before the period a comma and "except that if any such matter or thing involved the use of any person under the age of sixteen years engaging in sexually explicit conduct (as defined in section 2251 of this title), the punishment shall be a fine of not more than $10,000 or imprisonment of not less than one year nor more than ten years, or both, for the first offense, or a fine of not more than $15,000, or imprisonment of not less than two years nor more than fifteen years, or both, for each such offense thereafter".

(c) Section 1465 of title 18, United States Code, is amended by inserting immediately before the period in the first paragraph a comma and "except that if any matter described in this section involved the use of any person under the age of sixteen years engaging in sexually explicit conduct (as defined in section 2251 of this title), the punishment shall be a fine of not more than $10,000, or imprisonment of not less than one year nor more than 10 years, or both, for the first offense, or a fine of not more than $15,000, or imprisonment of not less than two years nor more than fifteen years, or both, for each such offense thereafter".

SEC. 6. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to

other circumstances shall not be affected thereby.

The PRESIDING OFFICER. Time for debate on this bill is limited to 2 hours, to be equally divided and controlled by the Senator from Mississippi (Mr. EASTLAND) and the Senator from South Carolina (Mr. THURMOND), with 30 minutes on any amendment in the first degree, except an amendment by Mr. ROTH on which there shall be 1 hour, and with 20 minutes on any amendment in the second degree, debatable motion, appeal, or point of order.

Who yields time?

Mr. CULVER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. CULVER. Mr. President, I ask unanimous consent that the time for the quorum call be equally divided.

The PRESIDING OFFICER. Without objection, the time will be equally divided between both sides.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MCGOVERN). Without objection, it is so ordered.

Mr. HATCH. Mr. President, I ask unanimous consent that James McClellan, of the Judiciary Commerce staff, be accorded the privilege of the floor during pendency of this action and votes thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CULVER. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be divided equally between both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CULVER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CULVER. Mr. President, I ask unanimous consent that Mr. Stephen Rapp, Mr. Cliff Vaupel, and Mr. Michael Klipper of the staff of the Subcommittee to Investigate Juvenile Delinquency, and Mary Jolly of Senator BAYH's staff, be given the privilege of the floor during the debate and vote on S. 1585.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I ask unanimous consent that Eric Hultman and Eva Clark, of the Judiciary Committee staff, be accorded the privilege of the floor during the consideration and vote on S. 1585.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I also ask unanimous consent that Larry Dye and Ted Farfaglia, of Senator ROTH's staff, be accorded the privilege of the floor during consideration of S. 1585.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRIFFIN. Mr. President, I make a similar request for Mark Steinberg, of my staff.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CULVER. Mr. President, has there been a unanimous-consent request made to proceed to the consideration of S. 1585?

The PRESIDING OFFICER. Yes; the bill is now before the Senate.

Mr. CULVER. I yield myself such time as I may need.

Mr. President, I am pleased to have the opportunity to bring S. 1585 before the Senate, S. 1585, the Protection of Children Against Sexual Exploitation Act of 1977, was reported unanimously by the Committee on the Judiciary and is sponsored by 57 Senators. It would make three related changes in title 18 of the United States Code to strengthen the ability of the Federal Government to combat two outrageous forms of child abuse: The use of children in the production of pornographic materials and the use of children as prostitutes.

Specifically, S. 1585 would add a new section 2251 to title 18, making it a Federal offense for anyone to use any child under the age of 16 to engage in sexually explicit conduct for the purpose of producing materials which are to be mailed or transported in interstate commerce. It would also amend section 2423 of title 18 to prohibit the interstate transportation of both males and females under 18 years of age for the purpose of engaging in prostitution. And finally it would amend the penalty provisions in sections 1461, 1462, and 1465 of title 18, dealing with the mailing, importation, and the transportation for sale or distribution of obscene materials by increasing the penalties where the materials involve the use of children under 16 years of age in sexually explicit conduct.

Mr. President, the presentation of S. 1585 today on the Senate floor is the result of intensive hearings and investigations conducted by the Judiciary Committee and its Juvenile Delinquency Subcommittee. Our subcommittee heard not only from the official sources and from the experts but also from those with firsthand experience with this sordid business of child pornography and prostitution. We heard from local officeholders and prosecutors, from undercover and newspaper investigators and from the police officers who had engineered one of the few successful busts of a child pornography production in the Nation. We also heard testimony from two convicted child pornographers, one a major national producer and distributor, the other an amateur, a man who had produced and mailed the materials from a middle-class home in a small city in the upper Midwest. Finally, we heard first hand the personal account of a victim of this business, a 17-year-old boy who has sold himself on the streets of Chicago for over 2 years as a prostitute and as an actor in pornographic movies.

We also considered at length the constitutional issue and received testimony from the Department of Justice and from leading constitutional scholars.

Through these hearings and staff investigations our subcommittee learned a great deal about the sexual abuse of children through pornography and prostitution. It is a big business, involving perhaps millions of dollars in profits. It takes many forms. One expert counted 260 magazines in circulation depicting children engaged in sexual conduct, magazines with titles like "Lolitots," "Torrid Tots," and "Young Flesh." Such magazines are sold over and under the counters of bookstores across the country, not just in large cities, but even, we discovered, in medium-sized communities in rural areas.

It also takes the form of short movies with titles like "Kinky Kids" and "Little Flower Girls" sold either in bookstores or through mail order operations.

It is a truly saddening experience to examine these materials, featuring obscene pictures of children, some as young as 5 or 6 years old.

Our witnesses told us that there has been at least some child pornography on sale for many years. Recently, however, there appears to have been an explosion of it. The producers of pornography began to realize that there was a substantial market for these materials across the country, that they could be marked up to prices far higher than adult publications, and that large profits could be made.

The subcommittee also discovered a related problem that has also been with us longer than we recognize, but that appears recently to have expanded in size and organization. For many years young girls have worked as prostitutes on the streets of major cities as have young boys. There now appears to be more juvenile prostitution than ever before with children participating at younger ages. We also discovered that some of this prostitution is highly organized and involves interstate transactions. In Chicago, one such prostitution ring known as the "Delta Project" was set up to deliver boys to as many as 5,000 potential customers around the country.

This is a business that preys on runaway and alienated youth, on children that are unloved and unwanted, on children that are struggling to survive on their own. They are often picked up at bus stations, hamburger stands, amusement parks, and other common hangouts for children on the run. For a little money or a gift or even for some attention they are persuaded to submit to a variety of sexual acts. Such encounters cannot help but have a deep psychological, humiliating impact on these youngsters, and jeopardize the possibility of any healthy affectionate relationships in the future.

Mr. President, it was the overwhelming judgment of the Committee on the Judiciary that S. 1585 would be the most effective Federal response to the problem of sexual exploitation of children.

The bill is tough: it provides minimum penalties of incarceration and maximum penalties of up to 10 years in prison and $10,000 in fines, and in some cases for

second offenses 15 years in prison and $15,000 in fines.

It is comprehensive; it deals with production, with sale and distribution, and with juvenile prostitution.

Finally, it was the strong consesus of the representatives of the Justice Department and other constitutional scholars who testified at the hearings that the bill as drafted is clearly constitutional. Since this legislation breaks new ground in highly sensitive legal areas, the greatest care was taken in the drafting to produce a statute that can be upheld in the courts and that will serve as the basis of successful prosecutions.

Mr. President, it is anticipated that two amendments will be offered on the floor of the Senate. The first by Senators BAYH, ROTH, and myself would add a provision banning live sex shows by children where the facilities of interstate commerce are used for their promotion. I believe this amendment is needed and I urge the Senate to support it.

The second amendment by Senators ROTH, HATCH, and several others would add a provision making it illegal to distribute or sell materials that are not obsecene if those materials depict children in certain activities. Whatever its merits, this amendment, according to a number of legal authorities, raises a critical constitutional question. A similar amendment was considered by the Judiciary Committee and was rejected by a vote of 9 to 4. When it is called up, I would urge the Senate to sustain the judgment of its Committee on the Judiciary and disapprove this amendment

At this time, Mr. President, I yield to the distinguished minority member of the full committee for any general statement he might wish to make.

Mr. THURMOND. Mr. President, are we under a time limitation?

The PRESIDING OFFICER. Yes, we are under controlled time.

Mr. THURMOND. Who is handling the opposition?

The PRESIDING OFFICER. The Senator from South Carolina has been designated to control the opposition time of 1 hour.

Mr. THURMOND. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator is recognized.

Mr. THURMOND. Mr. President, the legislation now before the Senate has my full support. The provisions of S. 1585 are directed at one of the most outrageous abuses of our Nation's most treasured resources—our young children. As a father of four young children I can easily sympathize with those who are shocked and dismayed by this unfortunate exploitation of many American children.

Hearings on this bill have revealed that child pornography and child prostitution have become a highly organized, multimillion dollar industry. It is a growing activity that undermines the moral fiber of our country and is one of the most menacing problems of our society. Such activity must be stopped. This bill will go a long way in helping to stamp out this kind of exploitation for profit.

Mr. President, during the consideration of this measure in the Senate Judiciary Committee, Senator HATCH offered a substitute bill on behalf of Senator ROTH that would attack the same problem. Senator ROTH is offering today an amendment to S. 1585. The amendment would prohibit the sale or distribution of materials depicting explicit sexual conduct, involving children, as well as the production of such material which is now covered by S. 1585. Objections have been raised, however, to this provision since in the opinion of the Department of Justice such a broad prohibition in a criminal statute may prove to be unconstitutional. The argument is that under existing case law any criminal statute which reaches protected expression as well as obscenity is void on its face for overbreadth.

There are laws on the books which provide criminal penalties for the mailing or "circulation or disposition" of obscene materials. S. 1585 would increase the penalties for such criminal conduct where it "involved the use of any person under the age of 16 years engaging in sexually explicit conduct." Although I am sympathetic with Senator ROTH's substitute and have supported it in the Judiciary Committee and will support it on the Senate floor, I also believe that the criminal provisions that are being added to existing law by S. 1585 can be effective in fighting this problem.

Mr. President, this bill is urgently needed to give prosecutors the tools to deal with child pornographers and those engaging in child prostitution. In addition, prompt approval of this bill will indicate to Federal prosecutors the importance and priority that the Congress attaches to this sordid activity. Organized crime is financing much of the production and distribution of these materials and a concerted effort will be needed to prosecute the individuals responsible. Legislation like S. 1585 can aid greatly in this effort.

Mr. President, I support this legislation and urge my colleagues to approve it.

Mr. President, I yield to the distinguished Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THURMOND. How much time does the Senator wish?

Mr. WALLOP. Two minutes.

Mr. THURMOND. Mr. President, I yield 2 minutes.

Mr. WALLOP. Mr. President, before I begin my remarks, I ask unanimous consent to have Pat Hoff of the Subcommittee on Judicial Improvements granted the privileges of the floor throughout the discussion of this bill and the votes thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, those of us who went to Chicago for field hearings on the topic of child pornography and prostitution could not have come away from that hearing with anything, but the most urgent desires to take in hand the problem that faces this country today. It seems almost inconceivable that male children, particularly, were not subject to the provisions of the Mann Act.

The legislation now before us will go a tremendous way toward dealing with this most abusive and disgusting problem. Children who testified in front of us were testifying incognito, but I daresay that everybody who went there and heard those voices will have no trouble in hearing a need to enact this legislation quickly.

Swift passage of S. 1585 will reduce the flagrant and unconscionable sexual exploitation of children. There is an urgent need to protect our children from the most psychologically punishing and physically devastating activities that can be conceived by the mind of man.

The Protection of Children Against Sexual Exploitation Act of 1977 represents a giant step toward reaching the goal of the eradication of the production, sale and distribution of child pornography. S. 1585 will serve as a model for the States to follow in an effort to protect children from sexual exploitation for profit. And all-out campaign at both the Federal and State levels should reduce and ultimately eliminate the child pornography industry.

The type and nature of the adult human beings who prey upon these children is about as low a form of human life as the average human can conceive, and perhaps well beyond the average conception of any of the people who walk the streets of this country.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. THURMOND. I yield 1 additional minute to the Senator.

Mr. WALLOP. Those who prey on the young people of this country in the manner described to the committee must be punished, and we must have the strength and the ability to punish them. S. 1585 is the means for punishing offenders who so callously sexually abuse their child victims for their own gain. I am confident that the provisions of this bill are constitutional and would survive the strictest judicial scrutiny.

Finally, I would like to commend the excellent job done by Senators CULVER and MATHIAS on the Subcommittee on Juvenile Delinquency and for their leadership role in moving this important piece of legislation.

Mr. President, I yield back the remainder of my time.

Mr. THURMOND. I yield to the Senator from Maryland.

Mr. MATHIAS. Will the Senator yield 10 minutes?

Mr. THURMOND. I yield 10 minutes.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 10 minutes.

Mr. MATHIAS. I thank the distinguished Senator from South Carolina for yielding me this time. I am vitally interested in this subject. It is a subject which is of great importance to everyone in this country. The significance of the issue impelled me to introduce S. 1585 in the first place. Now, after several transformations, S. 1585 has arrived on the floor in the form in which it is now before us.

I would first thank the distinguished chairman of the Senate Judiciary Subcommittee To Investigate Juvenile Delinquency for the kind of leadership he has shown in bringing this bill to the floor.

I would be very remiss if I failed to acknowledge his personal contribution, his resourcefulness, and the kind of personal investment he has made in shepherding S. 1585 to the Senate floor today.

The primary thrust of this bill is to provide Federal prosecutors with effective statutory tools to combat two insidious forms of child abuse which has only recently come to public attention: the widespread, growing use of children in the production of pornographic magazines and movies, and the escalating number of juveniles engaging in prostitution.

I believe that Congress response to the startling revelations of child abuse exemplifies the American system working in its most effective and expeditious manner. Only a few months ago, the closely related issues of child pornography and juvenile prostitution were unknown to the vast majority of Americans. In the intervening months, an outraged nation has reviewed the seriousness of these problems and has pushed relentlessly for corrective measures.

The American press first broke the stories of child pornography and prostitution, and it deserves the gratitude of the American people.

On May 15, 1977, a nationwide television audience was given its first in-depth view of the child pornography business in a segment on the CBS investigative news program "Sixty Minutes."

On that same day, the Chicago Tribune ran the first of a series of articles revealing the child pornography business to be a multimillion dollar racket which preys on impressionable youngsters. The Tribune also disclosed the scope and breadth of the juvenile prostitution business in America, including details of a nationwide boy prostitution ring headquartered in Chicago.

Other revelations followed and the American people, appalled by the disclosures, clamored for eradication of these activities. To their credit, officials at all levels of government—local, State, and Federal—responded. In Chicago, for example, the Tribune series was instrumental in prompting law enforcement officials to schedule a grand jury investigation into the allegations of child pornography and juvenile prostitution.

On the Federal level, the subcommittee has learned that both the Department of Justice and the Postal Service have stepped up their efforts in the child pornography area. Last month, the Subcommittee was informed by Assistant Postmaster General for Governmental Relations Jim Finch:

> In August 1977, as a result of increased emphasis placed on child pornography by Congress and others, and following a Department of Justice reevaluation of their prosecutive policy, Postal Inspectors were instructed to give priority to pornography cases involving children. All violations of the Postal Obscenity Statute are promptly brought to the attention of United States Attorneys for prosecutive consideration.

We were also informed that both the Federal Bureau of Investigation and the Customs Service are actively engaged in a number of child pornography investigations.

The subcommittee was encouraged by these intensified efforts at the Federal level. Yet, as we continued our investigation, we became convinced that new Federal laws were necessary to complement those already on the books. Our examination revealed gaps in our Federal laws which permitted persons using children in pornography and prostitution rings to go about their sordid business, often without fear that the Federal laws would intervene.

Our review of existing Federal obscenity laws showed that they focus exclusively on the sale, distribution, and importation of obscene materials and do not deal directly with the abuse of children inherent in their participation in the production of such materials. It became clear that new legislation was needed to address specifically the use of children in the production of pornography.

The very few States with statutes banning the production of child pornography underlines the need for Federal remedial legislation curbing such child abuse. A study conducted by the Congressional Research Service revealed that, as of March 1977, only six States had laws prohibiting the use of children in the production of pornography.

During its review, the subcommittee concluded that Federal obscenity laws were sufficient to deal with the problems of distribution and importation of child pornography on a substantive basis. At the same time, however, testimony received by the subcommittee indicated the need to bolster the deterrent effect of existing laws by increasing the penalties for the distribution of obscene materials depicting children engaged in sexually explicit conduct.

Finally, partly in response to testimony obtained by the subcommittee in the course of its field hearing in Chicago on May 27, it was determined that Federal legislation was necessary to cover the transportation of male juveniles across State lines for purposes of prostitution. Although present Federal law proscribes the transporting of young girls across State lines to engage in prostitution, there is no similar provision regarding young boys. The subcommittee gathered substantial evidence indicating that one of the major obstacles facing Federal efforts to combat juvenile prostitution is this gap in Federal law.

In response to its findings, the subcommittee moved quickly to report out S. 1585, which was introduced by Senator CULVER and myself on May 23. Subsequently, on June 28, the subcommittee reported the bill to the full Judiciary Committee, which, in turn, unanimously moved to send a virtually identical bill to the floor on September 14.

The bill now before the Senate for its consideration incorporates each of the major findings discussed above. Specifically, it would:

Add a new section 2251 to title 18, making it a Federal offense for anyone to use children under the age of 16 in the production of pornographic materials;

Amend 18 U.S.C. 2423 to proscribe the interstate transportation of all persons under 18 years of age for the purpose of engaging in prostitution; and

Amend the penalty provisions in those sections of title 18 dealing with the mailing (section 1461), importation or transportation (section 1642), and transportation for sale or distribution (section 1465) of obscene materials to increase the penalties where the materials adjudged obscene involved the use of children under 16 years of age engaging in sexually explicit conduct.

As the principal author of S. 1585, I am convinced that enactment of this bill would put us well on the road to stamping out child pornography and juvenile prostitution in America.

At the same time, however, we must not ignore the indisputable fact that these new forms of child abuse are symptomatic of deep-seated problems affecting our Nation's youth, including breakdown of the family structure, parental alienation, and drug abuse. We must continue to combat these social factors which lead adult and child alike to engage in these activities.

Foremost among our continued studies must be a detailed examination of the correlation between child pornography and juvenile prostitution on one hand, and runaway youths on the other. The committee has received considerable evidence that an overwhelming number of juvenile participants in child pornography and juvenile prostitution are runaway youths. I am particularly concerned about this aspect of the problem.

For several years, I sponsored legislation to deal directly with the problem of the runaway youth. As my colleagues are well aware, these efforts culminated in the enactment of the Runaway Youth Act as part of the Juvenile Justice and Delinquency Prevention Act of 1974. The runaway youth program provides much-needed funds for the development of shelter facilities for runaways, as well as money for research into the causes and scope of the runaway youth problem in America.

Earlier this month, President Carter signed into law the Juvenile Justice Amendments of 1977, which extend the runaway youth program for another 3 years. It is my hope that a reasonable portion of the funds allocated under this program for research purposes will be used to study the interrelationship between runaway youths and these new forms of child abuse. Given the mounting evidence indicating that such a correlation does, in fact, exist, we may properly view S. 1585 as a complement and, as a follow-up, to the Runaway Youth Act.

Mr. President, in conclusion, I am firmly convinced that S. 1585 will provide Federal authorities with both an effective and constitutional tool to combat the twin evils of child pornography and juvenile prostitution. It is a tough bill, one which will work effectively, unencumbered by the threat of protracted

and time-consuming challenges to its constitutionality. I urge my colleagues to support its passage.

Mr. CULVER. Mr. President, I yield myself 1 minute to express to the distinguished Senator from Maryland my appreciation for his leadership as the sponsor of this bill. As ranking minority member of the Juvenile Delinquency Subcommittee, he has devoted so much of his own time and efforts and his extremely valuable insights into the development and the perfection of S. 1585.

I wish to commend him for his statement and for the service he has provided in this regard to the committee and to the Senate.

UP AMENDMENT NO. 913

(Purpose: To make it unlawful for minors to participate in sexually explicit conduct in a live performance.)

Mr. BAYH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will first state the committee amendment.

The assistant legislative clerk read as follows:

On page 1, beginning with line 5, strike all down through line 8, page 4, and insert new language.

The PRESIDING OFFICER. On the assumption that the amendment just proposed is an amendment to the committee amendment, the clerk will now state the amendment offered by the Senator from Indiana.

The assistant legislative clerk read as follows:

The Senator from Indiana (Mr. BAYH), for himself, Mr. ROTH, Mr. BYRD (W. Va.), Mr. HATCH, Mr. THURMOND, and Mr. CULVER, proposes an unprinted amendment numbered 913.

Mr. BAYH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, line 11, immediately after "materials", insert "as subjects in live performances exhibiting sexually explicit conduct or for the purpose of prostitution".

On page 4, strike lines 19 through 23 and insert in lieu thereof the following:

"(3) existing Federal laws do not protect against the use of children in the production of pornographic materials, the use of children in live performances exhibiting sexually explicit conduct, or the interstate transportation of children for the purpose of engaging in prostitution or sexually explicit conduct and that specific legislation in this area is both advisable and needed."

On page 5, between lines 19 and 20, insert the following:

"'(b) It shall be unlawful for any person knowingly to employ, use, persuade, induce, entice or coerce any minor to engage in or to have a minor assist any other person to engage in, sexually explicit conduct, in a live performance, if such person knows or has reason to know that a facility of interstate or foreign commerce will be used to promote such live performance."

On page 5, line 20, strike out "(b)" and insert "(c)".

On page 6, between lines 6 and 7, insert the following:

"'(d) It shall be unlawful for any parent, legal guardian or person having custody or control of a minor knowingly to permit such minor to engage in, or to have a minor assist any other person to engage in sexually explicit conduct, in a live performance, if such parent, legal guardian, or person knows or has reason to know that a facility of interstate or foreign commerce will be used to promote such live performance."

On page 6, line 7, strike out "(c)" and insert "(e)".

On page 7, line 1, strike out "(d)" and insert "(f)".

On page 7, line 17, immediately after "prostitution", insert "or sexually explicit conduct (as defined in section 2251 of this title)".

On page 7, line 18, immediately after "prostitution", insert "or sexually explicit conduct (as defined in section 2251 of this title)".

Mr. BAYH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAYH. We are operating under controlled time, are we not?

The PRESIDING OFFICER. The Senator is correct. There is 30 minutes on this amendment, which gives the Senator 15 and 15 to the opposition.

Mr. BAYH. I thank the Chair, and the Chair's assumption was, as usual, correct that the amendment of the Senator from Indiana is to the Judiciary Committee amendment of S. 1585.

SEXUAL EXPLOITATION OF CHILDREN

Mr. President, today we are considering S. 1585, the Protection of Children Against Sexual Exploitation Act of 1977. As a cosponsor of this legislation, I wish to urge my colleagues to vote in favor of its immediate passage. This legislation would be the most effective Federal response to the problem of sexual exploitation of our children. The bill is tough and effective. But most importantly, it is clearly constitutional. S. 1585 can be upheld by the courts and serve as the basis of successful prosecutions resulting in the reduction of sexual exploitation of children.

Pornography and obscenity statutes have been the subject of heated debates for many years. Recently, there has been an increased focus on the use of children in live performances and in the production of pornographic materials depicting sexual explicit conduct. This is an area of great personal concern to me.

Problems regarding the prohibition of the publication, sale or distribution of pornographic materials involve serious constitutional questions of our first amendment right of freedom of speech and the press. We must be ever watchful that in our efforts to control the most offensive pornography we do not infringe on these important constitutional rights. However, I condemn the sexual exploitation of children for any purpose, including commercial purposes and strongly urge that existing criminal laws prohibiting child abuse and contributing to the delinquency of minors be more vigorously enforced.

To the extent that additional legislation is required, however, S. 1585, which carefully distinguishes between production and distribution of pornographic materials, has my strong support. At the same time, I am concerned that the underlying needs of our children, including those who are victims of the child pornographers, are addressed.

My Juvenile Justice and Delinquency Prevention Act of 1974 and the 1977 amendments to this act enables the Federal Government to play a crucial role in this process by providing Federal funds for alternative settings for children who are runaways, dependent, neglected, or incorrigible in school or at home, the typical victims of child pornographers.

This Juvenile Justice Act attacks the criminal justice system as wholly inappropriate to deal with these young juveniles. It further attacks the position of the juvenile justice system that these young victims need secure detention to assist them in coping with their problems, by providing for the deinstitutionalization of status offenders and placement in nonsecure local community settings—if such placement is at all warranted. The act also requires that juveniles be segregated from adults in any such placement.

Mr. President, the Protection of Children Against Sexual Exploitation Act will help to protect our children from being ravaged and destroyed through prostitution and pornography. We must join together to speak out for justice for children and urge the enforcement of all existing laws against pornography. Such groups as Citizens for Decency Through Law, with chapters in my own State of Indiana, the National Committee for Prevention of Child Abuse and Odyssey Institute have all joined in their support for this type of legislation to assist us in doing everything that we can to stop this form of child abuse.

Mr. President, recently a most reprehensible and despicable activity has been initiated in my State of Indiana. I refer to the nationwide promotion of the "Mr. and Miss Nude Teeny Bopper Pageant" at the Naked City Nudist Camp in Roselawn, Ind This sordid "event" was scheduled for August 27, 1977. I was utterly repulsed at the idea of this contest which was to feature nude children between the ages of 8 to 16. Parents were to be paid $10 to enter their children, $170 was to be given out in prize money, $10 was to be given to each contestant and spectators—for an admission price of $15—were solicited to take pictures of the nude children. Thousands were expected to attend.

On first being notified of this sordid enterprise. I immediately contacted the offices of the State attorney general and the Newton County prosecutor to express my grave concerns about this particularly gross form of child abuse. I am pleased to relate that the attorney general asked the judge of the Newton Circuit Court to issue an iniunction restraining this activity. A preliminary injunction order was issued restraining the owner of Naked City from displaying these nude children before an adult paying audience and specifically enioined the party from holding this contest until a hearing was held. Presently, a hearing

is scheduled in Jasper County at which time an attempt will be made to amend the temporary restraining order to a permanent restraining order so that no further activities of this sort can be held. It was argued that the challenged activity constitutes a public nuisance and outrages the public decency at large. I cannot agree more with this argument. Thousands of Indiana residents have joined in signing petitions aimed at launching another legal challenge.

A contest of this sort panders to those interested in child pornography and sex and is exploitive of children and potentially damaging to their mental health—I can imagine the trauma a young girl or boy might experience while parading naked in front of a crowd of leering strangers. The nude contest would also seem to provide an excellent opportunity for child pornographers to meet potential stars. The question comes to mind—if a parent would make a child participate in a nude contest for a chance of winning $100 (or just for the $10 that any participant receives) what would they have the child do if the stakes were higher?

It is clear that freedom of expression and the right to privacy are among our citizen's distinctive attributes and nudists should be permitted to indulge in their pastime in privacy. Naked City is not, as ads I have seen, a traditional family nudist colony—run in the proper sexual atmosphere. Naked City events in the past have drawn criticism by publicizing their events nationwide and inviting outsiders—who are not nudists and who remain clothed while at Naked City—to pay their way into the camp to view and film the nudists. In the past years many of the participants in the Naked City contests have reportedly been models and strippers looking for publicity. The advertisements for Naked City are blatantly sexual and suggestive of orgies and, while adults have the right to sexual freedom, this is hardly the appropriate atmosphere for a young child.

I cannot help but feel that, if this event took place, many of the children would be unwittingly exploited to satisfy the appetities of spectators.

Mr. President, Federal, State, and local law enforcement efforts must maintain a delicate balance in order to curb child pornography. The legislation I cosponsored, and which we will vote on today, will fill a void in Federal law and will attack the production of materials depicting children in sexually explicit conduct and further, my amendment will curb the use of minors in live performances exhibiting sexually explicit conduct as a form of child abuse and exploitation. I believe this legislation will help to arouse our collective conscience, which will in turn lead to policies and behavior more sensitive to our child victims. We must have a regard for the general tone of our society and be especially watchful and discourage events that tend to lower that tone.

Mr. President, this amendment is designed to expand the Mann Act to include transporting of boys and girls in interstate or foreign commerce for purposes of not only prostitution, but also for purposes of sexually explicit conduct. It further adds a new section which makes it unlawful to use minors in live performances exhibiting sexually explicit conduct. These amendments will improve this bill in a way that I believe will be unquestionably constitutional. I am pleased to have the distinguished chairman (Mr. CULVER) of the Juvenile Delinquency Subcommittee join me in cosponsoring this amendment, in addition to Senator ROTH.

I say to my good friend and colleague, the Senator from Iowa, (Mr. CULVER) that I think he and our distinguished colleague from Maryland (Mr. MATHIAS) have done yeoman service to the country.

Mr. President, I ask unanimous consent that the Senator from South Carolina (Mr. THURMOND) be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAYH. Mr. President, I want to salute him for that. I consider it a privilege to be a member of the Juvenile Delinquency Subcommittee—being its former chairman for 7 years—and to follow the leadership of the new chairman, the Senator from Iowa.

This particular problem, of using minors in live performances exhibiting sexually explicit conduct, is designed to be dealt with by my amendment. It further involves an ongoing situation in the State of Indiana which has relatively recently come to the attention of the Senator from Indiana. It took us some time to draft language which we believe would deal with the specific problem of use and abuse of children in sexually explicit conduct in live performances.

I have to admit to my colleagues in the Senate that I find it very difficult to understand how human minds get turned on by some of the activities that we are trying to prohibit.

I cannot, for the life of me, understand how adults can in any way get themselves in a position where they prey on youths and sexually exploit young boys and girls for commercial gain.

The Senator from Iowa dealt with it specifically in his statement, as did the Senator from Maryland, and I salute them for their efforts.

The Senator from Indiana's amendment would broaden the thrust of what would be prohibited in the Mann Act by including conduct that goes beyond prostitution in the Mann Act to include transporting young people across State lines for purposes of engaging them in sexually explicit conduct as defined in section 2251 of the bill. Those people who use minors in this fashion or for purposes of prostitution will be guilty of violating this new section of the Mann Act and subject to a fine of not more than $10,000, or imprisoned not more than 10 years, or both.

Mr. President, one particular concern that created my desire for these amendments involved a nudist colony in northwestern Indiana.

I, frankly, guess I am old-fashioned, but I cannot understand why adults wish to frolic around together in large numbers in their birthday suits. But, inasmuch as some of them do, and if they do that privately, the Constitution protects their right to do so.

But the promoter of this nudist colony, interestingly enough called Naked City, in northwestern Indiana, decided that he was going to conduct a nude beauty contest in which the participants would be boys and girls ages 6 to 16. Their parents would be paid for letting them parade in front of a paying audience of spectators with cameras. The winner would receive $100. The advertising went across State lines.

Now, this particular amendment is designed to get at that particular kind of conduct, where we are talking about the sexually exploitive conduct for commercial gain of boys and girls in the nude under the age of 16 in live sex shows.

I would certainly hope the Senate would accept this amendment.

I would like to ask my colleague from Iowa, the chairman and floor manager of this bill, a question or two.

Mr. HATCH. Will the Senator yield before that?

Mr. BAYH. Yes.

Mr. HATCH. I would like to be added as a cosponsor of the Senator's amendment. I think it is an excellent amendment.

Mr. BAYH. Mr. President, I ask unanimous consent that the Senator from Utah be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAYH. I would like my colleague, the floor manager of this bill, to help me resolve a question or two I have about the proper language.

I do not want to get into an area that is unconstitutional. I do not want to reach protected expression, but I want to make certain that the Senator, as a principal floor manager of this bill, shares my belief that the wording that is used here of "sexually explicit conduct" would cover the type of situation that I am referring to that is occurring up in Naked City at that nudist colony.

Is it the Senator's understanding that according to the court's interpretation "sexually explicit conduct" includes, by definition, the lewd display of genitals or the pubic area of a person under the age of 16.

Mr. CULVER. That is correct.

Mr. BAYH. Is it the Senator's understanding that if a hawker or promoter attempts to promote a live performance in interstate commerce in which boys and girls under the age of 16 are paraded and displayed nude, where adults are asked to come and take pictures, that would be a lewd display of the genital and pubic areas, and that thus it comes within the sexually explicit conduct definition under section 2251 of this bill?

Mr. CULVER. That is correct.

Mr. BAYH. Am I correct in my understanding that in the definition section of the bill, commercial gain is tied into the definition of "promoting" to include "advertising for pecuniary profit"?

Mr. CULVER. That is correct.

Mr. BAYH. I appreciate the chairman's assistance with this amendment and these questions.

I strongly uphold our first amendment

rights, and I believe that individuals who are acting on their own in private have a right to sexual freedom. I believe those rights are protected under the first amendment to the Constitution. But when you have some adults who parade the naivety of young boys and girls—and we have seen that some of these hawkers do bring these boys and girls in and display them—the next thing you know, they may be unwittingly involved in some of these prostitution rings.

What is of most concern to one are the young people who would be viewed and photographed—whose minds and habits are still in the formative stages. Such encounters cannot help but have a psychological and possibly humiliating impact on these youngsters and jeopardize the possibility of healthy, affectionate relationships in the future.

I yield the floor.

Mr. CULVER. I yield myself 1 minute.

Mr. President, I urge the Senate to act favorably on this amendment. It is a constructive amendment. I agree with the interpretation of the Senator from Indiana as to its import and effect.

I do not believe there is any further debate on the amendment, and I suggest the absence of a quorum.

The PRESIDING OFFICER. Does the Senator ask that the time be charged equally against both sides?

Mr. CULVER. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CULVER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered?

Who yields time?

Mr. CULVER. Mr. President, I wonder if the Chair would put the question on the amendment of the Senator from Indiana.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. BAYH. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Indiana.

The amendment was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have my name added as a cosponsor of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CULVER. Mr. President, I ask unanimous consent that Josephine Gitler, chief counsel for the subcommittee, may have the privilege of the floor during the consideration of this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1398

(Purpose: To prohibit the transportation in interstate or foreign commerce of material depicting sexual exploitation of children.)

Mr. ROTH. Mr. President, I call up my amendment No. 1398.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Delaware (Mr. ROTH), for himself, Mr. HATCH, Mr. ALLEN, Mr. BARTLETT, Mr. BELLMON, Mr. DANFORTH, Mr. DOLE, Mr. FORD, Mr. GARN, Mr. GOLDWATER, Mr. HATFIELD, Mr. HAYAKAWA, Mr. HELMS, Mr. HUDDLESTON, Mr. JOHNSTON, Mr. LAXALT, Mr. MATSUNAGA, Mr. MCCLURE, Mr. MORGAN, Mr. NUNN, Mr. PERCY, Mr. SCHWEIKER, Mr. STEVENS, Mr. THURMOND, Mr. TOWER, and Mr. YOUNG proposes an amendment numbered 1398.

Mr. ROTH. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is this the amendment on which there is an agreement or time limitation of 1 hour?

Mr. ROTH. That is correct.

The amendment is as follows:

On page 7, line 6, strike out the quotation marks.

On page 7, between lines 6 and 7, insert the following new section:

"§ 2252. Transportation, sale, or distribution for sale of material depicting sexual exploitation of a minor

"(a) No person may—

"(1) knowingly transport, ship, or mail in interstate or foreign commerce for the purpose of sale or distribution for sale any film, photograph, negative, slide, book, magazine, or other print or visual medium depicting a minor engaged in sexually explicit conduct; or

"(2) knowingly receive for the purpose of sale or distribution for sale, or knowingly sell or distribute for sale, any film, photograph, negative, slide, book, magazine, or other print or visual medium depicting a minor engaged in sexually explicit conduct which has been transported, shipped, or mailed in interstate or foreign commerce.

"(b) A person who violates this section shall be fined not more than $10,000 or imprisoned not less than one year nor more than ten years or both for the first offense, or shall be fined not more than $15,000 or imprisoned not less than two years nor more than fifteen years or both for each offense thereafter.

"(c) For the purposes of this section—

"(1) 'minor' means any person under the age of sixteen years;

"(2) 'sexually explicit conduct' means actual or simulated—

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) masturbation;

"(D) sadomasochistic abuse (for the purpose of sexual stimulation); and

"(E) lewd exhibition of the genitals or pubic area of any person.".

On page 5, between lines 8 and 9, insert at the end of the table of sections for chapter 110 the following new item:

"2252. Transportation, sale, or distribution for sale of material depicting sexual exploitation of a minor.".

Mr. ROTH. Mr. President, I call up my amendment No. 1398. This amendment would add an important provision to S. 1585 by including within its coverage the distributors and sellers of child pornography.

First, I want to commend Senator CULVER, Senator MATHIAS, and the Subcommittee on Juvenile Delinquency as a whole and its staff for their diligent efforts toward the eradication of the malicious abuse of innocent children by pornographers. The Senate and the American people are indebted to them for the serious attention they have given this subject and the conscientious proposal they have made.

S. 1585 is a good bill and should provide a significant first step in a concerted attack against a particularly loathsome form of child abuse—the sexual exploitation of children by a multimillion-dollar pornography industry. However, the bill has one serious shortcoming in that it fails to include a strong provision against the distributors and sellers of child pornography.

The bill does contain increased penalties for the distribution of child pornography that is deemed obscene under present obscenity statutes. In other words, in this crucial area of distribution, the bill does not offer a new law, but rather merely increases the penalties under existing law. Unfortunately, though, existing statutes have proven remarkably ineffective in eliminating child pornography. When an author who has studied this form of abuse is able to purchase throughout the country 264 different kinds of pornographic magazines dealing with children, the inadequacy of existing statutes becomes apparent.

My amendment would add to the bill a provision that prohibits the distribution and sale of child pornography that meets the definition specified within the bill. Convicted violators would be fined not more than $10,000 or imprisoned not less than 2 years or more than 10 years, or both, for the first offense, or not less than 5 years or more than 15 years or fined more than $15,000, or both, for each such offense thereafter. These are the identical penalties that the bill itself provides for the production of child pornography.

Mr. President, this amendment would provide a vital new weapon in the fight against child abuse. This amendment in no way attempts to establish new obscenity standards. The quagmire of litigation that confronts any legislation seeking to specify new obscenity standards or revise old ones should and must be avoided. The stakes are too high—for what we are proposing today is, as indicated in the title of S. 1585, the protection of children against sexual exploitation.

It was for this purpose that I introduced S. 1011 last March. I was the first Senator to offer a child pornography bill and was joined by 20 of my colleagues who shared my concern over the flagrant abuse of children by sleazy sex merchants And, it was for this purpose that we continued our efforts in the Judiciary Committee to insure that a strong section against sellers was included in the bill. I believe it is appropriate to note here Senator HATCH's hard work within that committee. Senator HATCH has been a major source of support in this effort since the introduction of S. 1011 last March. I deeply appreciate the dedication he has given this proposal and applaud the significant contribution he has made.

I believe that a substantial portion of this abuse will continue if we fail to enact a strong provision against distribution. The worst forms of child abuse by

pornographers occur at the hands of the fly-by-night operators whose hit-and-run techniques may include a few quick hours of filming or photographing in a cheap hotel room, on a deserted beach, or in an isolated stand of woods. Within hours of filming, the principals are gone, leaving few, if any, tracks behind them. I fear that prosecution of producers such as these will be nearly impossible; allowing them to continue their operations unchecked.

To effectively eliminate this abuse, we must include in this bill's coverage those who distribute and sell the producer's work.

Opponents of a stronger provision against distributors and sellers of child pornography have maintained that my amendment's prohibition against the distributing and selling of child pornography would violate first amendment rights of guaranteed speech. I disagree.

While a challenge in the courts would appear certain, I believe that this amendment's constitutionality could and would be upheld.

The Supreme Court has never been asked to weigh the constitutional rights of innocent children against the rights of pornographic publishers.

Indeed, in other areas the Court has recognized the special protection that must be afforded to children.

For instance, the Fair Labor Standards Act, in part, provides that no goods shall be shipped or delivered in commerce where such goods were the result of oppressive child labor employment.

And in a 1968 decision, the Supreme Court identified an independent, "transcending" interest of the State in the welfare of its children when it upheld the State's power to adjust the definition of obscenity as applied to minors and noted that the State has an independent interest in protecting the welfare of children and safeguarding them from abuses.

Three years ago Congress again recognized this special responsibility when it enacted the Child Abuse Prevention and Treatment Act, providing Federal financial assistance for the identification, prevention, and treatment of child abuse and neglect.

Nor can the opponents of my amendment convincingly argue that the first amendment provides an absolute right that will tolerate no qualifications.

One of the most obvious and necessary restrictions we have upon free speech is the prohibition of speech that would defame or libel another. The Court has also excepted from first amendment protection certain speech advocating the overthrow of the Government. It has also ruled that symbolic speech involving the use of the flag in sexually bizarre ways to register certain social protests is not protected. The communication of ideas by picketing and marching on the streets is not afforded the same kind of protection under the 1st and 14th amendments, according to the Court. Speech likely to cause a breach of the peace is not absolute. And sound trucks which emit loud and raucous noises are not protected under the first amendment.

Mr. President the invasion of privacy and the momentary discomforts of a blaring sound truck are as nothing in my mind when compared to the abuse, degradation, and potential psychological damage inherent in the lurid practices of child pornography.

If the distribution of child pornography could truly be separated from the process of child abuse that occurs in the production of child pornography, then perhaps I could accept the arguments of those who oppose a stronger provision against distributors. But I must agree with the noted attorney, Mr. Charles Rembar, that:

> It is not arbitrary or unreasonable for the legislature to conclude that inducing children to engage in sexual activity can harm them. Nor is it arbitrary or unreasonable to prohibit the photographing of children who have been induced to do so, or to interdict the publication and sale of magazines in which the photographs appear. The publisher and the seller are principals in the abuse. Without them, it would not occur.

Mr. Rembar's comments take on added force when we recognize that he was the attorney who, in the 1960's, defended "Lady Chatterley's Lover" and "Fanny Hill" against attempt censorship.

Mr. President, I cannot agree with those who say, in effect, that the first amendment gives a license to the distributors and sellers of child pornography to continue their participation in this particular manifestation of child abuse.

I urge the adoption of this amendment as an effective method by which we may begin, at last, to eradicate what must surely be one of the greatest blights on a civilized society.

(Mr. MATSUNAGA assumed the chair.)

Mr. GOLDWATER. Mr. President, will the Senator yield?

Mr. ROTH. I am happy to yield to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, I am very happy to support this amendment.

Mr. President, I would remind my colleagues that we went through all these arguments before. I can recall standing here in June of 1970, after offering an amendment to the Postal Reform Act which strengthened the right of parents to protect their children from smut mail.

We were told then that the courts would not uphold such a law because it might cover so-called works of art. But the amendment to the postal laws has been upheld time and again by the courts, and I am certain the Roth amendment will also be upheld as a proper exercise of Congress' power to protect child welfare, if we are wise enough to pass it.

Mr. President, it is my pleasure to join with the Senator from Delaware (Mr. ROTH) and many other Senators in proposing an amendment which will greatly strengthen our effort to control the sexual abuse and exploitation of children.

Now, I am also a cosponsor of the committee bill and I applaud members of the committee who were diligent in holding hearings on the subject and reporting the first national law aimed at prohibiting the production of materials that depict sexual conduct by children.

But, Mr. President, I believe we can and should go further. I believe we must go beyond the manufacture of these films or magazines and prohibit their distribution and sale, as well.

That is exactly what our amendment would do.

Other than the fact that our amendment would reach the actual distribution and newsstand or mail order sale of this material, the primary difference between our approach and that of the committee bill is that we do not restrict the prohibition to materials which may be obscene.

We are not relying solely on the power of Congress to control obscenity. We are acting under the congressional power to protect the welfare of children by regulating the transportation of materials moving in interstate commerce.

Mr. President, this is child abuse. It is not a first amendment problem.

The courts need not apply the same standards to our amendment that are used in obscenity cases. Even if they did, I am confident that a statute containing precise definitions and narrowly aimed at protecting minor children will be upheld.

The courts should be made to rule on the issue. We should not let it simply be assumed that they will decide negatively.

We are trying to protect children from being sexually abused and sexually exploited. To be effective in doing this, we must get at the sex merchants and dealers who are an important link in the multimillion dollar industry which is corrupting and brutally mistreating children for selfish commercial gain.

Only if we can stop the material from being sold and remove the potential for easy money, can we be effective in stopping its production.

Now, I know the Justice Department is opposed to our amendment. Their lawyers have become fascinated by theoretical law.

But I cannot for the life of me understand how President Carter, himself a religious man and a father, has failed to overrule the Department. I am still hopeful that if we pass the amendment and send it to the White House, he will repudiate the Department's position.

Mr. President, I would remind this administration that the Southern Baptist Convention has taken a very strong position in support of Antichild abuse legislation, such as the Roth amendment.

In August, Dr. Harry N. Hollis, Jr., director of Family and Special Moral Concerns of the Southern Baptist Convention, urged the passage of stronger laws to prevent this abuse of children.

Dr. Hollis said:

> We need to oppose those who exploit these children through the production, distribution and selling of this material.

Listen to that carefully, Mr. President. Not just the "production" of child pornography must be controlled. The "distribution" and "selling" of this material must be prohibited, as well.

The Southern Baptist Convention wants stronger laws against all three

forms of child pornography because, in Dr. Hollis' words, we are not talking about art, we are not talking about happy little children: "We are talking about children being physically coerced and psychologically manipulated into sex scenes."

Mr. President, I might comment at this point that the big argument covers the difficulty in defining pornography, and I would have to agree with the Supreme Court it is virtually impossible to describe the term "pornography" because what is pornographic to one might not be pornographic to another.

I can recite countless works of art around this world that some of us think are pornographic and others think are works of art. We got around that in my 1970 amendment, as we are trying to here, by calling it "sexually oriented" or "sexually explicit." I am thinking of an article I saw in the paper just last week of some people in New York who were protesting the sale of photographs by Edward Weston, whom I consider to be one of the two finest photographers we have ever developed in this country.

He did take pictures of his undressed children on the beach; I think his wife was a model for him. I consider them to be works of art.

If you consider a picture of a naked girl or a naked woman to be pornographic, that is your right to do so. That is where we ran into some argument, and we changed the term pornographic to "sexually oriented."

We are talking, Mr. President, about photographs. We are not talking about paintings. There is no way the courts could rule that one of the masters showing an unrobed woman would be considered pornographic. It is a work of art.

But a photograph is a different thing, and the type of photography we are talking about in this amendment is entirely different because I never in my life have seen such filthy, downright rotton, pictures as I have seen in the few magazines I have been shown as evidence of what is going on, depicting children in the acts that we should not talk about on this floor.

It has been my pleasure to join with the Senator from Delaware (Mr. ROTH) and many Senators in proposing an amendment which will greatly strengthen our efforts to control the sexual abuse and exploitation of children.

I just want to reiterate that the Mail Pornography Act that was passed at my suggestion in 1970, which is section 3010 of 39 United States Code, has been upheld by the Federal courts, and it has cut down, almost eliminated, what many people in this Chamber and many people in this gallery used to get unsolicited through the mails, filthy advertisements.

Now we have stopped it through the application of 10 years in jail and a $10,000 fine; and all an American citizen has to do is to tell his postmaster he does not want to receive any more of it and it stops.

What the Roth amendment will do will be merely saying, "You cannot abuse and cannot exploit children through the production, distribution and selling," of the type of rotten material that comes to my mind as I think of the need for this type of amendment.

I think it is a sad commentary on the state that the American mind has reached when they will allow such things to be printed, when they will allow themselves to buy this filth, and I am hopeful that today on the floor of the Senate we will forget about the arguments of those who say: "Oh, it might abuse the first amendment."

No, Mr. President, what Mr. Roth is trying to do, and I admire him for it, is to put a stop to the harmful abuse and exploitation of our children. When I say children, I am talking about children under 10 years of age or in their early teens, and if you do not believe me, go back in the back end of any dirty book store or some of our better book stores, and peek under the counter and see what I am talking about.

I urge my colleagues to support the Roth amendment. It is long overdue, and I am very happy and proud to be a cosponsor.

Mr. ROTH. I thank the Senator from Arizona.

Mr. President, one of the cosponsors of my amendment, the distinguished Senator from Kentucky (Mr. HUDDLESTON), could not be here today. I ask unanimous consent that his statement in support of this amendment be printed at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT OF SENATOR HUDDLESTON

I strongly support legislation to prohibit the sexual abuse of children. As a cosponsor of S. 1585, the Protection of Children Against Sexual Exploitation Act of 1977, I am pleased that it is being considered by the Senate today. I feel it is vitally important that Congress address itself immediately to a problem about which many Americans are concerned.

The use of children in pornography has been a topic widely discussed by the media recently as a result of a concerted effort by concerned groups and individuals and it is clear that the American public is outraged by the widespread abuse of children in this manner.

At the present time there is no federal statute that prohibits the use of children in the production of materials that depict explicit sexual conduct. Only a few states have statutes on the books which specifically prohibit the use of children in an obscene performance which would be harmful to them. And there is no federal statute specifically regulating the distribution of obscene material involving children.

I support the amendment offered by Senator Roth which would prohibit the distribution of obscene materials depicting children in perverted or sexually offensive acts. In my judgment, this amendment would make the bill a much stronger vehicle for stamping out the repulsive sexual exploitation of children. While we can pass laws to prohibit the horrendous sexual acts which involve children and the abuse of children, it is extremely difficult to catch the producers in the act. Even when they are caught, it is difficult to prosecute these cases because the films and photos are made in secret. I believe this legislation will be much more effective if we apply strict penalties for distributing the materials as well.

Some of my colleagues feel there is a chance that the Supreme Court could rule this provision unconstitutional. I do not think so. However, that will be a matter for the courts to decide. At the present time, there are no Supreme Court decisions dealing with the unique situation we are confronting in this legislation.

I hope that through this bill those involved in pornography depicting children will be caught and prosecuted, and others involved in some area of the industry will be frightened enough to get out of the business. But, most importantly, I hope it will prevent the destruction of children's lives and I urge you to support this legislation.

Mr. ROTH. Mr. President, I am happy to yield to another cosponsor of this amendment, the Senator from Illinois (Mr. PERCY).

Mr. PERCY. Mr. President, first, I ask unanimous consent for Mr. Ken Alkerman of my staff to have the privilege of the floor during discussion of this bill and votes thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Mr. President, once again I am delighted to join with my distinguished colleague from Arizona, Senator GOLDWATER, in supporting an effort that I think is extraordinarily important.

The city of Chicago, unhappily, has been a center of production and distribution of pornographic material involving children.

A subcommittee of the Judiciary Committee held some important hearings in Chicago, and I attended those hearings and was just as shocked as anyone else, particularly when we heard the voice—we did not see the person—but we heard the voice of a child who had engaged in the practice, who described the permanent injury, psychologically, done to children and the great difficulty of rehabilitating themselves once they had recognized the kind of a life that they had been led into.

I wish to pay great tribute to my distinguished colleague, Senator ROTH of Delaware, for his leadership in this area. He has sponsored an amendment aimed at curbing a nefarious form of child abuse, the use of children in pornographic materials.

The growing phenomenon of child sexual abuse carries a potential for leaving deep psychological scars on literally tens of thousands of our Nation's youth.

I wish to pose a brief series of questions to the senior Senator from Delaware regarding some specific questions raised about the amendment. These are not questions that I raise, because I am satisfied as a cosponsor of his amendment that he has adequate answers for them, but they are the kinds of questions that have been raised to me by others, and I hope the responses will answer some of the problems that have arisen in some minds about the amendment.

The proposed amendment extends criminal provisions already contained in S. 1585 against producers of child pornography to the distributors and sellers of child pornography as well. It is my understanding that the Senator's amendment does not attach criminal panalties to the handling of any materials which are not already subject to criminal sanctions under the main text of S. 1585. Will he explain this relationship?

Mr. ROTH. That is correct. The definition in the amendment as to what would constitute "child pornography" is a word-for-word duplicate of that in the main body of S. 1585. This amendment would not prohibit the sale and distribution of any material whose production is not already prohibited by the main body of the legislation. All agree that prohibitions against the production of this material are proper and constitutional as a legitimate Government protection against child abuse. The amendment does not extend to any material not already prohibited from being produced by S. 1585.

Mr. PERCY. The amendment, in effect, renders the distributor or seller an accessory in the first degree, or an aider and abetter, to the act of child abuse committed by the producer. As we know, so long as the marketing end of the trade remains intact, there is little we can really acomplish in curbing the production end of the trade. Clearly, the sellers and distributors contribute just as much, if not more, to the continuation of this form of child abuse as the producers themselves.

Is it not a close parallel that if we only had a penalty for the producers of drugs we would not get any place? Really, what we have to do is penalize the pusher, the distributor, and get at the source. If we cut the source of demand down, then we have an automatic cut in production.

I wonder if this is not a comparable example?

Mr. ROTH. Yes, the two are inextricably related. It is the distributors and sellers who keep the producers in business. Any statutory scheme which ignores this is doomed to ineffectiveness. For this reason, however, we have not made it illegal for the distributor or seller to handle any material where production has not already been prohibited under the main text of S. 1585. That is why I have characterized my proposal as a strengthening amendment.

Mr. PERCY. It is absolutely essential to have this amendment enacted if we really believe in carrying out the full intent and purpose of S. 1585.

The distinguished Senator from Delaware has drafted this amendment such that a distributor or seller would be culpable only if he or she acts "knowingly." Would this not mean that the distributor or seller must have either, first, actual knowledge that the materials do contain child pornographic depictions or, second, circumstances must be such that he should have had such actual knowledge, and that mere inadvertance or negligence would not alone be enough to render his actions unlawful? Clearly, it is not the intention of this amendment as I read it, to create any kind of trap for the unwary.

Mr. ROTH. That is absolutely correct. This amendment, limited as it is by the phrase "knowingly," insures that only those sellers and distributors who are consciously and deliberately engaged in the marketing of child pornography and thereby are actively contributing to the maintenance of this form of child abuse are subject to prosecution under this amendment.

Mr. PERCY. Then, if we could take a specific example: A large volume book or magazine retail store, with perhaps hundreds of different title books and magazines offered to the public for sale, whose owner does not have the time to read every single book or magazine in his shop—it would be literally impossible—would not be subject to potential culpability if a book or magazine which happened to contain prohibited material is discovered in his shop, unless, as you have noted, he acted "knowingly." Is this a correct statement?

Mr. ROTH. Yes, that is correct. This legislation creates no affirmative duty to inspect on the part of the distributor or seller, though it would certainly apply to one who actively and affirmatively endeavors to conceal his knowledge.

Mr. PERCY. Mr. President, I thank Senator ROTH for his explanation.

I think it will be reassuring to those who have been concerned about the amendment through what I believe are misapprehensions about it, and I commend him once again for his leadership in this very vital field.

Mr. ROTH. I thank the distinguished Senator from Illinois and commend him for his concern.

Mr. CULVER. Mr. President, will the Senator yield on my time?

Mr. ROTH. I am happy to yield on the Senator's time.

Mr. CULVER. Mr. President, I shall take this opportunity to express my appreciation to the distinguished Senator from Delaware for the interest and the initial leadership in this extremely difficult and tragic area of our national life, for the leadership he has given to the country and given to Congress in introducing first legislation on this subject.

I address myself more to the merits of his amendment, as we did in the full Judiciary Committee after other Senators, proponents of the amendment, had an opportunity to present their views.

But the distinguished Senator from Illinois did make one observation that I did want to correct at this point because it is understandable to me that it is possible, given the complicated nature of this public policy area, not to be aware of the fact that with regard to sale and distribution it is not correct to say that S. 1585 does nothing about that aspect of this problem.

In fact, we severely strengthened the penalties for under sale and distribution. We doubled them. It provides $10,000 fine, 10 years in prison, and minimum penalties of 2 years incarceration, and then in the event of a second offense it is $15,000 and 15 years. So we really take a very hard, tough position there on sale and distribution.

To the Senator from Illinois, I say that what we do, though, is rely on our existing obscenity statutes and the court interpretation, essentially the so-called Miller case, as to what constitutes obscene in order to obtain prosecution and conviction for the sale and distribution of obscene materials.

We are very confident, as are the Justice Department and the U.S. Postal Service people, that under those existing court tests we will have no difficulty whatsoever finding almost every single thing, that the distinguished Senator from Illinois and the Senator from Iowa are concerned about, obscene by the community standards.

In fact, we believe that prima facie, most of these 260 magazines and publications will be found obscene. So what we are talking about, then, is a very strong treatment of sale and distribution offenders, but only upon conviction of distributing obscene materials in accordance with the constitutional interpretation of what constitutes obscenity.

The difficulties we will get into and the problems that we think are posed by this other approach in terms of not applying the present constitutional test—and we feel, based on the testimony of every constitutional expert who testified before us in our hearings, which I do not think can be cavalierly dismissed, as well as the U.S. Justice Department officials who are charged with prosecution and want to effectively attack this problem—they say, "Don't go that way," and it is for that reason that we have taken the approach we have.

I think we have a strong bill and a constitutional bill, and, by a vote of 9 to 4 in the Committee on the Judiciary, with the support of our distinguished chairman, the Senator from Mississippi (Mr. EASTLAND), we did defeat this other approach.

The problem we have, if we go ahead with it, as nice as it sounds and as attractive as it may be to suggest to our constituencies that "I have gotten tough with child porno," the sad thing of it is, in the judgment of those charged with the implementation of this new statutory authority, is that it could well be counterproductive, when we find it to be unconstitutional, when these indictments and prosecutions fall and these people walk away scot free.

That is the problem.

Mr. ROTH. Mr. President, will the Senator yield?

Mr. CULVER. Certainly. On whose time?

Mr. ROTH. Hopefully on your time.

Mr. CULVER. Maybe just for a question.

Mr. ROTH. Just a brief question. First of all, I wish again to congratulate the chairman of the subcommittee, as I did in my opening remarks, for the role he is playing in this area. I know his concern is the same as mine, even though we differ as to the remedy or solution.

The thing that concerns me, as he points out, is increasing the penalty. We already have laws on the books so far as obscenity is concerned. If they are so effective, why have they not worked, and stopped the growth and expansion of child pornography? That is the question.

Mr. CULVER. First of all, may I say to the Senator that the problem we

found in our hearings was really twofold: one, that there was currently a vacuum in terms of Federal authority to go at the problem of production—the production of these materials, films and magazines. We had no Federal authority based on child pornography to get at these problems. All we had was local jurisdictional authorities on child molestation and contributing to the delinquency of a minor.

So we had no way to trigger the involvement of the Federal Bureau of Investigation or the U.S. Postal Service——

Mr. HATCH. Mr. President, will the Senator yield?

Mr. CULVER. Let me finish my response to the question, and I will be delighted to yield.

We had no way to get the Federal Bureau of Investigation into these things, and we had no authority to reach them.

So one of the things they told us was that we need that kind of authority to get in, to be more effective in local prosecutions, and the Federal prosecutors said that would help.

The second thing is that we have not had a lot of prosecutions, indictments, and convictions in this area, because historically we have seen a trend upward, as the Senator knows. He did not introduce his bill until this year.

We saw some television documentaries and we saw some very effective journalistic investigative reporting, all of which said, "Wake up, America, we have got a problem here."

When you go back to the authorities and look at the record, what you also find is that on the one hand we did not have the authority to reach this kind of child abuse conduct, and, on the obscenity side, the extent to which our resources were applied to this problem was historically only aimed at the big operators—the big, big operators—and the ones that had some tie to organized crime.

One of the things that this national attention, publicity, and congressional consideration has brought about, to a not insignificant degree through the efforts of the distinguished Senator from Delaware, is a renewed interest in determination of the nature of the problem, and the prosecuting authorities and investigative authorities are much more aggressive now. We have received reports that we will put in the RECORD here, that we have now received from the Postal Service, that they have officially changed their policy; they have begun to give highest priority to child pornography cases. We have seen acceleration in the number of prosecutions by the Department of Justice; we have seen more indictments, and we have seen recent convictions. I think it was not because they did not have strong statutory authority—though it really was not—that when they had a case, they found obscenity standards and statutes insurmountable in terms of achieving convictions. They have never said that the three-part test of Miller was a roadblock to effectively prosecuting the child pornography obscenity cases. So I think that probably is the most responsible explanation of the pace of prosecution to date in this area.

Mr. HATCH. Mr. President——

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Delaware has 7 minutes remaining.

Mr. HATCH. Will the Senator from South Carolina give me some time on the bill?

Mr. THURMOND. Does the Senator from Delaware have about 3 minutes to yield?

Mr. ROTH. May I yield to Senator HATCH first? Then I will yield to the Senator from South Carolina.

The PRESIDING OFFICER. How many minutes?

Mr. ROTH. I yield 3 minutes to the Senator from Utah.

Mr. HATCH. Will the distinguished Senator from South Carolina yield me some time against the bill as well?

Mr. THURMOND. How much time does the Senator want?

Mr. HATCH. Could the Senator yield me another 7 or 8 minutes, to add to his 3?

Mr. THURMOND. I yield the Senator 8 minutes, Mr. President, on the bill.

The PRESIDING OFFICER. The Senator from Utah is recognized for 11 minutes.

Mr. HATCH. Mr. President, I rise to support the amendment submitted by the distinguished Senator from Delaware (Mr. ROTH), and I compliment him for the leadership he has provided the Senate in dealing with the problem of child pornography.

I also compliment my colleagues from Iowa (Mr. CULVER) and Maryland (Mr. MATHIAS), who wrote the bill that we are now considering. I think that all of us are working together to solve this child abuse and child pornography problem.

But I especially want to compliment the senior Senator from Delaware (Mr. ROTH), for having submitted this amendment. It is necessary because S. 1585, in its present form, does not adequately deal with the problem of child pornography. Let me explain why.

The proponents of S. 1585 insist that the best way to put a prompt and effective end to the mischief is to make the production of child pornography a Federal crime. Accordingly, the bill provides, under section 2251, that it shall be unlawful for anyone knowingly to persuade or force any minor to engage in what is called "sexually explicit conduct" for the purpose of promoting any film, book or magazine, if this person knows or has reason to know that such material will be mailed or otherwise transported in interstate or foreign commerce.

Mr. President, the term "sexually explicit conduct" is the key to an understanding of this legislation, because it extends beyond mere obscenity, as the Supreme Court has defined obscenity, and includes every form of sexual behavior, whether actual or simulated. This bill, in other words, does not forbid simply the production of obscene materials, but all materials which portray the kinds of sexually explicit conduct that are proscribed under section 2251.

With regard to the sale and distribution of these materials, however, S. 1585 attacks the problem simply by increasing the penalties for the distribution of obscene materials where children are depicted. Thus the bill contains a double standard. It outlaws the production of materials which display sexually explicit conduct, but merely forbids the distribution of materials which are obscene.

This double standard is, in my judgment, a fatal weakness of the bill that will undermine our effort to eradicate child pornography. I agree with Senator ROTH that the scope of S. 1585 is too narrow and that its provision for an increase in penalties for the distribution of obscene materials, simply does not go far enough. It is my view that the problem of child pornography will not be effectively handled unless the same standard is applied to both the producers and the distributors of these materials.

It is also my view that the supporters of S. 1585 agree, in principle, that the standard should be the same for producers and distributors. They hesitate to apply the same standards, however, because they believe that this would create a constitutional problem. Relying on what is, in my view, an erroneous constitutional argument offered by Patricia Wald, Assistant Attorney General, they address themselves to the Roth-Hatch amendment in this manner—and I quote from the committee report:

> Attempts to prohibit the sale and distribution of such material necessarily involves an evaluation of the content of the materials in question. Consequently, the Supreme Court in Miller v. U.S. has held that in determining whether material is obscene and loses its first amendment protection, the material must be judged in its entirety. Therefore, the Committee is of the view that an attempt to make illegal the sale and distribution of material regardless of whether such material taken as a whole is obscene, would run counter to present Federal constitutional law as enunciated by the Supreme Court in Miller.

Mr. President, my study of the case law that has been developed by the Supreme Court in obscenity cases leads me to the very opposite conclusion.

In the first place, the opinion of Miss Wald on the constitutionality of the Roth-Hatch amendment is wholly speculative. There are no Supreme Court decisions dealing with the unique situation we are confronting in this legislation. The Supreme Court has never ruled on a case dealing with the production and distribution of child pornography.

Second, Miss Wald's reliance on the Miller case, which held that the material must be judged in its entirely, completely ignores the fact that the material in question involved adults and obscene materials. But we are not dealing with adults, and it is highly questionable, in my mind, that the Supreme Court is going to insist that we must apply the same standards to children that we apply to adults.

I say this on the basis of Ginsberg against New York, decided in 1968. In this case, and in other instances, the Supreme Court has maintained that the

standards for obscenity are not uniform in all respects, as applied to all individuals or places, especially where children are involved. As the Court declared in the Ginsberg case, narrowly drawn proscriptions of distribution or exhibition of materials to children which would not be obscene for adults are permissible under the first amendment.

I am aware, of course, that the Ginsberg case and others dealing with the sale of pornographic material to children are not directly applicable to the situation we confront here, any more than the Miller case is directly applicable, because the pornographic material we are trying to eliminate in this legislation is being sold to adults rather than children.

But I submit that children are involved at the distribution stage in this situation, even though the materials are being sold to adults. I would also point out to my colleagues that the Supreme Court has consistently and strenuously emphasized the point that cases involving children present special questions in that the governmental interest in protecting children overbalances the interest of the adult to receive and possess pornographic material and the interest of a distributor to satisfy the willing adult's inclination to receive it.

As the Court said in Ginsberg, the New York law prohibiting the sale of material to children which would be permissibly sold to adults but not children—and I quote from the decision—"simply adjusts to social realities." And that is all this amendment seeks to accomplish—to adjust this legislation to social realities. On this very point, the Court stated in the Ginsberg case—and I again read from the Court's opinion:

> That the state has power to make that adjustment seems clear, for we have recognized that even where there is an invasion of protected freedoms, the power of the state to control the conduct of children reaches beyond the scope of its authority over adults.

So I put this question to the proponents of S. 1585 who are opposed to this amendment: If the Supreme Court has already clearly and unequivocally stated that government has the authority to apply stricter obscenity standards regarding the sale of pornographic materials to children, why would you suppose that the Court would hesitate to apply stricter obscenity standards regarding the sale of pornographic materials which show children engaged in sexually explicit conduct?

When children are involved, whether it be children purchasing obscene material or children pictured in the material itself, the case law that has been developed supports the proposition that the adult standards for obscenity need not be followed. The Miller case, which deals with adults and states that the material must be judged in its entirety, did not overturn the Ginsberg case. And the Ginsberg case flatly holds that a different standard, a tougher standard, can be used where there is an overarching interest in the protection of our children.

In the third place, Mr. President, I would also like to point out that the opponents of this amendment, who cling tenaciously to the Miller case, erroneously assume that the Supreme Court's standards for obscenity are fixed in concrete, and therefore, cannot accommodate the modification we are attempting to make with regard to children. The truth of the matter is, and I quote from "The Constitution of the U.S. of America: Analysis and Interpretation," published by our own Library of Congress—

> The Court's approach has changed and it has formulated new standards, giving government, federal, state and local, greater power than it previously possessed to outlaw the sale and dissemination of materials found to be pornographic.

A good example of the Court's changing attitude is the very case which the opponents of the amendment rely on—the case of Miller against California. In the Miller case, the Court specifically rejected the old standard of obscenity that the material in question must be "utterly without redeeming social value" before it may be prohibited. In short, the Court's standards for obscenity have been and will continue to be in a state of flux. They should not and do not preclude Congress from giving assistance to the Judiciary in dealing with the problem of child pornography.

To be sure, the Court, in the Miller case, has assured us Government does not unnecessarily endanger first amendment freedoms when it attempts to redefine the standards for obscenity. Why? Because, said the Court in Miller, first amendment values "are adequately protected by the ultimate power of appellate courts to conduct an independent review of constitutional claims when necessary."

In the final analysis, Mr. President, the only question is whether the Senate might rationally conclude that only by proscribing the distribution of "sexually explicit materials" can the abuse of our children be effectively curbed—abuse and exploitation, I remind my colleagues, which occurs prior to distribution but which is nevertheless an incentive for, and an integral part of, the distribution process. In terms of practical, commonsense, in terms of the realities of the situation and the nature of the pornography business, we cannot reach any other conclusion. If we truly want to rid this country of child pornography, then we must go after the distributors of this filth with tough standards, not the watered-down obscenity standards that are applied to adults. We need only take a walk through the streets of Washington, or any city in this country, to see that adult obscenity standards are not going to rescue our children from the adults who are exploiting our children in ways that will affect their hearts and minds for the rest of their lives.

I think we would make a serious error, and one we do not have to make, as I read the constitutional law that has been developed by the Court, if we separated the production and the distribution process in this issue. To do so would take us back to the old law of the Court which once held that manufacturing is not part of interstate commerce, because it was an activity prior to the flow of commerce. That view has long been rejected by the Court because it is simply an unrealistic view of what actually takes place in the field of commerce. For the same reason, it is, in my judgment, wholly unrealistic to look at the commercial exploitation of children without realizing that the manufacture and production of these materials cannot be divorced from the sale thereof. In substance, the causal relationship is no different here than it is in child labor legislation.

Insofar as children are involved, there is, in reality, no meaningful distinction between production and distribution, because only at the distribution stage, where the material is finally brought out into the light of day, can the Government effectively protect this Nation's children.

For these reasons, Mr. President, I urge my colleagues to support this amendment, and to apply the sexually explicit conduct standards to both the producers and distributors of child pornography. If the Supreme Court rules it to be unconstitutional, as the amendment's opponents predict, S. 1585 will still remain on the books.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Who yields time?

Mr. THURMOND. Mr. President, will the Senator yield to me, or perhaps I should yield on the bill.

Mr. ROTH. Will the Senator yield it on the bill?

Mr. THURMOND. Mr. President, I yield myself such time as may be required on the bill.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I rise in support of the amendment offered by the Senator from Delaware to strengthen the protection of children against sexual exploitation by the distributors and sellers of child pornography. The amendment would treat such distributors and sellers as principals in the child abuse that occurs when the material is produced, distributed, and sold.

The amendment adds a provision to S. 1585 that eliminates the bill's dual standard of prosecution of producers of child pornography and the distributors of child pornography. By making this change in S. 1585, the legislation would recognize the principal role that distributors and sellers have in the distribution of child pornography.

Mr. President, I believe this amendment is meritorious, since it will permit the prosecution of not only the makers of child pornography, but also the distributors and sellers of such material. Although existing law may reach this kind of conduct, Senator Roth's amendment would clarify the existing criminal statutes and give prosecutors an added tool in achieving the successful prosecution of this kind of activity.

The amendment is also subject to section 6 of S. 1585, which allows for the severance of any provision which may be later ruled invalid by the courts as unconstitutional or otherwise defective. Thus, the Roth amendment, if proved to be invalid, could be severed from S. 1585 and not jeopardize its other provisions.

Mr. President, there are good aspects to both the Roth amendment and S.

1585. Both are directed at stamping out the rapid growth of child pornography and child prostitution in this country. I support that objective and want to see the most effective bill possible approved by the Senate. If there are other improvements that can be made to the bill, I will support them. Legislation to stop child pornography and child prostitution is urgently needed.

I support the Roth amendment and feel that it will make S. 1585 a better bill.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. CULVER. Mr. President, the Senator from Maryland wanted to make some comments.

Mr. MATHIAS. If the Senator from Iowa will yield me 5 minutes, at least to get started, I should like to comment briefly on the amendment.

Mr. CULVER. I am very happy to yield 5 minutes to the Senator from Maryland.

The ACTING PRESIDENT pro tempore. The Senator from Maryland is recognized for 5 minutes.

Mr. MATHIAS. Mr. President, first, I want to say that the Senator from Delaware and the Senator from Utah were among the first to raise their voices on this distasteful subject of child pornography. There is obviously no difference in goal or difference in purpose in our being here today. We are merely trying to find out the better way to approach this problem.

The subject of the Roth-Hatch amendment is only one corner of a larger bill. The larger bill goes toward the creation of a new crime on the Federal statute books, the crime of procuring children for the purpose of exploiting them in productions, whether it is in movies or magazines or individual exhibitions. It is an important new element of law.

Secondly, it would amend the Mann Act to proscribe the interstate transportation of persons under 18 years of age for the purpose of engaging in prostitution.

The question of sale and distribution which, in the original bill, S. 1585, we have dealt with by an increase in penalties, would be dealt with under the Roth-Hatch amendment by the introduction of some new language. It is only one phase of a comprehensive bill. So, if we look at it in context, I think we see that it is an important phase, but one which is covered by existing law.

The Justice Department could not be more clear in saying that, while the interest that has been shown in Congress has been constructive and positive, and while the pressure that this very debate is putting on this wretched industry has been constructive and positive, what it does not want is to have the settled law unsettled. With the two new tools we are providing—making a new crime out of procuring children for this purpose, increasing the penalties under the existing laws and broadening the Mann Act—they then feel that they can go forward and get the prosecutions which will stamp out this traffic.

But if we unsettle the settled law, as this amendment would do, what I am afraid of is that we are going to have a vacation. We are going to have a hiatus in which the traffickers will have a period of time, pending appeals all through the court system, in which they will not be hindered by the new law.

The Senator from Delaware said, in his remarks, that there is no doubt that court tests will follow. I think that is a fair statement. I think we all would agree with that. Even if we were to assume, for the sake of argument, that it will all come out right in the end, we are headed, if we adopt this amendment, for an unsettled period at a time when we ought to be operating on the settled law of the land and getting the convictions and discouraging people from conducting this outrageous kind of traffic.

Part of the reliance for this amendment is on a rather novel proposition of law. It is argued you can regulate activity of this kind under the child labor statutes. I think that is an interesting thought, but it is not one that I believe the courts are going to find very persuasive. There are specific cases which deal with this kind of theory, one of them being the Oklahoma Press Publishing Co. case.

In the Oklahoma case, it was held that newspapers, radio stations, television broadcasters, and book and magazine publishers are, of course, all business institutions. They are organized like any other business to make a profit. Therefore, they are subject to regulation which affects their normal profitmaking activities; and they can claim no special privilege from that kind of regulation. But the court has always been clear that such regulation of an economic nature cannot, in the long run, result in a restraint upon expression. So I think that the Oklahoma case pretty clearly puts to rest the concept that we can have any firm reliance on child labor laws as a source of strength for the proposition that we should unsettle the settled law of the land with respect to sale and distribution of the material in question here.

I believe, as the bill does, that we are better off to follow the advice of the prosecutors of this country. These people, who are going to bear the heat and battle of the day in the courtrooms, urge us to increase the penalty on the settled law of the land which prohibits sale and distribution, and we will get the convictions which will stamp out this traffic.

Some reference has been made to the Ginsberg case, I will quote very briefly, Mr. President, from a book called "The Law of Obscenity" which comments on the Ginsberg case where, on page 89, it says:

> It is important to understand that although *Ginsberg* allows the obscenity test to be so adjusted where the audience is not the general public, it still requires a finding of obscenity. The statute at issue in *Ginsberg* still required an appeal to prurient interest, still required patent offensiveness, and still required a lack of redeeming social importance. The *Ginsberg* test is still a test for obscenity, albeit modified, and if material does not meet each of the three tests, it may not be prohibited, even for minors.

This is serious business. I think this is what we are tampering with if we adopt this amendment.

We are taking chances that the action we take here will be struck down when the prosecutors have said, "Don't take those chances, we don't need it. Give us the tools and we'll do the job".

We have provided in 1585 the specific tools that the U.S. attorneys across the country want.

These sentiments were echoed again and again and again and again in witnesses before the committee. I believe we have got to listen to those voices, not out of any desire to frustrate the obviously good intentions of the authors of this amendment, but simply out of concern that what we do, we do well and we do effectively.

Paul Bender, who was the General Counsel of the President's Commission on Obscenity and Pornography, says that it is his considered opinion that the amendment, although he was speaking then of the bill which was the father of the amendment, was unconstitutional:

> Perhaps the definition of obscenity can be altered to some extent when a child is the actor. But the Supreme Court has never indicated that it would depart from the three-part approach it reaffirmed in 1973 in the Miller case.

So I would hope the Senate would not go off on a tangent by adopting this amendment which I do not think is necessary to do the job. Such an approach risks the great advances and great achievements that are possible with this bill. Moreover, even if the amendment were found 4 or 5 years from now to be constitutional, its adoption would certainly slow down and complicate a job that I think the American people want to have done now.

Mr. PRESIDENT, I am hopeful that the Senate will reject this amendment.

Mr. HATCH. Will the Senator yield for a question?

The PRESIDING OFFICER. The time of the Senator has once more expired.

Who yields time?

Mr. ROTH. One minute.

The PRESIDING OFFICER. The Senator from Utah is recognized for 1 minute.

Mr. HATCH. It would appear to me that what the Senator is saying is this: that because this amendment might be declared unconstitutional—which I would dispute—that we should apply the sexually explicit conduct test only with regard to production, but apply the obscenity test, which is more difficult to prosecute, with regard to distribution of these child materials.

I question the rationale for this fear of a constitutional confrontation because it seems to me a prosecutor could at any time add both the obscenity indictment and the sexually explicit conduct indictment; and if the sexually explicit indictment was faulty, he would still have the option of seeking a conviction based on obscenity.

Last, but not least, there is a severability clause in this bill which says that if this amendment is not proper or is unconstitutional it will not affect the rest of the bill.

So I really think that the legislative branch should apply the "sexually ex-

plicit conduct" standard to distributors, as well as producers.

I commend my two distinguished colleagues on the intent and significance of this bill in its present form, but this amendment will make it a truly great bill that will enable Federal prosecutors to put an end to child pornography.

Mr. MATHIAS. If someone will yield me the time, I will answer.

The PRESIDING OFFICER. Who yields time?

Mr. CULVER. I am glad to yield 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. MATHIAS. I will try to answer in 1 minute. Of course, under S. 1585 it is perfectly possible to bring the three counts the Senator refers to: procuring a juvenile, violating the Mann Act, and for sale and distribution. Thus; all the things he wishes to be done can be done within the four corners of the existing bill.

But if a U.S. attorney were given the option of bringing a sale and distribution charge under section 1461 or 1462 or 1465, when he could proceed under a new section 2252, he would frequently opt for the new provision which would not require him to meet the three-part Miller test. Thus if section 2252 were later declared unconstitutional all the defendants convicted under this provision would be freed. That is the risk we run by adopting this amendment.

Mr. HATCH. I can only say that the test of obscenity is far more difficult to prove than the test of "sexually explicit conduct."

The PRESIDING OFFICER. The time has expired.

Mr. CULVER addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. CULVER. I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator is recognized.

Mr. CULVER. Mr. President, some of the constitutional problems that are posed by the Roth amendment, I think, are perhaps best illustrated in the current Washingtonian magazine, October 1977.

The distinguished Senator from Arizona made reference to photographs by the well-known photographer, Mr. Edward Weston, and on page 93 of the Washingtonian magazine are six photographs of nude boys in poses which raise problems if one applies the approach of the Roth amendment to this particular series of photographs.

Now, the Roth amendment would have the effect of making it a crime to distribute materials that, taken as a whole, are not obscene. But if those materials were to contain one isolated picture—one isolated picture, not the materials as a whole—that fell within a definition of sexually explicit conduct, then under the Roth amendment you could ban the publication and subject to criminal penalties those who sold and distributed that publication.

Mr. HATCH. Mr. President, will the Senator yield on that point?

Mr. CULVER. If I may finish this point, I will be delighted to yield.

This advertisement in this month's Washingtonian has a portfolio of photographs by Edward Weston, to whom the Senator from Arizona (Mr. GOLDWATER) referred earlier as a great American artist. I think he is so recognized. It could be found to depict a "lewd display" of the genitals or pubic area.

It is possible that, like beauty in the eyes of some beholders, these photographs, in and of themselves, independent of the whole of this particular publication or magazine, could be found to so qualify.

In that event, what we are concerned about is that it would make the seller of the Washingtonian, including any neighborhood drug store owner or news dealer, guilty of a crime for which he could get up to 10 years. This is because the Roth-Hatch amendment applies to any isolated picture in a larger work or publication, and S. 1585, as the Senator from Maryland has said, requires that we look to the material as a whole.

I yield to the Senator.

Mr. HATCH. I hope the Senator does not mean what he has just been saying, because the Roth-Hatch amendment uses the same standards as S. 1585. In other words, it uses the standard of the Senator's bill, and that standard is not obscenity but "sexually explicit conduct."

Mr. CULVER. It is important to clarify this. It is true that it uses the same standards, but the test to be applied is the Miller standard, as to whether or not it is obscene; and to make that determination, one has to consider the work as a whole. The Senator's proposal does not adhere to the Miller standard. Therefore, he would apply the same standards in our bill to an isolated incinent.

Mr. HATCH. The producer of that particular magazine, if the Senator's argument is extended, would be just as liable, under S. 1585 as it now stands, as the distributor would be under our amendment. S. 1585 does not use the obscenity test for the production of pornographic materials, so the Miller test for obscenity is inapplicable at the production stage. The Senator is arguing against the standards set forth in his own bill.

Mr. CULVER. I beg to point out to the Senator that the difference is that our bill provides, for the first time, for a new Federal offense under child abuse for using children to produce these photographs in ways that satisfy our standards of sexually explicit conduct.

Mr. HATCH. Our amendment establishes the same standard for distributors.

Mr. CULVER. I cannot hear the Senator. I will be glad to yield in regular order. I cannot answer and listen and respond in midstream.

There is a very important difference between trying to reach problems of conduct. The Senators asks why the double standard between conduct on the one hand and content on the other. We are talking about two different values, two different problem areas.

The Senator is talking, on the one hand, about the legal authority to reach and prohibit conduct which is felt to be, by way of a matter of public policy, harmful to children, in terms of their experience, in terms of what one person does to another. Once that act is done and it goes into the form of a publication or a film or a picture or a magazine, the courts have said that we are going to consider that work in its entirety in order to determine whether or not it is obscene, and therefore proscribe speech and an encroachment and a restriction on free speech.

The way they determine that is to apply the Miller standard. What is the Miller standard?

The PRESIDING OFFICER. All time of the Senator has expired.

Mr. CULVER. I yield myself additional time on the bill.

The real question here—and where we really seem to get off the mark—is that the courts want to get away from the kind of situation where you can take a paragraph out of "Lady Chatterly's Lover" that you find to be obscene or offensive and ban the book. Or you can take "The Exorcist," because there is a situation involving one isolated incident of sexually explicit conduct, and ban the film. Or, because in "Romeo and Juliet" there is a nude child, you can ban the play.

The court has said that before you can do that, you have to apply the three-part test of Miller: One, take it as a whole; two, whether or not it appeals to the prurient interests and has no real social value; and, three, apply the community standards.

What everyone is saying is that when you talk about child pornography and what may or may not be sexually explicit conduct and child pornographic films, you apply the same three-part test to those materials. I do not think there is any doubt at all that when you talk about child pornography and child obscenity, the threshold is going to be lowered by a jury as to what they feel is obscene. There is going to be no reluctance on the part of those people to apply a very tough standard.

There has been no showing that the element of obscenity would be difficult to prove under the tests set down by the court in the Miller case, because, taken as a whole, all these publications clearly lack any serious literary or artistic value, and they clearly appeal predominantly to the prurient interests as judged by the standards of a community—any community in the country.

The fact that the materials depict juveniles, in my judgment, in practice, clearly will lower the jury threshold and make them more ready to find convictions, easier than in adult pornography cases.

The Senator from Delaware has said, "Why have we not seen more prosecutions?" I tried to speak to that earlier.

If prosecutors will prosecute, section 5 of our bill provides them with the tools I believe necessary to obtain convictions in these cases. This section of S. 1585 is a

clear signal to them to begin such prosecutions.

I mentioned that since the middle of this year, since all this publicity, we have had 38 child pornography investigations opened at the Federal level. We have seen a change in the policy of the postal authorities to put this as a priority, and so on; and I talked about what a change that represented from the previous administrative attitude on this question.

I think it is unwise, Mr. President, to go ahead with this Roth-Hatch amendment because I think the constitutional problems inherent here would endanger successful prosecutions. The best witnesses we have on that point are the prosecutors.

We were in Chicago. We talked to these people. We heard them before our committee. We said, "What tools do you need to do the job?" And they said, "We will tell you the tools we need. We have to make the Mann Act apply to boys as well as girls so we can get this interstate boy prostitution ring. We cannot get them, and we have got to get at the child-abuse problems because we are rinky-dinking around here with contributing to the delinquency of minors, and we want to uncork the FBI's and the postal authority's investigative resources to go into this problem of how they abuse the children."

They also said, "Slap those penalties on them, obscenity; make it tougher. And we want a signal from you in Congress and to the Justice Department, we want to have the word go out that we are serious about this so we have got the necessary support in the bureaucracy to do it." I think, Mr. President, this is what this does.

The Senator mentions that he does not see any problems, that it has got a separability clause. Well, frankly, as the Senator knows, on these constitutional issues whether you have a separability clause or not the court, as a matter of constitutional doctrine, applies a separability clause, and separates those things out.

But what we are worried about is we are going to be going after the Washingtonian magazine, we are going to have a lot of gumshoes running around closing down the local news counters; we are going to be hauling a lot of people in and subjecting them to a grand jury and indictments based on this law, and they are going to then be prosecuted and convicted under this law, and then it is going to go up, and you are going to have a whole wave of these cases, and we feel confident, not because we are so all-knowing about what the Supreme Court is going to do, but because we did what we thought we should conscientiously and responsibly do, and that is go to the experts, go to our own Department of Justice, and say, "You people studied this problem pretty well. Tell us what problems you see in that Roth-Hatch approach."

They said "It is fraught with danger." They said they do not need it. They said they do not want it. They said, "We can do the job with the tools you have given us. It is counterproductive; it is overkill; and as far as equipping us to do the job we do not need it.

"Moreover, if we move under that we are fearful—sure, they will separate it out, and this will fall as being unconstitutional, but also these convictions will fall, these indictments will fall, and you will see not progress with these prosecutions but they represent a retrogression."

The first amendment simply does not permit you, except in cases such as those involving a clear and present danger, a test which is not applicable here by any stretch of the imagination, to restrict speech that is not obscene. We cannot restrict speech that is not obscene. The Founding Fathers said there should be no abridgement of the first amendment. We have seen the courts tortuously try to carve out some exceptions to that.

Mr. HATCH. Mr. President, will the Senator yield for a question?

Mr. CULVER. When I finish my statement.

I think the rule, according to the testimony we have received from Justice and from every other constitutional expert, without exception—we had the benefit of the legal scholars who were associated with the President's Commission on Obscenity, and who did nothing but live with this sick, sordid business for a long time, were the most sophisticated witnesses in terms of the constitutional area of obscenity—they did not feel this could pass constitutional muster. They just did not feel it. They thought this whole provision would be struck down by the court. It would because they said in a criminal statute that reaches protected speech and protected expression as well as that of obscenity is void on its face for overbreadth.

If this happens, based on this constitutional interpretation and precedent, then I think these convictions will be voided, and I think that defendants convicted will be freed.

So, finally, Mr. President, let me just say that contrary to the argument of Senator HATCH and Senator ROTH, for whom I have the greatest personal respect in terms of the sincere concern they have and the interest and leadership they have demonstrated in this area, there can be no separate standard for juvenile obscenity that ignores the Miller standard.

The Senator mentioned the Ginzberg case, and I think it is important to respond to the question the Senator posed with regard to Ginzberg. I think it is true, and it should be acknowledged, that the Ginzberg case clearly provided for a slight variation of the definition of obscenity when the material is to be sold to children.

But we are talking about a fact situation here where the material is to be sold to everyone, adults as well as children; and, secondly, we are talking about a situation where children are the participants in the production, and we are talking about the question of content as opposed to the sale to children in another context.

But even under the Ginzberg case. Mr. President, even under that important precedent with regard to the general area of constitutional law, it is still necessary to look at materials as a whole, I think that is the key thing here, and the key difference, a rule that the Roth-Hatch amendment would ignore, and so I would just submit that S. 1585 would prohibit the sale and distribution of almost all child pornography in a way that is clearly constitutional and enforceable.

I am happy to yield.

Mr. HATCH. If I might just add this thought before yielding to Senator ROTH: I have also talked to a number of prosecutors who would like to change in this way.

I have deep regard for my friend from Iowa, as he knows. But I think I may have a much higher opinion of the Supreme Court of the United States than the Senator does because I just do not believe the Court is going to declare that this bill, as amended by the Roth-Hatch amendment, violates the first amendment. If the Senator's bill passes without this amendment, some really horrendous pornography problems will not be solved.

Mr. CULVER. I have often found that a high opinion of the Court is usually found when they agree with your view, and a low opinion is usually found when they do not. I think if you look at the tortuous meandering of the Supreme Court's history, there is plenty for both of us to be both high and low on the Supreme Court.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I am about ready to yield back the remainder of my time.

I would just like to make one comment and point out to the Senate that similar legislation was adopted on the House side by a vote of 375 to 12.

In closing, I would point out there is a need, and we all agree to that. I would point out that in no way does our amendment jeopardize what the Senate Committee on the Judiciary is trying to do because the provisions are severable.

I think for the same reason it is important to protect our children from sweatshops, it is also important to protect them from smut shops.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, I am pleased to cosponsor the amendment of the distinguished Senator from Delaware (Mr. ROTH) and to speak in support of it at this time. This amendment is essential to achieve the purpose of the proposed legislation, namely to protect children from sexual exploitation.

S. 1585 proposes to protect children from sexual abuse in pornographic material by making the production of child pornography a Federal crime. Therefore, the bill provides criminal liability for anyone who knowingly persuades, encourages, or forces any child to engage in "sexually explicit conduct" for the purpose of promoting any film, book, magazine, or other pornographic material.

The phrase "sexually explicit conduct"

includes every form of sexual behavior, whether actual or simulated, and whether it "appeals predominantly to the prurient interest of a sexually deviant class of persons." *Miller v. California*, 413 U.S. 15 (1973). Therefore this phrase includes activities not covered by the definition of obscenity applied by the Supreme Court.

Accordingly, some argue that although Federal law can constitutionally reach the horrendous conduct which is the subject matter of these materials, and therefore that Congress may attach criminal liability to its producers, the "sexually explicit conduct" standard may not be used to reach the distributors and sellers of such material. They insist that Federal criminal liability may extend to distributors and sellers only when their materials are obscene under present constitutional standards.

Therefore, under S. 1585, a double standard is created by which a producer may be criminally liable for inducing the "sexually explicit conduct" which is the subject matter of a film while the distributors and sellers of that film are not so liable.

Mr. President, the purpose of this bill is to protect children from sexual abuse and to punish those who seek to exploit children in this manner. It deals not only with the abuse of children in pornography, but also their abuse through prostitution, their interstate transportation for immoral purposes, and their induced sexual conduct.

Opponents of Mr. ROTH's amendment maintain that its standard of "sexually explicit conduct" must be judged by the more narrow "obscenity" standard of constitutional law regarding pornography. Thus, they argue that by its very definition, the Roth amendment must be rejected as needlessly overbroad and hence, as unconsitutional. In my judgment they are wrong. Their error, I believe, is to apply the Supreme Court's obscenity standard to this issue at all. This bill deals with obscenity only secondarily, its primary purpose is to protect children from exploitation.

By definition, the Roth amendment does not seek to prohibit pornographic material. Rather, its purpose is to protect these injured children's right of privacy. In the first instance, these children are abused by the makers of sexually explicit material when they are required to submit to such conduct. They are again exploited by those who broadcast that material. Is not that initial abuse, that initial injury, Mr. President, compounded by those who distribute and sell such material?

Just as it cannot be said that these children consented to engaging in the conduct prohibited by this legislation, it cannot be said that they consented to the distribution, sale and appropriation of their name, their picture, or their likeness. The distribution and sale of such material constitutes a new and independent invasion of privacy. It is an additional injury to these children equal to their abuse in the material's production. Certainly, the Constitution does not prohibit the protection of a child's right to privacy, nor does it mandate a license to broadcast this painful event in a child's life. Such publicity may haunt him for years and make recovery from the emotional damage of the conduct itself impossible.

Mr. President, I strongly support the amendment of the Senator from Delaware and urge my colleagues to act favorably upon it.

Mr. SCHWEIKER. Mr. President, I appreciate the opportunity to speak today in support of the amendment which my distinguished colleague from Delaware (Senator ROTH) has submitted to S. 1585, the protection of Children Against Sexual Exploitation Act of 1977. In May I cosponsored legislation introduced by Senator ROTH to eliminate child pornography. The Judiciary Committee acted quickly to hold hearings on the number of bills in this area, and members of this committee are to be commended for their action. However, I do feel adoption of the Roth amendment will improve the provisions of S. 1585 by increasing the likelihood of penalties for those who knowingly transport through interstate commerce or sell any photograph or film depicting a child engaging in a prohibited sex act.

The subject of child pornography is not pleasant or easy to discuss. Many would like to pretend that such abuse never takes place. Others think that legislative bodies like the Senate and local and State elected officials should not concern themselves with what they sarcastically refer to as "kiddie porn." However, I believe that this issue is critically important, and deserves the attention of this Congress. My constituents in Pennsylvania shared my sense of outrage and frustration upon reading and viewing the news media exposés on the use of children in pornographic films and pictures. These exposés have described the child pornography racket as a multimillion-dollar business.

S. 1585, introduced by Senators CULVER and MATHIAS, along with Senator ROTH's amendment, both of which I am cosponsoring, would go far in reducing the abuse of children in pornography. Child abuse, in whatever form it takes, is a horrible crime. The children who are abused today will years from now, still be reeling from the impact of the abuse they have suffered. Psychiatrists and psychologists have repeatedly told us that abused children will carry the scars of their abuse with them throughout their lives, and that many times it is the abused child who grows up to be the child abuser. Studies in this area have also shown that the abused child many times never recovers from his feeling of alienation from the rest of society, and this alienation can surface in the adult in his acting out violently against others, in drug or alcohol addiction, and in various criminal activities. As a Congress concerned, not only for the pain abused children feel today, but also for the repercussions of this abuse and the future cost to society, we must turn our attention to stopping, for once and for all, the sexual exploitation of children in pornography.

Some have argued that a crackdown on child pornographers would be a violation of their constitutional rights under the first amendment. I am tired of hearing such weak arguments which classify this filth as free speech. The American people are fed up with this type of reasoning. It is no wonder our citizens have lost respect for elected officials or members of the judiciary who would argue that the pornographer can trample the rights of any other individual, to the point of forcing children to commit sexual acts with each other or an adult, because to stop them would limit pornographers' freedom to express themselves. That is ridiculous. It is not enough to count on existing obscenity laws to stop the flow of child pornography. We must prevent its production and its availability. Senator ROTH's amendment would provide the last tool needed—prosecution for distributors of child pornography.

Mr. President, children, some only 3 years old, cannot be expected to protect themselves from adults who would use them in this manner to make some fast money. Although it is difficult to believe, many times the adults who exploit these children are friends or relatives, even parents. It is time for Congress to enact legislation which makes it clear to the American people and to the child pornographers, that we are serious about cleaning up this problem, and protecting the right of children not to be abused. This amendment calls for mandatory minimum prison sentences, and fines for convicted individuals. With no chance to somehow working their way out of punishment, perhaps those who use children in pornographic films will be forced to think twice before they inflict the psychological scars that will stay with sexually exploited children for life.

I want to thank Senator ROTH for giving me this chance to speak in favor of and cosponsor his amendment and commend him and Senators CULVER and MATHIAS and the other members of the Judiciary Committee for their leadership in this area.

Mr. KENNEDY. Mr. President, first, I wish to commend my distinguished colleagues, the Senator from Iowa (Mr. CULVER) and the Senator from Maryland (Mr. MATHIAS) for the excellent work they have done in providing what I believe to be a desperately needed solution to the growing problem of child pornography.

As cosponsor of this bill (S. 1585), I share their concern for the grave situation which presently exists in this country that encourages, either directly or indirectly, the sexual exploitation and abuse of some of our nation's children.

In order to meet this problem head on and in order to give the Department of Justice the adequate tools and support it needs, it is vitally important that the bill passed by the Senate be on solid constitutional footing. The Department of Justice has stated that they have serious reservations about the constitutional adequacy of the amendment proposed by the Senator from Delaware. Additionally there is a question as to whether the Roth amendment is even necessary since prosecutions are being brought under the existing obscenity laws.

For these reasons, I urge my fellow colleagues to pass the bill without an amendment which in the future may haunt prosecutions while the constitutionality of the amendment is being decided.

Mr. ROTH. Mr. President, I am ready to yield back the remainder of my time.

The PRESIDING OFFICER. All time has expired on the amendment.

Mr. CULVER. Let me just say with reference to what the House of Representatives did. Under our Senate rules I never knew that was necessarily supposed to be relevant, but I see it referred to not infrequently. I point out that on September 29 the House Judiciary Committee unanimously reported out a bill, H.R. 8059, without a Roth-Hatch section attached to it, and the vote that the Senator from Delaware refers to with regard to the House action of 375 to 12 was a rider to the child abuse bill, H.R. 6693. I think we should note that the rider was never voted on in committee but was inserted by the manager of the bill in a motion to suspend the rules.

It was impossible for House Members to vote to delete it or to amend it, and their only choice was to vote against the motion to suspend the rules or a vote that would have been seen as opposition to doing anything about child pornography, as well as a vote in opposition to a much-needed child abuse authorization bill to which this was attached.

I think the considered judgment then of the House of Representatives could not be found in that vote but in the decision of the Judiciary Committee, that considered decision not to include a Roth-Hatch section, and I think that this was the view of the Senate Judiciary Committee when it voted 9 to 4 to oppose the Roth-Hatch amendment.

I urge my Senate colleagues to offer a similar expression with regard to the amendment at this time, and I yield back the remainder of my time.

Mr. THURMOND. Mr. President, I yield back the remainder of my time.

Mr. CULVER. Mr. President, I move to table the amendment.

Mr. HELMS. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays are ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Delaware.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Kentucky (Mr. FORD), the Senator from Colorado (Mr. HASKELL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Vermont (Mr. LEAHY), the Senator from Montana (Mr. METCALF), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from New York (Mr. MOYNIHAN), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE) is absent on official business.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Pennsylvania (Mr. HEINZ), and the Senator from New York (Mr. JAVITS) are necessarily absent.

I further announce that, if present and voting, the Senator from Pennsylvania (Mr. HEINZ) would vote "nay".

The result was announced—yeas 21, nays 65, as follows:

[Rollcall Vote No. 551 Leg.]

YEAS—21

Abourezk	Cranston	McGovern
Bayh	Culver	Metzenbaum
Biden	DeConcini	Nelson
Brooke	Gravel	Packwood
Case	Hathaway	Pearson
Chafee	Kennedy	Stafford
Clark	Mathias	Wallop

NAYS—65

Allen	Griffin	Percy
Anderson	Hansen	Proxmire
Bartlett	Hart	Randolph
Bellmon	Hatch	Ribicoff
Bentsen	Hatfield	Riegle
Bumpers	Hayakawa	Roth
Burdick	Helms	Sarbanes
Byrd, Harry F., Jr.	Hollings	Sasser
	Jackson	Schmitt
Byrd, Robert C.	Johnston	Schweiker
Cannon	Laxalt	Scott
Chiles	Long	Sparkman
Church	Lugar	Stennis
Curtis	Magnuson	Stevens
Danforth	Matsunaga	Stevenson
Dole	McClure	Stone
Domenici	McIntyre	Talmadge
Durkin	Melcher	Thurmond
Eagleton	Morgan	Tower
Garn	Muskie	Weicker
Glenn	Nunn	Young
Goldwater	Pell	Zorinsky

NOT VOTING—14

Baker	Huddleston	McClellan
Eastland	Humphrey	Metcalf
Ford	Inouye	Moynihan
Haskell	Javits	Williams
Heinz	Leahy	

So the motion to lay on the table Mr. ROTH's amendment was rejected.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the motion to lay on the table was rejected.

Mr. BROOKE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now recurs on the amendment of the Senator from Delaware. The yeas and nays have been previously ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Kentucky (Mr. FORD), the Senator from Colorado (Mr. HASKELL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Vermont (Mr. LEAHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), the Senator from New York (Mr. MOYNIHAN), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE) is absent on official business.

Mr. STEVENS. I announce that the Senator from Tennesseee (Mr. BAKER), the Senator from Pennsylvania (Mr. HEINZ), and the Senator from New York (Mr. JAVITS) are necessarily absent.

I further announce that, if present and voting, the Senator from Pennsylvania (Mr. HEINZ) would vote "yea."

The result was announced—yeas 73, nays 13, as follows:

[Rollcall Vote No. 552 Leg.]

YEAS—73

Allen	Gravel	Percy
Anderson	Griffin	Proxmire
Bartlett	Hansen	Randolph
Bellmon	Hart	Ribicoff
Bentsen	Hatch	Riegle
Biden	Hatfield	Roth
Bumpers	Hayakawa	Sarbanes
Burdick	Helms	Sasser
Byrd, Harry F., Jr.	Hollings	Schmitt
	Jackson	Schweiker
Byrd, Robert C.	Johnston	Scott
Cannon	Laxalt	Sparkman
Chafee	Long	Stafford
Chiles	Lugar	Stennis
Church	Magnuson	Stevens
Curtis	Matsunaga	Stevenson
Danforth	McClure	Stone
DeConcini	McIntyre	Talmadge
Dole	Melcher	Thurmond
Domenici	Morgan	Tower
Durkin	Muskie	Wallop
Eagleton	Nunn	Weicker
Garn	Packwood	Young
Glenn	Pearson	Zorinsky
Goldwater	Pell	

NAYS—13

Abourezk	Cranston	McGovern
Bayh	Culver	Metzenbaum
Brooke	Hathaway	Nelson
Case	Kennedy	
Clark	Mathias	

NOT VOTING—14

Baker	Huddleston	McClellan
Eastland	Humphrey	Metcalf
Ford	Inouye	Moynihan
Haskell	Javits	Williams
Heinz	Leahy	

So Mr. ROTH's amendment (No. 1398) was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WILLIAMS. Mr. President, child pornography is a vile and inhumane practice that has corrupted and traumatized children in both the physical and spiritual sense. It can be likened to an ulcer that has been allowed to grow to unknown bounds, and that needs to be eradicated now before another child falls prey to this insidious disease. I am hopeful that the legislation before us today, S. 1585, will halt this sordid, exploitive practice by fortifying our law enforcement officers with the needed tools to eliminate this atrocious moneymaking venture from our society.

In May of this year, the Senate Human Resources Committee, which I chair, passed a resolution denouncing child pornography and urging the Senate Judiciary Committee, which has jurisdiction over this matter to hold hearings into the problem. S. 1585 is the final product of extensive hearings that the Judiciary Committee held on the sexual abuse and exploitation of our children.

At the present time there is no Federal statute which prohibits the use of children in the production of materials that depict explicit sexual conduct. The bill which Senators MATHIAS and CULVER bring before us will assist us to grapple with this horrendous practice and redress the problem in a manner which will curb child pornography and yet avoid violation of the Constitution.

Hearings held by both the Senate and House Judiciary Committees demonstrated that child pornography is a highly organized, multimillion-dollar industry operating on a nationwide scale. Strong evidence collected in those hearings showed that the use of children as the subjects of pornographic materials is not only extremely harmful to the children but attacks the very fabric of our society. We cannot allow these peddlers to continue to exploit our children for their own personal gain.

Briefly, here are some of the important provisions of the bill. This bill will make it a Federal crime to use any child under the age of 16 in sexually explicit conduct for the purposes of pornography. It will also impose stiff penalties of 2 to 15 years in prison and accompanying fines of $10,000 to $15,000. Another key feature of S. 1585 will expand the protections instituted in the Mann Act to protect young males through the prohibition of interstate trafficking of boy prostitutes. The problem of young males, particularly runaways, being lured into male prostitution appears to be closely related to the problem of child pornography.

I am hopeful that the provisions incorporated in this legislation will significantly enhance the ability of the Federal Government to combat these despicable forms of child abuse: The use of children in pornographic materials and juvenile prostitution.

We must now mount an effective national campaign against this kind of sexual abuse and join in repudiating these practices. I believe this bill reported from the Senate Judiciary Committee both deals with these problems and avoids the critical constitutional problems which might arise under the first amendment. I urge my colleagues to support this bill.

Mr. MORGAN. Mr. President, during this past year or so Americans have become increasingly aware of a problem which is so shocking, I think, that a great many people find it difficult to comprehend. That is the problem of the abuse of children in the production of pornographic films, magazines, and other materials. Reliable evidence indicates that children as young as three and four or five are routinely involved in this sickening kind of enterprise. Many of these young children are involved in such activity by their parents, many of whom are prostitutes or drug addicts or both. Violent physical abuse often accompanies the emotional and sexual abuse which is intrinsic to this kind of pornography. Many slightly older children, age 12 or 13, or 14, who become involved in pornographic films, are runaways from broken homes or homes where physical abuse is a way of life.

So the problem of child pornography, therefore, is part of a greater problem—the breakdown of family, and the decline of societal mores. I think we have to give very serious attention to the overall problem of the quality of American life, and the ability of the American family to maintain high standards of decency in a society which increasingly tolerates an alarming amount of violence on our television programs and the blatant sale of pornographic materials and showing of films in our towns.

But we also have to target in on the specific components of this overall problem. In this case, I think the Congress has to go after those individuals who would profit from the sexual exploitation of young children. I commend the distinguished Senator from Delaware, Mr. ROTH, for his diligent efforts over the past year or so in bringing this shocking problem to the attention of the Senate and of the Nation. I also commend the distinguished sponsors of S. 1585, Senators CULVER and MATHIAS, in their capacities as chairman and ranking minority member of the Judiciary Subcommittee on Juvenile Delinquency. They have performed a very valuable service in bringing to the Senate very quickly a responsible bill which targets in on the producers of child pornography, and makes the production of such materials a crime.

But I agree with Senator ROTH that we need to take this process one step further. I think we also need to make illegal the knowing and willful distribution of the same kinds of films and materials which S. 1583 explicitly describes. I think we have to tackle this problem at each step of the process. I fail to see why those who would profit from the distribution and sale of pornography using children are any less a part of the problem than those who would profit from the production of these materials. I am not persuaded that our Federal Constitution, in all its majesty and wisdom, does now or was ever intended to protect under the freedom of speech provisions of that document, the distribution of obscene materials involving very young children in sexually explicit acts.

The amendment offered by the distinguished Senator from Delaware is carefully drafted. Its definitions and its penalties are the same as those of the bill. It contains, furthermore, a severability clause, which, should the Supreme Court agree with the opponents of this amendment and strike down its provisions, insures that the rest of the bill would not be jeopardized.

But I am not persuaded that is going to happen. I believe that in passing the bill before us today with the amendment offered by Senator ROTH, the Senate will have acted responsibly and constitutionally in dealing with a shameful and scandalous situation. The Senate of the United States will have put on notice the unprincipled and immoral entrepreneurs who would abuse young children to make a fast buck. The American people are simply not going to tolerate this kind of activity any longer.

I am honored to be a cosponsor both of the bill and of the Roth amendment, and I strongly urge support for both.

Mr. BROOKE. Mr. President, I fully support S. 1585, the Protection of Children Against Sexual Exploitation Act of 1977, as reported from the Committee on the Judiciary.

This legislation addresses one of the most serious problems facing our Nation. Indeed, citizens from the Commonwealth of Massachusetts and citizens from all across the Nation, have flooded my office with letters and phone calls protesting this abhorrent practice.

The extensive hearings and staff investigations of the Senate Judiciary Committee have confirmed what I have heard and what I have read. The committee concluded that child pornography and child prostitution have become highly organized, multimillion dollar industries that operate on a nationwide scale. The committee found that the use of children as prostitutes or as the subjects of pornographic materials is most harmful to both the children and the society as a whole. And because the existing Federal laws dealing with prostitution and pornography do not protect against the use of children in these activities, the committee recommended the enactment of new legislation.

Senate bill 1585 is an excellent bill which reflects the findings of the Senate Judiciary Committee. It has three principal provisions. First, the bill would make it a Federal offense for anyone to use children under the age of 16 in the production of pornographic materials to be mailed or otherwise transported in interstate commerce. Second, it would proscribe the intrastate transportation of persons under 18 years of age for the purpose of engaging in prostitution. And third, it would strengthen present obscenity statutes to provide much more severe penalties for the distribution and sale of obscene materials that depict sexual conduct by children.

Mr. President, it is important to acknowledge that this legislation will not by itself solve the problem of child pornography. Indeed we must address the national problems which help create the environment in which child pornography and prostitution can thrive: broken homes, alienated and runaway children, emotionally disturbed juveniles, alcohol and drug abuse among the very young, and widespread child abuse.

But the enactment of this legislation would be an important first step. And one which must be taken immediately. For the State and local law enforcement officials cannot adequately control the use of children in the production of pornographic material. What is needed is a massive and coordinated effort by Federal, State, and local law enforcement officials aimed at eradicating this form of child abuse.

Mr. President, I therefore urge my colleagues to join me in voting overwhelmingly for this vitally needed legislation.

Mr. DOLE. Mr. President, the Senate has an opportunity today to help put an end to the practice of using children in pornography. Recent public awareness of this activity has brought universal shock and indignation from every decent

American. Pornography of this type cannot be allowed to continue and now is the time for the Senate to take a major step toward stopping this indefensible practice.

The Senator from Kansas is horrified that a law is needed to prohibit child pornography. Normal decency should be sufficient to outlaw the practice. Yet, no Federal law exists specifically forbidding the distribution of obscene material using children. These children, because of the very nature of this practice, deserve special treatment and special concern from Congress. Common decency demands that the congressional response to this problem be firm and unequivocal.

CHILD PORNOGRAPHY HAS NO CONSTITUTIONAL PROTECTION

One point must be made clear. The first amendment offers no shelter to those who produce, distribute or sell child pornography. There is no "redeeming social value" in destroying the lives of defenseless children for pecuniary gain. The "community standards" of every American city and neighborhood are violated by pictures and films of children as young as three or four being unwittingly used.

A special need exists to extend the sanctions of this bill to those who sell and distribute "kiddie porn." Tracking down those producing the books and films is extremely difficult and sometimes impossible. Pornographers, especially anyone demented enough to produce kidporn, make every effort to remain anonymous and transient.

Police raids on porn shops can only temporarily remove this smut from the shelves. It quickly reappears when the distributor makes his next visit to the store. Child pornography is a three-headed monster with producers, distributors, sellers, all part of the same animal. Cutting off one head without harming the others is useless. If a market exists, the distributors will always find someone to supply the garbage needed. Only if all three branches are pruned simultaneously will this noxious weed be destroyed.

WORST EFFECT IS ON THE CHILDREN

In this bill, Congress has an opportunity to protect our children from irreparable damage. These children cannot protect themselves without our help and this help is needed now. The congressional committees involved have received testimony that thousands of young girls and boys can be counted among the victims of this national scandal.

It does not require a vivid imagination to understand the severe psychological traumatization of these innocent children. Sexual abuse at an early age indisputably causes sexual dysfunctions when these children grow up. One study showed that three-quarters of the prostitutes interviewed were victims of sexual abuse when children.

The social costs are large when members of our society are deprived of any opportunity to be a normal, productive individual. Each child whose life is ruined by being forced into child pornography is a child lost to our country's future.

The number of children involved in child pornography is unknown. Estimates for the Los Angeles area alone range as high as 30,000. Nationwide figures may be more than ten times that number. I only know that to the Senator from Kansas, the exploitation of even one child for profit is more than I am willing to allow. I do not harbor the delusion that passage of this bill will wipe out the kiddie porn industry. Yet, if we can spare 1 or 100 or 1,000 of these youngsters, it will be well worth our efforts.

A FIRM STAND REQUIRED

Mr. President, I ask my colleagues to take the firmest possible stand on this issue. Our clear duty is to strike effectively at the heart of the child pornography problem. As a cosponsor of this bill, I want to urge the Judiciary Committee to quickly resolve the differences between the Senate and House bills in the conference committee. A child pornography bill was first introduced in March. This is a pressing problem and final legislation should be passed this session of Congress. Senate passage today is only one step on the long path toward protecting this country's children.

Mr. McINTYRE. Mr. President, in recent months we have been horrified by stories in the press and in congressional hearings of the brutal abuse of children by child pornographers. Dr. Judianne Denson-Gerber, who has led national efforts to prevent child abuse and neglect, has stated the nature of the evil very well: that the children involved are destroyed by their experiences, spiritually and emotionally.

In the course of public hearings on this subject, it became clear that not only is the problem much more widespread than previously believed, but that both Federal and State law are not adequate to combat it.

I am pleased that the State of New Hampshire is one of those States which has responded swiftly to this issue by passing a tough new law.

But it is vital that efforts against these vicious practices proceed on the Federal level as well, given the widespread use of the mail and other conduits of interstate commerce to distribute these pornographic materials. And as a cosponsor of S. 1585, I am pleased that the Judiciary Committee has acted quickly and responsibly to bring this bill before us today.

This bill attacks the problem in several ways: First, it makes it a Federal offense to use children under the age of 16 in the production of pornographic materials. To date, Federal law has concentrated on the sale and distribution of such materials through interstate and foreign commerce. This bill would close that gap.

Second, the bill attacks the problem of juvenile prostitution by prohibiting the transportation of children under the age of 18 for the purposes of engaging in prostitution. Existing Federal law prohibits transportation of females, but not males.

Finally, the bill greatly increases the penalties for existing laws prohibiting the mailing, importation, and transportation for sale or distribution of pornographic materials.

Mr. President, the issue is clear cut and the need is overwhelmingly documented. Immediate action to give Federal law enforcement officials more effective tools against this unspeakable trade is mandatory. I am proud to be a cosponsor of this measure, and urge its swift enactment.

Mr. DeCONCINI. Mr. President, this legislation provides the needed tools to combat the spreading practice of sexual abuse of children in the pornography industry. As a member of the Senate Judiciary Committee, I have become sadly familiar with the evidence indicating that these practices are spreading. Child pornography is such an abhorrent practice that it is difficult to rationally and objectively formulate legislation that will meet constitutional standards and at the same time effectively combat the practice. I believe the legislation must emphasize society's opprobrium within constitutional bounds.

Therefore, I am pleased that the Judiciary. Committee has agreed to my amendment providing for mandatory minimum sentences of 2 years and 5 years for first and subsequent convictions for production of child pornography, and for mandatory minimum sentences of 1 year and 2 years for first and subsequent convictions for distribution of child pornography. Those mandatory sentences will strongly demonstrate to those involved in the child pornography industry the stern view society takes of their conduct, yet the sentences are not so disproportionate to the conduct as to be Draconian. Whatever view one takes of adult pornography, no one can disagree that the use of children in commercial sex strikes at two of the roots of society; we must be able to protect our children's physical well-being, and we must be able to protect our abiilty to foster in them healthy attitudes toward sexuality. Child pornography damages our children's bodies and minds. Therefore, I believe this mandatory imprisonment is justified and I urge swift passage of this legislation.

Mr. BENTSEN. Mr. President, I rise in support of a bill I cosponsor, S. 1585, which will combat several forms of child abuse that are taking an increasing toll on America's young people and our society as a whole.

Shocking cases have come to light recently that demonstrate widespread abuse of children in the making of pornographic material, and in child prostitution. Hearings by the Subcommittee to Investigate Juvenile Delinquency have demonstrated that this is a national problem that must command our immediate attention. Child pornography and child prostitution have become highly organized multimillion-dollar industries. The result is serious harm to thousands of young people, and the spread of a degrading activity that should not exist in a civilized society.

One researcher, Robin Lloyd, author of "For Money or Love: Boy Prostitutes in America," has documented over 260 different magazines that depict children engaging in explicit sexual conduct. They bear names such as "Torrid Tots," "Night Boys," and "Children Love." They depict children, some as young as 3 to 5 years of age, engaging in various forms of sexual conduct with young people their own age and with adults.

It is not necessary for me to detail the conduct depicted. Let it suffice to say that it is revolting and shocking, so utterly tasteless that words do not easily describe it. It is saddening to think that some human beings will abuse others in this way.

Mr. President, great profits have been made from this kind of activity. Magazines that can be produced for 50 cents may sell for over $12. One witness testified that undercover officers of the Chicago Police Department infiltrated a group that was using two 14-year-old boys to make a pornographic film for national distribution. The cost of producing this film was $21 per copy and the retail selling price was said to be $100. At the time of their arrest the producers of the film stated that they might be able to sell as many as 10,000 copies of this film over a 6-month period.

The true dimensions of this tragedy can only be understood when we look at the young people who are shamefully exploited. We are talking about thousands of runaways, troubled but rarely criminals, who come to the city with little money, few friendships and no direction. The Los Angeles Police Department recently conducted a study of boy victims which found that they are usually between the ages of 8 and 17 years old; with no record of previous delinquency; with no previous homosexual experience. These are vulnerable people, often with insufficient parental care, often homeless, frightened, and in their own way trying to make a stand. They are preyed upon at the very time that they need compassion, guidance, and love. Equally tragic is the fact that so many of these people, hardened and warped by the experience, become child molesters themselves when they are older.

Mr. President, the people who perpetrate this crime should be put on notice. This kind of activity must stop. Those who commit this form of child abuse must be severely punished. S. 1585 will assist in the successful prosecution of these cases. It will establish a Federal statute to prohibit the use of children in the production of materials that depict explicit sexual conduct. It will prohibit interstate trafficking in child prostitutes. It will provide tougher sentences for those found guilty. For those convicted of producing, mailing, or transporting obscene materials involving children there will be mandatory minimum sentences. For all of the related offenses there will be tough maximum sentences.

This bill will help combat child abuse and will see to it that the abusers are punished severely. It is supported by people representing the entire ideological spectrum. Mr. President, the fabric of our society is characterized by a common thread of decency and compassion. When conduct falls below this standard we will work together to end the abuse. This is the goal of S. 1585. I wish to commend the work of my colleagues Senators MATHIAS, CULVER, and ROTH for their interest in this important matter. The bill voted out of the Judiciary Committee meets the important tests of policy and constitutionality, and I urge the Senate to give it prompt and favorable consideration.

Mr. CULVER. Mr. President, at several points in the debate on the previous amendment, Senators expressed their disgust and abhorrence over child pornography and child prostition. I would like the RECORD to reflect that it is the intent of the Senate today, to pass the strongest possible bill to prohibit such abuse of children. I know that was the intent of Senator ROTH and his distinguished colleagues in voting for an amendment that they felt would strengthen the bill. Moreover, my sole reason for resisting that amendment was the sincere belief that the bill would be stronger without it.

I regret that the Senate saw fit to accept the amendment and only hope that if in the future the courts nullify the amendment on constitutional grounds, the remaining provisions of this bill will be left uneffected under the severability clause. In any event the Senate has spoken and I now urge my colleagues to proceed to the consideration of the entire bill. S. 1585 is a strong bill that makes it abundantly clear that the Congress demands that this outrageous perversion of our children come to an end. Under the bill, the use of any child under the age of 16 to produce child pornography that is intended to move in interstate commerce will be a Federal crime punishable by fines of up to $10,000 or imprisonment for up to 10 years or both, for the first offense, and fines of up to $15,000 and imprisonment of up to 15 years, or both, for any subsequent offense. It also provides equally stiff penalties for anyone who sells or distributes obscene materials that depict children engaged in sexually explicit conduct. Finally, it prohibits the use of children for the purposes of prostitution and live sex shows if such activities are conducted in some form of interstate commerce.

In short, Mr. President, S. 1585 gives Federal officials the weapons they need to stop child pornography and child prostitution and a clear signal that the people and the Congress of the United States want them to use these weapons. I am hopeful that the bill will be effective in helping to prevent this abuse of children and, therefore, I urge every Senator to support the bill.

Mr. President, I ask for the yeas and nays on passage.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendment, the question is on agreeing to the committee amendment as amended.

The committee amendment, as amended, was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The ACTING PRESIDENT pro tempore. The bill having been read the third time, the question is, Shall the bill pass? The yeas and nays having been previously ordered, the clerk will call the roll.

Mr. THURMOND. Mr. President, if there is no objection, someone wanted a 10-minute rollcall. Unless there is an objection, I ask unanimous consent that it be limited to 10 minutes.

Mr. SCHMITT. Mr. President, I object.

The ACTING PRESIDENT pro tempore. The objection is heard.

Mr. THURMOND. Mr. President, I yield back my time on the bill.

Mr. CULVER. I yield back my time.

The ACTING PRESIDENT pro tempore. All time has been yielded back. The question is, Shall the bill pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Kentucky (Mr. FORD), the Senator from Colorado (Mr. HASKELL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Vermont (Mr. LEAHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), the Senator from New York (Mr. MOYNIHAN), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE) is absent on official business.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Arkansas (Mr. MCCLELLAN) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Pennsylvania (Mr. HEINZ), and the Senator from New York (Mr. JAVITS) are necessarily absent.

I further announce that, if present and voting, the Senator from Tennessee (Mr. BAKER), and the Senator from Pennsylvania (Mr. HEINZ) would each vote "yea."

The result was announced—yeas 85, nays 1, as follows:

[Rollcall Vote No. 553 Leg.]

YEAS—85

Allen	Danforth	Laxalt
Anderson	DeConcini	Long
Bartlett	Dole	Lugar
Bayh	Domenici	Magnuson
Bellmon	Durkin	Mathias
Bentsen	Eagleton	Matsunaga
Biden	Garn	McClure
Brooke	Glenn	McGovern
Bumpers	Goldwater	McIntyre
Burdick	Gravel	Melcher
Byrd,	Griffin	Metzenbaum
Harry F., Jr.	Hansen	Morgan
Byrd, Robert C.	Hart	Muskie
Cannon	Hatch	Nelson
Case	Hatfield	Nunn
Chafee	Hathaway	Packwood
Chiles	Hayakawa	Pearson
Church	Helms	Pell
Clark	Hollings	Percy
Cranston	Jackson	Proxmire
Culver	Johnston	Randolph
Curtis	Kennedy	Ribicoff

Riegle	Sparkman	Thurmond
Roth	Stafford	Tower
Sarbanes	Stennis	Wallop
Sasser	Stevens	Weicker
Schmitt	Stevenson	Young
Schweiker	Stone	Zorinsky
Scott	Talmadge	

NAYS—1

Abourezk

NOT VOTING—14

Baker	Huddleston	McClellan
Eastland	Humphrey	Metcalf
Ford	Inouye	Moynihan
Haskell	Javits	Williams
Heinz	Leahy	

So the bill (S. 1585), as amended, was passed, as follows:

S. 1585

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Protection of Children Against Sexual Exploitation Act of 1977".

SEC. 2. (a) The Congress finds that—

(1) the use of children as subjects in the production of pornographic materials as subjects in live performances exhibiting sexually explicit conduct or for the purpose of prostitution is very harmful to both the children and to society as a whole;

(2) the production and sale of such pornographic materials represent many millions of dollars in annual revenue and that the sale and distribution of such materials are carried on to a substantial extent through interstate and foreign commerce and through the means and instrumentalities of such commerce; and

(3) existing Federal laws do not protect against the use of children in the production of pornographic materials, the use of children in live performances exhibiting sexually explicit conduct, or the interstate transportation of children for the purpose of engaging in prostitution or sexually explicit conduct and that specific legislation in this area is both advisable and needed.

(b) The Congress determines that the provisions of chapter 110 of title 18, United States Code, are necessary and proper for the purpose of carrying out the powers of Congress to regulate commerce and to establish uniform and effective laws on the subject of sexual exploitation of children.

SEC. 3. (a) Title 18, United States Code, is amended by adding immediately after chapter 109 the following:

"CHAPTER 110—SEXUAL EXPLOITATION OF CHILDREN

"Sec.
"2251. Sexual exploitation of children.
"2252. Transportation, sale, or distribution for sale of material depicting sexual exploitation of a minor.

"§ 2251. Sexual exploitation of children

"(a) It shall be unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in, or to have a minor assist any other person to engage in, any sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, if such person knows or has reason to know that such film, photograph, negative, slide, book, magazine, or other print or visual medium will be mailed or otherwise transported in interstate or foreign commerce.

"(b) It shall be unlawful for any person knowingly to employ, use, persuade, induce, entice or coerce any minor to engage in or to have a minor assist any other person to engage in, sexually explicit conduct, in a live performance, if such person knows or has reason to know that a facility of interstate or foreign commerce will be used to promote such live performance.

"(c) It shall be unlawful for any parent, legal guardian, or person having custody or control of a minor to knowingly permit such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, if such parent, legal guardian, or person knows or has reason to know that such film, photograph, negative, slide, book, magazine, or other print or visual medium will be mailed or otherwise transported in interstate or foreign commerce.

"(d) It shall be unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit such minor to engage in, or to have a minor assist any other person to engage in sexually explicit conduct, in a live performance, if such parent, legal guardian, or person knows or has reason to know that a facility of interstate or foreign commerce will be used to promote such live performance.

"(e) For the purposes of this section, the term—

"(1) 'minor' means any person under the age of sixteen years;

"(2) 'sexually explicit conduct' means actual or simulated—

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) masturbation;

"(D) sado-masochistic abuse (for the purpose of sexual stimulation; and

"(E) lewd exhibition of the genitals or pubic area of any person; and

"(3) 'promoting' means producing, directing, manufacturing, issuing, publishing, or advertising for pecuniary profit.

"(f) Any person who violates this section shall be fined not more than $10,000, or imprisoned not less than two years nor more than ten years, or both, for the first offense, or fined not more than $15,000, or imprisoned for not less than five years nor more than fifteen years, or both, for each such offense thereafter.

"§ 2252. Transportation, sale, or distribution for sale of material depicting sexual exploitation of a minor

"(a) No person may—

"(1) knowingly transport, ship, or mail in interstate or foreign commerce for the purpose of sale or distribution for sale any film, photograph, negative, slide, book, magazine, or other print or visual medium depicting a minor engaged in sexually explicit conduct; or

"(2) knowingly receive for the purpose of sale or distribution for sale, or knowingly sell or distribute for sale, any film, photograph, negative, slide, book, magazine, or other print or visual medium depicting a minor engaged in sexually explicit conduct which has been transported, shipped, or mailed in interstate or foreign commerce.

"(b) A person who violates this section shall be fined not more than $10,000 or imprisoned not less than one year nor more than ten years or both for the first offense, or shall be fined not more than $15,000 or imprisoned not less than two years nor more than fifteen years or both for each offense thereafter.

"(c) For the purposes of this section—

"(1) 'minor' means any person under the age of sixteen years;

"(2) 'sexually explicit conduct' means actual or simulated—

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) masturbation;

"(D) sadomasochistic abuse (for the purpose of sexual stimulation); and

"(E) lewd exhibition of the genitals or pubic area of any person.".

(b) The table of chapters of part I of title 18, United States Code, is amended by inserting immediately after the item relating to chapter 109 the following:

"110. Sexual exploitation of children.. 2251".

SEC. 4. (a) Section 2423 of title 18, United States, is amended to read as follows:

"§ 2423. Coercion or enticement of minor

"(a) (1) It shall be unlawful for any person to transport, or to cause to be transported, in interstate or foreign commerce or within the District of Columbia or any territory or possession of the United States, any minor for the purpose of such minor engaging in prostitution or sexually explicit conduct (as defined in section 2251 of this title) or with intent to induce, entice, or compel such minor to engage in prostitution or sexually explicit conduct (as defined in section 2251 of this title).

"(2) For purposes of this section, the term 'minor' means any person under the age of eighteen years.

"(b) Any person who violates this section shall be fined not more than $10,000, or imprisoned not more than ten years, or both.".

(b) The table of sections of chapter 117 of title 18, United States Code, is amended by striking out in the item relating to section 2423 the word "Female".

SEC. 5. (a) Section 1461 of title 18, United States Code, is amended by inserting immediately before the period in the eighth paragraph a comma and "except that if such thing involved the use of any person under the age of sixteen years engaging in sexually explicit conduct (as defined in section 2251 of this title), the punishment shall be a fine of not more than $10,000, or imprisonment of not less than one year nor more than $15,000, or imprisonment of not less than two years nor more than fifteen years, or both, for each such offense thereafter".

(b) Section 1462 of title 18, United States Code, is amended by inserting immediately before the period a comma and "except that if any such matter or thing involved the use of any person under the age of sixteen years engaging in sexually explicit conduct (as defined in section 2251 of this title), the punishment shall be a fine of not more than $10,000 or imprisonment of not less than one year or more than ten years, or both, for the first offense, or a fine of not more than $15,000 or imprisonment of not less than two years nor more than fifteen years, or both, for each such offense thereafter".

(c) Section 1465 of title 18, United States Code, is amended by inserting immediately before the period in the first paragraph a comma and "except that if any matter described in this section involved the use of any person under the age of sixteen years engaging in sexually explicit conduct (as defined in section 2251 of this title), the punishment shall be a fine of not more than $10,000, or imprisonment of not less than one year nor more than ten years, or both, for the first offense, or a fine of not more than $15,000, or imprisonment of not less than two years nor more than fifteen years, or both, for each such offense thereafter".

SEC. 6. If any provision of this Act or the application thereof of any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated to other circumstances shall not be affected thereby.

Mr. CULVER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GRAVEL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 914

Mr. CULVER. Mr. President, I send to the desk an amendment to the title.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Iowa (Mr. CULVER) proposes an unprinted amendment numbered 914 to the title:

"Amend the title so as to read: 'A bill to amend title 18, United States Code, to make unlawful the use of minors engaged in sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, or live performance, and for other purposes.'".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. CULVER. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 1585.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I want to take this opportunity to commend the distinguished managers of this bill, the Senator from Iowa (Mr. CULVER) and the Senator from South Carolina (Mr. THURMOND) on the passage by the Senate of S. 1585, the Protection of Children Against Sexual Exploitation Act of 1977.

It is only recently that we—as a society—have become aware of the extent of the problem of sexual abuse of children and its terrible consequences upon a completely defenseless minority of our people. Yet, in spite of the fact that the legislation that the Senate has just passed was introduced only last May, Senator CULVER, as chairman of the Juvenile Delinquency Subcommittee, was able to conduct extensive hearings on this problem and, together with Senator THURMOND, bring before the Senate a measure designed to deal with it. I think it is clear that the bill that the Senate has passed will go a long way toward eliminating an abuse that no society—but least of all our society—should tolerate.

The children of this country owe both Senator CULVER and Senator THURMOND a debt of gratitude.

EXECUTIVE SESSION

FEDERAL COMMUNICATIONS COMMISSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session and, without debate, proceed to vote on the nomination of Mr. Charles D. Ferris, of Massachusetts, to be a member of the Federal Communications Commission for a term of 7 years, beginning July 1, 1977.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on each of the two remaining rollcall votes today there be a 10-minute limitation, with the warning bells to be sounded at the first 2½ minutes.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

ADDITIONAL STATEMENT SUBMITTED

Mr. HATHAWAY. Mr. President, it is with a great deal of pleasure that I rise to endorse my good friend, Charlie Ferris, for the position of Chairman of the Federal Communications Commission. Charlie served for 13 years as the chief counsel for the Senate majority. He possesses in full measure the sound judgment that is such a rare but needed quality to fulfill positions of high responsibility.

During our years in the Senate most of us here have had personal contact with Charlie. We have found him to have, not only insight and integrity, but a remarkable combination of idealism and pragmatism that shall enable him to serve well in his chairmanship of the Federal Communications Commission.

Over the years that he worked in this body, Charlie Ferris demonstrated his dedication to the highest objectives of public service. He has been intimately involved in many of the most important issues and decisions in the recent history of our Nation.

I know I speak for my colleagues when I say that Charlie Ferris will bring to his leadership of the FCC the same friendly personality, good sense, and devotion to hard work that made him a trusted and valued friend in the Senate. I strongly endorse his nomination and wish Charlie the best of success in his new duties. I look forward to working with him in the years ahead.

The ACTING PRESIDENT pro tempore. The question is, Will the Senate advise and consent to the nomination of Mr. Charles D. Ferris? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Kentucky (Mr. FORD), the Senator from Colorado (Mr. HASKELL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Vermont (Mr. LEAHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), the Senator from New York (Mr. MOYNIHAN), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Arizona (Mr. GOLDWATER), the Senator from Pennsylvania (Mr. HEINZ), and the Senator from New York (Mr. JAVITS) are necessarily absent.

The result was announced—yeas 85, nays 0, as follows:

[Rollcall Vote No. 554 Ex.]

YEAS—85

Abourezk	Garn	Nunn
Allen	Glenn	Packwood
Anderson	Gravel	Pearson
Bartlett	Griffin	Pell
Bayh	Hansen	Percy
Bellmon	Hart	Proxmire
Bentsen	Hatch	Randolph
Biden	Hatfield	Ribicoff
Brooke	Hathaway	Riegle
Bumpers	Hayakawa	Roth
Burdick	Helms	Sarbanes
Byrd, Harry F., Jr.	Hollings	Sasser
Byrd, Robert C.	Jackson	Schmitt
Cannon	Johnston	Schweiker
Case	Kennedy	Scott
Chafee	Laxalt	Sparkman
Chiles	Long	Stafford
Church	Lugar	Stennis
Clark	Magnuson	Stevens
Cranston	Mathias	Stevenson
Culver	Matsunaga	Stone
Curtis	McClure	Talmadge
Danforth	McGovern	Thurmond
DeConcini	McIntyre	Tower
Dole	Melcher	Wallop
Domenici	Metzenbaum	Welcker
Durkin	Morgan	Young
Eagleton	Muskie	Zorinsky
	Nelson	

NAYS—0

NOT VOTING—15

Baker	Heinz	Leahy
Eastland	Huddleston	McClellan
Ford	Humphrey	Metcalf
Goldwater	Inouye	Moynihan
Haskell	Javits	Williams

So the nomination was confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. HATHAWAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL TRANSPORTATION SAFETY BOARD

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate, with 20 minutes equally divided allowed for debate, will proceed to vote on the nomination of Mr. James B. King to be a member of the National Transportation Safety Board for the term expiring December 31, 1981.

Who yields time?

Mr. SCHMITT. Mr. President, I yield myself 5 minutes.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico is recognized for 5 minutes.

Mr. SCHMITT. Mr. President, I will not keep my colleagues very long.

Mr. PERCY. Mr. President, may we have order, please.

The ACTING PRESIDENT pro tempore. The Senate will be in order. Senators will cease their conversations on the floor. The Senate will please come to order.

The Senator from New Mexico.

Mr. SCHMITT. Mr. President, it is my intention to vote against the confirmation of Mr. James B. King's nomination to be a member of the National Transportation Safety Board. I shall do so not out of the belief that Mr. King is unqualified to hold any Federal post but because he is unqualified to serve in this particularly position.

In the way of background, my colleagues might be interested to learn that

FURTHER LEGISLATION PROGRAM

(Mr. ANDERSON of Illinois asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ANDERSON of Illinois. Mr. Speaker, it is very nice to be back once again here in the Chamber. We have, as far as I know, dispatched the only business that I heard was going to be before us.

I do have some curiosity, however, as to what the majority leader or the distinguished Speaker has in mind for us for the balance of the afternoon. We are about 35 minutes away from the time at which, as I said this morning, we are accustomed to adjourn, this being a Friday.

I think, rather than keep us here for an indefinite period of time, we should have some indication from the majority side of the aisle as to why we are here.

I am pleased to yield to the distinguished Speaker.

Mr. O'NEILL. Mr. Speaker, there have been conversations between the leadership of the Senate and the House. We have at the present time a couple of our own Members talking to the acting chairman of the Appropriations Committee, who has handled this resolution.

We have talked to the chief sponsor of the amendment in the other body. I have given that gentleman the facts as they are at the present time. The facts at the present time are that unless the Senate accepts the resolution that we sent over, if they were to pass the Brooke amendment, as the committee just voted 11 to 10, it would come back here under normal proceedings. Unanimous consent would be required to act on the Senate amendment or to send it to conference and have conferees named.

I would imagine at that particular time an objection would come forward, so then we would ask for the Committee on Rules to act on Tuesday next. We would ask the Committee on Rules to be in Washington to have a meeting. Under the normal procedure then it will be brought up on Friday next. We are trying to avoid that.

We have made our colleagues aware of what the parliamentary situation is. As I see it, unless we can suspend all rules, which I do not think we can do, the most we can do is ask unanimous consent. Any vote on this, unless the Senate would accept the position of the House, would be next Friday.

All the Members of the Senate are concerned with this issue and are now apprised of the situation in the House and what the position of the House has been. I have dispatched our colleague, Representative DICKS, who has talked with the chairman of the committee in the other body, to tell the gentleman the parliamentary situation.

We are waiting for our emissaries to return and tell us what the situation is and when that information is received, a motion will be on the floor.

Mr. ANDERSON of Illinois. Mr. Speaker, how much longer are we going to wait? Are the intentions of the Speaker to call another recess in an hour or so?

Mr. O'NEILL. I would hope if anyone wants to make 1-minute speeches, we would be able to take them, or if anybody has special orders, they would take them; but I would hope the House would be a little at ease until the gentlemen return from talking to Senator MAGNUSON.

Mr. ANDERSON of Illinois. Mr. Speaker, I am always glad to listen to my colleagues making speeches or taking special orders. I would hope if we are going to wait for a message from the other body, we could recess to an hour certain and by that time, if nothing happens, we can adjourn.

CALL OF THE HOUSE

Mr. O'NEILL. Mr. Speaker, I move a call of the House.

The SPEAKER pro tempore. Without objection, a call of the House is ordered.

Mr. BAUMAN. Mr. Speaker, I object.

The SPEAKER pro tempore. The question is, shall there be a call of the House?

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

So a call of the House was ordered.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 745]

Akaka	Fraser	Nix
Andrews, N. Dak.	Frey	O'Brien
Annunzio	Fuqua	Pepper
Archer	Gammage	Perkins
Armstrong	Gaydos	Pike
Ashbrook	Gephardt	Pursell
Badham	Gilman	Quayle
Badillo	Ginn	Quie
Barnard	Goodling	Quillen
Baucus	Guyer	Railsback
Beard, Tenn.	Hagedorn	Rhodes
Bedell	Hall	Richmond
Bevill	Hannaford	Risenhoover
Biaggi	Harkin	Roberts
Bingham	Harrington	Roe
Boggs	Harsha	Rogers
Boland	Heckler	Rosenthal
Bolling	Hefner	Rostenkowski
Brinkley	Hightower	Russo
Broomfield	Hillis	Ryan
Burke, Calif.	Holland	Sarasin
Burke, Fla.	Holt	Sawyer
Burton, John	Horton	Scheuer
Burton, Phillip	Howard	Schulze
Butler	Huckaby	Sebelius
Carter	Ichord	Shipley
Cederberg	Jenkins	Shuster
Chappell	Jones, N.C.	Snyder
Chisholm	Jones, Okla.	Solarz
Cleveland	Jones, Tenn.	Steed
Cochran	Jordan	Stokes
Collins, Ill.	Ketchum	Taylor
Collins, Tex.	Koch	Thompson
Conable	Krueger	Udall
Corcoran	LaFalce	Ullman
Corman	Latta	Vander Jagt
Cotter	Lent	Vento
Coughlin	Long, La.	Walsh
Crane	Long, Md.	Wampler
Cunningham	McClory	Watkins
D'Amours	McCloskey	Waxman
Delaney	McCormack	Whalen
Derrick	Madigan	White
Devine	Mathis	Whitehurst
Diggs	Meeds	Whitley
Dingell	Metcalfe	Whitten
Duncan, Oreg.	Michel	Wiggins
Eckhardt	Mikva	Wilson, Bob
Edwards, Okla.	Milford	Wilson, C. H.
Eilberg	Mitchell, Md.	Wilson, Tex.
Erlenborn	Moffett	Wolff
Fascell	Moss	Wydler
Findley	Mottl	Wylie
Ford, Tenn.	Murphy, N.Y.	Yatron
	Nichols	Young, Alaska

The SPEAKER pro tempore. (Mr WRIGHT). On this rollcall 270 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

REQUEST FOR PERMISSION FOR COMMITTEE ON RULES TO HAVE UNTIL MIDNIGHT, TUESDAY, NOVEMBER 8, 1977, TO FILE REPORT

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that the Committee on Rules may have until midnight, Tuesday, November 8, 1977, to file a report.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, what is the nature of the report?

Mr. BRADEMAS. If the gentleman will yield, the report, presumably, would run to the subject matter which has been the substance of our colloquy during most of the day.

Mr. BAUMAN. Mr. Speaker, further reserving the right to object, the gentleman from Maryland is not familiar with that. What is that issue?

Mr. BRADEMAS. If the gentleman will yield further, the question of the difference between the House and the Senate action on the Federal restrictions with respect to abortion.

Mr. BAUMAN. Further reserving the right to object, Mr. Speaker, if permission were not granted, then the House would have to be in session Wednesday and Thursday?

Mr. BRADEMAS. Not necessarily.

Mr. BAUMAN. Mr. Speaker, I object.

The SPEAKER. Objection is heard.

CONFERENCE REPORT ON S. 1585, PROHIBITING SEXUAL EXPLOITATION OF CHILDREN

Mr. CONYERS submitted the following conference report and statement on the Senate bill (S. 1585) prohibiting to amend title 18, United States Code, to make unlawful the use of minors engaged in sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, or live performance, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 95-811)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1585) to amend title 18, United States Code, to make unlawful the use of minors engaged in sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, or live performance, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment to the text of the bill insert the following:

That this Act may be cited as the "Protection of Children Against Sexual Exploitation Act of 1977".

SEC. 2. (a) Title 18, United States Code, is amended by inserting immediately after chapter 109 the following:

"Chapter 110—SEXUAL EXPLOITATION OF CHILDREN

"Sec.
"2251. Sexual exploitation of children.
"2252. Certain activities relating to material involving the sexual exploitation of minors.
"2253. Definitions for chapter.

"§ 2251. Sexual exploitation of children

"(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who have a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, shall be punished as provided under subsection (c), if such person knows or has reason to know that such visual or print medium will be transported in interstate or foreign commerce or mailed, or if such visual or print medium has actually been transported in interstate or foreign commerce or mailed.

"(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct shall be punished as provided under subsection (c) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual or print medium will be transported in interstate or foreign commerce or mailed or if such visual or print medium has actually been transported in interstate or foreign commerce or mailed.

"(c) Any person who violates this section shall be fined not more than $10,000, or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this section, such person shall be fined not more than $15,000, or imprisoned not less than two years nor more than 15 years, or both.

"§ 2252. Certain activities relating to material involving the sexual exploitation of minors

"(a) Any person who—

"(1) knowingly transports or ships in interstate or foreign commerce or mails, for the purpose of sale or distribution for sale, any obscene visual or print medium, if—

"(A) the producing of such visual or print medium involves the use of a minor engaging in sexually explicit conduct; and

"(B) such visual or print medium depicts such conduct; or

"(2) knowingly receives for the purpose of sale or distribution for sale, or knowingly sells or distributes for sale, any obscene visual or print medium that has been transported or shipped in interstate or foreign commerce or mailed, if—

"(A) the producing of such visual or print medium involves the use of a minor engaging in sexually explicit conduct; and

"(B) such visual or print medium depicts such conduct;

shall be punished as provided in subsection (b) of this section.

"(b) Any person who violates this section shall be fined not more than $10,000, or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this section, such person shall be fined not more than $15,000, or imprisoned not less than two years nor more than 15 years, or both.

"§ 2253. Definitions for chapter

"For the purposes of this chapter, the term—

"(1) 'minor' means any person under the age of sixteen years;

"(2) 'sexually explicit conduct' means actual or simulated—

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) masturbation;

"(D) sado-masochistic abuse (for the purpose of sexual stimulation); or

"(E) lewd exhibition of the genitals or pubic area of any person;

"(3) 'producing' means producing, directing, manufacturing, issuing, publishing, or advertising, for pecuniary profit; and

"(4) 'visual or print medium' means any film, photograph, negative, slide, book, magazine, or other visual or print medium.".

(b) The table of chapters for title 18, United States Code, and for part I of title 18, United States Code, are each amended by inserting immediately after the item relating to chapter 109 the following:

"110 Sexual exploitation of children..2251".

SEC. 3. (a) Section 2423 of title 18, United States Code, is amended to read as follows:

"§ 2423. Transportation of minors

"(a) Any person who transports, finances in whole or part the transportation of, or otherwise causes or facilitates the movement of, any minor in interstate or foreign commerce, or within the District of Columbia or any territory or other possession of the United States, with the intent—

"(1) that such minor engage in prostitution; or

"(2) that such minor engage in prohibited sexual conduct, if such person so transporting, financing, causing, or facilitating movement knows or has reason to know that such prohibited sexual conduct will be commercially exploited by any person;

shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(b) As used in this section—

"(1) the term 'minor' means a person under the age of eighteen years;

"(2) the term "prohibited sexual conduct' means—

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) masturbation;

"(D) sado-masochistic abuse (for the purpose of sexual stimulation); or

"(E) lewd exhibition of the genitals or pubic area of any person; and

"(3) the term 'commercial exploitation' means having as a direct or indirect goal monetary or other material gain.".

(b) The table of sections for chapter 117 of title 18, United States Code, is amended by striking out the item relating to section 2423 and inserting in lieu thereof the following:

"2423. Transportation of minors.".

SEC. 4. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

JOHN CONYERS,
ELIZABETH HOLTZMAN,
LAMAR GUDGER,
HAROLD VOLKMER,
ALLEN E. ERTEL,
DALE E. KILDEE,
JOHN ASHBROOK,
TOM RAILSBACK,
PETER W. RODINO, Jr.,
Managers on the Part of the House.

JOHN CULVER,
EDWARD M. KENNEDY,
BIRCH BAYH,
DENNIS DECONCINI,
CHARLES MCC. MATHIAS,
MALCOLM WALLOP,
STROM THURMOND,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the Senate and House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1585) to amend title 18, United States Code, to make unlawful the use of minors engaged in sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, or live performance, and for other purposes, submit the following joint statement to the Senate and the House in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report: The House amendment to the text struck out all of the Senate bill after the enacting clause and inserted a substitute text. The Senate receded from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The House amendment to the title changed the title to reflect the changes to the Senate bill by the House amendment to the text, and the Senate receded from its disagreement to the House amendment to the title.

The principal differences between the Senate bill, the House amendment and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

The "long titles" differ as between the House and Senate versions. The Conference substitute adopts the House provision.

The Senate bill has a "short title." The House amendment does not. The Conference substitute adopts the Senate provision.

The Senate bill has a "Findings" section. The House amendment does not. The Conference substitute adopts the House version.

The Senate bill contains an express requirement in proposed section 2251(a) that the crime be committed "knowingly." The House amendment does not. The Conference substitute accepts the House provision with the intent that it is not a necessary element of a prosecution that the defendant knew the actual age of the child.

The House amendment prohibits the transportation of visual or printed matter actually transported in interstate or foreign commerce or mailed, whether or not the accused knew or had reason to know of such transporting or mailing. The Senate bill does not. The Conference substitute accepts the House provision.

The Senate bill contains an amendment offered by Senator Bayh to prohibit certain activities relating to "live performances." The House amendment contains no comparable provision. The Conference substitute omits the Senate provision in light of the fact that the Conference substitute contains amendments to Title 18 U.S.C. 2423 which would prohibit the interstate transportation of any minor for the purpose of engaging in prohibited sexual conduct as defined in that section, if the conduct will be commercially exploited. The Conferees believe that in most cases these provisions would cover the sexually explicit conduct of minors during live performances as drafted in the Bayh amendment.

Both the Senate bill and the House amendment contained an express "knowingly" requirement relating to the liability of any parent, legal guardian, or person under proposed Section 2251(b). It is the intent of the Conference Committee that such parent, legal guardian or person have control over the actions of the child when permitting the child to engage in sexually explicit conduct. The proposed criminal act is not passive but is to be an expression of knowledge and control. This contrasts with the decision of the Conference Committee to omit the "knowingly" requirement in the first subsection of proposed Section 2251 as was discussed previously.

The Senate bill and the House amendment contained identical definitions that were placed in different sections. In the Conference substitute the definitions are unified for all sections of the new Chapter 110 and placed at the end of the Chapter. It is the intent of the Conference Committee that the definition of "print and visual medium" be interpreted broadly, i.e. "film" may include but not be limited to electronic visual images or videotapes. It is also the intent of the conferees that the definition of "sexually explicit conduct" be interpreted so as to apply only to conduct that is sexual in nature. For example the term bestiality as used in this definition would only apply to sexual bestiality.

The Senate and House versions differ in their penalty provisions as follows:

(a) The Senate bill provides—

(1) for production, a $10,000 fine, or a two year minimum and a 10 year maximum imprisonment, or both, for the first offense; and for subsequent offenses, a $15,000 fine, or a 5 year minimum and 15 year maximum, or both; (ii) for transportation etc., a $10,000 fine, or a one year minimum and a ten year maximum imprisonment, or both, for the first offense. For subsequent offenses, a $15,000 fine, or a 2 year minimum and a 15 year maximum, or both; (iii) for the "Mann Act," a $10,000 fine or 10 years imprisonment, or both, the same as existing in law.

(b) The House amendment provides a $10,000 fine or 10 years imprisonment, or both, throughout.

The Conference Committee agrees that any person who violates proposed Sections 2251 or 2252 of Title 18 dealing with production and transportation will be fined not more than $10,000 or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under these sections such person shall be fined not more than $15,000 or imprisoned not less than 2 years nor more than 15 years, or both. A minimum sentence has been agreed to therefore for the second conviction.

The Senate bill contains a section on the prohibition of transportation, sale or distribution for sale of material depicting sexual exploitation of minors. The House amendment does not. The Conference substitute adopts the Senate provision with the modification that the visual or printed matter must be obscene and with the requirement that the production of the matter involved the use of a child engaging in sexually explicit conduct. It is the intent of the Conference Committee that if a minor has engaged in this sexually explicit conduct and there was a production of material using any printed or visual medium depicting such conduct that persons who knowingly transport, ship, or mail for the purpose of sale or distribution, or knowingly thereafter receive for sale or distribution, or knowingly thereafter sell or distribute for sale any such material are liable whether or not they have contact with the minor or the original production of the material.

Both the Senate bill and the House amendment contain amendments to Section 2423 of Title 18, United States Code. Although each version differs somewhat in form, the substantive provisions are very similar with two exceptions: (a) The House amendment does not include "simulated" sexual conduct within its prohibition. (b) The House amendment requires that there be some commercial exploitation of the prohibited sexual conduct. The Senate bill does not. The Conference substitute adopts the House provisions.

The Senate bill amends existing Federal obscenity law to increase the penalties of each violation that involves the sexual exploitation of a minor. The House amendment does not. The Conference substitute accepted the House provision because a version of Section 2252 (relating to transportation and distribution of explicit material) was agreed to with an obscenity standard.

The Senate bill contains a "severability" section. The House amendment does not. The Conference Committee accepts the Senate provision.

JOHN CONYERS,
ELIZABETH HOLTZMAN,
LAMAR GUDGER,
HAROLD VOLKMER,
ALLEN E. ERTEL,
DALE E. KILDEE,
JOHN ASHBROOK,
TOM RAILSBACK,
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Managers on the Part of the House.

JOHN CULVER,
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BIRCH BAYH,
DENNIS DECONCINI,
CHARLES MCC. MATHIAS,
MALCOLM WALLOP,
STROM THURMOND,
Managers on the Part of the Senate.

RESIGNATION AS MEMBER AND APPOINTMENT AS MEMBER OF SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL

The SPEAKER laid before the House the following resignation as member of Select Committee on Narcotics Abuse and Control:

HOUSE OF REPRESENTATIVES,
Washington, D.C., October 18, 1977.

Hon. THOMAS P. O'NEILL,
Speaker,
House of Representatives.

DEAR MR. SPEAKER: Following my appointment as Chairman of the Select Committee on Population, I hereby resign from the Select Committee on Narcotics.

With every warm best wish,
Yours,

JAMES H. SCHEUER.

The SPEAKER. Without objection, the resignation will be accepted.

There was no objection.

The SPEAKER. Pursuant to the provisions of House Resolution 77, 95th Congress, the Chair appoints the gentleman from New York (Mr. ZEFERETTI) as a member of the Select Committee on Narcotics Abuse and Control to fill the existing vacancy thereon.

PROPOSAL FOR A 5-MINUTE RECESS OF THE HOUSE

(Mr. ANDERSON of Illinois asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ANDERSON of Illinois. Mr. Speaker, during the recess that ended recently, I have had an opportunity to visit personally the floor of the other Chamber and to learn something of the negotiations that are going on over there with respect to the way in which the continuing resolution for the Departments of Labor, and Health, Education, and Welfare should be handled.

I think that it would save the time of the Members of this body if we could have a 5-minute recess merely to discuss these matters among ourselves.

RECESS

Mr. ANDERSON of Illinois. Mr. Speaker, I ask unanimous consent that the House stand in recess for 5 minutes.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, we have recessed now three times. The Speaker has made it clear that under the rules there is absolutely no way in which this matter could be considered today. It is even doubtful that it could be considered next week.

What is the purpose of continuing to recess and recess and recess, since there is nothing that could be done today? Will the gentleman from Illinois inform me as to what might be accomplished by this?

Mr. ANDERSON of Illinois. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Illinois.

Mr. ANDERSON of Illinois. Mr. Speaker, it is very difficult for me to say, frankly. I want to be just as candid with the gentleman from Maryland (Mr. BAUMAN) as I can be.

I have reason to believe that if certain Members would have 4 or 5 minutes to visit together, perhaps we could then come back and adjourn this House until next Tuesday.

Mr. BAUMAN. I think that could be done now.

Mr. ANDERSON of Illinois. Mr. Speaker, the gentleman may possibly be correct. I see some advantages in pursuing the course that I have suggested, and that would not delay us for more than 5 minutes.

Mr. BAUMAN. Mr. Speaker, we have special orders scheduled, and we have other matters that can be taken care of in the interim.

Mr. Speaker, I withdraw my reservation of objection.

Mr. ANDERSON of Illinois. Mr. Speaker, I renew my unanimous-consent request that the House stand in recess for 5 minutes.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The SPEAKER. The Chair declares the House in recess for a period of 5 minutes.

Accordingly (at 2 o'clock and 51 minutes p.m.) the House stood in recess for approximately 5 minutes.

tleman from Maryland, Hon. GOODLOE BYRON, for his leadership on this bill, and also the chairman of the National Parks and Insular Affairs Subcommittee, Hon. PHILLIP BURTON, and the gentleman from Kansas, Hon. KEITH SEBELIUS, for the more comprehensive features which they so ably worked into this piece of legislation.

The Appalachian Trail extends for nearly 2,000 miles from Maine to Georgia, and provides an outstanding opportunity for people on the crowded eastern seaboard to relish the outdoor pleasures which this footpath provides. We on the west coast have a companion national scenic trail—the Pacific Crest Trail—which runs from the Canadian to the Mexican borders along the backbone of the Cascade and Sierra Nevada mountain ranges through Washington, Oregon, and California.

I know that both of these existing national trails are extremely popular. Use has been extremely heavy, and will likely become all the more so as time passes. As we are likely to bring additional national trials into the national trails system in the years ahead, it will be important that the trail managers assure that the use of these new trails, as well as the two existing trails, is sufficiently allocated and controlled so that the pleasure of an outdoor hiking experience is not diminished by crowded conditions and adverse impacts on the trail resources themselves by excessive use. I believe that the institution of management plans, required by this bill to be developed for all national trails, provides an excellent medium for the planning and implementation of mechanisms to keep on top of this situation.

Mr. Speaker, I realize that the funding authorized by this bill is substantial. But there is probably no other outdoor recreation opportunity so easily available to so many millions of people along the eastern seaboard as is represented by this trail. I believe it will be a sound investment which we will never regret having done, and we must do it expeditiously or we will lose to conflicting development, major sections of the route for all time. I think it must be emphasized that the development and preservation of this trail has always been, and must continue to be, an effort participated in by many organizations and individuals. With this added potential for greatly strengthened Federal financial participation, the State and local governments and other entities must also do more. With this cooperative spirit, both financially and otherwise, much can be accomplished.

I urge my colleagues to support the adoption of this bill.

Mr. WYLIE. Mr. Speaker, I rise in support of H.R. 8803, the Appalachian Trail amendment to the National Trails Act.

Most of us, whether hikers or not, have heard of the Appalachian Trail. Because of its length, more than 2,000 miles, its beauty and solitude lie within a half day's drive for almost two thirds of the American people, my State of Ohio included. Because it winds through 14 States, the famous footpath passes through a fascinating and virtually endless procession of biological, geological, and historical facts about our land.

This priceless heritage is threatened today by private development. Already 175 miles of the trail have had to be diverted to public roads for lack of right of way. Many more miles are in serious jeopardy.

This bill does not seek to create a 2,000-mile long national park for that in itself would eliminate part of the character of the trail. It simply seeks to authorize the National Park Service to acquire those sections which are in immediate danger of being lost.

When you consider the number of Americans who enjoy the trail today and who will enjoy it tomorrow; when you consider that the trail is maintained and will continue to be maintained by the volunteers of the Appalachian Trail conference at no cost to the taxpayer; when you consider that if we fail to meet the threat to the trail today we will never be able to recreate anything like it; I believe you will conclude with me that H.R. 8803 is a bill that strongly merits our favorable consideration.

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I rise in support of H.R. 8803, legislation designed to provide permanent protection to the Appalachian Trail.

There is no question that the Appalachian Trail is one of the great symbols of America's wilderness heritage. A unique blend of Federal and State cooperation was fostered by the 1968 Scenic Trails Act to assist the conservation organizations in the Appalachian Trail conference to protect the trail.

Much good work has been accomplished, but immediate Federal financial assistance is necessary in order to preserve and improve the trail route. At the present time some 175 miles of the trail are located on public highway. In Pennsylvania the integrity of the trail route is threatened by the encroachment of second home developments; clearcutting and other incompatible land uses.

This bill is not designed to preempt State land acquisition for the trail. Much of the $30 million authorized to be spent annually would be in the form of matching grants. However, it is apparent that the States have only limited resources for this worthwhile project. Pennsylvania has appropriated $500,000 for this fiscal year to protect its 250 miles of the trail, but purchase of a single site slated for extensive development near scenic Wolf Rocks would more than wipe out this fund.

I also strongly endorse the provisions in the bill widening the potential trail corridor to 1,000 feet and continuing the existence of the Appalachian Scenic Trail Advisory Council. Their work has been most effective.

GENERAL LEAVE

Mr. PHILLIP BURTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill under consideration.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER. The question is on the motion offered by the gentleman from California (Mr. PHILLIP BURTON) that the House suspend the rules and pass the bill H.R. 8803, as amended.

The question was taken.

Mr. ASHBROOK. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER. Pursuant to clause 5, rule XXVII, and the Chair's prior announcement, further proceedings on this vote will be postponed.

SEXUAL EXPLOITATION OF MINORS

Mr. CONYERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 8059) to amend chapter 117 (commonly called the Mann Act) of title 18, United States Code, to prohibit the transportation of minors in interstate or foreign commerce for sexual purposes, as amended.

The Clerk read as follows:

H.R. 8059

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2423 of title 18, United States Code, is amended to head as follows:

"§ 2423. Transportation of minors

"(a) Whoever transports, finances in whole or part the transportation of, or otherwise causes or facilitates the movement of any minor in interstate or foreign commerce, or within the District of Columbia or any territory or other possession of the United States, with the intent—

"(1) that such minor engage in prostitution; or

"(2) that such minor engage in prohibited sexual conduct, if such person so transporting, financing, causing, or facilitating movement knows or has reason to know that such prohibited sexual conduct will be commercially exploited by any person shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(b) As used in this section—

"(1) the term 'minor' means a person under the age of eighteen years;

"(2) the term 'prohibited sexual conduct' means—

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) masturbation;

"(D) sado-masochistic abuse (for the purpose of sexual stimulation); or

"(E) lewd exhibition of the genitals or public area of any person; and

"(3) the term 'commercial exploitation' means having as a direct or indirect goal monetary or other material gain."

SEC. 2. The table of sections for chapter 117 of title 18, United States Code, is amended by striking out the item relating to section 2423 and inserting in lieu thereof the following:

"2423. Transportation of minors."

SEC. 3. (a) Title 18, United States Code, is amended by inserting immediately after chapter 109 the following:

"Chapter 110.—SEXUAL EXPLOITATION OF CHILDREN

"Sec.

"2251. Sexual exploitation of children.

"§ 2251. Sexual exploitation of children

"(a) Any person who employs, uses, per-

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suades, induces, entices, or coerces any minor to engage in, or to have a minor assist any other person to engage in, any sexually explicit conduct for the purpose or promoting any film, photograph, negative, slide, book, magazine, or other visual or print medium, shall be punished as provided under subsection (d), if such person knows or has reason to know that such film, photograph, negative, slide, book, magazine, or other visual or print medium will be mailed or transported in interstate or foreign commerce or if such film, photograph, negative, slide, book, magazine or other visual or print medium has actually been mailed or transported in interstate or foreign commerce.

"(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other visual or print medium shall be punished as provided under subsection (d), if such parent, legal guardian, or person knows or has reason to know that such film, photograph, negative, slide, book, magazine, or other visual or print medium will be mailed or transported in interstate or foreign commerce or if such film, photograph, negative, slide, book, magazine or other visual or print medium has actually been mailed or transported in interstate or foreign commerce.

"(c) For the purposes of this section, the term—

"(1) 'minor' means any person under the age of sixteen years;

"(2) 'sexually explicit conduct' means actual or simulated—

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) masturbation;

"(D) sadomasochistic abuse (for the purpose of sexual stimulation);

"(E) lewd exhibition of the genitals or pubic area of any person; and

"(3) 'promoting' means producing, directing, manufacturing, issuing, publishing, or advertising, for pecuniary profit.

"(d) Any person who violates subsection (a) or (b) shall be fined not more than $10,000, or imprisoned not more than ten years, or both."

"(b) The tables of chapters for title 18, United States Code, and for part I of title 18, United States Code, are each amended by inserting immediately after the item relating to chapter 109 the following:

"110. Sexual exploitation of children.. 2251".

The SPEAKER. Is a second demanded?

Mr. ASHBROOK. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER. The gentleman from Michigan (Mr. CONYERS) will be recognized for 20 minutes, and the gentleman from Ohio (Mr. ASHBROOK) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to bring H.R. 8059 before the House of Representatives. It was reported unanimously from the Committee on the Judiciary on September 29, with amendments, and it addresses fundamentally two problems: The great increase in juvenile prostitution and the use of children in the production of pornographic materials.

The content of the law is as follows:

It was found that the present law, in title 18, of the United States Code, 2423, prohibits the transportation by common carrier of females under the age of 18 across State lines to engage in prostitution, debauchery, or other immoral practice. Unfortunately, there is no relevant provision in the present law which would apply to males under 18 years of age. The first section of H.R.8059 applies the same criminal penalties of a fine of not more than $10,000 or imprisonment of not more than 10 years, or both, which exist now in the law, to the transportation of any minor person under 18 years of age. In other words, we amend the Mann Act to apply to persons of both sexes.

In addition, this legislation also prohibits the use of children in acts of sexually explicit conduct for the purpose of promoting printed or filmed matter by creating a new section of the Criminal Code, section 2251.

Mr. Speaker, I express my gratitude to the other Members, particularly my colleague, the gentleman from Michigan (Mr. KILDEE), who has brought this serious problem to the Members' attention through other legislation. This was a bipartisan effort and was encouraged initially by the distinguished chairman of the committee, the gentleman from New Jersey, Mr. RODINO.

H.R. 8059 was reported from the committee, with amendments, one of which does not appear on the October 12 printed version of the bill. I would like to mention briefly that the amendment which was the subject of discussion and support in the subcommittee and the committee markup would amend the Mann Act to penalize not only those who transport, finance or facilitate the movement of a person under the age of 18 in interstate or foreign commerce, with the intent that that minor engage in prostitution, but also if that minor engages in prohibited sexual conduct if that conduct is to be commercially exploited. The purpose is to penalize persons who induce children to perform sexually explicit conduct not just for money but for any direct or indirect gain and at the same time to avoid penalizing a 16-year-old male who brings a female of the same age across State lines, with her consent or perhaps vice versa, to engage in sexual conduct. We do not wish to breath new life into this questionable interpretation of the intent of Congress in 1910. By amending the Mann Act we hope we have not run that risk, and we make the necessary corrections.

Mr. Speaker, a word about constitutionality. It is the strong opinion of the representatives of the Department of Justice and the constitutional scholars who appeared before our subcommittee and who gave testimony that H.R. 8059 is clearly constitutional. We have approached this matter with some legal care, because the worst thing that could happen is that the 95th Congress pass a law that would in one section or another be found unconstitutional.

And then, as I have said before on the floor, this would result in a counterproductive activity.

We want a good, strong, prosecutable law, one which will penalize for abuses and protect the rights of children. H.R. 8059 is that product, and it seems to me that we can urge the support of the entire membership for this legislation.

There were many other amendments and issues considered. I think I should mention several of those at this point. The issues the committee considered included whether the proposed legislation should amend title 18 or be placed elsewhere.

We feel rather strongly in the Committee on the Judiciary that the integrity and consistency of our system of codification of laws—and there are several bills on that subject that are moving forward—should be maintained, and that a proposed criminal statute belongs properly in title 18 of the Federal Criminal Code.

We considered also whether criminal penalties should be more severe than the present Mann Act penalties of a $10,000 fine and 10 years in prison or both. We decided they should not be. That was based on the fact that in some State jurisdictions, where much more severe penalties are had, sometimes there is a reluctance to convict and sometimes there is a reluctance to even prosecute.

The committee debated whether sections of the bill penalizing the transportation, distribution, and dissemination of material could be unconstitutional and concluded that the danger was great, and that we ought not try to move that provision into the present legislation.

We addressed the separate issue of juvenile prostitution by amending the Mann Act. When faced with the question of whether present Federal law was adequate to cover the person who induces or coerces a child to engage in sexually explicit conduct for the purpose of promoting printed or visual matter, we determined it was not and so created new section 2251 of title 18, United States Code.

We think on review that we have now a piece of legislation that goes not only to sexual abuse but to those who would engage children in pornographic activity. It also precludes penalizing parents who may sometimes be aware of their children's activity but may be totally without the ability to curb those activities.

So on balance, I will say to my colleagues that we think we have presented to the Members a piece of legislation that will merit their support.

There is one additional thought I might leave with the Members. There is another similar piece of legislation pending. It has been my understanding that all of this legislation will be before the conference committee.

Mr. Speaker, it is my intention to recommend to the chairman of the full committee that the gentleman from Michigan (Mr. KILDEE) be included in the list of conferees to be named.

Mr. Speaker, the details of the committee consideration are as follows:

H.R. 8059 prohibits the transportation of male or female children under 18 when the intent exists that the minor engage in prostitution. The first section of H.R. 8059, which amends section 2423 of title 18 United States Code, addresses a form

of child abuse identified in hearings as juvenile prostitution. The committee was influenced by the Senate bill S. 1585, section 4(a), which addressed this problem by making it a Federal crime for anyone to transport any person under 18 years of age across State lines to engage in prostitution.

It was found that present law, 18 United States Code 2423, prohibits the transportation by common carrier of females under age 18 across State lines to engage in prostitution, debauchery or other immoral practice. There is no relevant provision in present law which would apply to males under 18. The first section of H.R. 8059 applies the same criminal penalties of a fine of not more than $10,000 or imprisonment of not more than 10 years, or both, which exist now in the law to the transportation of any "minor" person under 18 years of age.

The committee removed language in 18 United States Code 2523 concerning "debauchery" and "other immoral acts," because the case law shows no clarity in the definitions of these items.

H.R. 8059 also prohibits the use of children in acts of sexually explicit conduct for the purpose of promoting printed or filmed matter in the following way:

Subsection (a) of amended title 18, section 2251 makes it a Federal offense for anyone to use children under the age of 16 in the production of pornographic materials. Because present Federal obscenity laws focus almost exclusively on the mailing, distribution, and importation of obscene materials, they do not directly address the use and abuse of children in the production of obscene materials which are introduced in interstate or foreign commerce.

Subsection (a) of 2251 will fill the gap in existing law by declaring such use of children punishable. The section prohibits any person from employing, using persuading, enticing, or coercing any minor to engage in or assist in any sexually explicit conduct, the purpose of which to promote printed or visual matter if that person knows or has reason to know such matter will be mailed or transported in interstate or foreign commerce, regardless of whether it actually, in fact, is so mailed or transported, or if such matter has been mailed or transported in interstate or foreign commerce, regardless of whether the person knew or should have known it would be so mailed or transported.

Subsection (b) of 2251 makes it a Federal crime for the parent, guardian or other person having custody, or control over a minor to knowingly permit such minor to engage in sexual explicit conduct.

The scope of the section is much the same as the Senate provision. The committee wishes to affirm the fact that it has limited the circumstances under which a parent or guardian having control of a minor permits that minor to engage in the proscribed conduct. No parent will be punished if he or she has some knowledge of the minor's behavior but does not have the requisite control or dominion over the minor which is intended by the word "permits." "Permission" is not to be passive, but an active giving, encouragement, inducement, or enticement.

Subsection (c) of amended title 18, section 2251 contains new definitions.

Paragraph (1) defines a minor as any person under the age of 16.

Paragraph (2) defines sexually explicit conduct as actual or simulated sexual intercourse including genital-genital, oral-genital, anal-genital, or oral-anal whether between persons of the same or opposite sex, bestiality, masturbation, sado-masochistic abuse and the lewd exhibition of the genitals or pubic area, and

Paragraph (3) defines promoting as producing, directing, manufacturing, pursuing, publishing, or advertising for pecuniary profit.

Subsection (d) of amended title 18, section 2251 provides a penalty of a fine of not more than $10,000 or imprisonment of not more than 10 years or both.

H.R. 8059 was reported from committee with amendments, one of which does not appear on the October 12 printed version of the bill. The amendment, which was the subject of bipartisan discussion and support in subcommittee and committee markup, would amend the White Slave Traffic Act to penalize not only those who transport, finance, or facilitate the movement of a person under the age of 18 in interstate or foreign commerce with the intent that that minor engage in prostitution, but also if that minor engages in prohibited sexual conduct if that conduct is to be commercially exploited. The intent is to penalize persons who induce children to perform sexually explicit conduct not just for money but for any direct or indirect gain and at the same time to avoid penalizing a 16-year-old male who brings a female of the same age across State lines, with her consent or vice versa, to engage in sexual conduct. We did not wish to breath new life into this questionable interpretation of the intent of Congress in 1910. By amending the Mann Act we hope we have not run that risk.

The context in which H.R. 8059 was consider was the following:

At the beginning of the 95th Congress, a series of bills, with more than 100 cosponsors, was introduced that addressed the problem of sexual abuse of children. Primary sponsors of these bills, each of which carried the title of the "Child Abuse Prevention Act," were Congressmen DALE KILDEE, Democrat of Michigan, and JOHN MURPHY, Democrat, of New York. With one exception, these bills contained identical substantive provisions providing criminal penalties for sexual abuse of children as defined in the bills. However, some of the bills placed these provisions in title 18, the Criminal Code; these were referred to the Judiciary Committee for consideration. Others proposed these same criminal provisions as amendments to the Child Abuse Prevention and Treatment Act located in title 42, United States Code; these were referred to the Education and Labor Committee.

Congressman CONYERS on June 28, 1977, introduced H.R. 8059 to amend chapter 117 (commonly called the Mann Act) of title 18, United States Code, to prohibit the transportation of minors in interstate and foreign commerce for sexual purposes. That bill was referred solely to the Subcommittee on Crime.

The two committees worked on a parallel course toward reporting out legislation.

After considerable staff investigation and interviews, the Subcommittee on Crime began a series of hearings which explored the need for Federal legislation in this area. Much information had already come to the attention of the subcommittee regarding the rapid proliferation of these practices. It was the subcommittee's intent in these hearings to establish two things: First, the nature and scope of the abusive practices sought to be proscribed by the bills before us; and second, whether existing Federal and State laws were comprehensive enough to control these practices, and whether such laws were being enforced. We reviewed the bills with the point of view that, establishing the fact that objectionable conduct—even revolting conduct—is taking place does not necessarily establish the need for new Federal criminal legislation.

We kept in mind that additional laws may be needed, but perhaps not criminal laws. We came to the hearings with open minds, anticipating that the solution to problems of sexual abuse and exploitation of young people may be improved child care, education, mental health, family support, juvenile delinquency facilities, and employment.

On May 23, 1977, the subcommittee members heard from Prof. Frank Osanka of Lewis College, who is one of the country's leading authorities in the problem of sexual abuse of children. Dr. Judianne Densen-Gerber, a crusader on the issue, appeared also. Finally Charles Rembar, who is an attorney with extensive knowledge of first amendment problems relating to obscenity, gave testimony.

On Wednesday, May 25, 1977, Investigator Lloyd Martin from California, who heads up one of the most active sexual abuse squads in a local police force, appeared to discuss enforcement problems on the local level to give detailed testimony concerning the type of children involved in this activity and how they are drawn into such activity. Mr. Robert Leonard, a member of the National District Attorneys Association from Flint, Mich., came to Congress to detail the strides the Nation's prosecutors have taken to address the problem. Finally, from the American Civil Liberties Union, Ms. Heather Florence, who is a member of the Communications Media Committee, which studies current issues with impact on first amendment rights, evaluated the bills before the subcommittee and expressed ACLU's opposition to certain provisions of H.R. 3913.

On June 10, 1977, the members of our subcommittee and those of the Select Education Subcommittee sat together for an important hearing on the bills H.R. 3913 and 4571. The majority of witnesses who appeared were from Government

agencies that have jurisdiction over and the responsibility for the enforcement of Federal obscenity statutes. Each subcommittee wanted to hear the statements of representatives of the Department of Justice, the U.S. Postal Service, and the U.S. Customs Service to make a determination as to the need for and enforceability of the bills before them. Mr. John C. Keeney, Deputy Assistant Attorney General of the Criminal Division, U.S. Department of Justice, gave cogent and informative testimony, particularly on the constitutionality of the same provisions that troubled the ACLU.

Our final and most productive hearing occurred on September 20, 1977, at which time we heard from a representative of the National Conference of State Legislatures, Kenneth Maddy. We commissioned that organization to survey the individual States and ascertain the content of their laws in order to help us determine how the States under present law are coping with the problem, and in what areas they would turn to the Federal Government for assistance. We invited Larry Parrish, a former U.S. Attorney from Memphis, Tenn., to tell us of his experience in prosecuting under present Federal obscenity law, and we heard from Delaware State Attorney General Richard Wier, who informed us how his State came to enact a new obscenity law encompassing child pornography. A county prosecutor, Robert Gemignani described the operation of a local prosecutor's office in obscenity cases. We benefited from hearing from Mr. Herald Fahringer who does defense work in the area of Federal obscenity law, and who discussed the constitutionality of proposals before our subcommittee. He was accompanied by probably his most famous client, Larry Flynt, publisher of Hustler magazine.

The issues the committee considered included whether the proposed legislation should amend title 18 of the United States Code or be placed elsewhere. We decided in the interest of integrity and consistence of our system of codification of our laws, a proposed criminal statute properly belongs in title 18, the Federal Criminal Code. We considered also whether criminal penalties for the behavior should be more severe than present Mann Act penalties of a $10,000 fine or 10 years imprisonment or both, and we decided that they should not. In addition, the committee debated whether sections of the bill penalizing the transportation, distribution and dissemination of materials could be unconstitutional and concluded the danger was great. We addressed the separate issue of juvenile prostitution by amending the Mann Act. When faced with the question of whether present Federal law was adequate to cover the person who induces or coerces a child to engage in sexually explicit conduct for the purpose of promoting printed or visual matter, we determined it was not and so created new sections 2251 of title 18 United States Code.

We carefully scrutinized present State law to determine if by legislating the Federal Government would be intruding upon an area reserved for the States under the police power of the Constitution.

The committee was careful in its legislation, bearing in mind the fact that in 1978, 37 States will have adopted prohibitions against the use of children in pornographic materials. We perceived a need to not supplant or discourage State and local response to those practices, but to respond in the areas where the States turned to the Federal Government for assistance.

On September 26, 1977, the subcommittee members met to markup H.R. 8059, Mr. CONYERS' bill which would have amended 18 United States Code 2423 to apply to minors transported across State lines for sexual purposes.

Ms. HOLTZMAN introduced an amendment in the nature of a substitute which paralleled the Senate Judiciary Committee provision amending the Mann Act. It was accepted. The subcommittee rejected a proposal to amend the Child Abuse Prevention and Treatment Act to require that no State receive funds under that act unless it passes a criminal law prohibiting the sexual exploitation of children. Finally, the subcommittee adopted Ms. HOLTZMAN's amendment to prohibit the inducement of a child to engage in sexually explicit conduct for the purpose of photographing and shipping the products in interstate commerce. This provision is also similar to the Senate version although the penalties are comparable to present Mann Act proscriptions. The subcommittee reported the bill to committee by a 4-to-0 vote.

The committee met on September 29, 1977, to markup H.R. 8059 as reported from subcommittee with amendments. Discussion ensued on Mr. RAILSBACK's proposal to tie child abuse funding to State criminal laws on sexual abuse. This was rejected in committee also. Mr. ERTEL, another subcommittee member, proposed an amendment to section 2251 which was adopted to add the words "or if such film, photograph, negative, slide, book, magazine, or other visual or print medium has actually been mailed or transported in interstate or foreign commerce." This would enable prosecution if there has been mailing or transportation without knowledge or intent on the part of the promoter. The subcommittee is grateful to Ms. HOLTZMAN for her determined effort to fashion a bill which would be both constitutional and protect the rights of children. The two amendments which she offered in subcommittee became the substance of H.R. 8059 voted by committee.

I am hopeful that H.R. 8059 will afford the Department of Justice a useful and constitutional tool to employ against the evils of juvenile prostitution and child pornography.

Mr. ASHBROOK. Mr. Speaker, I yield 5 minutes to the ranking minority member of the Committee on the Judiciary, the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in strong support of this legislation. First, I want to commend the chairman of the subcommittee, the gentleman from Michigan (Mr. CONYERS), the ranking minority member of the Subcommittee on Crime, the gentleman from Ohio (Mr. ASHBROOK), and the committee itself for bringing forth this legislation.

I had the privilege of testifying before the committee in support of the measure. I might say there has been great interest in this legislation in Illinois, largely generated by some extremely important investigative work done by reporters of the Chicago Tribune. The Tribune articles, written by Michael Sneed and George Bliss helped to establish that a great deal of the trafficking in young people for purposes of child pornography was being carried on in the State of Illinois, especially in the general Chicago area, as well as in some of the other large metropolitan areas of the country.

I know that the gentleman from Michigan (Mr. KILDEE) has been very active in sponsoring and promoting this legislation. He also deserves to be very highly commended.

I am confident that the press-media reports and the action which the Congress is now taking on this legislation are going to focus great national attention on the terrible evil which is being perpetrated by the trafficking in young people for pornographic purposes. I am confident, too, that this will serve as a great deterrent, as will the actions that are taken in the investigation and prosecution of offenders who are covered by this legislation.

Mr. Speaker, H.R. 8059 will help prevent that crime so dreadful to us all—the sexual abuse of children. Child pornography, as it is generally called, is one of the most abhorrent crimes that we can conceive of. Despite an almost overwhelming desire on the part of all Members of this Chamber, there have been problems in properly formulating a law that courts later would not find in violation of first amendment guarantees.

I know that it is the hope of my colleague, Mr. CONYERS, chairman of the House Judiciary Committee's Subcommittee on Crime, that H.R. 8059 avoids the possible pitfall which constitutional experts have cautioned the subcommittee about.

What the Subcommittee on Crime presented to the full Judiciary Committee, which voted its approval, is a bill that prohibits sexual abuse of children while avoiding that constitutionally suspect area of prohibiting distribution of materials that are the fruits of child abuse. It should be noted that both the U.S. Department of Justice and the American Civil Liberties Union are in support of H.R. 8059.

I strongly urge that my colleagues on both sides of the aisle approve this measure which amends title 18 of the Criminal Code to provide criminal penalties for persons who use children in acts of sexually explicit conduct for the purpose of promoting printed or filmed matter.

Mr. Speaker, I therefore urge support of the motion to suspend the rules and pass H.R. 8059 which every decent, concerned, and thoughtful American man and woman should support. Thank you.

Mr. CONYERS. Mr. Speaker, I yield 5 minutes to the gentlewoman from New York (Ms. HOLTZMAN).

Ms. HOLTZMAN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of this legislation, and I particularly want to commend the chairman of the subcommittee for his responsible leadership in bringing to the House a bill that will address the vicious problem of child pornography, and will do so effectively by avoiding constitutional problems.

The bill before us, I think, will be an effective measure. It will penalize persons who use children in acts of sexually explicit conduct to promote any printed or filmed material. The bill also penalizes parents who knowingly consent to the use of their youngsters in the production of such material.

In addition, the bill makes some important changes in the Mann Act. First, it broadens its coverage by providing protection for both young boys and young girls; second, it provides penalties for the transportation of minors across State lines for purposes of any prohibited sexual conduct which will be commercially exploited; and third, it removes the vague language that made the Mann Act objectionable in the past.

Mr. Speaker, I am pleased that I had an opportunity to contribute to the shaping of this legislation, and I urge the House to adopt it.

Mr. CONYERS. Mr. Speaker, will the gentlewoman yield?

Ms. HOLTZMAN. I am happy to yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Speaker, I think I should bring to the attention of the membership that the gentlewoman's two amendments really, in essence, form the basis of this legislation and that the subcommittee expresses is gratitude to her.

Mr. Speaker, I yield 5 minutes to the gentleman from Missouri (Mr. VOLKMER).

Mr. VOLKMER. Mr. Speaker, it is with a great deal of gratification that I stand here before the Members today as a member of the subcommittee and as a freshman Member who has worked with the gentleman from Michigan (Mr. CONYERS), the chairman of the subcommittee, and with other Members on this much-needed legislation. I wish to commend them and each of them for the conscientious work that has gone into this bill by Members on both sides of the aisle.

Mr. Speaker, I also wish to commend the other gentleman from Michigan (Mr. KILDEE) for the work that he has done in this area to provide this much-needed legislation.

I wish to point out to the Members that in the unanimous opinion, I believe, of all of the members of the subcommittee, the language that is contained in this legislation will pass constitutional muster. It may not do everything that each of us would like to have done in this area of child pornography in our attempts to try to hold down this social stigma which pervades this country—in many parts of it, at least, at this time—but I do believe that with the amendments to the Mann Act and the other provisions, there will be less child pornography in this country as a result of this legislation once it is finally enacted.

Of course, we must remember that the legislation is only as good as those people who enforce it. I am sure that the Federal prosecutors will do all in their power to prosecute those individuals who violate the act itself. In that regard, I wish to state that it is with that thought that I and, I am sure, other Members of the House look upon the legislation, to make sure that when those prosecutions are brought, they are not brought and then end up in appeals reversing convictions based on this legislation's being an unconstitutional act, which would mean that it would all go for naught. In other words, Mr. Speaker, we want to make sure that when a prosecution is brought, a person will be fined or suffer imprisonment and that those persons charged with offenses will not go through the process and then end up with an appellate court holding parts of the act unconstitutional or all of the act unconstitutional, and those persons going scot free, except making them spend a little money for a trial and appeals, and they have plenty of that, considering what we were told in committee.

Mr. CONYERS. Mr. Speaker, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman for yielding.

First of all, I want to thank my colleague, the gentleman from Missouri, for his contribution to the hearings and the shaping of this legislation. Upon the important point that he raised, I would like to remind the House that the National Conference of State Legislators when they testified before the subcommittee pointed out that by the end of next year there will be 37 States who will be enacting various laws that speak to the precise subject of the use of minors in pornographic activity.

The problem, as my colleague recalls, is that these statutes will be going in a number of directions, and it is felt that this particular legislation will provide perhaps a stabilizing piece of uniform legislation that will help guide them as they move along as well.

At the State level there is activity in this field. There is more able prosecution. There is more concerned investigative and police work, and we think that this legislation would be very stabilizing for the State courts and the State prosecutors as well.

Mr. VOLKMER. I agree with the gentleman wholeheartedly and thank him.

Mr. CONYERS. Mr. Speaker, I yield 5 minutes to the gentleman from Michigan (Mr. KILDEE).

Mr. KILDEE. Mr. Speaker, I rise in support of the motion to suspend the rules and pass H.R. 8059. I would like to compliment my colleague from my home State of Michigan for the responsible manner in which he conducted hearings on a very sensitive issue. I would like to compliment also the gentlewoman from New York (Ms. HOLTZMAN) for her tremendous input on this bill. Those hearings, and the hearings held in the Select Education Subcommittee, have demonstrated the need for Federal legislation to stop this particularly abhorrent form of child abuse.

My colleague from Michigan is aware of the fact that I consider the bill to be incomplete. I honestly feel that additional provisions are needed to control the sale and distribution of these sordid materials. I also feel that such a provision is constitutional.

The situation, however, is serious and demands immediate action. Any unnecessary delay at this stage would only help those who are abusing our children. I understand that a motion will be offered to instruct the conferees to agree to a provision covering distribution and sale; therefore, we will have an opportunity to include such language even though the bill is before us under suspension of the rules.

I would strongly urge the 375 Members of the House who previously voted for stronger language when we passed H.R. 6693 to vote to pass H.R. 8059 and then to vote for a motion to instruct the conferees to agree to the language in the Senate bill which would control the sale and distribution of these materials.

Mr. ASHBROOK. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. RAILSBACK), a member of the subcommittee.

Mr. RAILSBACK. Mr. Speaker, I want to begin by congratulating the gentleman from Michigan (Mr. KILDEE) for taking what I think is a very, very positive and constructive attitude. I know that sometimes there is a pride of sponsorship and a pride of authorship, but I know that what he just recommended to be the action of the House is in no way going to reflect at all on the work that he has done. As a matter of fact, his bill was passed overwhelmingly by this body, and one similar to it by the other body.

Let me just say that I think the chairman of our Judiciary Subcommittee and other members of the subcommittee performed a very valuable service in recognizing that we are not going to be able to solve entirely the problems that we had evidence of that came before us which related not only to child pornography but, as the subcommittee chairman mentioned, related to what I will refer to as child abuse, or child exploitation.

Now, we on the national level are limited as to what action we can take by reason of our Federal system of Government, which leaves certain things to the States to do, unless we have exclusive or concurrent jurisdiction.

As one of the members of the subcommittee, it is my belief that one of the most important things to happen as a result of our hearings was the evidence that we heard from representatives of the State attorneys-general, as well as from representatives of States attorneys of the various local jurisdictions.

When the Chicago Tribune broke its stories, it became very apparent that child pornography was only one aspect of the child abuse that is going on throughout the country.

Another aspect that I found very upsetting and something to be concerned about is other kinds of child abuse, such as child prostitution. We know that

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there are people in the country that are actually taking commercial advantage of children.

The SPEAKER. The time of the gentleman from Illinois has expired.

Mr. ASHBROOK. Mr. Speaker, I yield 2 additional minutes to the gentleman from Illinois.

Mr. RAILSBACK. Mr. Speaker, as I was saying, there are people throughout the country that are commercializing on young people. The laws that have been enacted today in my opinion are simply inadequate, when we learn there are many activities at the State and local levels that are designed to do something about these other forms of child abuse and child exploitation.

In closing, Mr. Speaker, I hope that the action we take today and the action that we took when we passed the Kildee bill will at least be one step towards recognizing the seriousness of the problem and will result in the Federal Government working with the States and the local governments to really combat extensively what I think is a most serious problem.

Mr. ASHBROOK. Mr. Speaker, I yield 3 minutes to the gentleman from Vermont (Mr. JEFFORDS).

Mr. JEFFORDS. Mr. Speaker, of course, I join everyone in commending the subcommittee for doing something in this field. Certainly the bill improves the Mann Act; but I would like to issue a warning and urge some caution here, because this bill will do very little, really nothing, to end the problems of child pornography. The hearings that the Subcommittee on Select Education held in California—and being a former prosecutor I was concerned as to why the evidence of pornography continued and why could it not be stopped—demonstrated that there are already existing State laws to take care of the problem. The State laws are there to do what this legislation seeks to do. There is nothing in this bill which would provide anything not already provided in all the State laws. In fact, the provisions of this bill are even harder to enforce, because it requires the proof of intent to ship in interstate commerce.

What then will the provisions here do? Nothing.

Ms. HOLTZMAN. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentlewoman from New York.

Ms. HOLTZMAN. Mr. Speaker, if the gentleman would examine the bill, he would find that it states that a crime is constituted if the materials actually are shipped in interstate commerce, regardless of intent.

Mr. JEFFORDS. That is true, but again, the people that will be prosecuted here are not the ones that promote and use the films but rather the ones that participate in making the films. The only way this situation can be handled is to cut off the market for the products, and this the bill does not do. In no way does the bill make it unlawful to sell or dispose of these things after they have been shipped in interstate commerce.

From talking to the prosecutors in many States, I know this is the only way Federal involvement will in any way help prevent the abuses practiced here.

In particular the Select Education Subcommittee heard testimony from Lloyd Martin, investigator for the Los Angeles Police Department, special unit for sex crimes against children, that it is almost impossible to locate the victims of pornographic exploitation. Also, Joe Freitas, director, National District Attorney's Task Force on Criminal Exploitation of Children, emphasized the need of prosecutors to work back up the chain from the vendors and distributors of child pornography, to the extremely elusive producers and film makers. The victims we are seeking to help here are children. They generally do not go to their parents or to the authorities to report instances of abuse.

Otherwise, we have done nothing but create a nice model for State laws, and it is a good model.

On that score I compliment the committee; but the bill is not going to do anything to stop pornography for the simple reason that we cannot catch the people that produce it. The only thing we can hope to do is to shut the market off. Unless the House conferees were to accept the provisions of the amendment offered by Senator ROTH in the other body, there will be little if anything done to help California and other States.

If we can close the market off we can end the problem. This bill does nothing to that effect, and I am afraid that it will really do nothing significantly to help in this field.

So, I would urge the members of the committee, who have taken some good steps, to make sure that they adopt the Senate provisions in conference, which will do something to stop this very terrible trend in this country.

Mr. ASHBROOK. Mr. Speaker, I yield such time as he may consume to the gentleman from Arizona (Mr. RUDD).

Mr. RUDD. Mr. Speaker, I support this bill, but I am most disappointed that it has been brought up under suspension of the rules, since this prevents any needed amendments to strengthen the bill's child antipornography provisions.

The Senate passed a very similar bill on October 10, after adding several very good amendments that cannot be offered here under suspension of the rules.

The Senate bill (S. 1585) looked very much like this bill when it was brought to the Senate floor. But S. 1585 was amended with a provision offered by Senator BAYH to prohibit and provide penalties for the use of minors in live performances exhibiting sexually explicit conduct. It is a serious weakness of this bill that it does not also contain an identical provision.

The Senate also adopted an even more important provision during floor consideration, which was offered by Senator ROTH and 25 other cosponsoring Senators. This provision prohibited and provided penalties for the interstate transportation, sale, or distribution of pornographic materials depicting the sexual exploitation of minors.

The interstate commercial distribution and sale of hard-core child pornography is the evil core of this multimillion-dollar industry. It is a major flaw of H.R. 8059 that this bill does not also contain a provision that prohibits the distribution and sale of child pornography that meets the definition specified within the bill, with the identical penalties for convicted violations that the bill provides for the production of child pornography.

Mr. Speaker, I ask unanimous consent to include the text of both Senate amendments at this point in the RECORD:

The Bayh Amendment to S. 1585—adopted by voice vote: Title 18, United States Code, is amended by adding immediately after Chapter 109 the following:

Chapter 110—SEXUAL EXPLOITATION OF CHILDREN

"Sec.
"2251. Sexual Exploitation of Children.

"(b) It shall be unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in, or to have a minor assist any other person to engage in, sexually explicit conduct, in a live performance, if such person knows or has reason to know that a facility of interstate or foreign commerce will be used to promote such live performance.

"(d) It shall be unlawful for any parent, legal guardian or person having custody or control of a minor knowingly to permit such minor to engage in, or to have a minor assist any other person to engage in sexually explicit conduct, in live performance, if such parent, legal guardian, or person knows or has reason to know that a facility of interstate or foreign commerce will be used to promote such live performance."

The Roth Amendment to S. 1585—adopted by 73-13 rollcall vote: Title 18, United States Code, is amended by adding immediately after Chapter 109 the following:

Chapter 110—SEXUAL EXPLOITATION OF CHILDREN

"Sec.
"2252. Transportation, sale, or distribution for sale of material depicting sexual exploitation of a minor

"(a) No person may—

"(1) knowingly transport, ship, or mail in interstate or foreign commerce for the purpose of sale or distribution for sale any film, photograph, negative, slide, book, magazine, or other print or visual medium depicting a minor engaged in sexually explicit conduct; or

"(2) knowingly receive for the purpose of sale or distribution for sale, or knowingly sell or distribute for sale, any film, photograph, negative, slide, book, magazine, or other print or visual medium depicting a minor engaged in sexually explicit conduct which has been transported, shipped, or mailed in interstate or foreign commerce.

"(b) A person who violates this section shall be fined not more than $10,000 or imprisoned not less than one year nor more than ten years or both for the first offense, or shall be fined not more than $15,000 or imprisoned not less than two years nor more than fifteen years or both for each offense thereafter.

"(c) For the purposes of this section—

"(1) 'minor' means any person under the age of sixteen years;

"(2) 'sexually explicit conduct' means actual or simulated—

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) masturbation;

"(D) sadomasochistic abuse (for the purpose of sexual stimulation); and

"(E) lewd exhibition of the genitals or pubic area of any person."

Mr. Speaker, I believe that both of these provisions offer vitally needed new weapons in the fight against child abuse and child pornography. Neither provision attempts to establish new obscenity standards. And both provisions meet previous standards set by both the Congress and the courts in protecting the welfare of children and safeguarding them from abuses.

I believe it is important that the final child antipornography bill sent to the President for his signature include provisions against involving minors in sexually explicit live performances—and against the distributors and sellers of child pornography—where interstate and foreign commerce are involved.

I am sure that the House would overwhelmingly adopt both these provisions if they could be offered as amendments to H.R. 8059. But this is not possible under suspension of the rules.

As I see it, we have three choices open to us—and I will work to see that one of the three options results in the inclusion of these two provisions in the final House-Senate child antipornography bill:

First, the House can recommit this bill to committee, with instructions that the two provisions adopted in the Senate are included in the bill returned to us for House floor action.

Second, the House can refuse to pass H.R. 8059 under suspension of the rules, in hopes that the bill will be promptly returned to the House with a rule allowing consideration of these and any other needed amendments.

Or third, the House can pass H.R. 8059 today, under suspension of the rules, as reported by the committee, and instruct the House conferees when they are selected to accept the Senate provisions to which I have referred.

At this point so close to the end of our 1977 session, it looks as though the third option—an instruction to the House conferees on H.R. 8059 and S. 1585 to accept the additional provisions of the Senate's stronger child antipornography bill—will be the easiest and most fruitful course of action.

If necessary, I will offer such a motion at the appropriate time.

In any event, I urge all my colleagues to support whatever action is taken to bring about the inclusion of these stronger, vitally needed child antipornography provisions in the final bill passed by the Congress.

In addition to stopping the production of this outrageous child pornography, and child prostitution, we must also take firm and positive steps to eliminate the use of minors in sexually explicit live performances, and to wipe out the corrupt and debilitating commercial exploitation of children through the interstate distribution and sale of child pornography.

Mr. ASHBROOK. Mr. Speaker, I yield such time as he may consume to the gentleman from Idaho (Mr. SYMMS).

Mr. SYMMS. Mr. Speaker, the child pornography/sexual exploitation bill being considered today in the House is the first step toward a constitutional solution to the growing problem of child pornography and child prostitution. Unlike the child pornography amendment tacked onto the child abuse bill passed recently by this body, this legislation suffers from none of the constitutional flaws that marred the first bill. Additionally, this bill deals with the plague of child prostitution by extending the Mann Act to include minor boys, as well as girls.

Dealing with the production of sexually explicit materials which exploit children, instead of dealing with the distribution of the materials, avoids the constitutional pitfalls of the earlier bill, a bill that could possibly provide a loophole that could free the very individuals who should be prosecuted to the full extent of the law. Until the Supreme Court more carefully defines obscenity and outlines the first amendment rights guaranteed by the Constitution, Congress should avoid enacting laws that will provide child pornographers with a constitutional screen.

Child pornography and child prostitution are absolutely abhorrent, and those who abuse children in these ways should be dealt with swiftly and harshly. I urge my colleagues in the House to pass this legislation being considered today. It will provide prosecutors with a tool to fight child pornography and child prostitution and to prosecute those who actually abuse children for the sexual satisfaction of deviant adults.

Mr. ASHBROOK. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I support H.R. 8059 for only one reason, that it is a vehicle to get to conference with the Senate so, hopefully, we can then bring back to the House a much stronger bill, a bill along the lines of the one I have introduced and one suggested by my colleague from Michigan (Mr. KILDEE) and my colleague from the Education and Labor Committee (Mr. JEFFORDS).

I would reiterate what Mr. JEFFORDS has said. He was absolutely on point. If we were trying to frame a model State statute this would be appropriate, but I would remind my colleagues that we are at the Federal level, and therefore it is our obligation to take actions that may not necessarily be those that are uniquely limited to members of State legislatures.

There is a rather curious philosophy behind H.R. 8059 which I followed through most of the debates in our subcommittee and here on the floor. The philosophy, if I can summarize it, is basically this: If you can catch one of these porno film makers in action, you can arrest him. Somehow or other, however, once his product is reduced to a picture; once it is reduced to a negative; once it is reduced to film, all of a sudden my liberal colleagues throw up their hands and say that we cannot do anything about it at that point because it is protected under the first amendment.

To that, I say nonsense. The notion that child pornography dealers, distributors, and purveyors who show the sick, pornographic films are innocent bystanders and are protected in the exercise of their freedom of speech as an extension of the first amendment is without merit. The courts have never granted that ridiculous extension, and I believe that they would not grant it in a test case on our tough language making transportation and distributors of child pornography a criminal offense.

Earlier this month we considered another bill on child pornography, H.R. 6693. Some Members voted against that legislation, on the basis that it might be unconstitutional and that it amended a part of the law other than the criminal section of the United States Code, title 18. At the time of the vote, I said that I opposed H.R. 6693 exclusively on those grounds, but wholeheartedly endorsed the concept of child pornography legislation which I have advocated when there was little or no interest in this subject.

I am pleased that H.R. 8059 incorporates a new provision to make it illegal to engage young boys under age 18 as well as young girls in acts of child abuse across State lines. This Mann Act amendment is a valuable asset to child abuse legislation. It amends title 18 United States Code, and places the legislation in the criminal statutes where it properly belongs.

Constitutional questions have been addressed in the Judiciary Committee. The committee is reporting a bill which does not include certain language which I believe to be critical to any Federal child pornography legislation. The addition of a section against transportation and distribution of the material should be included in legislation that ultimately is agreed upon by both Houses, or I fear that criminals will continue to profit, perhaps even more so by driving them even further underground.

Why do I say the profiteering will increase, Mr. Speaker? Clearly, by forcing producers underground even further, certain expenses, and thereby profits, will increase. Costs of sale of the items to the distributors, who will be able to legally distribute the material, will skyrocket, due to supply and demand pressures, and therefore will increase the profitability to underground pornographers. Some State legislation is probably already creating this effect by drying up some of the more obvious sources of the pornography.

By passing legislation that fails to wipe out all aspects of commercialism involved in child pornography, we are simply adding more fuel to the fire of this criminal business.

During hearings by the Subcommittee on Crime, on which I serve as ranking minority member, Dr. Frank Osanka, a noted psychologist who has become an expert on child abuse testified that—

> . . . Serious penalties should be provided for the importation and the exploitation of child pornography. In brief, protective legislation in this area must take the profit out of child pornography.

Other witnesses, including police officials and prosecutors testified that unless we wiped out the commercialism across the board, the problem of child pornography and the ensuing child abuse would continue to persist. Why should we enact new legislation on the Federal level? Clearly, the States are coming to us and saying that we need legislation. They, for

the most part, are now drafting legislation. We heard from the National Conference of State Legislatures, and they told us that at least 29 States have enacted, or will enact, such child abuse legislation. We must aid them by entering the battle on the front where the transportation occurs across State lines. Our duty as Congressmen is to enact criminal legislation to stop that interstate transportation, and distribution of child pornography. On the face of the legislation itself, H.R. 8059 requires transportation as an element for Federal jurisdiction. Why not then, provide for penalties for transportation so long as we require that as a condition precedent to prosecution? Unless we dry up the market we will not stop the abuse.

To capture a pornographer in the basement of his home as he commits his acts of violence against his chosen victims—young children—imposes a true hardship on police officers. With all due regard for defendants' rights, how can we expect the FBI to capture underground pornographers as they click their shutters in the basement of their hideaways. To pursue these people in the act of producing the materials would require an unusual sense of timing and ingenuity on behalf of our Federal agents.

Why, the question may be asked, did I speak on the House floor in opposition to H.R. 6693 when I had the opportunity to vote on a bill with distribution and sale language? The Subcommittee on Crime and the full Judiciary Committee were that very week engaged in debate on the issue of first amendment freedom of speech rights of the distribution and sale sections. After having reviewed the evidence, I have become convinced that children have occupied a special place in the law. We have already acted to provide special assistance for children who are victims of child abuse and neglect, by the passage of the Child Abuse Prevention and Treatment Act. Case law sets forth special qualifications in limiting commercial dissemination of obscene materials to minors. In *Ginsberg* v. *New York*, 390 U.S. 629 (1968), the U.S. Supreme Court upheld a New York criminal statute that makes it unlawful to knowingly sell harmful material to a minor. The Fair Labor Standards Act provides that oppressive child labor employment shall not be used in the production of goods which are entered in the flow of commerce.

Those who are concerned about the constitutional question of first amendment rights of free speech may take some solace in the printed testimony of Mr. Charles Renbar, well-known criminal defense attorney who testified before our subcommittee. Mr. Renbar said, in part:

> It is not arbitrary or unreasonable for the legislature to conclude that inducing children to engage in sexual activity can harm them. Nor is it arbitrary or unreasonable to prohibit the photographing of children who have been induced to do so, or to interdict the publication and sale of magazines in which the photographs appear. The publisher and the seller are principals in the abuse. Without them, it would not occur.

To consider that the first amendment argument that children should have this right of speech can further be discredited when one considers that children lack the capacity to exercise certain legal privileges.

If we do not allow children to buy an automobile, sign a note, or buy a home at age 15, then why should we permit them to engage in conduct which can be damaging to themselves? Is it not reasonable to assume that children engaged in these acts do so under some sort of coercion? Is it really proper to argue the first amendment? The issue is protecting children. The issue is not one of censorship versus freedom of press. The issue is whether the grossest sort of perversion can find any constitutional protection.

If the Constitution had been designed to protect all publications from restrictions, then libel, slander, false advertising, and falsely shouting "fire" in a crowded theater would be legal today. Fortunately, our courts have wisely held that certain kinds of speech are so inflammatory that great public harm can come from a line of conduct. The use and abuse of children for the production, distribution, and sale of these materials should be stopped. It is with these thoughts in mind that I originally submitted H.R. 8778, a bill which includes distributors and sellers of the materials resulting from the child abuse.

At the time of the appointment of conferees for this legislation, I will offer an instruction that the House conferees adopt language to prohibit the sale and distribution of child pornography. I am asking this body to take the same action which was taken on October 10, 1977, in the Senate. At that time, Mr. ROTH added his amendment No. 1398 to S. 1585, a transportation and distribution section, and was supported by a vote of 73 to 12. Today, I will ask my colleagues to join with me in instructing the conferees to adopt the Roth language. I urge the support of H.R. 8059, and the later support of my instructions to the conferees.

Mr. DORNAN. Will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from California.

Mr. DORNAN. I thank the gentleman for yielding.

What are the chances for getting these instructions to the conferees?

Mr. ASHBROOK. I say to my colleague, the gentleman from California, that I am going to offer the amendment. As my colleague, the gentleman from Michigan (Mr. KILDEE) indicated, there were something like 375 or 380 Members of the House who voted for legislation that had basically that thrust before. Therefore, I would hope that most of those would vote for my motion to instruct. And with such a mandate of the House, I think we would bring back the Roth language from conference.

Mr. DORNAN. If the gentleman will yield further, when will that motion be voted upon?

Mr. ASHBROOK. That motion will be voted upon at the time my colleague from Michigan moves to go to conference and for the appointment of the conferees for the House.

Mr. DORNAN. I sent a Dear Colleague letter yesterday, asking Members to vote against this bill under suspension today. However, I will change my advice because of your excellent motion. I, also, realize that nothing else will be forthcoming from the committee this year if this particular vehicle against child pornography is destroyed, and I do not want to disappoint the good citizens of Los Angeles County, the county which suffers from this social plague of pornography to a worse degree than any area on Earth. I would wholeheartedly support the motion of the gentleman from Ohio and strongly reiterate what the gentleman said about this bill being flawed unless toughened. Suppose we were talking about gut-rotting bootleg liquor, distributors would be covered up by law, if we were talking about illegal firearms, the distributors would be involved, if we were talking about any type of illegal drug or narcotic, the distributors would be involved . . . So not to involve the distributors with something as heinous, vile, and destructive to society as child pornography is ridiculous. I do not think that our conferees will mind at all to be instructed to make this an effective tough law that will accomplish the intended goal. To put perverts who produce or traffic in this nightmare of child pornography in jail.

The pornographers have had it all their own way for over 12 or 13 years, and this measure will only dent what they have been doing to our country. But that is better than nothing. But without the provision to hit the distributors it is more than worthless because it prevents anything effective being done next year. Distributors of this moral poison know exactly what they are carrying in their trucks as they push this garbage throughout our country, just as do illegal drug distributors, heroin distributors, cocaine distributors, distributors of illegal arms, and runners of gut-rotting moonshine liquor. Your motion to instruct conferees is the best course to take this year. I urge support of your efforts to make a bad bill effective.

I thank you for yielding.

Mr. CONYERS. Mr. Speaker, I yield myself 1 minute.

I do not think this debate could be completed without pointing out that perhaps we do need more laws, but they may not all need to be criminal laws. What this subcommittee found was that there is a vast and complicated set of problems involved with your exploitation and with pornographic activities that is spreading across the country. I would hope that most of the membership is not going to address this question by throwing more Federal criminal laws at a problem that they are concerned about. Laws may not stop child pornography but they certainly will provide in H.R. 8059 a basis for the effective prosecution of pornography and those who would engage in this form of child abuse. It has not been a tool of the Federal prosecutors before now.

The SPEAKER. The time of the gentleman from Michigan (Mr. CONYERS) has expired.

Mr. CONYERS. Mr. Speaker, I yield myself 1 additional minute.

Mr. Speaker, I will just conclude with this point: What we found is that there

are problems in child care in the juvenile justice system, in family support, in delinquency facilities, involving youngsters who are voluntarily selling themselves merely to earn money. This is not a simplistic problem that can be described as evil moneymakers who are willing to do anything in terms of pornographic activity versus the rest of the world. I wish it were all that simple, but it is not.

I hope that from these hearings, in both the Committee on Education and Labor and the Committee on the Judiciary, we could move forward to further and more complete exploration of this problem.

The SPEAKER pro tempore (Mr. KAZEN). The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and pass the bill H.R. 8059, as amended.

The question was taken.

Mr. ASHBROOK. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

LAW SCHOOL DEPOSITORY LIBRARIES

Mr. NEDZI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 8358) to amend title 44, United States Code, to provide for the designation of libraries of accredited law schools as depository libraries of Government publications.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 19 of title 44, United States Code, is amended by adding at the end thereof the following new section:

"§ 1916. Designation of libraries of accredited law schools as depository libraries

"(a) Upon the request of any accredited law school, the Public Printer shall designate the library of such law school as a depository library. The Public Printer may not make such designation unless he determines that the library involved meets the requirements of this chapter, other than those requirements of the first undesignated paragraph of section 1909 of this title which relate to the location of such library.

"(b) For purposes of this section, the term 'accredited law school' means any law school which is accredited by a nationally recognized accrediting agency or association approved by the Commissioner of Education for such purpose.".

SEC. 2. The table of sections for chapter 19 of title 44, United States Code, is amended by adding at the end thereof the following new item:

"1916. Designation of libraries of accredited law schools as depository libraries.".

The SPEAKER pro tempore. Is a second demanded?

Mr. DICKINSON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan (Mr. NEDZI) will be recognized for 20 minutes, and the gentleman from Alabama (Mr. DICKINSON) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan (Mr. NEDZI).

Mr. NEDZI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this legislation has been brought before the House because of the fact that in certain geographic areas congressional designations of depository libraries have been exhausted.

There are presently two designations per congressional district. Many districts have filled these designations, yet there are law libraries without a designation. Because of the unique character of law libraries, it was felt that all law libraries should be given this designation as a matter of course, provided they are duly designated by the American Bar Association or by another agency authorized by the Department of HEW.

Mr. Speaker, I know of no opposition to this legislation. It passed out of subcommittee unanimously, and it passed out of the full committee unanimously.

Until today I have heard of no opposition to the legislation, but I see the gentleman from Maryland (Mr. BAUMAN) standing, and if he desires, I would be very pleased to yield to him.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield?

Mr. NEDZI. I yield to the gentleman from Maryland.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman for yielding.

I have read over the legislation, and, quite frankly, I am a little surprised that there was not some opposition at some point in the consideration of this bill. It appears to me that it provides a $10 million subsidy for law libraries across the United States.

The gentleman's committee only a few months ago brought up legislation that was passed reducing the number of subscriptions to the CONGRESSIONAL RECORD available for Members of Congress to distribute in their districts, and the committee took a great deal of credit for cutting down expenditures in that regard.

My experience with law libraries has been that such facilities are not open to the public; they are open to school's graduates, students, and to members of the Bar. Most people do not even know where such libraries, as far as public use of the law library is concerned.

It seems to me that if schools want these Government publications, they ought to be required to pay for them; otherwise the taxpayers have to pay for them. If the schools do not pay for these publications, this is another $10 million added to Federal expenditures from our taxpayer's pockets.

Mr. NEDZI. Mr. Speaker, the estimate the committee received was that there would be a maximum of $2.1 million, assuming all the 164 libraries would take advantage of the provisions of the legislation.

Further, in response to the gentleman, a library, in order to be designated a depository library, has to abide by certain regulations, which include access to the public. They cannot receive that designation in the absence of such an understanding with the Government Printing Office.

Mr. BAUMAN. Mr. Speaker, my reference to $10 million is for the 5-year period of the bill.

Nevertheless. I still think this is a direct subsidy to law schools, and they could well afford to pay this directly if they want these publications.

Mr. NEDZI. Mr. Speaker, it is true that one can look at this as a direct subsidy to law schools. On the other hand, one can look at it as an investment or as an assistance to higher education, as well as to the general public, because the public does and will have access to this material.

Mr. KREBS. Mr. Speaker, will the gentleman yield?

Mr. NEDZI. I yield to the gentleman from California.

Mr. KREBS. Mr. Speaker, I thank the gentleman for yielding.

It is not too often that I agree with my colleague, the gentleman from Maryland (Mr. BAUMAN), but it seems to me that his comments certainly are well taken.

I cannot help but feel, as he does, that this is indeed a subsidy to a certain segment of our educational community. If we are going to start opening this up to law schools—and I happen to be a graduate of a law school—we will then be asked to open it up to subsidize libraries for medical schools and seminaries as well.

I can see a whole Pandora's box of subsidies being opened by this well-intended type of legislation.

Unless the chairman comes up with some explanation to refute some of the comments made, I certainly would be constrained to oppose it and reluctantly so.

Mr. NEDZI. The fact of the matter is that we do subsidize libraries across the board out of an interest in the general education of our citizens.

It was felt by all those who looked into this matter and after extensive hearings that the unique character of law libraries deserves this kind of consideration. There is no evidence that all of the libraries are going to take advantage of it because there are considerable burdens connected with making available to the public these kinds of publications. It really is not a bonanza for an individual library to have this kind of designation.

For example, I have two vacancies in my district; and I cannot get a library to accept the designation, simply because of the obligations which they incur in becoming depositories.

Mr. KREBS. Mr. Speaker, if the gentleman will yield further, I think the chairman knows that I hold him in very high regard. However, I wonder whether the chairman would be kind enough to tell me as to where the line is going to be drawn.

I realize that this type of library is going to be open to the public, and that is the way it should be; but let us assume that some other type of school is willing to open its library to the general public. Are we then going to turn them down? If so, on what theory are we going to turn them down, if we are

S. Report 98-169
H. Report 98-536

LEGISLATIVE HISTORY
P.L. 98-292

CHILD PROTECTION ACT OF 1984

P.L. 98-292, see page 98 Stat. 204

House Report (Judiciary Committee) No. 98-536, Nov. 10, 1983 [To accompany H.R. 3635]

Senate Report (Judiciary Committee) No. 98-169, June 29, 1983 [To accompany S. 1469]

Cong. Record Vol. 129 (1983)

Cong. Record Vol. 130 (1984)

DATES OF CONSIDERATION AND PASSAGE

House November 14, 1983; May 8, 1984

Senate July 16, 1983; March 30, 1984

The House bill was passed in lieu of the Senate bill. The House Report is set out.

HOUSE REPORT NO. 98-536

[page 1]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3635) to amend chapter 110 (relating to sexual exploitation of children) of title 18 of the United States Code, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

* * * * *

NEED FOR THIS LEGISLATION

The creation and proliferation of child pornography is no less than a national tragedy. Each year tens of thousands of children under the age of 18 are believed to be filmed or photographed while engaging in sexually explicit acts for the producer's own pleasure or profit. The Protection of Children Against Sexual Exploitation Act of 1977 was designed to address this inexcusable abuse of children. Both developing constitutional case law and prosecutorial experience provide an assessment of the Act and how its effectiveness can be improved.

The Protection of Children Against Sexual Exploitation Act of 1977 was based on First Amendment case law requiring a showing of obscenity as a condition precedent to a legislative interest in

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banning child pornography.[1] In 1982, however, the Supreme Court ruled, in the case of *New York* v. *Ferber*,[2] that the State's interest

[1] *Miller* v. *California*, 413 U.S. 15 (1973).
[2] *New York* v. *Ferber*, 102 S. Ct. 3348 (1882).
1. 93 S.Ct. 2607, 37 L.Ed.2d 419.

in protecting children outweighed a need for First Amendment protection of child pornography. In *Ferber*, the Court reversed the New York Court of Appeals and upheld the constitutionality of a State statute permitting the prosecution, inter alia, of vendors of books and films visually depicting children in explicit sex acts. The New York Court of Appeals had found the statute to be unconstitutionally overbroad, as applied to sellers of the material who had nothing to do with the abuse of the children resulting from the production itself, in that it did not require proof of obscenity of the material.

The Supreme Court, reasoning that States are entitled to greater leeway in the regulation of pornography depicting children, concluded that States were justified in finding that drying up the distribution network is essential to controlling production itself, and that distributors can legitimately be prosecuted as child abusers, rather than only as purveyors of obscenity.

The *Ferber* decision has prompted calls to amend the Federal Protection of Children Against Sexual Exploitation Act of 1977. The impetus for amended legislation also provided a forum to review the effectiveness of the 1977 law. Since May 1977, only 28 persons have been indicted under 18 U.S.C. Section 2252. Twenty-three defendants were convicted of this violation, two were convicted of other obscenity violations, and the cases of two defendants are still pending. One defendant committed suicide. Convictions under the production offense, 18 U.S.C. Section 2251 are, to date, nonexistent. Only four individuals have been indicted under 18 U.S.C. Section 2251. Two pled guilty to other charges under 18 U.S.C. Section 2252, one pled guilty to a conspiracy charge, and one case is still pending.[3] The few prosecutions under the Act indicate that the Protection of Children Against Sexual Exploitation Act requires some modification.

Perhaps the most important limitation in existing law is the "commercial purpose" limitation. Utilization of 18 U.S.C. Section 2252 has been inhibited by that statute's limited application to the distribution of child pornography only for commercial purposes ("for the purpose of sale or distribution for sale"). Many of the individuals who distribute materials covered by 18 U.S.C. Section 2252 do so by gift or exchange without any commercial motive and thus remain outside the coverage of this provision. Those persons who use or entice children to engage in sexually explicit conduct for the purpose of creating child pornography do not violate 18 U.S.C. Section 2251 unless their conduct is for pecuniary profit. (Although Section 2251 does not contain express language of a commercial requirement, such a requirement is imposed by the definition of "producing" in Section 2252(3) which imposes a "for pecuniary profit" requirement.) Since the harm to the child exists whether or not

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those who initiate or carry out the schemes are motivated by

[3] Testimony of Mr. Mark Richard, Deputy Assistant Attorney General, Criminal Division, United States Department of Justice, at the Hearings on the Implementation of Protection of Children Against Sexual Exploitation Act of 1977, before the Subcommittee on Crime of the House Judiciary Committee, 98th Congress, 1st Session, June 16, 1982.

profit, the Subcommittee found a need to expand the coverage of the Act by deleting the commerical purpose requirement.

The Committee concluded that the age of the children encompassed by the Act should be increased from 16 to 18 years. The prosecution for distribution are most often based solely on the pornography which is the subject of the offense; the children cannot be located. Based on the pictures alone, the prosecution must show that the child is under the age of 16. This is extremely difficult once the child shows any sign of puberty. Raising the age to 16 would facilitate the prosecution of child pornography cases and raise the effective age of protection of children from these practices, probably not to 18 years of age, but perhaps to 16.

Upgrading the fine schedule would also improve the law. The Act now punishes a first offense with a fine not to exceed $10,000, or imprisonment for not more than 10 years or both. If a conviction for a repeated offense is obtained, it carries a fine not to exceed $15,000 or imprisonment for not less than 2 years nor more than 15 years or both. The impact of the existing fines is substantially reduced by the impact of inflation. These fines should serve as a punishment, which takes the profit out of crime, and as a deterrent. States are increasingly being forced to reduce the sentences of nonviolent criminals due to prison overcrowding and as a result, fines are playing an increased role in punishment. For these reasons, the Committee sees a need for higher fines.

The small number of prosecutions also indicated a need for improved enforcement. One way to address this need would be to permit the issuance of Federal wiretap warrants in child pornography investigations. The Justice Department recommends the wiretap authority for two reasons. First, there have been no arrests under 18 U.S.C. 2251 for the making of child pornography due to its clandestine nature and wiretaps would facilitate investigations of production. Second, where such wiretaps are available, the prosecution may be able to make its case without calling for the victim-child to the witness stand.

Another way to improve enforcement is to create a reproduction offense. The Subcommittee found a need to prosecute the producer who pirates photos from other publications or who purchases photos for reproduction. Section 2251 of Title 18, production offense, seems to require that a producer also be directly involved in inducing the child to pose for the photography in question before violating the Act.

The Supreme Court in the *Ferber* case indicated that written material must still be subject to an obscenity requirement, *New York* v. *Ferber,* 102 S.Ct. at 3358 (1982). However, no reason for coverage of non-visual depictions was found in the legislative history of the Act, and no need for such coverage has been identified in the 6 years of implementation of the Act. Rather than write in an obscenity requirement for print material, it seems more approprite to simply limit coverage to visual material.

Improving the existing legislation by addressing each of the demonstrated needs for reform would improve the ability to investigate and prosecute violations, and, therefore, protect children from child pornography cases.

History of the Legislation

In 1977, this Committee reported, and Congress enacted, legislation to address the problem of sexual exploitation of children by the use of children as performers in the production of films and photographs depicting sexually explicit conduct. (18 U.S.C. 2251 et seq.) At that time, investigation by the Committee revealed that deplorable practices such as these were a growing phenomenon in all parts of the country.[4]

Federal prosecution of some elements of the child pornography industry was possible prior to the 1977 legislation. Federal offenses might arise from mailing (18 U.S.C. 1461) or importing (18 U.S.C. 1462) child pornography material. However, both these statutes are designed to prohibit the dissemination of pornography and thus require proof of obscenity of the material in question. Prosecution under State child abuse laws was also possible, but State and local officials called upon Congress to enact Federal criminal child protection laws, citing the interstate nature of the traffic in child pornography. Responding to these requests, this Committee proceeded to examine existing bills and to develop its own legislation on the subject. Four hearings were held on the subject between May and September 1977, at which 26 witnesses testified.

Proponents of new Federal legislation stressed the need for legislation to authorize Federal involvement based on abuse of children in the production and interstate trafficking in these sexually explicit materials not just based on obscenity of the material. The pinciple bill on which the Subcommittee held hearings, H.R. 3913 by Mr. Kildee, proscribed both the production and interstate distribution, without proof of obscenity, of sexually explicit materials the production of which involved children in these sex acts. The Department of Justice [5] and other legal authorities opposed a distribution offense which did not contain a requirement of proof of obscenity of the material, arguing that such a statute might reach constitutionally protected material as well as unprotected (obscene) material, and thus be held to void on its face for overbreadth. The Committee shared this concern that courts might extend the same constitutional protection, namely the requirement of proof of obscenity, to a vendor of child pornography who had no role in the production of the material, as is extended to that vendor when he sells similar adult pornography. Having concluded that inclusion of a distribution offense without an obscenity requirement might jeopardize the constitutionality of the statute, we elected to include no distribution offense, on the grounds that distribution of obscene material is already generally proscribed by 18 U.S.C. 1461 and 1462. The Senate-passed bill contained a distribution offense, which was retained by the Conference, as was a commercial requirement

[4] State legislatures were, at the same time, becoming quite concerned about this problem, which came quickly to be known by the abbreviated terminology "child pornography". According to testimony before our Committee at that time, 24 States had considered child pornography in the past year, and 15 had enacted laws on the subject. Prohibiting the Sexual Exploitation of Children, H. Rept. No. 95-696, 95th Congress, 1st Session, p. 9 Within 5 years, 47 States would have enacted criminal legislation to confront the problem. See, *New York* v. *Ferber*, 102 S.Ct. 3348 (1982), footnote 2, for citation to these State laws.

[5] Supra, n. 3.

in the section 2251 production offense, which was contained in both House and Senate bills.

Committee Consideration in the 98th Congress

The Subcommittee on Crime held a hearing on proposals to amend the 1977 Act on June 16, 1983. Four bills were before the Subcommittee at that time: H.R. 2106 by Mr. Pashayan; H.R. 2432 by Mr. Hutto; H.R. 3062 by Mr. Sawyer; and H.R. 3298 by Mr. Hughes.

All of the bills had two features in common: elimination of the requirement of proof of obscenity of the material in question, and elimination of the requirement that distribution of the material be for commercial purposes before prosecution can take place. All of the bills except H.R. 2106 would substantially raise the maximum fine levels authorized under the Act. H.R. 2432 would raise the age of protection of children under the Act to 18 from 16 would provide an affirmative defense to prosecution if the conduct in question was masturbation or lewd exhibition of the genitals and if the material produced depicting such conduct has serious literary, artistic, scientific, social or educational value, and would make offenses under this Act also subject to prosecution under the Racketeer Influenced and Corrupt Organizations Act and to triple damage civil actions.

H.R. 3062 would permit courts to authorize wiretapping in the investigation of offenses under this Act, and would exclude from coverage under this Act the visual depiction of simulated sexual conduct by minors in a visual medium, which taken as a whole, has serious literary, artistic, political, scientific, or educational value. H.R. 3298 contains a similar exclusion from coverage of simulations when the possibility of harm to the participating child is outweighed by redeeming social literary, scientific, or artistic value.

H.R. 3298 would add a "reproduction" offense in 18 U.S.C. 2252. This amendment was designed to insure that a person who is a producer of child pornography but who does not have a direct role in inducing a child's participation (for example, a person who buys photos from another, or who pirates them from other publications) cannot escape prosecution simply because he did not have direct contact with the child. Section 2251, the present production offense, seems to require such direct contact, and this amendment was designed to close that possible loophole.

At the June 16 hearing, testimony was heard from Congressmen Hutto and Pashayan, and from representatives of the United States Department of Justice, the United States Postal Service, and from the United States Custom Service. Copies of the views of the Administration witnesses are contained in another section of this report.

Finally, H.R. 3298 would limit coverage under the Act to visual depiction of children engaged in explicit sex acts, rather than to retain coverage of written depictions and follow the mandate of the Supreme Court to provide an obscenity requirement in the case of written depictions.

Subcommittee and Committee Markups

Subcommittee markup on H.R. 3062 was held on July 14. At the beginning of markup, Mr. Sawyer offered, for himself and Mr. Hughes, an amendment in the nature of a substitute, which incorporated provisions from H.R. 3062, H.R. 3298, and H.R. 2432. The substitute would eliminate the obscenity and commercial sale requirements, increase maximum authorized fines to $100,000 for a first offense and $200,000 for second and subsequent convictions, raise the age of protection from children under 16 to those under 18 years of age, authorize courts to authorize wiretapping in investigations of these offenses, add a "reproduction" offense, and limit coverage of the Act to visual depictions. Finally, the substitute contained a variation of the provisions for special treatment of visual depiction of simulated conduct contained in H.R. 3062 and 3298. The variation narrows considerably the scope of exemption for depictions of simulated sexual conduct provided for in either 3062 or 3298. H.R. 3062 would exclude conviction if the depicted material, taken as a whole, has serious literary, artistic, political, scientific, or educational value. H.R. 3298 would exclude conviction if the possibility of harm to the child, taking into account the nature and circumstances of the simulation, is not outweighed by redeeming social, literary, scientific, or artistic value of the material.

The variation contained in the substitute excludes coverage of simulations only if there is little or no possibility of harm to the minor, taking into account the nature and circumstances of the simulation, and there is redeeming value in the material. This reflects a determination by the Subcommittee that redeeming value, standing alone, should not serve to exculpate, and that a substantial possibility of harm to the minor could not be tolerated even if the material produced possessed substantial value, value which might be found to outweigh the possibility of harm to the minor.

The Sawyer-Hughes substitute to H.R. 3062 was approved by the Subcommittee by a voice vote, and reported to the full Committee as a clean bill, H.R. 3635.

On October 4, the Committee on the Judiciary met to consider H.R. 3635. During consideration of the bill, one amendment was adopted. The amendment, offered by Mr. Glickman, would strike the words "little or" before the term "no possibility of harm to the minor" in section 4 of the bill. The effect of this amendment is to narrow further the exclusion from coverage of simulated conduct by the Act. By adopting the amendment, the Committee determined that redeeming value of material depicting a minor in simulation of explicit sexual conduct can serve to exculpate only if there is no possibility of harm to the minor from such participation, rather than if there is "little or no" such possibility.

Section-by-Section Analysis

Section 1 is the short title of the act.

Section 2 contains the amendments to section 2251 of title 18, United States Code, relating to sexual exploitation of children.

Paragraphs (1) and (2) clarify the application of the section to the production of a "visual depiction" of a minor engaging in sexually

explicit conduct. It eliminates coverage of print medium in order to comport with elimination of the obscenity element of the offense.

Paragraph (3) raises the maximum fine that can be imposed for a first offense from $10,000 to $100,000. The maximum prison sentence of 10 years remains unchanged.

Paragraph (4) raises the maximum fine that can be imposed for a subsequent offense from $15,000 to $200,000. The maximum prison sentence of 15 years remains unchanged.

Section 3 contains the amendments to section 2252 of title 18, United States Code, relating to certain activities relating to materials involving the sexual exploitation of minors.

Paragraph (1) strikes out the language "for the purpose of sale or distribution for sale." This amendment eliminates such a state of mind as an element of the offense of transporting, shipping, or receiving child pornography in interstate commerce.

Paragraph (2), by striking out the word "obscene", eliminates as an element of the offense the requirement that the prosecution prove beyond a reasonable doubt that the child pornography transported, shipped, received or distributed meets the U.S. Supreme Court's three-prong test of obscenity in *Miller* v. *California,* 413 U.S. 15[1] (1973). This will have the effect of making proof of these offenses easier. This comports with the decision of the U.S. Supreme Court in *New York* v. *Ferber,* 102 S. Ct. 3348 (1982).

Paragraphs (3) and (4) clarify the application of this section to the transporting, shipping, receiving, or distributing of a "visual depiction" of a minor engaging in sexually explicit conduct.

Paragraph (5) eliminates the sale element in the offense of distributing child pornography. The prosecution no longer must prove that the distribution was a sale or was for the purpose of a subsequent sale.

Paragraph (6) creates a new offense of knowingly reproducing any visual depiction for distribution in interstate or foreign commerce or through the mails. This offense closes a loophole which has required proof that the producers of child pornography actually use the child depicted in the production of the material. This new offense will make prosecution of those who make or produce child pornography easier by applying the offense to those who merely reproduce such materials for distribution.

Paragraph (7) raises the maximum fine for a first offense of violating this section from $10,000 to $100,000. The maximum prison term of 10 years remains unchanged.

Paragraph (8) raises the maximum fine for a subsequent violation of this section from $15,000 to $200,000. The maximum prison term of 15 years remains unchanged.

Section 4 contains the amendments to section 2253 of title 18 of the United States Code relating to the definitions for chapter 110—Sexual Exploitation of Children.

Paragraph (1) changes the definition of minors protected by this chapter from a person under the age of 16 years, to a person under the age 18 years. This will improve the coverage of the act, and facilitate prosecution and conviction in cases in which the age of the child depicted cannot be proven by positive identification of the child. Usually the child who is depicted in child pornography cannot be located. Proof of the child's age has therefore been by

1. 93 S.Ct. 2607, 37 L.Ed.2d 419.

circumstantial evidence. This meant that unless the child appeared to have not yet attained puberty (and therefore was definitely under age 16), an offense could not be proven. By raising the age to 18, if the child depicted does not look like an adult, a conviction can be obtained.

Paragraph (2) modifies the term "sexually explicit conduct" to exclude simulated conduct if there is no possibility of harm to the minor, taking into account the nature and circumstances of the simulation, and that there is redeeming social, literary, educational, scientific, or artistic value. This amendment is necessary to protect from prosecution legitimate motion pictures such as The Exorcist which included material which simulated sexually explicit conduct depicted by a minor.

Paragraphs (3), (4) and (5) are technical amendments which carry out the change in clarifying the definition of the prohibited material from "visual or print medium" to "visual depiction".

Section 5 authorizes the Attorney General or his designee to apply to a Federal judge for an order authorizing the interception of wire or oral communications in order to provide evidence of the violation of chapter 110 of title 18, Sexual Exploitation of Children pursuant to chapter 119 of title 18, Wire Interception and Interception of Oral Communications.

Departmental Views

STATEMENT OF MARK M. RICHARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

I am pleased to be here today on behalf of the Department of Justice to discuss issues surrounding the sexual exploitation of children and child pornography. In particular, I shall address the enforcement of 18 U.S.C. §§ 2251-2253 and 2423, known collectively as the Protection of Children Against Sexual Exploitation Act of 1977, and bills which would amend several of these provisions. Efforts to improve the federal statutes in this area and otherwise to combat the sexual exploitation of children undoubtedly deserve the attention of the Congress and the Administration. The shocking nature of the crimes involved and the indelible mark such crimes leave on their young victims are of serious concern to the Department of Justice. As one measure of the importance with which we view these crimes, the Administration has included proposals to strengthen the child pornography laws in its Comprehensive Crime Control Act of 1983, which has been introduced in the House as H.R. 2151.

Turning first to the enforcement of the federal sexual-exploitation-of-children statutes, as you know 18 U.S.C. § 2251 makes it unlawful to use or induce a minor to engage in sexually explicit conduct for the purpose of producing materials depicting such conduct, provided the statute's requirements as to interstate or foreign commerce or mail are met. Section 2252 reaches the product of this and other conduct involving the sexual exploitation of children. It prohibits the transportation, receipt, and sale of obscene materials depicting sexual conduct by children, provided the transportation or receipt is for the purpose of selling the materials or distributing

them for sale. The requisite jurisdictional basis must also be shown under section 2252. Finally, 18 U.S.C. § 2423 makes it unlawful to transport a minor in interstate or foreign commerce with the intent that the minor engage in (1) prostitution or (2) sexual conduct if the person transporting the minor has knowledge that this conduct will be commercially exploited.

Since May of 1977, 67 persons have been indicted under all available obscenity statutes (including obscenity statutes which are not limited to child pornography) for distribution of obscene material depicting minors; 56 defendants have been convicted; none have been acquitted; charges against ten are still pending; and one defendant committed suicide. In some of these cases, 18 U.S.C. §§ 1461 and 1462, which are general obscenity statutes, have been used to prosecute child pornography cases because these two provisions lack the commercial-purpose limitation found in the child pornography statutes. I shall discuss this commercial-purpose limitation of the child pornography statutes in greater detail later in my statement.

Indictments naming 28 of the above-mentioned defendants included charges under 18 U.S.C. § 2252; 23 defendants were convicted of this violation; two were convicted of other obscenity violations; and cases involving two defendants charged under this section are still pending. One defendant charged under 18 U.S.C. § 2252 committed suicide.

Regrettably, we have been singularly unsuccessful in developing prosecutions under 18 U.S.C. § 2251. Because of the clandestine nature of the child pornography industry, it has proven extremely difficult to develop evidence that an individual was responsible for the production of mailed or shipped material. Only four individuals have been indicted under 18 U.S.C. § 2251; two subsequently pled guilty to other charges under 18 U.S.C. § 2252 (one of whom was sentenced to eight years of imprisonment); one pled guilty to a conspiracy charge; and one case is still pending.

We work closely with the Postal Service and the Federal Bureau of Investigation, which share investigative jurisdiction for violations of these statutes, and with the United States Attorneys, and we feel we have developed an effective program for the prosecution of these violations. In fact, all child pornography cases that have been brought to our attention by the investigative agencies here in Washington have been prosecuted except for a very few which were factually deficient for one reason or another; we are unaware of any unwillingness on the part of United States Attorneys to prosecute cases which have been brought directly to their attention. While the FBI, as an in-house investigative agency, has always directly referred these cases to united States Attorneys, in the past coordination with the Postal Service was maintained at the national level; that is, all Postal referrals were cleared through the Criminal Division before being sent out to United States Attorneys. However, as a result of the considerable expertise that Postal Inspectors developed in this area over the past several years, we authorized the Postal Service to make direct referrals to United States Attorneys. In light of the extensive experience which Criminal Division attorneys have developed in the obscenity area, our guidelines in the United States Attorneys' Manual require United

States Attorneys to consult with the Criminal Division before returning any indictments in these cases. Finally, attorneys in this Division have participated in special training seminars that have been held by both the FBI and the Postal Service dealing with the prosecution of child pornography offenses.

Prosecutions under the White Slave Traffic Act, including 18 U.S.C. § 2423, traditionally have been referred by the FBI to United States Attorneys, who have been given a high degree of independence in the handling of these cases. Departmental guidelines provide that prosecution is generally limited to commercial prostitution activities, but that other violations of the statute may be prosecuted after consultation with the Division where warranted by the facts. Prosecution statistics under 18 U.S.C. § 2423 are obtained from monthly reports submitted by United States Attorneys to the Department. However, these data are reported by the United States Attorneys only by reference to the principal statute involved in the case. Therefore, our statistics are limited to only those cases where 18 U.S.C. § 2423 was the sole or principal violation. With this limitation in mind, we can report that during Fiscal Years 1978 through 1982 charges were filed against 31 defendants under 18 U.S.C. § 2423; 26 defendants were convicted; one defendant was acquitted; and charges against one defendant were dismissed. Once again, I would note that there may have been additional charges filed and dispositions obtained under 18 U.S.C. § 2423 which were reported by United States Attorneys under other statutes and which, therefore, have not been picked up in our statistical reporting system.

Before turning to the bills which would amend the child pornography provisions in 18 U.S.C. §§ 2252-2253, I would like to discuss an aspect of 18 U.S.C. § 2423. Jurisdiction over offenses under that statute extends to offenses taking place "within the District of Columbia." This anachronistic provision is not needed since the District of Columbia has its own criminal code which sets forth a number of prostitution offenses. I would also note that similar language is included in the parallel provisions in sections 2421 and 2422 dealing with adult prostitution.

Several bills have been introduced in the House to amend the current federal child pornography provisions. Among these is the Administration's crime bill, H.R. 2151, particularly sections 1502 and 1604. The Administration's bill would strengthen the federal child pornography provisions in the following three ways: (1) most importantly, by deleting the requirement that the production, receipt, transportation, and distribution of child pornography be for a commercial purpose; (2) by adding child pornography offenses to the list of those for which court-ordered wiretaps are authorized; and (3) by eliminating the obscenity requirement of the current child pornography law to the extent constitutionally permissible.

Two other bills, H.R. 2106 and H.R. 2432, also amend the federal child pornography laws. These bills, as well as sections 1502 and 1604 of the Administration's crime bill, H.R. 2151, are in part a response to the Supreme Court's decision in *New York* v. *Ferber,* 102 S. Ct. 3348 (1982), which held that the obscenity standard set forth in *Miller* v. *California,* 413 U.S. 15 [2] (1973), does not apply to photographic or other depictions of children engaging in sexual conduct.

2. 93 S.Ct. 2607, 37 L.Ed.2d 419.

Current federal law, 18 U.S.C. § 2252, however, prohibits the dissemination of material depicting children engaging in sexually explicit conduct only if the material is obscene.

H.R. 2106 and H.R. 2432 would remove the obscenity requirement of 18 U.S.C. § 2252 for all categories of child pornography. On the other hand, the Administration's bill would eliminate the obscenity requirement of 18 U.S.C. § 2252 only with respect to a visual or print medium which visually depicts a minor engaging in sexually explicit conduct. Where the visual or print medium does not visually depict such conduct, for example, in the case of a written description without photographs, the obscenity requirement of current law would be retained.

This distinction between visual and non-visual depictions of children engaging in sexual conduct reflects the Department's position that certain language in *Ferber* recognized that a written depiction of sexual activities of minors that is not obscene probably continues to be protected by the First Amendment. Indeed, the New York statute upheld in *Ferber* only banned material which visually depicted sexual conduct by minors. As a practical matter, we point out that the distinction we are suggesting between visual and non-visual depictions of minors engaging in sexually explicit conduct has little significance with respect to potential violations of 18 U.S.C. § 2252. In any case a violation can only exist if "the producing of [the] visual or print medium involves the use of a minor engaging in sexually explicit conduct." We are unaware of any instances in which such use of a minor has occurred for the purpose of facilitating a purely written description of the sexual conduct. Thus, the obscenity standard in the Administration's bill for non-visual depictions of minors engaging in sexually explicit conduct would apply to a very small category of child pornography materials.

Elimination of the obscenity requirement in 18 U.S.C. § 2252 would obviously enhance the enforcement of this statute. Although we believe that few if any prosecutions have not been brought or not been successful in the past because of the obscenity requirement, in our view deletion of this unnecessary element will streamline prosecutions. Since expert witnesses and other evidence are sometimes utilized by both sides in seeking to prove or disprove that the material is obscene, eliminating this requirement will generally expedite preparation for trial and the trial itself.

Another issue addressed by all three bills, and the one which we regard as perhaps the most important of the proposed changes, is the elimination of the commercial-purpose limitation. Utilization of 18 U.S.C. § 2252 has been inhibited by the fact that the statute covers the distribution of child pornography only for commercial purposes. It is a fact, however, that many, perhaps even most, of the individuals who distribute materials covered by 18 U.S.C. § 2252 do so by trade or exchange, without any commerical purpose and thereby avoid violating this provision. Moreover, those who use or entice children to engage in sexually explicit conduct for the purpose of creating a visual or print medium depicting such conduct do not violate 18 U.S.C. § 2251 if their conduct is not for pecuniary profit. Nevertheless, the harm to children involved in child pornography schemes exists whether or not those who initiate or

carry out these schemes have a profit motive or commercial purpose.

H.R. 2106 removes the commercial-purpose limitation of current law in a manner consistent with the Administration's bill. However, we note that H.R. 2432 deletes more language than is necessary from 18 U.S.C. § 2252(a)(2) merely to eliminate the commercial-purpose limitation of that provision. Specifically, H.R. 2432 would strike from current law not only the commercial-purpose limitation applicable to the offenses of knowingly receiving or distributing child pornography materials, but also would strike (we believe inadvertently) the underlying offenses of selling or distributing.

Amendment of the wiretap statute is also a matter that needs to be addressed if enforcement of the child pornography laws is to be improved. Section 1604 of the Administration's bill would amend the wiretap law, 18 U.S.C. § 2516, to add child pornography offenses to the list of those for which a court-ordered interception of a wire or oral communication is authorized. As I indicated earlier, the clandestine nature of the child pornography industry has made it extremely difficult to prosecute those who use children to produce pornographic material. Traditional investigative techniques, such as interviews and grand juries, are not always effective in making prosecutable cases. Moreover, it has been difficult to obtain the cooperation of children who have been exploited, given their age and the desire of their parents to shield them from embarrassment and from involvement in judicial proceedings. Also, the offenses of distribution and receipt of child pornography are often the subject of secret dealings. Wiretap authority for these offenses would greatly assist the Department in lifting this veil of secrecy and gathering evidence against persons responsible for the sexual exploitation of minors. The failure of H.R. 2106 or H.R. 2432 to amend the wiretap statute is in our judgment a serious defect. We urge the Subcommittee to include such an amendment in whatever legislation it recommends to the full Committee.

Let me now turn briefly to a discussion of some additional provisions found in H.R. 2432 which are not included in the Administration's proposal. One such provision is H.R. 2432's language providing for the assertion of an affirmative defense in prosecutions brought for the production or distribution of child pornography depicting certain categories of sexually explicit conduct. The defense with regard to these categories would be that "the medium, when taken as a whole, possesses serious literary, artistic, scientific, social, or educational value." We strongly oppose this aspect of the bill since it essentially retains the obscenity standard for certain categories of child pornography by way of an affirmative defense. Thus, it significantly undercuts the basic philosophy of *Ferber*, which authorized the elimination of the obscenity standard in the context of child pornography for the same categories of sexually explicit conduct to which H.R. 2432 applies this standard. Significantly, the Senate Subcommittee on Juvenile Justice, which recently considered S. 57, a bill identical to H.R. 2432, voted to delete this affirmative defense in the version of the bill it reported to the full Judiciary Committee.

Even in the absence of the affirmative defense provided in H.R. 2432, a defendant may take the position that the application of the child pornography statute to his case is unconstitutional and falls within the "tiny fraction of the materials within the statute's reach" which the Court recognized should receive constitutional protection. 102 S. Ct. at 3363. Thus, the affirmative defense provision (which was not in the New York statute approved in *Ferber*) is unnecessary. Including an affirmative defense provision in the federal child pornography statute in our view would produce consequences far beyond protecting the small class of materials referred to by the Court. It may provide an appealing loophole for pornographers intent upon thwarting the purpose of the statute by placing otherwise proscribed child pornography materials within a legitimate literary or scientific work. Proving the defense—that the medium, when taken as a whole, possesses serious literary, artistic, scientific, social, or educational value—would not be difficult in such cases. The affirmative defense proposed in H.R. 2432 is practically an invitation to distribute child pornography in a conviction-proof medium.

Finally, we believe that the primary purpose of the proposed affirmative defense is to address concerns raised by authors and publishers of legitimate sex education books who fear that, without such a defense, their works would be reached by the anti-child pornography law. We do not believe such works would be covered in light of the definition of "sexually explicit conduct" set out at 18 U.S.C. § 2253, particularly in conjunction with the requirement that the production of the material involve the "use" of a minor engaging in such conduct. Given the concerns expressed by publishers, however, it should be noted that the Department does not view the bills I have discussed as designed to reach legitimate sex education material. The creation of a statutory affirmative defense would, we believe, substantially undermine the basic purpose of H.R. 2432—to strengthen federal anti-child pornography enforcement efforts.

Another problematic aspect of H.R. 2342 is its definition of the word "simulated," a term which is used but not defined in the current child pornography provisions. The bill defines this term to mean "the explicit depiction of any ['sexually explicit conduct' as defined] which creates the appearance of such conduct and which exhibits any uncovered portion of the genitals or buttocks." We believe that the bill defines the term "simulated" too narrowly and that certain conduct excluded by the definition should be included within the law's proscriptions. For example, the requirement that the simulated sexual conduct exhibit any uncovered portion of the genitals or buttocks would exclude simulated sexual conduct in which the unclothed portions of the body are simply out of view of the camera. H.R. 2432's definition of "simulated" in our view could prove to be a significant loophole to imaginative pornographers.

In light of these concerns, we believe that the term "simulated" should not be defined or that the definition should not require the exhibiting of any uncovered portion of the genitals or buttocks. The latter solution, significantly, was adopted by the Senate Subcommittee in its consideration of S. 57.

In addition to the above problems presented by H.R. 2432, the bill includes an amendment of the Racketeer Influenced and Corrupt Organizations (RICO) statutes, 18 U.S.C. Chapter 96. Specifically, the bill would make violation of the federal child pornography statutes a predicate offense for purposes of RICO.

We oppose H.R. 2432's amendment of the RICO statutes. The penalties for a violation of the federal child pornography laws are sufficiently severe (10 years for a first offense and 15 years for a second offense, in addition to the increased fines under the bill) that RICO coverage with its 20-year maximum sentence is not necessary. Moreover, in light of the complications which arise in RICO prosecutions, we believe its coverage should not be expanded except where a clear need exists. Again, we note that the Senate Subcommittee eliminated the RICO provision from the version of the bill it reported.

Finally, we mention two other aspects of H.R. 2432 which differ from the Administration's bill but on which we take no strong position. First, the bill would amend the definition of "minor" for purposes of the federal child pornography statutes by including within this term any person under the s, rather than 16 years as under current law. Although the 16-year age limit was in essence approved in *Ferber*, we do not believe that the Court precluded the possibility of an 18-year age limit for minors protected by a child pornography statute. Moreover, the retention of the 16-year age limit in the Administration's bill does not reflect a conscious rejection of a possible 18-year age limit.

The amendment to raise the age of a "minor" has some advantages from the standpoint of enforcement. Some obscene material depicts children who are clearly under the age of sixteen; however, the age of the child is not so readily apparent in other obscene material. In the latter cases it may be necessary to identify the child and offer proof of age in order to establish this element of the offense. In light of the clandestine fashion in which such obscene films and magazines are produced, this is often extremely difficult. Unless we have such proof of age, we may be forced, as a practical matter, to limit prosecutions to cases where the subjects depicted in the material are clearly younger than sixteen. If the law were amended to protect minors under the age of 18, rather than 16, it would be easier to prosecute cases in which 14 or 15-year olds have been sexually exploited, but regarding whom actual proof of age is not available.

However, there is the countervailing consideration that, as amended by H.R. 2432, the federal child pornography statutes would also extend their reach under the new constitutional standard to 16 and 17-year olds, whom for some purposes society regards as adults. On balance, therefore, we believe the appropriate definition of the term "minor" for purposes of the federal child pornography provisions is a moral judgment best left to a determination by Congress.

Finally, H.R. 2432 would increase the fines applicable to violations of the federal child pornography statutes from $10,000 to $75,000 for the first offense and from $15,000 to $150,000 for any subsequent offense. While we support increasing fines as a greater deterrent to the commission of crimes involving the sexual exploi-

tation of children, we believe that the fines applicable to many other criminal offenses should also be increased. Current fine levels generally reflect monetary values of prior decades and are too low to be a realistic measure of the gravity of the offense committed. Title II of the Administration's crime bill takes a comprehensive approach to increasing maximum fine levels applicable to criminal offenses and to specifying the criteria to be considered in the imposition of fines. Moreover, the Administration's bill would increase maximum fines to a higher level than would H.R. 2432.

Again, thank you for the opportunity to present the views of the Department of Justice on federal efforts to combat the sexual exploitation of children and bills currently under consideration in this regard.

STATEMENT OF CHARLES R. CLAUSON, ASSISTANT CHIEF POSTAL INSPECTOR FOR ADMINISTRATION

Mr. Chairman, I am Charles R. Clauson, Assistant Chief Postal Inspector, U.S. Postal Inspection Service. I appreciate the opportunity to appear before this subcommittee today to discuss our efforts to enforce Federal laws prohibiting the mailing of child pornography.

The Postal Inspection Service is the investigative arm of the United States Postal Service. It has investigative jurisdiction over all violations of Federal criminal laws relating to the Postal Service and is responsible for performing internal audits of the Postal Service and providing for the security of postal facilities and employees. Among the criminal acts investigated by postal inspectors are: Those acts involving an attack upon the Postal Service or its employees such as theft of mail, armed robberies, burglaries and assaults on postal employees: and secondly, those offenses involving the criminal misuse of the postal system for purposes such as the mailing of bombs, the conduct of fraudulent schemes, and, of course, the subject of this hearing—the use of the mails to transport pornography.

Postal inspectors have investigated obscenity offenses since 1865 when Congress passed the postal obscenity statute. The majority of investigations conducted under this statute were directed at large commercial operations dealing primarily in obscene materials using adult models. For many years traffic in child pornography was limited in scope and was investigated in connection with other obscenity cases, especially cases involving large commercial dealers. Over the years, prosecutions under the postal obscenity statute declined due to a series of Supreme Court decisions and due to American society in general growing more tolerant of pornographic material. Unfortunately, during the period of greater tolerance, the distribution of obscene material depicting children was on the increase. The public was outraged by this type of material, and Congress responded by enacting the Protection of Children Against Sexual Exploitation Act of 1977 (title 18, United States Code, sections 2251-2253). The new statutes prohibit the manufacture or distribution for profit of material depicting children under 16 engaged in sexually explicit conduct.

The Postal Inspection Service immediately acted to give priority attention to the enforcement of the new law. At least three experienced Postal Inspectors in each of our five regions are designated as child pornography specialists. Additional investigative assistance is available to these specialists when needed. They have been provided training that includes instruction from noted experts in the child pornography field such as police authorities and psychiatrists, as well as discussions with convicted pedophiles. The training process is conducted on a continuing basis to insure that inspectors assigned to pornography investigations maintain and improve their expertise.

Child pornography investigations conducted by the Postal Inspection Service since 1978 have resulted in the arrest of ninety-seven offenders. Seventy-seven have been convicted, and court action for some of the ninety-seven individuals arrested is currently pending. We anticipate additional convictions once all court activity is completed. Twenty-five of those convicted have been sentenced to prison terms averaging 5.8 years.

Traffickers in child pornography have always maintained a low profile. However, since the enactment of the Protection of Children Against Sexual Exploitation Act of 1977, they have virtually gone underground. During adult obscenity investigations, we are often able to order materials directly from solicitations or advertisements but, with child pornographers, we must gain access to the distributors' underground networks. We monitor those publications oriented toward pedophiles, and we maintain close contact with local police and social workers who, in their work, frequently come upon child abuse and/or child pornography. We also examine evidence, such as mailing lists seized during the execution of search warrants, in an effort to identify persons interested in this type of material. Our efforts are primarily directed at identifying those who would sell child pornography through the mails. Our jurisdiction is limited to postal-related offenses, and investigations generally follow an identification, test correspondence, test purchase procedure. If, during the course of this procedure, we discover evidence of other offenses such as child abuse, we refer it to the proper authorities for attention.

While the production and/or distribution of child pornography is potentially lucrative, we have not found it to be highly profitable when conducted through the mails. Although we have investigated several commercial operations, they were relatively minor in scope compared to operations dealing in adult material and did not enjoy the financial success often achieved in the adult pornography business. Most often, our investigations have resulted in the identification of collectors, some of whom sell their material while others do not. Those who do not sell their material often loan or trade collections with others who share their interest.

Only rarely does the child pornographer measure up to the stereotype image of the "dirty old man." Many of those displaying an interest held respected positions within their communities and have been able to conceal their interest in child pornography for years. There have been the professional dealers identified in our investigations, but there have also been clergymen, teachers, psychologists, journalists, and businessmen.

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We investigate the distribution of material of both domestic and foreign origin. Generally, the domestic material is of the "home-made" variety, while the imported material is produced by commercial dealers. We have also noted that once an item of child pornography begins to circulate, it is reproduced for further distribution, time and time again. As a result, a distributor may be many times removed from the origin of the material. While this and other factors complicate an investigation, we have made good progress in combating the use of the mails to distribute child pornography. Many of the major domestic commercial mail order dealers have been identified and prosecuted; however, some child pornography is still being circulated through the mails by commercial dealers who have become extremely cautious and who try to restrict their sales to known pedophiles.

The bulk of the child pornography traffic is non-commercial. This activity is not in violation of the Federal child pornography statutes. These statutes require a commercial transaction in connection with the manufacture or distribution of the material before a violation exists.

When confronted with a non-commercial situation, we have several alternatives. We may utilize the postal obscenity statute; however, the Department of Justice has been concerned that the potential number of non-commercial cases would be large and exceed the available Federal prosecution resources. Consequently, guidelines were established to identify those cases which should be acted upon. These guidelines are designed to offset any type of selective prosecution claims raised by defendants. These guidelines call for the Federal prosecution of child pornography offenders under title 18, United States Code, section 1461, when a combination of the following factors exist: More than three seizures over the past years; a large quantity of child pornography imported at one time; an arrest history of crimes against children; known membership in a family sex group; employment involving children; photographs depicting the recipient involved in sexual activity with children; correspondence with other pedophiles or undercover agents relating to sexual involvement with children; and, distribution of material. With these guidelines, only a handful of our non-commercial cases have been prosecuted federally.

Another alternative is to contact the appropriate State or local authorities to determine whether the evidence we have gathered supports a violation of their laws. This has been our most frequently exercised option in non-commercial cases as is evidenced by the fact that during fiscal years 1980, 1981, and 1982, 53 of the 77 child pornography arrests arising out of our investigations were for State or local violations.

The Protection of Children Against Sexual Exploitation Act of 1977 applies to those who produce child pornography and/or those who transport it for sale or distribute it for sale. The act does not address the traders and lenders of child pornography, who we have found account for an appreciable number of those individuals involved in trafficking of child pornography. These individuals do not transport their material through the mails for the purpose of sale of distribution for sale and therefore do not violate the provisions of the statute.

Mr. Chairman, it has been my pleasure to report to you the efforts of the Postal Inspection Service to enforce Federal laws prohibiting the mailing of child pornography.

Committee Approval

On October 4, 1983, a quorum being present, the Committee on the Judiciary approved H.R. 3635 by a voice vote.

Oversight Findings

The Committee makes no oversight findings with respect to this legislation other than those included in the text of this report.

In regard to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

New Budget Authority

In regard to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, H.R. 3635 creates no new budget authority or increased tax expenditures for the Federal Government.

Inflationary Impact Statement

Pursuant to clause (l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

Federal Advisory Committee Act of 1972

The Committee finds that this legislation does not create any new advisory committees within the meaning of the Federal Advisory Committee Act of 1972.

Cost Estimate

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee agrees with the cost estimate of the Congressional Budget Office.

Statement of the Congressional Budget Office

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, and section 403 of the Congressional Budget Act of 1974, the following is the cost estimate on H.R. 3635 prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, D.C, October 18, 1983

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representative, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has re-

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viewed H.R. 3635, the Child Protection Act of 1983, as ordered reported by the House Committee on the Judiciary, October 4, 1983.

The bill clarifies existing laws relating to the sexual exploitation of children and increases the fines that can be imposed on persons who violate these laws. CBO expects that no significant additional costs to the federal government or to state and local governments would be incurred as a result of enactment of this bill.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RUDOLPH G. PENNER, *Director.*

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ADDITIONAL VIEWS OF REPRESENTATIVES WILLIAM J. HUGHES AND HAROLD S. SAWYER

During consideration of H.R. 3635 by the Committee on the Judiciary, an amendment was offered to amend the Racketeer Influenced and Corrupt Organizations statute (RICO) (18 U.S.C. 1961 et seq.). A point of order against the amendment was sustained. Due to the considerable interest in this amendment, we want to discuss the merits of the proposal.

The principal reason advanced for including the child pornography offenses as RICO predicates was to provide to children who might be injured the opportunity to sue producers of the visual depictions for treble damages under the civil remedy section, 18 U.S.C. 1964(c). The problem is that to enable courts to entertain such suits would constitute a fundamental revision of the RICO civil relief provisions.

18 U.S.C. 1964(c) provides that "any person injured in his business or property by reason of a violation of section 1962 of this chapter" may sue in a U.S. district court for threefold the damages he sustains. 18 U.S.C. 1961(l), since it does not include child pornography as a predicate offense, precludes children who are depicted in child pornography from obtaining relief. However, even if child pornography were a predicate offense, such children who are injured neither in property nor in business would still be unable to state a RICO cause of action.

The civil action under 18 U.S.C. 1964(c) requires proof of the violations of RICO predicate offenses by a civil standard of proof of a preponderance of the evidence. The inclusion of mail fraud and wire fraud as RICO predicate offenses has been the basis for the filing of RICO treble damages suits on the basis of alleged frauds in cases in which the underlying claim may be nothing more than a breach of warranty or commercial misrepresentation. Unfortunately the threefold damages provision has already attracted a great number of spurious civil suits under a RICO cause of action for alleged business or property injury. We are extremely reluctant to amend this provision to include personal injury as an additional cause of action—in all RICO cases, not just child pornography

cases—without carefully considering the impact such a change would have.

We are also reluctant to include the child pornography offenses among the RICO predicate offenses as defined in 18 U.S.C. 1961(l) because there has been an absence of any evidence of organized crime involvement in the production and distribution of child pornography. In fact the specific need for one of the principal changes in the law provided for by this bill is that child pornography is not commercially distributed, rather it is loaned or given away. This is further evidence that it is an activity which has no attraction for organized crime involvement. Since the fundamental purpose of

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the RICO statute is to combat organized crime, there is an absence of a strong direct argument for including child pornography as a RICO predicate offense. Since the only reason to do so was to seek to obtain recovery for any personal injury suffered, and to provide such relief in this context would involve a significant revision of RICO without an adequate record, we think that it has been proper not to adopt the proposals to that effect.

It should also be noted that the Department of Justice expressed clear disapproval of the proposed changes to RICO in this context.

WILLIAM J. HUGHES.
HAROLD S. SAWYER.

18, 1983, if it does so pursuant to an adjournment, the reading of the Journal be dispensed with; that no resolutions come over under the rule; that the call of the calendar be dispensed with; that following the recognition of the two leaders under the standing order, there be a special order in favor of the Senator from Georgia (Mr. MATTINGLY) for not to exceed 15 minutes, to be followed by a period for the transaction of routine morning business not to exceed 1 hour in length, with Senators permitted to speak therein for not more than 5 minutes each; and provided further that the morning hour be deemed to have expired.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, I believe the requests I am about to put have been cleared with the minority leader. I will state them now for his consideration and for that of all other Senators.

RESCISSION OF TIME LIMIT ON REPORTING H.R. 3034

Mr. BAKER. Mr. President, I ask unanimous consent that on H.R. 3034, an act to provide for appointment and education of congressional pages, now before the Committee on Rules and Administration, that the 30-day time limit for reporting the bill be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY DISCHARGE FROM FURTHER CONSIDERATION OF H.R. 1590

Mr. BAKER. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of H.R. 1590, an act to provide emergency food assistance to low-income and unemployed persons and to improve the commodity distribution program, and that the bill be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. BAKER. Mr. President, there are a number of items on today's calendar of business which are cleared for action by unanimous consent on this side. I will identify them for the minority leader and ask if he is in a position to consider all or any part of this list of items by unanimous consent.

I refer to Calendar Nos. 272, 288, 289, 290, 292, 293, 294, 295, 296, 297, and 298.

Mr. BYRD. Mr. President, I have no objection to any of the measures.

Mr. BAKER. Mr. President, since the minority leader has indicated that we can clear those bills for action, I ask unanimous consent that the Senate proceed to their consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

SEXUAL EXPLOITATION OF CHILDREN

The Senate proceeded to consider the bill (S. 1469) to amend title 18 of the United States Code relating to the sexual exploitation of children.

Mr. SPECTER. Mr. President, this legislation proposes amendments to significantly strengthen the Protection of Children Against Sexual Exploitation Act of 1977. These amendment would:

First. Remove the requirement that the production or distribution of child pornography be for a commercial purpose;

Second. Delete the obscenity requirement from the distribution offense;

Third. Protect children under age 18;

Fourth. Increase the penalties for violations;

Fifth. Authorize the imposition of a penalty upon organizations that violate the act; and

Sixth. Provide for civil and criminal forfeiture.

This bill reflects nearly 2 years of investigation and study of the problems of sexually exploited children by the Subcommittee on Juvenile Justice of the Senate Committee on the Judiciary.

On November 5, 1981, the subcommittee began hearings on the problem of the sexual exploitation of children. This first hearing explored the nature and scope of the problem. A second hearing on April 1, 1982, examined Federal law enforcement efforts.

On August 19, 1982, I introduced S. 2856 in response to these hearings. A subsequent subcommittee hearing, held December 10, 1982, in the wake of the Supreme Court's decision in *New York* v. *Ferber*, 1102 S. Ct. 3348 (1982), examined the necessity for an obscenity requirement for child pornography.

On June 14, 1983, I, joined by Senator GRASSLEY, long a leader in this field, Senator THURMOND, the distinguished chairman of the Senate Committee on the Judiciary, and 16 other cosponsors introduced S. 1469.

This bill—by increasing the scope of Federal protection of children from sexual exploitation—represents an important step forward in the protection of our Nation's children. We have no higher priority; I urge the passage of S. 1469.

Mr. DENTON. Mr. President, I rise today to strongly support S. 1469, a bill designed to halt child pornography in America.

The widespread existence and growth of child pornography is a national disgrace and social cancer threatening to swallow up legions of American children. While there are many issues which we can and should reasonably disagree on, I do not believe that child pornography is one of them. Surely the most basic purpose of any good government is to protect its citizens and more precisely to shield the weak and innocent from those who would use their strength and lack of scruples to exploit the weak.

This basic principle is the foundation of so many of the laws and rules which govern our society that it hardly needs to be repeated.

And yet, the incredible growth of child pornography in America stands out as a glaring rebuke to our Government and its inability or unwillingness to protect some of the most vulnerable among us from some of the most cruel and crafty perversion purveyors.

Mr. President, the sad fact is that in America today thousands of innocent children from the earliest ages are being used as models to pose for materials which are sold or exchanged among a growing number of people who get sick pleasure from seeing the innocence of these children compromised.

Decent Americans are sickened to learn that such exploitation goes on, and even more disillusioned to realize that stopping this cancer is difficult because these enemies of innocence have chosen to attack American children while hiding behind the virtually impregnable shield of free expression.

Mr. President, it is obvious to everyone in this body and almost everyone in the Nation that child pornography is wrong and ought to be stopped. The legislation we consider today, S. 1469, will make prosecution much more possible by removing that shield of free expression to those who would exploit children for profit and perversion. This bill is a cooperative effort combining language from the respective bills of Senators GRASSLEY and SPECTER, and also my suggestion that courts be enabled to confiscate all profits and assets used in the production of illegal material. The effect of S. 1469 will be to make it virtually impossible for the sophisticated merchants of perversion to find a safe harbor from prosecution.

Mr. President, I believe that the legislation before us today is only a first step in eradicating the overall blight of pornography on our society. Pornography is wrong and harmful no matter what age group participates. I encourage my colleagues to devote the same attention to future antipornog-

raphy legislation that has been devoted to this present measure.

Mr. President, unless we act by taking swift and decisive action to stop child pornography, the momentum that the ruthless exploiters have gained in recent years will continue to build, engulfing more children and leaving a trail of destroyed young lives in its wake. I, therefore, urge my colleagues to pass S. 1469, so that we can end this national disgrace of child pornography.

Mr. GRASSLEY. Mr. President, I believe that this bill is a new landmark in Federal efforts to eradicate child pornography. Taking its lead from the Supreme Court's 1982 decision in New York against Ferber, this bill outlaws the distribution of all child pornography—not simply that which is technically "obscene." The Court recognized in Ferber that the need to protect our children from sexual exploitation far outweighed the need of the exploiters to first amendment protection, and the bill before us writes that conclusion into law.

Due to the outstanding efforts of Senator SPECTER, Senator DENTON, and of course the distinguished chairman, STROM THURMOND, we have before us a compromise measure that shields as effectively as possible those children vulnerable to sexual exploitation. This bill was agreed to after much deliberation as to what standards would both protect children and pass constitutional muster.

Two bills on this subject were introduced and referred to the Judiciary Committee in this session of Congress. The bill that I introduced, S. 29, is identical to one which passed the Senate as part of the Violent Crime and Drug Enforcement Act in the latter part of the 97th Congress. I reintroduced that bill on January 26, and later introduced another bill, S. 1240, which increased criminal penalties and raised the maximum age for children protected by the act to 18 from 16 in the current law. Senators THURMOND, DENTON, DOLE, LAXALT, HATCH, EAST, DECONCINI, HEFLIN, JEPSEN, KASTEN, RANDOLPH, DOMENICI, HUDDLESTON, WARNER, and NICKLES joined me in cosponsoring that bill.

As originally introduced, Senator SPECTER's bill, S. 57, contained a number of exceptions to prosecution. The bill originally contained a defense that would not restrain the distribution or production of materials involving minors if the materials contain "serious literary, artistic, scientific, social or educational value." A specific exemption also existed in the original S. 57, and the version reported by the Juvenile Justice Subcommittee for mediums depicting children masturbating if that medium was "an integral portion of a work possessing serious scientific or educational value." I want to emphasize here today that these exemptions have been dropped from the compromise now being introduced.

S. 1469 is in keeping with the Supreme Court decision in Ferber, which addressed and assessed the potential need for blanket exemptions to prosecution and concluded:

> A 12-year-old child photographed while masturbating surely suffers the same psychological harm whether the community labels the photograph "edifying" or "tasteless". The audience's appreciation of the depiction is simply irrelevant to New York's asserted interest in protecting children from psychological, emotional, and mental harm . . . An exception for depictions of serious social value, moreover, would actually increase opportunities for the content-based censorship disfavored by the First Amendment.

This act is so critical a shield for the Nation's children that it warrants the strictest adherence to the Ferber decision. In eliminating the loopholes that previously existed in the bill that was passed out of the subcommittee and instead adopting the increase sanction and age limit contained in that bill, I believe that we have created a most effective prosecutorial tool through this legislation.

Other strengthening provisions that are contained in this legislation include stricter language relating to the definition of sado-masochistic abuse. Section 2253 of title 18 defines "sexually explicit conduct" to include "sado-masochistic abuse (for the purpose of sexual stimulation)." We have eliminated the qualifier "for the purpose of sexual stimulation" in hopes of further removing children from the sexual marketplace. Another critical provision, contributed by Senator JEREMIAH DENTON, allows forfeiture in child pornography cases. It is only through effective economic deterrents that the business of child pornography can be effectively suppressed.

All of us recognize that this bill marks only the beginning of heightened efforts to abolish child pornography. The true test of its effectiveness remains in the hands of our Federal prosecutors. Let us hope that through this legislation we will have armed them adequately.

The bill was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1469

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby finds that—

(1) child pornography has developed into a highly organized, multimillion-dollar industry which operates on a nationwide scale;

(2) thousands of children including large numbers of runaway and homeless youth are exploited in the production and distribution of pornographic materials; and

(3) the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the individual child and to society.

SEC. 2. Chapter 110 of title 18, United States Code, is amended to read as follows:

"CHAPTER 110—SEXUAL EXPLOITATION OF CHILDREN

"Sec. 2251. Definitions for chapter.
"Sec. 2252. Sexual exploitation of children.
"Sec. 2253. Certain activities relating to material involving the sexual exploitation of minors.
"Sec. 2254. Criminal forfeiture.
"Sec. 2255. Civil forfeiture.
"Sec. 2256. Reporting.

"§ 2251. Definitions for chapter

"For the purposes of this chapter, the term—

"(1) 'minor' means any person under the age of eighteen years;

"(2) 'sexually explicit conduct' means actual or simulated—

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) sado-masochistic abuse;

"(D) masturbation; or

"(E) a display of the genitals or pubic area of any person for the purpose of arousing or inciting sexual desire;

"(3) 'simulated' means the explicit depiction of any conduct described in clause (2) of this section which creates the actual appearance of such conduct;

"(4) 'producing' means producing, directing, manufacturing, issuing, publishing, or advertising; and

"(5) 'visual or print medium; means any film, photograph, negative, slide, book, magazine, or other visual or print medium.

"§ 2252. Sexual exploitation of children

"(a) Any person who knowingly employs, uses persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, shall be punished as provided under subsection (c), if such person knows or has reason to know that such visual or print medium will be transported in interstate or foreign commerce or mailed, or if such visual or print medium has actually been transported in interstate or foreign commerce or mailed.

"(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct shall be punished as provided under subsection (c) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual or print medium will be transported in interstate or foreign commerce or mailed or if such visual or print medium has actually been transported in interstate or foreign commerce or mailed.

"(c) Any person who violates this section shall be fined not more than $75,000 or imprisoned not more than ten years, or both, but, if such person has a prior conviction under this section, such person shall be fined not more than $150,000 or imprisoned not less than two years nor more than fifteen years, or both.

"§ 2253. Certain activities relating to material involving the sexual exploitation of minors

"(a) Any person who—

"(1) knowingly transports or ships in interstate or foreign commerce or mails any visual or print medium, if—

"(A) the producing of such visual or print medium involves the use of a minor engaging in sexually explicit conduct; and

"(B) such visual or print medium visually depicts such conduct or such visual or print medium is obscene and depicts such conduct; or

"(2) knowingly receives, sells or distributes any visual or print medium that has been transported or shipped in interstate or foreign commerce or mailed, if—

"(A) the producing of such visual or print medium involves the use of a minor engaging in sexually explicit conduct; and

"(B) such visual or print medium visually depicts such conduct or such visual or print medium is obscene and depicts such conduct;

shall be punished as provided in subsection (b) of this section.

"(b)(1) Any person who violates this section shall be fined not more than $75,000 or imprisoned not more than ten years, or both, but, if such person has a prior conviction under this section, such person shall be fined not more than $150,000 or imprisoned not less than two years nor more than fifteen years, or both. Any organization which violates this section shall be fined not more than $250,000.

"(2) For purposes of this section, the term 'organization' means a person other than an individual.

"§ 2254. Criminal forfeiture

"(a) Whoever violates any provision of section 2252 shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 2252, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 2252.

"(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders of prohibitions, or to take such other action, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

"(c)(1) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person.

"(2) All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions thereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General.

"(3) The United States shall dispose of all such property as soon as commercially reasonable, making due provision for the rights of innocent persons.

"§ 2255. Civil forfeiture

"(a) The following property shall be subject to forfeiture by the United States:

"(1) any visual or print medium produced, transported, shipped, or received in violation of this chapter; and

"(2) any property constituting, or derived from, any proceeds obtained, directly or indirectly, from a violation of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(b) All provisions of the customs law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

"§ 2256. Reporting

"Beginning one hundred and twenty days after the date of enactment of this Act, and every year thereafter, the Attorney General shall report to Congress the number of cases and convictions brought under section 2252 of title 18, United States Code, and the dollar amount of any forfeiture of assets under section 2254 of such title.".

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL PSYCHOLOGY DAYS

The joint resolution (S.J. Res. 19) to authorize and request the President to designate the period August 26 through August 30, 1983, as "National Psychology Days" was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 19

Whereas the American Psychological Association Convention provides a forum for the Nation's outstanding behavioral scientists and psychological practitioners to disseminate their findings and expertise, to the ultimate benefit of our residents and the quality of life of our Nation;

Whereas psychological inquiry increases our knowledge of human behavior and enhances people's understanding of themselves and others; and the American Psychological Association pursues such knowledge and encourages its utilization in the best interests of society; and

Whereas the American Psychological Association and various State affiliates encourage high standards of education, competence, achievement, and ethical conduct for psychologists; improvement and growth of the field of psychology; and the application of psychological research to the promotion of human welfare: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation designating the period August 26, 1983, through August 30, 1983, as "National Psychology Days", and calling upon the people of the United States to observe the period with appropriate programs, ceremonies, and activities.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL CHILD SUPPORT ENFORCEMENT MONTH

The joint resolution (S.J. Res. 56) to designate the month of August 1983 as "National Child Support Enforcement Month" was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 56

Whereas significant progress has been made toward improving laws and regulations dealing with child support enforcement by the States;

Whereas the provisions of part D of title IV of the Social Security Act have provided a needed response in alleviating problems that exist within and among States as to legal rights and financial needs of their citizens;

Whereas the child support program's ultimate goal is to reduce financial deprivation among America's children by ensuring that the responsibility of support rests with the responsible parent, thereby diminishing the need for welfare dependency by women and children;

Whereas the dedicated service of family support enforcement personnel, the judiciary and the legal community has contributed to increased child support collections, parternity establishments and the location of absent parents;

Whereas the growth and success of child support programs have resulted from and continue to rely on increased cooperation of Federal, State and local agencies: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of August 1983 is designated "National Child Support Enforcement Month" and that the President of the United States is authorized

Norfolk: Norfolk Public Library; Old Dominion University Library; U.S. Armed Forces Staff College Library.

Petersburg: Virginia State University Johnston Memorial Library.

Quantico: Federal Bureau of Investigation Academy Library; Marine Corps Education Center, James Carson Breckinridge Library.

Reston: Department of the Interior, Geological Survey, National Center Library.

Richmond: U.S. Court of Appeals Fourth Circuit Library; University of Richmond Boatwright Memorial Library; University of Richmond Law School Library; Virginia Commonwealth University James Branch Cabell Library; Virginia State Law Library; Virginia State Library.

Roanoke: Roanoke Public Library.

Salem: Roanoke College Library.

Williamsburg: College of William and Mary Marshall-Wythe Law Library; College of William and Mary Swem Library.

Wise: Clinch Valley College John Cook Wyllie Library.

The resolution, Mr. President, pays tribute to these libraries and their dedicated personnel and, in fact, all individuals and libraries associated with the program.

It is fitting and proper that this resolution be enacted to coincide with the celebration of National Library Week held each year in April.

I urge my colleagues to support this resolution as a means of reaffirming our support of this program that insures public knowledge of their Government's actions in each and every congressional district in our land.

The resolution was agreed to.

The preamble was agreed to.

The resolution, and the preamble, are as follows:

S. RES. 359

Whereas the United States Senate has recognized that citizens of America should have effective access to Government information throughout the country; and

Whereas the Congress of the United States has provided its citizens with free and open access to Government information through a Depository Library System that includes at least one depository library in each congressional district; and

Whereas depository libraries in a variety of categories, including public, academic, land grant, State, law school, and Federal libraries, have enthusiastically provided service and access to information to citizens across the country; and

Whereas the Nation celebrates National Library Week each year in the month of April to honor and recognize the fine public service that has always been characteristic of the libraries of America: Now, therefore, be it

Resolved, That the Senate pay tribute to depository libraries throughout the land and commend the many dedicated people associated with the depository library program for their significant contribution in furthering the cause of free and open public access to Government information.

SEC. 2. The Secretary of the Senate shall transmit copies of this resolution to the Public Printer of the United States, the president of the American Library Association and the president of the American Association of Law Libraries.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SEXUAL EXPLOITATION OF CHILDREN

Mr. STEVENS. Mr. President, I ask the Chair to lay before the Senate Calendar Order No. 566.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3635) to amend chapter 110 (relating to sexual exploitation of children) of title 18 of the United States Code, and for other purposes.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2873

Mr. STEVENS. Mr. President, on behalf of the distinguished Senator from Pennsylvania (Mr. SPECTER), I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. WILSON). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS), on behalf of Mr. SPECTER, proposes an amendment numbered 2873.

Mr. STEVENS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Child Protection Act of 1984".

SEC. 2. The Congress finds that—

(1) child pornography has developed into a highly organized, multi-million-dollar industry which operates on a nationwide scale;

(2) thousands of children including large numbers of runaway and homeless youth are exploited in the production and distribution of pornographic materials; and

(3) the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the individual child and to society.

SEC. 3. Section 2251 of title 18 of the United States Code is amended—

(1) by striking out "visual or print medium" each place it appears and inserting "visual depiction" in lieu thereof;

(2) by striking out "depicting" each place it appears and inserting "of" in lieu therof;

(3) by striking out "person" each place it appears in subsection (c) and inserting "individual" in lieu thereof;

(4) by striking out "$10,000" and inserting "$100,000" in lieu thereof;

(5) by striking out "$15,000" and inserting "$200,000" in lieu thereof; and

(6) by adding at the end of subsection (c) the following: "Any organization which violates this section shall be fined not more than $250,000.".

SEC. 4. Section 2252 of title 18 of the United States Code is amended—

(1) by striking out ", for the purpose of sale or distribution for sale";

(2) by striking out "for the purpose of sale or distribution for sale" the second place it appears;

(3) by striking out "obscene" each place it appears;

(4) by striking out "visual or print medium" each place it appears and inserting "visual depiction" in lieu thereof;

(5) by striking out "depicts" each place it appears and inserting "is of" in lieu thereof;

(6) by striking out "or knowingly sells or distributes for sale" and inserting in lieu thereof "or distributes";

(7) by inserting after "mailed" the following: "or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails";

(8) by striking out "person" each place it appears in subsection (b) and inserting "individual" in lieu thereof;

(9) by striking out "$10,000" and inserting "$100,000" in lieu thereof;

(10) by striking out "$15,000" and inserting "$200,000" in lieu thereof; and

(11) by adding at the end of subsection (b) the following: "Any organization which violates this section shall be fined not more than $250,000.".

SEC. 5. (a) Section 2253 of title 18 of the United States Code is amended—

(1) in paragraph (1) by striking out "sixteen" and inserting "eighteen" in lieu thereof;

(2) by striking out "sado-masochistic" and inserting "sadistic or masochistic" in lieu thereof;

(3) by striking out "(for the purpose of sexual stimulation)"; and

(4) by striking out "lewd" and inserting "lascivious" in lieu thereof;

(5) by striking out ", for pecuniary profit"; and

(6) by amending paragraph (4) to read as follows:

"(4) 'organization' means a person other than an individual.

(b) Section 2253 of title 18 of the United States Code, as amended by subsection (a) is redesignated as section 2255.

SEC. 6. Chapter 110 of title 18 of the United States Code is amended by inserting after section 2252 the following:

"§ 2253. Criminal forfeiture

"(a) A person who is convicted of an offense under section 2251 or 2252 of this title shall forfeit to the United States such person's interest in—

"(1) any property constituting or derived from gross profits or other proceeds obtained from such offense; and

"(2) any property used, or intended to be used, to commit such offense.

"(b) In any action under this section, the court may enter such restraining orders or take other appropriate action (including acceptance of performance bonds) in connection with any interest that is subject to forfeiture.

"(c) The court shall order forfeiture of property referred to in subsection (a) if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

"(d)(1) Except as provided in paragraph (3) of this subsection, the customs laws re-

lating to disposition of seized or forfeited property shall apply to property under this section, if such laws are not inconsistent with this section.

"(2) In any disposition of property under this section, a convicted person shall not be permitted to acquire property forfeited by such person.

"(3) The duties of the Secretary of the Treasury with respect to dispositions of property shall be performed under paragraph (1) of this subsection by the Attorney General, unless such duties arise from forfeitures effected under the customs laws.

"§ 2254. Civil forfeiture

"(a) The following property shall be subject to forfeiture by the United States:

"(1) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual depiction in violation of this chapter.

"(2) Any visual depiction produced, transported, shipped, or received in violation of this chapter, or any material containing such depiction.

"(3) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(b) All provisions of the customs law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.".

SEC. 7. The table of sections at the beginning of chapter 110 of title 18 of the United States Code is amended—

(1) by inserting after the item relating to section 2252 the following new items:

"2253. Criminal forfeiture.

"2254. Civil forfeiture."; and

(2) by redesignating the item relating to section 2253 as 2255.

SEC. 8. Section 2516(1)(c) of title 18 of the United States Code is amended by inserting "sections 2251 and 2252 (sexual exploitation of children)," after "section 664 (embezzlement from pension and welfare funds),".

SEC. 9. Beginning one hundred and twenty days after the date of enactment of this Act, and every year thereafter, the Attorney General shall report to the Congress on prosecutions, convictions, and forfeitures under chapter 110 of title 18 of the United States Code.

Mr. SPECTER. Mr. President, today I offer an amendment in the nature of a substitute to H.R. 3635, a bill to amend Federal laws prohibiting the production or distribution of child pornography. On July 16, 1983, the Senate passed a bill which I sponsored, S. 1469, which contained similar provisions to strengthen Federal laws outlawing child pornography. The purpose of the amendment which I am offering today is to resolve the differences between H.R. 3635, as originally passed by the House on November 14, 1983, and S. 1469 as passed by the Senate.

In working through the differences between the two bills, we, the principal sponsors of both bills—Senator GRASSLEY and I for the Senate and Mr. HUGHES and Mr. SAWYER for the House of Representatives—retained those provisions which would provide for the toughest laws to stop the sexual exploitation and abuse of children. As a result, I am confident that this amendment offers the best of both bills.

Specifically, this substitute amendment would make the following changes in current law:

First. Under current law, only materials produced or distributed for commercial purposes are unlawful. This bill eliminates the commercial purpose requirement;

Second. Under current law, distribution of materials depicting children in sexually explicit poses is unlawful only if the materials are proven to be legally obscene. This bill removes the obscenity requirement;

Third. This bill raises the fines for violation from the current levels of $10,000 for a first offense to $100,000 and $15,000 for a second offense to $200,000. The bill also adds a $250,000 fine for organizations which violate the law;

Fourth. Current law defines a minor as any person under age 16. This bill would extend that definition to include children under age 18;

Fifth. This bill also contains a provision to make it clear that the knowing reproduction of materials depicting children in sexually explicit poses is unlawful;

Sixth. This bill would add for the first time both criminal and civil forfeiture provisions. These are intended to insure that the profit is removed from child pornography; and

Seventh. This bill would also amend the Federal wiretapping statute to include child pornography as a crime for which Federal investigators may obtain authority to utilize a wiretap.

The amendment which I am offering also makes two changes in the definition of sexually explicit conduct. First, our new provision would amend the definition of sexually explicit conduct by deleting "sado-masochistic abuse (for the purpose of sexual stimulation)" and inserting instead "sadistic or masochistic abuse." The substitution was made to broaden the scope of the act.

Sado-masochistic abuse occurs when both sadistic and masochistic actions are involved. The Psychiatric Dictionary defines sado-masochism as "a condition of combined sadism and masochism: coexistence of submissive and aggressive attitude in social and sexual relations to the other person with a considerable degree of destructiveness present; . . ." (P. 560.) In other words, sado-masochistic abuse exists when both a pain inflictor and a pain recipient are involved. Sadism, on the other hand, has been defined as "a state in which the sexual impulse is manifested as a tendency to strike, misuse, or humiliate the love object." (Psychiatric Dictionary, p. 559.) "Masochism" represents the reverse side, and occurs when "sexual satisfaction depends upon the subject himself suffering pain, ill-treatment, and humiliation." (Psychiatric Dictionary, p. 370.)

With this amendment, the law will clearly prohibit the production and interstate distribution of material which visually depicts a minor engaging in sadistic abuse, masochistic abuse, or both.

Second, this amendment would replace the current law's prohibition of the "lewd exhibition of the genitals" with a prohibition against the "lascivious exhibition of the genitals." "Lewd" has in the past been equated with "obscene"; this change is thus intended to make it clear that an exhibition of a child's genitals does not have to meet the obscenity standard to be unlawful.

I first became involved with the effort to toughen our Federal laws against child pornography in November 1981 when the Subcommittee on Juvenile Justice, which I chair, began a series of hearings examining the sexual exploitation of children. When our independent study suggested that the commercial purpose requirement in current law posed an impediment to arrests and prosecutions of those who produce and distribute pornographic depictions of children, the subcommittee requested testimony on this point from the relevant Federal authorities.

The testimony offered on behalf of the FBI by Dana E. Caro of the Criminal Investigative Division verified the finding of the subcommittee investigation.

I ask unanimous consent to have an excerpt printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[T]he FBI has determined that a clandestine subculture exists in the United States which is functioning in violation of the child pornography and sexual exploitation of children statutes. This culture is involved in recruiting and transporting minors for sexual exploitation and investigation has revealed that this culture is very difficult to penetrate. It has been determined that the largest percentage of child pornography

available in the United States today was originally produced for the self-gratification of the members of this culture and was not necessarily produced for any commercial purpose. Pedophiles maintain correspondence and exchange sexual explicit photographs with other members of this subculture and often establish contact with each other through "swinger" type magazines and newspapers which act as mail forwarding services for the readers. FBI investigations have revealed the commercial photographers and major distributors pose as members of this subculture and obtain free of charge the sexually explicit photographs of minor children. As a result, many of the photographs taken for private use and obtained by these commercial photographers and pornographic distributors subsequently appear in child pornography magazines which have wide commercial distribution. Neither the child posing for the picture nor the photographer receive any payment from these commercial photographers or major distributors. Therefore, the FBI's effectiveness in combatting child pornography and the sexual exploitation of children at the grass roots has been seriously impaired by the pecuniary interest requirement contained in title 18, U.S. Code, section 2251 and 2252.

Mr. SPECTER. Mr. President, this legislation also reflects the Supreme Court's July 2, 1982, decision in New York against Ferber. In that case, the Supreme Court ruled that the compelling State interest in safeguarding the physical and psychological well-being of children constitutionally justified the prohibition of nonobscene sexually explicit photographs of children.

This legislation will make it clear that Federal law enforcement authorities will not tolerate any interstate production or distribution of any materials which visually depict children in sexually explicit poses. It is my hope that this new Federal effort will encourage the States to toughen their own child pornography laws.

In closing, I would like to take this opportunity to commend my colleagues in the Senate and House of Representatives for their dedication and concerted actions taken to protect children from sexual exploitation. Most notably, I extend my appreciation to the other principal sponsor of S. 1469, Senator GRASSLEY, for his legislative leadership in this area, to Senator DENTON for his inclusion of the civil and criminal forfeiture provisions in the bill, and to Senator THURMOND, who as chairman of the Senate Judiciary Committee, expedited the passage of this legislation. I would also like to thank Congressmen HUGHES and SAWYER for their parallel efforts to enact child pornography legislation in the House of Representatives and their cooperation with us in the Senate to successfully resolve the differences between the two versions.

Mr. THURMOND. Mr. President, I rise today, as I did on July 22 of last year, to speak in support of legislation that would add new strength to the laws prohibiting the vile practice and social tragedy we know as child pornography. On that day, I rose to offer an amendment to S. 1469, the Sexual Exploitation of Children Act of 1983, that would include the crime of producing or dealing with child pornography in that list of offenses for which court-ordered electronic surveillance would be allowed. I offered that amendment and was an original sponsor of the bill because I felt the Federal Government should have the strongest means available to combat an industry which I have described as "a tragic curse upon this proud Nation and a scourge that cannot be tolerated."

Thanks primarily to the hard work of Senators SPECTER, GRASSLEY, and DENTON, S. 1469 was intended to close the loopholes in the current Federal law that allowed this industry to thrive. In addition to closing these loopholes, the thrust of S. 1469 was to remove any monetary incentive to engage in child pornography by providing for substantial increases in existing fines and for providing for both civil and criminal forfeiture for violations of the laws. The Sexual Exploitation of Children Act was favorably reported by the Committee on the Judiciary and later enjoyed the unanimous support of the Senate.

Today I am speaking in support of similar legislation in the hope that we can put an end to the "kiddy-porn" industry once and for all. I am delighted to join with my three distinguished colleagues from the Judiciary Committee in offering this amendment to H.R. 3635, the House-passed, Child Protection Act of 1983. This legislation, like S. 1469, is a legislative response to the landmark case of Ferber against New York, where the Court held that the exploitation and well-being of the child, rather than the obscenity of the materials themselves, was of paramount importance in determining the validity of any statutory bans.

The substitute amendment we offer today is the result of many hours of hard work and compromise with Members of the House of Representatives. This amendment will make H.R. 3635, like S. 1469, the most effective and constitutionally valid deterrent to those who would sexually exploit our youth for profit by combining the strongest parts of both bills. The result will be a noble accomplishment by both Houses of Congress. I might take a moment to commend Ms. Mary Louise Westmoreland, chief counsel of the Subcommittee on Juvenile Justice, and Ms. Linda Nersesian, chief counsel of the Subcommittee on Administrative Practice and Procedure, for their staff role in the negotiations and for their dedicated hard work to this cause.

Mr. President, I now urge my colleagues to accept this amendment and pass as modified, H.R. 3635, the Child Protection Act of 1983, so that its enactment can put the teeth back into laws intended to end this continuing tragedy.

Mr. STEVENS. Mr. President, I ask that the amendment be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2873) was agreed to.

Mr. DOLE. Mr. President, I welcome this opportunity to support this legislation, which takes aim at the exploiters of our youth. I have been an active proponent of legislative proposals introduced in this Congress to more effectively combat child pornography and have worked closely with Senators SPECTER and GRASSLEY in developing a bill that will serve to strengthen existing law.

As a cosponsor of the Senate-passed bill toughening Federal laws applicable to child pornography, I have examined the substitute legislation before us and determined that it combines the strongest provisions of both bills. In particular, I am pleased to note that this legislation contains provisions raising the age of minority from 16 to 18, increasing individual sanctions, and providing for an "organization" sanction, and allowing court-ordered wiretaps in order to lift the traditional veil of secrecy surrounding the sexual exploitation of minors.

According to testimony from the Department of Justice, since May of 1977, only 67 persons have been indicted under all available obscenity statutes, including obscenity statutes which are not limited to child pornography. Yet the findings of the bill before us are that "thousands of children, including large numbers of runaway and homeless youth, are exploited in the production and distribution of pornographic materials."

Mr. President, it does not take unusual reasoning power to identify that there is no correlation between the numbers of cases being prosecuted and the numbers of children being exploited. It is my hope that this legislation, combined with the Supreme Court's decision in New York against Ferber, will prompt more successful prosecutions of child pornographers.

The Senator from Kansas is confident that there is no need to impress upon my colleagues the importance of maintaining strong safeguards to protect our children from the fear of being sexually abused and exploited. It goes without saying that those children who do become victims of pornographic depictions suffer physical, emotional, and psychological damage, and are often scarred for life. Studies have indicated that sexually abused and exploited children are incapable of developing normal relationships

later on in life and have a tendency to become sexually abusive themselves. We need to act now to protect our children and future generations of children from this intolerable crime of exploitation for profit.

The legislation before us marks a positive step toward curbing the growth of the billion-dollar child pornography industry in this country. Mr. President, 1982 marked the "Year of the Child" in America. Let us hope that, through this legislation, we can make this the year that we made that promise good both in fact and in theory. I urge all of my colleagues to support this legislation.

Mr. GRASSLEY. Mr. President, we have before us a landmark in Federal efforts to eradicate child pornography. Taking its lead from the Supreme Court's 1982 decision in New York against Ferber, this bill outlaws the distribution of all child pornography—not simply that which is technically "obscene." The Court recognized in Ferber that the need to protect our children from sexual exploitation far outweighs the need of exploiters to first amendment protection, and the bill before us writes that conclusion into law.

Due to the outstanding efforts of Senator SPECTER, Senator DENTON, and of course the distinguished chairman, Senator STROM THURMOND, as well as Congressmen HUGHES and SAWYER, we have before us a compromise measure that shields as effectively as possible those children vulnerable to sexual exploitation. This bill was agreed to after much deliberation as to what standards would both protect children and pass constitutional muster.

I. LEGISLATIVE HISTORY PERTAINING TO S. 1469

In response to the Ferber decision, two bills were introduced and referred to the Senate Judiciary Committee in the last session of Congress. The bill that I introduced, S. 29, was identical to one which passed the Senate as part of the Violent Crime and Drug Enforcement Act in the latter part of the 97th Congress.

I reintroduced that bill on January 26, and later introduced another bill, S. 1240, which increased criminal penalties and raised the maximum age for children protected by the act to 18 from 16 in the current law. Senators THURMOND, DENTON, DOLE, LAXALT, HATCH, EAST, DECONCINI, HEFLIN, JEPSEN, KASTEN, RANDOLPH, DOMENICI, HUDDLESTON, WARNER, and NICKLES joined me in cosponsoring that bill.

As originally introduced, Senator SPECTER's bill, S. 57, significantly strengthened certain provisions but nevertheless contained a number of exceptions to prosecution. The bill originally contained a defense that would not restrain the distribution or production of materials involving minors if the materials contain "serious literary, artistic, scientific, social or eductional value." A specific exemption also existed in the original S. 57, and the version reported by the Juvenile Justice Subcommittee for mediums depicting children masturbating if that medium was "an integral portion of a work possessing serious scientific or educational value." I want to emphasize here today that these exemptions were dropped from S. 1469, which passed the Senate on July 16, 1983. No similar provisions were adopted in the legislation currently before us.

II. LEGISLATIVE HISTORY PERTAINING TO THE BILL BEFORE US

It should be noted that the legislation before us forges the strongest combination of the Senate and House bills possible. During discussions that Senator SPECTER and I had with Congressmen SAWYER and HUGHES, we ironed out two provisions in particular: one dealing with depictions of a sado-masochistic nature and the other having to do with simulated portrayals.

A. SADO-MASOCHISTIC DEPICTIONS

The Senate passed bill, S. 1469, deleted the parenthetical "for the purpose of sexual stimulation" from the current description of sado-masochistic abuse at 18 U.S.C. 22253(D). This parenthetical was struck because it was regarded as confusing since no other prohibited conduct under the definition of "sexually explicit conduct" was so narrowly construed. I believe that inclusion of the parenthetical in a courtroom situation would invite an array of psychiatrists into the trial to speculate as to whether the sado-masochistic materials were "sexually stimulating." I believe that we want to avoid that possibility and that we do avoid this possibility by eliminating the potential loophole.

The definition has been altered to reflect that the prohibited conduct is "sadistic or masochistic abuse" as opposed to "sado-masochistic abuse for the purpose of sexual stimulation." In making this change, any accompanying legislative history must and it is our resolve that it reflect intent in altering the act is to broaden the scope of the act. As amended, the substitute prohibits the production and interstate distribution of material which visually depicts a minor engaging in either sadistic abuse, masochistic abuse, or both.

B. TREATMENT OF SIMULATED CONDUCT

H.R. 3635 contains an explicit exemption for simulations of sexually explicit conduct "if there is no possibility of harm to the minor, taking into account the nature and circumstances of the simulation, and there is redeeming social, literary, educational, scientific, or artistic value."

The substitute before us preserves current law as it relates to simulations of sexual conduct. Hence, sexually explicit conduct is defined as actual or simulated conduct that utilizes any of the probibited depictions delineated in 18 U.S.C. 2253. This preservation, in our opinion, discourages imaginative pornographers from discovering significant loopholes.

The bill before us is in keeping with the Supreme Court decision in Ferber, which addressed and assessed the potential need for blanket exemptions to prosecution and concluded:

> A 12-year-old child photographed while masturbating surely suffers the same psychological harm whether the community labels the photograph "edifying" or "tasteless." The audience's appreciation of the depiction is simply irrelevant to New York's asserted interest in protecting children from psychological, emotional, and mental harm . . . An exception for depictions of serious social value, moreover, would actually increase opportunities for the content-based censorship disfavored by the First Amendment.

All of us recognize that this bill marks only the beginning of heightened efforts to abolish child pornography. The true test of its effectiveness remains in the hands of our Federal law enforcement personnel and prosecutors. Let us hope that through this legislation we will have armed them adequately.

(By request of Mr. STEVENS, the following statement was ordered to be printed in the RECORD:)

● Mr. DENTON. Mr. President, the American people are rightly outraged at the ruthlessness and moral decadence of child pornographers. The Senate shortly will approve legislation that will allow prosecution of the people who exploit and abuse children for profit and perversion. I commend Senators SPECTER and GRASSLEY for working quickly and efficiently to prepare and propose the legislative corrections that we will approve today. I also want to acknowledge Senator THURMOND, the able chairman of the Judiciary Committee, for his great capabilities and leadership in this important area.

The legislation is based upon the Ferber decision, which recognized that the business of manipulating and seducing children for the camera is not free speech protected by the first amendment. Rather, it is an attack on the family, an attack that victimizes the most vulnerable member of the family, and leaves a trail of destroyed young lives in its wake.

The footnotes of the Ferber decision illustrate that child pornography has become a multimillion-dollar industry, operating on a nationwide scale. One researcher has documented at least 260 different magazines that depict children engaging in sexually explicit conduct. Each magazine, each photo session, is an attack on an individual child.

To whom will those children turn? What emotional scars will they carry for life?

Mr. President, it seems that each day we learn about new horrors such as the serial murders of children by pedophiles who kidnap, sexually abuse, and murder at will, such as the forced prostitution of children, and even the exporting of children to other countries for a life of sexual imprisonment. Virtually every time one of those crimes occurs, child pornography is a factor. We must find ways under the law to make those activities so unprofitable that the child exploiters cannot continue their activities.

The legislation comes before us when we are in the shadow of yet another news account of tragic child abuse. In California, employees at a child care center were in fact perverted exploiters of the children entrusted to their care. The children were psychologically tormented and threatened into submission to the illegal and pornographic activities.

I suggested that one way to help achieve better law enforcement was to include forfeiture provisions in the legislation. The provisions that the bill contains will allow the Attorney General to go after the assets and profits of the enterprise used to produce the illegal material.

The bill includes a reporting section that requires the Department of Justice to inform Congress about the record of prosecutions. We hope for and anticipate that some of the known child molesting organizations will be prosecuted for their criminal activities.

I thank Senators GRASSLEY and SPECTER for adopting my suggestion. I commend them for their diligence and for their commitment to an important piece of legislation. Chairman THURMOND, the distinguished Senator from South Carolina, is to be commended for the leadership he has shown in this important law enforcement area.

The PRESIDING OFFICER. If there be no further amendments to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Child Protection Act of 1984".

SEC. 2. The Congress finds that—

(1) child pornography has developed into a highly organized, multi-million-dollar industry which operates on a nationwide scale;

(2) thousands of children including large numbers of runaway and homeless youth are exploited in the production and distribution of pornographic materials; and

(3) the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the individual child and to society.

SEC. 3. Section 2251 of title 18 of the United States Code is amended—

(1) by striking out "visual or print medium" each place it appears and inserting "visual depiction" in lieu thereof;

(2) by striking out "depicting" each place it appears and inserting "of" in lieu thereof;

(3) by striking out "person" each place it appears in subsection (c) and inserting "individual" in lieu thereof;

(4) by striking out "$10,000" and inserting "$100,000" in lieu thereof;

(5) by stiking out "$15,000" and inserting "$200,000" in lieu thereof; and

(6) by adding at the end of subsection (c) the following "Any organization which violates this section shall be fined not more than $250,000.".

SEC. 4. Section 2252 of title 18 of the United States Code is amended—

(1) by striking out ", for the purpose of sale or distribution for sale";

(2) by strking out "for the purpose of sale or distribution for sale" the second place it appears;

(3) by striking out "obscene" each place it appears;

(4) by striking out "visual or print medium" each place it appears and inserting "visual depiction" in lieu thereof;

(5) by striking out "depicts" each place it appears and inserting "is of" in lieu thereof;

(6) by striking out "or knowingly sells or distributes for sale" and inserting in lieu thereof "or distributes";

(7) by inserting after "mailed" the following: "or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails";

(8) by striking out "person" each place it appears in subsection (b) and inserting "individual" in lieu thereof;

(9) by striking out "$10,000" and inserting "$100,000" in lieu thereof;

(10) by striking out "$15,000" and inserting "$200,000" in lieu thereof; and

(11) by adding at the end of subsection (b) the following: "Any organization which violates this section shall be fined not more than $250,000.".

SEC. 5. (a) Section 2253 of title 18 of the United States Code is amended—

(1) in paragraph (1), by striking out "sixteen" and inserting "eighteen" in lieu thereof;

(2) by striking out "sado-masochistic" and inserting "sadistic or masochistic" in lieu thereof;

(3) by striking out "(for the purpose of sexual stimulation)"; and

(4) by striking out "lewd" and inserting "lascivious" in lieu thereof;

(5) by striking out ", for pecuniary profit"; and

(6) by amending paragraph (4) to read as follows:

(4) 'organization' means a person other than an individual.

(b) Section 2253 of title 18 of the United States Code, as amended by subsection (a) is redesignated as section 2255.

SEC. 6. Chapter 110 of title 18 of the United States Code is amended by inserting after section 2252 the following:

"§ 2253. Criminal forfeiture

"(a) A person who is convicted of an offense under section 2251 or 2252 of this title shall forfeit to the United States such person's interest in—

"(1) any property constituting or derived from gross profits or other proceeds obtained from such offense; and

"(2) any property used, or intended to be used, to commit such offense.

"(b) In any action under this section, the court may enter such restraining orders or take other appropriate action (including acceptance of performance bonds) in connection with any interest that is subject to forfeiture.

"(c) The court shall order forfeiture of property referred to in subsection (a) if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

"(d)(1) Except as provided in paragraph (3) of this subsection, the customs laws relating to disposition of seized or forfeited property shall apply to property under this section, if such laws are not inconsistent with this section.

"(2) In any disposition of property under this section, a convicted person shall not be permitted to acquire property forfeited by such person.

"(3) The duties of the Secretary of the Treasury with respect to dispositions of property shall be performed under paragraph (1) of this subsection by the Attorney General, unless such duties arise from forfeitures effected under the customs laws.

"§ 2254. Civil forfeiture

"(a) The following property shall be subject to forfeiture by the United States:

"(1) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual depiction in violation of this chapter.

"(2) Any visual depiction produced, transported, shipped, or received in violation of this chapter, or any material containing such depiction.

"(3) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(b) All provisions of the customs law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.".

SEC. 7. The table of sections at the beginning of chapter 110 of title 18 of the United States Code is amended—

(1) by inserting after the item relating to section 2252 the following new items:

"2253. Criminal forfeiture.
"2254. Civil forfeiture."; and

(2) by redesignating the item relating to section 2253 as 2255.

SEC. 8. Section 2516(1)(c) of title 18 of the United States Code is amended by inserting

"sections 2251 and 2252 (sexual exploitation of children)," after "section 664 (embezzlement from pension and welfare funds),".

SEC. 9. Beginning one hundred and twenty days after the date of enactment of this Act, and every year thereafter, the Attorney General shall report to the Congress on prosecutions, convictions, and forfeitures under chapter 110 of title 18 of the United States Code.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DEEP WATER PORT ACT AMENDMENTS

Mr. STEVENS. Mr. President, I ask the Chair to lay before the Senate Calendar Order No. 686, S. 1546.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1546) to amend the Deep Water Port Act of 1974, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation with an amendment to strike all after the enacting clause and insert:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Deepwater Port Act Amendments of 1983".

AMENDMENT, TRANSFER, OR RENEWAL OF LICENSE

SEC. 2. (a) Section 3(4) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(4)) is amended to read:

"(4) 'application' means an application submitted under this Act for a license for the ownership, construction, and operation of a deepwater port;".

(b) Section 4(b) of the Deepwater Port Act of 1974 (33 U.S.C. 1503(b)) is amended to read:

"(b)" The Secretary may—

"(1) on application, issue a license for the ownership, construction, and operation of a deepwater port; and

"(2) on petition of the licensee, amend, transfer, or reinstate a license issued under this Act.".

(c) Section 4(f) of the Deepwater Port Act of 1974 (33 U.S.C. 1503(f)) is amended to read:

"(f) The Secretary may amend, transfer, or reinstate a license issued under this Act if the amendment, transfer, or reinstatement is consistent with the findings made at the time the license was issued.".

(d) Section 4(h) of the Deepwater Port Act of 1974 (33 U.S.C. 1503(h)) is amended to read:

"(h) A license issued under this Act remains in effect unless suspended or revoked by the Secretary or until surrendered by the licensee.".

(e) Section 4(e)(1) of the Deepwater Port Act of 1974 (33 U.S.C. 1503(e)(1)) is amended by inserting at the end thereof: "On petition of a licensee, the Secretary shall review any condition of a license issued under this Act to determine if that condition is uniform, insofar as practicable, with the conditions of other licenses issued under this Act, reasonable, and necessary to meet the objectives of this Act. The Secretary shall amend or rescind any condition that is no longer necessary or otherwise required by any Federal department or agency under this Act.".

(f) The first sentence of section 5(g) of the Deepwater Port Act of 1974 (33 U.S.C. 1504(g)) is amended by striking "issued, transferred, or renewed" and inserting "issued".

(g) The first sentence of section 7(a) of the Deepwater Port Act of 1974 (33 U.S.C. 1506(a)) is amended by striking "issue, transfer, or renew" and inserting "issue".

(h) Section 7(b)(1) of the Deepwater Port Act of 1974 (33 U.S.C. 1506(b)(1)) is amended:

(1) by striking the first sentence and inserting: "The Secretary shall transmit promptly to the Attorney General and the Federal Trade Commission a complete copy of each application for issuance of a license or a petition for the amendment, transfer, or reinstatement of a license that is received."; and

(2) in the second sentence, by inserting immediately after the word "hearing" the phrase "on license application".

ECONOMIC DEREGULATION

SEC. 3. (a) Section 8 of the Deepwater Port Act of 1974 (33 U.S.C. 1507) is amended to read:

"SEC. 8. (a) A deepwater port and a storage facility serviced directly by that deepwater port shall operate as a common carrier under applicable provisions of part I of the Interstate Commerce Act and subtitle IV of title 49, United States Code, except as provided by subsection (b) of this section.

"(b) A licensee under this Act shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued. However, a licensee is not subject to common carrier regulations under subsection (a) of this section when that licensee—

"(1) is subject to effective competition for the transportation of oil from alternative transportation systems; and

"(2) sets its rates, fees, charges, and conditions of service on the basis of competition, giving consideration to other relevant business factors such as the market value of services provided, licensee's cost of operation, and the licensee's investment in the deepwater port and a storage facility, and components thereof, serviced directly by that deepwater port.

"(c) When the Secretary has reason to believe that a licensee is not in compliance with this section, the Secretary shall commence an appropriate proceeding before the Federal Energy Regulatory Commission or request the Attorney General to take appropriate steps to enforce compliance with this section and, when appropriate, to secure the imposition of appropriate sanctions. In addition, the Secretary may suspend or revoke the license of a licensee not complying with its obligations under this section.".

SUSPENSION OF FEE COLLECTION AND SUBROGATION

SEC. 4. (a) Section 18 of the Deepwater Port Act of 1974 (33 U.S.C. 1517) is amended as follows:

(1) In the first sentence of subsection (a), following the words "deepwater port", the first time they appear, insert "while located in the safety zone".

(2) In subsection (f)(3), strike the third and fourth sentences and insert: "These collections shall cease after the date of enactment of the Deepwater Port Act Amendments of 1983, unless there are adjudicated claims against the Fund to be satisfied. The Secretary may order the collection of the fee to be resumed when the unobligated balance of the Fund as reduced by the unliquidated debts to the United States Treasury is less than $4,000,000. Any collection of fees ordered by the Secretary under the preceding sentence shall cease whenever the unobligated balance of the Fund as reduced by the unliquidated debts to the United States Treasury exceeds $4,000,000. The Fund may borrow from the United States Treasury at an interest rate to be determined by the Secretary of the Treasury amounts sufficient to maintain the available balance in the Fund at $4,000,000.".

(3) In the seventh sentence of subsection (f)(3), after the word "than", insert "the amount the Secretary determines is needed to draw upon under subsection (c)(3) of this section or".

(4) In the ninth sentence of subsection (f)(3), after the word "needed", insert "to draw upon under subsection (c)(3) of this section or".

(5) In subsection (h)(2), insert at the end thereof: "In that event, the owner and operator of the vessel are jointly and severally liable for cleanup costs and damages resulting from that discharge in the same manner and to the same extent as under subsection (d) of this section.".

(6) In subsection (h)(3), insert at the end thereof: "When the Fund under this subsection is subrogated to the right of any person entitled to recovery against the owner or operator of a vessel, that owner and operator are jointly and severally liable for cleanup costs and damages resulting from that discharge in the same manner and to the same extent as under subsection (d) of this section.".

RELATIONSHIP TO OTHER LAWS

SEC. 5. (a) Section 19(a) of the Deepwater Port Act of 1974 (33 U.S.C. 1518(a)) is amended by adding at the end thereof:

"(3) The Secretary of State shall notify the government of each foreign state having vessels registered under its authority or flying its flag which may call at or otherwise utilize a deepwater port but which do not currently have an agreement in effect as provided in subsection (c)(2)(A)(i) of this section that the United States intends to exercise jurisdiction over vessels calling at or otherwise utilizing a deepwater port and the persons on board such vessels. The Secretary of State shall notify the government of each such state that, absent its objection, its vessels will be subject to the jurisdiction of the United States whenever they—

"(A) are calling at or otherwise utilizing a deepwater port; and

"(B) are within the safety zone of such a deepwater port and are engaged in activities connected, associated, or potentially interfering with the use and operation of the deepwater port.

The Secretary of State shall promptly inform licensees of deepwater ports of all objections received from governments of foreign states in response to notification made under this paragraph.".

on a permanent basis would be more than offset by collections of overpayments. The net collections to be paid into miscellaneous receipts are estimated to be $24 million for fiscal year 1990 and $28 million for fiscal year 1991.

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CHILD SEXUAL ABUSE AND PORNOGRAPHY ACT OF 1986

P.L. 99-628, see page 100 Stat. 3510

DATES OF CONSIDERATION AND PASSAGE

House September 29, 1986

Senate October 18, 1986

House Report (Judiciary Committee) No. 99-910, Sept. 27, 1986 [To accompany H.R. 5560]

Cong. Record Vol. 132 (1986)

No Senate Report was submitted with this legislation.

HOUSE REPORT NO. 99-910

[page 1]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5560) to amend title 18 of the United States Code to ban the production and use of advertisements for child pornography or solicitations for child pornography, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

* * * * *

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SUMMARY OF THE BILL

The bill closes a loophole regarding interstate transportation of children for the purpose of producing child pornography to cover transportation even if no commercial purpose exists.

The bill prohibits advertising—to buy or sell child pornography, to offer or seek children for sex acts for the purpose of producing child pornography, or to participate with children in sex acts for the purpose of producing child pornography.

The bill defines the term "visual depiction" to include undeveloped film and videotape.

The bill rewrites the Mann Act ("White Slave Traffic") to eliminate its anachronistic features and to make it gender neutral. It also deletes the commercial purpose requirement in prohibited transportations in 18 U.S.C. 2423.

BACKGROUND

Of all of the crimes known to our society, perhaps none is more revolting than the sexual exploitation of children, particularly for the purpose of producing child pornography. These terrible crimes have long been a concern of the Committee on the Judiciary which developed the original legislation banning this activity in the 95th Congress.

More recently the Subcommittee on Crime has continued to examine the seriousness of this problem.[1] The production and distribution of child pornography continues to be a serious problem. Senator William V. Roth, Jr. (Delaware), who chaired hearings investigating child pornography and pedophilia by the Permanent Subcommittee on Investigations of the Senate Committee on Government Affairs in 1984 and 1985, testified before the Subcommittee that there may be as many as one half million children and adolescents who are the victims of sexual abuse annually.[2] Senator Roth shared with the Committee a 76 page Draft Report of the Permanent Subcommittee on Investigations on "Child Pornography and Pedophilia" that demonstrates the continuation of widespread distribution of child pornography and included the Subcommittee's conclusions and recommendations.[3]

THE 1978 LEGISLATION

In the 95th Congress, Public Law 95-225 was enacted, adding Chapter 110, "Sexual Exploitation of Children", to title 18, United States Code. This chapter created a Federal felony offense of sexual exploitation of children. The offense consisted of inducing persons under the age of 16 to engage in explicit sexual conduct for the

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purpose of filming or photographing the conduct and shipping the product in interstate commerce.

Chapter 110, as originally enacted, also prohibited the commercial distribution of obscene child pornography depicting such sexual conduct by minors.

Finally, it amended one section of what is popularly known as the Mann Act (Chapter 117 of title 18). This section, 18 U.S.C. 2423, previously was an enhancement penalty provision for "white slave" traffic if the female being transported was a minor. The amendment extended coverage to minor males as well as females, and, in lieu of prohibiting such transportation for "prostitution or other

[1] See Hearings before the Subcommittee on Crime of the House Committee on the Judiciary on H.R. 3062 and related bills relating to Protection of Children Against Sexual Exploitation, June 16, 1983, Serial No. 138, 98th Cong. 1st sess.; and Hearings before the Subcommittee on Crime of the House Committee on the Judiciary on Implementation of the Child Protection Act, August 14, 1986, 99th Cong. 2d sess.

[2] Statement of Senator William V. Roth, Jr. at the Hearings before the Subcommittee on Crime of the House Committee on the Judiciary on Implementation of the Child Protection Act, August 14, 1986, 99th Cong. 2d sess.

[3] Hearings of the Senate Permanent Subcommittee on Investigations on Child Pornography and Pedophilia. November 29-30, 1984, S. Hrg. 98-1277, Part 1, 98th Cong. 2d sess.; February 21, 1985, S. Hrg. 99-18, Part 2, 99th Cong. 1st sess.

immoral purposes", prohibits transportation for prostitution or any "commercially exploited" explicit sexual conduct.

THE 1984 AMENDMENTS

On May 21, 1984, Public Law 98-292 (H.R. 3635, H. Rept. 98-536) was enacted, making several changes to correct short-comings identified in the first few years of implementation of chapter 110, and taking into account a landmark Supreme Court decision (*New York* v. *Ferber*, 458 U.S. 747, 102 S. Ct. 3348, 73 L.Ed.2d 1113 (1982)). Chapter 110 had been enacted under the assumption that distributors who had no role in the direct child abuse (recruiting for the activity to be filmed, and the filming and production) could only be prosecuted if the material in question were obscene under the Supreme Court's obscenity rulings, most notably *Miller* v. *California*. (413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973)).

In *Ferber*, the Supreme Court ruled that such child pornography material is entitled to no First Amendment protection, and that obscenity need not be proven. The Court reasoned that all persons involved in distribution of such materials are necessary links back to the original acts of child abuse, and can be prosecuted for such abuse. (The case upheld a New York statute similar to chapter 110, but which did not require proof of obscenity.)

The *Ferber* decision prompted one of the amendments made in the 1984 amendments, namely the elimination of the obscenity requirement.

A second change was to eliminate the requirement that interstate distribution be for purpose of sale; experience revealed that much if not most child pornography material is distributed through an underground network of pedophiles who exchange the material on a non-commercial basis, and thus no sale is involved.

A third change was to raise the age of protection of children from such activities from those under 16 to those under 18 years of age which made these cases much easier to prosecute.

Other changes included permitting wiretaps in investigtions, increasing fine levels, and authorizing criminal and civil forfeiture of property involved in these offenses.

These changes were signed into law on May 21, 1984. (P.L. 98-292). Since enactment of the Child Protection Act of 1984, enforcement of the law against the sexual exploitation of children has increased dramatically.

During the 6 years and 4 months between January 1, 1978 and May 20, 1984, there were a total of 69 individuals indicted and 65

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individuals convicted of violating chapter 110 of title 18. In the 28 months from May 21, 1984 through September 26, 1986, 274 individuals have been indicted and 214 individuals have been convicted of violating chapter 110 of title 18 according to cases reported to the Department of Justice so far.[4] It is likely that the actual number is higher. The Committee is very pleased with the substantially increased enforcement of this chapter that these statistics represent.

[4] Telephone conversation between Don Nicholson, Criminal Division, U.S. Department of Justice and Staff of the Subcommittee on Crime, September 26, 1986.

Subcommittee Action

On August 14, 1986, the Subcommittee on Crime held an oversight hearing on the implementation of chapters 110 and 117 of title 18. Testimony was heard from the Department of Justice, from the U.S. Postal Inspection Service which does much of the investigative work involved in implementing these statutes, and from Senator William V. Roth, Jr., Chairman of the Senate Permanent Subcommittee on Investigation, which did an extensive investigation of child pornography in this Congress.

On September 19, 1986, Representative William J. Hughes introduced H.R. 5560, the "Child Sexual Abuse and Pornography Act of 1986".

On September 24, 1986, H.R. 5560 was marked up by the Subcommittee on Crime. An amendment offered by Representative Bill McCollum was adopted to delete the commercial purpose requirement and to further modernize section 2423 of title 18, United States Code, with its greater penalties for transportation of minors in interstate or foreign commerce for the purpose of prostitution or illegal sexual activity. A quorum being present, the bill, as amended, was ordered favorably reported to the full committee as a single amendment in the nature of a substitute.

Committee Action

On September 25, 1986, the Committee on the Judiciary, a quorum being present, approved the amendment in the nature of the substitute and ordered the bill favorably reported to the House by a voice vote.

Section-by-Section Analysis

SECTION 1. SHORT TITLE

The short title is the "Child Sexual Abuse and Pornography Act of 1986".

SECTION 2. AVERTISING OFFENSES RELATED TO SEXUAL EXPLOITATION OF CHILDREN

This section creates two new offenses. First, it prohibits anyone from knowingly making, printing or publishing, or causing to be made, printed or published, any notice or advertisement seeking or offering to receive, exchange, buy, produce, display, distribute, or

[page 6]

reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct.

Second, it prohibits anyone from knowingly making, printing or publishing, or causing to be made, printed or published, any notice or advertisement seeking or offering participation in any act of sex-

ually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct. This prohibits a person from advertisting that he wishes to participate in sex acts with minors for the purpose of producing visual depictions. It prohibits a child, or an agent for a child, from advertising the child's availability for sex acts for the purpose of producing pornography, and it prohibits a person from advertisting to recruit children for sex acts for the purpose of producing pornography.

These offenses are committed when the actor knows or has reason to know that the notice or advertisement will be transported in interstate or foreign commerce or mailed; or the notice or advertisement is transported in interstate or foreign commerce or mailed.

The government must prove that the defendant knew the character of the visual depictions as depicting a minor engaging in sexually explicit conduct but need not prove that the defendant actually knew the person depicted was in fact under 18 years of age or that the depictions violated Federal law.

The advertising of child pornography has been a very serious problem. There are a number of magazines and newsletters which serve to advertise the availability of child pornography or to offer children to participate in sexually explicit conduct. Control of advertising of this type was the first recommendation of the Senate Permanent Subcommittee on Investigations.[5] The advertisement itself need not be a visual depiction, nor it must be obscene for a conviction to be sustained. The Committee believes that this comports with the first amendment.[6]

A recent technological phenomenon, computer "bulletin boards," have been discovered to be used to offer pornography for sale or exchange or to advertise the availability of children for sexual exploitation.[7] Use of a computer bulletin boards for such notices, since they are a means of interstate commerce, would also be prohibited by this section.

SECTION 3. TRANSPORTATION OF CHILDREN FOR PURPOSES OF SEXUAL EXPLOITATION

Currently the offense of transporting a minor across state lines for the purpose of having the minor participate in prohibited sexual conduct (18 U.S.C. 2423, chapter 117 of title 18) is prosecutable only if the prohibited sexual conduct will be commerically ex-

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[5] Investigation Report on "Child Pornography and Pedophilia," Senate Permanent Subcommittee on Investigations, pp. 66-67, (1986 Draft).

[6] *See* Memorandum—"Advertising Prohibitions Under the Comstock Act" [18 U.S.C. Section 1461], by Rita Ann Reimer, Legislative Attorney, American Law Division, July 14, 1986 in Hearings before the Subcommittee on Crime of the House Committee on the Judiciary on Implementation of the Child Protection Act, August 14, 1986, 99th Cong. 2d sess.

[7] Investigation Report on "Child Pornography and Pedophilia," Senate Permanent Subcommittee on Investigations, pp. 21-23, (1986 Draft).

ploited. This is not a problem in regard to the conduct for which section 2423 was originally intended—prostitution—since commercial purpose is an element of prostitution. However, in the case of transportation for the purpose of participating in the production of child pornography materials, private (rather than commerical) exploitation is frequently the objective, and thus section 2423 cannot now be successfully invoked.

To address this problem, this section amends section 2251 of title 18 (chapter 110) directly since the gap in coverage relates directly to transportation for the purpose of producing child pornography. Naturally, this amendment does not contain a commerical requirement.

SECTION 4. CLARIFICATION OF MEANING OF VISUAL DEPICTION

The original 1978 legislation contained a definition of "visual depiction", which include undeveloped film within the definition. In the 1984 amendments, the defined term "visual or print medium" (which term was replaced in the offenses by the term "visual depiction") was dropped as a defined term since it was felt that a definition was no longer necessary. The bill defines the term "visual depiction" to include express coverage of undeveloped film and videotape to facilitate prosecutions involving such media, at the recommendation of the U.S. Postal Inspection Service. The Committee intends that any visual depiction of sexually explicit conduct that can be retrieved by electromagnetic, chemical or other means shall also be included in the terms "visual depiction". The Committee approves of the holding of the U.S. Court of Appeals for the Ninth Circuit in rejecting the argument that the term "visual depiction" does not include undeveloped film (*U.S.* v. *James E. Smith,* 795 F. 2d 841, 846-7 (9th Cir. July 29, 1986).

SECTION 5. MANN ACT AMENDMENTS

Subsection (a)

A common term for the condition of women compelled to work as prostitutes in the early 20th century was "white slavery." The Act of June 25, 1910, based on legislation introduce by Representative James R. Mann of Illinois (1856-1922), has been codified as sections 2421 and 2422 of title 18.

This subsection replaces the current chapter heading for chapter 117, "White Slave Traffic" with a more descriptive and appropriate heading: "Transportation For Illegal Sexual Activity and Related Crimes."

Subsection (b)

The Mann Act (sections 2421-2422, and section 2424 of title 18, U.S.C.) now applies only to offenses involving the transportation of females. The problem of the sexual exploitation of young males is equally as serious. This section rewrites these sections to make gender neutral. The section also deletes obsolete terminology (e.g. "compel her to give herself up to the practice of prostitution, or to give herself up to debauchery,").

The change in section 2421 also substitutes for the phrase "for any other immoral purpose" as a purpose for the transportation which violates the section, the more precise standard of "with intent that such individual engage in . . . any sexual activity for which any person can be charged with a criminal offense."

Under this language, the offense is transporting any person for illegal sexual activity under any applicable law—Federal, State or local. This is a more appropriate standard for a Federal offense than the current vague standard of "immoral purpose," under which the transportation can be an offense even when the conduct for which the transportation takes place (such as non-commercial sex between consenting unmarried adults) violates no law in any of the jurisdictions involved in the travel. This change reflects a proper recognition of community standards regarding acceptable sexual behavior, in that Federal law would, in effect, apply those standards.

The amendment also deletes an unnecessary paragraph relating to one who "procures or obtains any ticket or tickets . . . to be used" for the interstate transportation. This conduct would constitute aiding and abetting the commission of this offense and thus a person who engages in such conduct would be treated as a violator of the Mann Act offenses by section 2 of title 18 of the United States Code relating to principals. This language in 18 U.S.C. 2421 is superfluous.

Similarly, sections 2422 and 2423 are rewritten in modern form and the commercial purpose requirement is deleted from section 2423.

Subsection (c)

The amendments in this subsection amend section 2424 of title 18 to make it gender neutral.

Committee Approval

On September 25, 1986, a quorum being present, the Committee on the Judiciary ordered favorably reported to the House H.R. 5560, as amended, as a single amendment in the nature of a substitute.

Oversight Findings

The Committee makes no oversight findings with respect to this legislation other than those included in the text of this report.

In regard to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

New Budget Authority

In regard to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, H.R. 5560 creates no new budget authority or increased tax expenditures for the Federal Government.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

FEDERAL ADVISORY COMMITTEE ACT OF 1972

The Committee finds that this legislation does not create any new advisory committees within the meaning of the Federal Advisory Committee Act of 1972.

COST ESTIMATE

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee agrees with the cost estimate of the Congressional Budget Office.

STATEMENT OF THE CONGRESSIONAL BUDGET OFFICE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, and section 403 of the Congressional Budget Act of 1974, the following is the cost estimate of H.R. 5560.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 26, 1986.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 5560, the Child Sexual Abuse and Pornography Act of 1986, as ordered reported by the House Committee on the Judiciary, September 25, 1986. CBO estimates that enactment of this bill would result in no significant cost to the federal government, and in no cost to state or local governments.

H.R. 5560 would make illegal the advertising for child pornography and the interstate transportation of any minor for the purpose of producing child pornography, prostitution or any sexual activity for which any person can be charged with a criminal offense. Currently the interstate transportation of minors is illegal only when it is for prostitution or for prohibited sexual conduct that will be commercially exploited. This bill also makes a number of technical changes to the Mann Act (regarding transportation for illegal sexual activity and related crimes) to eliminate anachronistic features and to make it gender neutral.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

ROSEMARY MARCUSS
(For Rudolph G. Penner).

* * * * *

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been spoken by my friend, the gentleman from Massachusetts [Mr. FRANK]. The extraordinary cooperation which we have received throughout, that is, "we," the chairman and ranking member of this subcommittee, through this whole session of Congress. I think it is exhibited in the bills that we are bringing to the floor today. Bills which could be very difficult and could be controversial and could have many sharp edges but they do not. They have been worked off, they have been worked at with a sense of cooperation and comity. I think we have produced good, solid, effective legislation.

As chairman of the subcommittee, I want to thank my colleagues personally for their extraordinary level of cooperation and I want to suggest to the House that because this bill and the other bills we have talked about today have been the product of that kind of attitude and outlook, I think that they are good, supportable bills which will make a difference in this immigration law.

Mr. YOUNG of Florida. Mr. Speaker, I rise in strong support of H.R. 3737, legislation to amend the Immigration and Nationality Act to deter immigration-related marriage fraud.

As a cosponsor of this important measure, I share the concern expressed by many of my constituents about our inconsistent and often confusing immigration reforms, and have introduced several bills aimed at correcting serious immigration problems, I found myself unable to support the rule that would have allowed H.R. 3810, the Immigration Control and Legalization Amendments Act of 1985, to come to the House floor for consideration on September 26, 1986. Not only did the rule automatically add over 20 amendments directly to the bill, but it denied Members an opportunity to amend one of the most contentious issues of the legislation—the provisions granting permanent resident status to foreign farmworkers who could prove they had worked at least 60 days in American agriculture between May 1985 and May 1986.

The continued frustration my constituents and I share over our immigration problems cannot continue. While this legislation is but a small step, it is certainly an important one. H.R. 3737 closes the marriage fraud loophole by requiring a 2-year conditional residency period for an alien spouse.

In order for the status to be adjusted to permanent resident, the couple must attend an interview within 90 days of the second anniversary of admission. If the interview reveals that the marriage is a lawful one and not entered into solely for the purpose of obtaining residency, the conditional status will be removed. If, however, the interview reveals that the marriage was fraudulent, deportation hearings would begin. Finally, criminal penalties are established for marriage fraud. Anyone who knowingly enters into a marriage to evade immigration laws is subject to a maximum fine of $250,000 or 5 years imprisonment, or both.

There are many law-abiding individuals throughout the world who are desperate to become United States citizens and who have followed our laws without success. This legislation attempts to close one of the loopholes in our immigration laws that has allowed some to unfairly side-step the law and gain permanent residency ahead of those who have waited for so long.

Mr. Speaker, I urge my colleagues in the House of Representatives to approve this legislation, and call upon the Senate to take prompt and favorable action.

Mr. MAZZOLI. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky [Mr. MAZZOLI] that the House suspend the rules and pass the bill, H.R. 3737, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

CHILD SEXUAL ABUSE AND PORNOGRAPHY ACT OF 1986

Mr. HUGHES. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5560) to amend title 18 of the U.S. Code to ban the production and use of advertisements for child pornography or solicitations for child pornography, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5560

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Sexual Abuse and Pornography Act of 1986".

SEC. 2. ADVERTISING OFFENSES RELATED TO SEXUAL EXPLOITATION OF CHILDREN.

Section 2251 of title 18, United States Code, is amended—

(1) in subsection (a), by striking out "subsection (c)" and inserting in lieu thereof "subsection (d)";

(2) in subsection (b), by striking out "subsection (c)" and inserting in lieu thereof "subsection (d)";

(3) by inserting after subsection (b) the following:

"(c)(1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering—

"(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

"(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct;

shall be punished as provided under subsection (d).

"(2) The circumstance referred to in paragraph (1) is that—

"(A) such person knows or has reason to know that such notice or advertisement will be transported in interstate or foreign commerce or mailed; or

"(B) such notice or advertisement is transported in interstate or foreign commerce or mailed."; and

(4) by redesignating subsection (c) as subsection (d).

SEC. 3. TRANSPORTATION OF CHILDREN FOR PURPOSES OF SEXUAL EXPLOITATION.

Section 2251(a) of title 18, United States Code, is amended by inserting ", or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in," after "assist any other person to engage in,".

SEC. 4. CLARIFICATION OF MEANING OF VISUAL DEPICTION.

Section 2255 of title 18, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (3);

(2) by striking out the period at the end of paragraph (4) and inserting "; and" in lieu thereof; and

(3) by adding at the end the following:

"(5) 'visual depiction' includes undeveloped film and videotape.".

SEC. 5. MANN ACT AMENDMENTS.

(a) CHAPTER HEADING.—(1) The heading for chapter 117 of title 18, United States Code, is amended to read as follows:

"CHAPTER 117—TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES".

(2) The table of chapters for part I of title 18, United States Code, is amended so that the item relating to chapter 117 reads as follows:

"117. Transportation for illegal sexual activity and related crimes.".

(b) REVISION OF OFFENSE PROVISIONS.—(1) Chapter 117 of title 18, United States Code, is amended by striking out section 2421 and all that follows through section 2423 and inserting in lieu thereof the following:

"§ 2421. Transportation generally

"Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than five years, or both.

"§ 2422. Coercion and enticement

"Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate of foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than five years, or both.

"§ 2423. Transportation of minors

"Whoever knowingly transports any individual under the age of 18 years in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than ten years, or both.".

(2) The table of sections at the beginning of chapter 117 of title 18, United States Code, is amended so that the item relating to section 2422 reads as follows:

"2422. Coercion and enticement.".

(c) GENDER-NEUTRAL AMENDMENTS TO SECTION 2424.—(1) Section 2424 of title 18, United States Code, is amended—

"(1) by striking out "female" in the heading for such section and inserting "individual" in lieu thereof;

"(2) by striking out "woman or girl" each place it appears and inserting "individual" in lieu thereof;

"(3) by striking out "she" each place it appears and inserting "that individual" in lieu thereof;

"(4) by striking out "her" each place it appears and inserting "that individual's" in lieu thereof;

"(5) by striking out "him" each place it appears and inserting "that person"; and

"(6) by striking out "his" and inserting "that person's".

The SPEAKER pro tempore. Is a second demanded?

Mr. McCOLLUM. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey [Mr. HUGHES] will be recognized for 20 minutes, and the gentleman from Florida [Mr. McCOLLUM] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, of all of the crimes known to our society, perhaps none is more revolting than the sexual exploitation of children for the production of pornography.

The Subcommittee on Crime, which I chair, has been monitoring our Government's enforcement effort against this terrible crime for several years. Prior to the amendments which were developed in 1984 with the leadership of our committee, and in particular the former Member from Michigan, Hal Sawyer, the Federal Government rarely prosecuted child pornographers. In the 6 years between 1978 and 1984 only 65 individuals were convicted of child pornography offenses. However I am pleased to report to the House that in the 28 months since the Child Protection Act of 1984 was enacted, at least 214 individuals—and probably more since the data is incomplete—have been convicted of these crimes. That number represents 3½ times as many convictions in just over 2 years than in all of the prior 6 years. I am pleased that the Department of Justice is placing a much higher priority on these offenses which are among the most disgusting in the Criminal Code.

Despite the increased enforcement effort, the indications are that these crimes are still being committed in large numbers. The Permanent Subcommittee on Investigations of the other body has extensively examined the program of child pornography and pedophilia. In testimony before the Subcommittee on Crime, it was estimated that there may be as many as one-half million children who are sexually abused annually.

Mr. Speaker, the Committee on the Judiciary has reported a bill to substantially strengthen our ability to investigate and prosecute these crimes.

First, the bill closes a loophole regarding the interstate transportation of children for the purpose of making child pornography to eliminate a requirement that the transportation for the purpose of sexual abuse have a commercial purpose.

Second, the bill prohibits advertising to distribute or purchase child pornography. It also prohibits advertising that will aid in the production of child pornography such as recruiting or offering children to participate in sex acts for the purpose of making child pornography. This provision has been drafted so that it will outlaw the use of computer bulletin boards to exchange information about the availability of children for child pornography.

Third, the bill defines the term "visual depiction" to include undeveloped film and videotape.

Fourth, the bill rewrites the Mann Act relating to interstate transportation of women for the purpose of prostitution or other prohibited sexual activity to modernize the offenses and to make them gender neutral.

I want to commend the ranking Republican member of the subcommittee, BILL McCOLLUM, for his cooperation and contributions to the bill. It is a good bill. It was unanimously reported from the committee. I urge the House to pass the bill.

Mr. Speaker, I reserve the balance of my time.

□ 1415

Mr. McCOLLUM. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH], the ranking minority member of the Committee on the Judiciary.

Mr. FISH. Mr. Speaker, I rise in strong support of the Child Sexual Abuse and Pornography Act of 1986 because it expands the Federal arsenal against child abuse. There is no room for leniency in our battle to protects our children from child pornography. The chairman of the Subcommittee on Crime, Mr. HUGHES, and the ranking Republican Mr. McCOLLUM, deserves great credit for moving this bill to the floor.

The improvements made to Federal child pornography laws in 1984, which I cosponsored, have been highly successful. Public Law 98-292 has lead to 164 Federal child pornography convictions in the last 2 years. This total is roughly three times larger than the number obtained in the previous 6½ years under the old laws. But our work is not complete. We must continue our efforts to wipe out this despicable form of child abuse.

H.R. 5560 makes two important improvements to our Federal laws that protect the younger members of our society. First, it outlaws advertisements for child pornography. Persons advertising pornographic materials depicting children or advertising for the purpose of recruiting children into this despicable activity would be strictly punished. This prohibition is particularly important in today's high technology world because pedophiles and other child abusers are relying more and more on computers to communicate and advertise their criminal activities. The advertising prohibitions in H.R. 5560 will also apply to these computer communications.

Second, this bill makes a vast improvement to the existing law that prohibits the interstate or foreign transportation of children for purposes of sexual abuse. Today, this conduct violates Federal law only if there is a commercial purpose. H.R. 5560 deletes the requirement of a commercial purpose so that the Federal law will punish anyone transporting children in interstate or foreign commerce for purposes of any illegal sexual activity. These children are harmed by sexual abuse whether or not someone profits from it. I therefore support the elimination of the profit motive as a prerequisite to Federal prosecution.

The Child Sexual Abuse and Pornography Act of 1986 also updates the laws on transportation in interstate and foreign commerce for immoral purposes. These provisions, commonly referred to as the Mann Act, use archaic language and apply to the transportation of women. This law updates the language of these sections and makes them gender neutral.

I strongly urge the adoption of H.R. 5560, the Child Sexual Abuse and Pornography Act of 1986 because it provides a substantial improvement in our Federal laws prohibiting the sexual abuse of children. We must continue every effort to protect this Nation's greatest resource: its youth.

Mr. HUGHES. Mr. Speaker, I have no further requests for time.

Mr. McCOLLUM. Mr. Speaker, I yield myself such time as I may consume.

"§ 2423. Transportation of minors

"Whoever knowingly transports any individual under the age of 18 years in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than ten years, or both.".

(2) The table of sections at the beginning of chapter 117 of title 18, United States Code, is amended so that the item relating to section 2422 reads as follows:

"2422. Coercion and enticement.".

(c) GENDER-NEUTRAL AMENDMENTS TO SECTION 2424.—(1) Section 2424 of title 18, United States Code, is amended—

"(1) by striking out "female" in the heading for such section and inserting "individual" in lieu thereof;

"(2) by striking out "woman or girl' each place it appears and inserting "individual" in lieu thereof;

"(3) by striking out "she" each place it appears and inserting "that individual" in lieu thereof;

"(4) by striking out "her" each place it appears and inserting "that individual's" in lieu thereof;

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The SPEAKER pro tempore. Is a second demanded?

Mr. McCOLLUM. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

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The Chair recognizes the gentleman from New Jersey [Mr. HUGHES].

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Second, the bill prohibits advertising to distribute or purchase child pornography. It also prohibits advertising that will aid in the production of child pornography such as recruiting or offering children to participate in sex acts for the purpose of making child pornography. This provision has been drafted so that it will outlaw the use of computer bulletin boards to exchange information about the availability of children for child pornography.

Third, the bill defines the term "visual depiction" to include undeveloped film and videotape.

Fourth, the bill rewrites the Mann Act relating to interstate transportation of women for the purpose of prostitution or other prohibited sexual activity to modernize the offenses and to make them gender neutral.

I want to commend the ranking Republican member of the subcommittee, BILL McCOLLUM, for his cooperation and contributions to the bill. It is a good bill. It was unanimously reported from the committee. I urge the House to pass the bill.

Mr. Speaker, I reserve the balance of my time.

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Mr. McCOLLUM. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH], the ranking minority member of the Committee on the Judiciary.

Mr. FISH. Mr. Speaker, I rise in strong support of the Child Sexual Abuse and Pornography Act of 1986 because it expands the Federal arsenal against child abuse. There is no room for leniency in our battle to protects our children from child pornography. The chairman of the Subcommittee on Crime, Mr. HUGHES, and the ranking Republican Mr. McCOLLUM, deserves great credit for moving this bill to the floor.

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H.R. 5560 makes two important improvements to our Federal laws that protect the younger members of our society. First, it outlaws advertisements for child pornography. Persons advertising pornographic materials depicting children or advertising for the purpose of recruiting children into this despicable activity would be strictly punished. This prohibition is particularly important in today's high technology world because pedophiles and other child abusers are relying more and more on computers to communicate and advertise their criminal activities. The advertising prohibitions in H.R. 5560 will also apply to these computer communications.

Second, this bill makes a vast improvement to the existing law that prohibits the interstate or foreign transportation of children for purposes of sexual abuse. Today, this conduct violates Federal law only if there is a commercial purpose. H.R. 5560 deletes the requirement of a commercial purpose so that the Federal law will punish anyone transporting children in interstate or foreign commerce for purposes of any illegal sexual activity. These children are harmed by sexual abuse whether or not someone profits from it. I therefore support the elimination of the profit motive as a prerequisite to Federal prosecution.

The Child Sexual Abuse and Pornography Act of 1986 also updates the laws on transportation in interstate and foreign commerce for immoral purposes. These provisions, commonly referred to as the Mann Act, use archaic language and apply to the transportation of women. This law updates the language of these sections and makes them gender neutral.

I strongly urge the adoption of H.R. 5560, the Child Sexual Abuse and Pornography Act of 1986 because it provides a substantial improvement in our Federal laws prohibiting the sexual abuse of children. We must continue every effort to protect this Nation's greatest resource: its youth.

Mr. HUGHES. Mr. Speaker, I have no further requests for time.

Mr. McCOLLUM. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Child Sexual Abuse and Pornography Act of 1986 strengthens the existing Federal child abuse statutes in several prominent and potent ways. H.R. 5560 provides additional protection for our children from the slimy underworld of child pornography.

The sexual abuse of a child during the making of pornography is exacerbated by the lifetime fear that the pictures themselves will surface to ruin the adult life of an abused child. Child pornography is horrendous and we must continue our efforts against it.

H.R. 5560 expands the existing child pornography laws to prohibit advertisements for child pornography. The bill also bans advertising by adults who wish to participate in the creation of child pornography and advertisements for the purpose of recruiting children to create pornography. The Permanent Subcommittee on Investigations of the other body has issued an investigative report recommending a ban on advertising child pornography and this bill fulfills that recommendation.

H.R. 5560 also makes transporting children in interstate or foreign commerce for the purpose of making child pornography a crime. This addition to the Federal law also protects our children.

H.R. 5560 modernizes and expands another important Federal criminal law. The Mann Act, which was enacted in 1910, prohibits the transportation of women and the inducement of women to enter interstate or foreign commerce for immoral purposes. The Mann Act also prohibits the harboring of illegal alien women for immoral purposes. A 1978 amendment prohibited the transportation of minors in interstate or foreign commerce for certain sexual activity that is profit motivated.

H.R. 5560 amends the Mann Act to modernize the language and to make its provisions gender neutral. Under an amendment I offered, which the subcommittee adopted, the bill now deletes a requirement that the children be transported with a profit motive. Since I firmly believe that the children suffer from sexual abuse whether or not financial profit is involved, I am glad that this comprehensive protection is included in H.R. 5560.

Federal prosecution of child pornography cases have dramatically increased under the child pornography amendments processed by the Subcommittee on Crime in 1984. Chairman HUGHES was instrumental in the enactment of Public Law 98-292 which has increased convictions under Federal child pornography laws nearly threefold in just 2 years. This proposal continues our effort to stamp out sexual abuse of minors by those criminals in our society who prey on our children.

Mr. Speaker, I yield such time as he may consume to the gentleman from Indiana [Mr. COATS].

Mr. COATS. Mr. Speaker, I want to add my congratulations to the chairman, the gentleman from New Jersey [Mr. HUGHES], and to the ranking member of the Subcommittee on Crime, the gentleman from Florida [Mr. MCCOLLUM], for bringing forth what I think are some very important substantive changes to the existing law regarding child pornography.

We held a hearing in our Select Committee on Children, Youth, and Families not too many months ago on this subject. We were presented with some important testimony from law enforcement officials and others across the country who have spent considerable time in this area.

They outlined for us some of the substantive changes that they thought were necessary to close some loopholes in the existing law. I am pleased that these recommendations have been incorporated in the language in the bill before us today.

I thank the Committee on the Judiciary for that diligent and efficient and effective work in this regard.

Mr. Speaker, the subject of child pornography has been one that has been for too long ignored. It is something that we do not like to think about, that we think only happens to someone else's children. We regret it and deplore it but have not in the past focused enough attention on it.

Child pornography is a significant problem that our society faces, and we must take steps to do everything that we can here at the Federal level of make sure that the commercial exploitation and individual involvement is fully protected against and fully prosecuted.

The Attorney General's Commission on Pornography recently released their report. I would urge Members of this body to take the time to read that report. It has a major section detailing the problems that we face in the area of child pornography.

While the press and the media have attempted to portray this report as simply a witch hunt against some popular men's magazines found in some of our convenience stores, it is far from that. It details, among other things, the involvement of the commercial underworld in terms of exploitation of young people in the area of child pornography. It gives some chilling eyewitness accounts backed up with evidence of the nature and extent of the child pornography industry.

I think it makes a significant contribution to our effort to outlaw and to deal with this problem.

I would urge the Attorney General and the Justice Department to follow the recommendations made by that Commission and bring about enforcement throughout our country of this problem.

We were given testimony before our Select Committee on Children, Youth, and Families that, with a specially targeted effort for a limited period of time, we could have a significant impact in eliminating much of the child pornography business that takes place in this country.

It is not a massive effort that is needed to be undertaken. Specifically targeted, well-enforced prosecution of the laws that are already on the books can bring about a significant decline in the amount of child pornography that currently takes place in this country.

With this strengthening of the law by passage of this bill today, we can provide prosecutors with even better enforcement tools. I urge my colleagues to support the bill that is before us and, again, I thank both the gentleman from Florida [Mr. MCCOLLUM] and the gentleman from New Jersey [Mr. HUGHES] for their efforts in this regard.

Mr. MCCOLLUM. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. Mr. Speaker, it gives me great pleasure to rise in support of this legislation. This is truly a bipartisan effort. I think it is an example for the Congress as to what we can do when we put our minds to it.

I think it is a comment on where we have gone in terms of public opinion, at least in my observation, that 10 years ago we may not have been able to pass legislation like this, not because of the individuals involved here, but I am not sure that the American attitude was what it is now. There was a thought that perhaps pornography was not bad for you; some were even suggesting that it was good for you. Even when you are talking about child pornography, all sorts of excuses were being made as to why we could not attack it.

We have long since passed that time. We are now moving, I think, in a more realistic view of the world. Today we are passing legislation which will allow us on the Federal level to do a better job of controlling those who traffic in child pornography.

One thing we discussed in our subcommittee markup, that I discussed with the chairman, was the recommendation made by the President's Commission on Pornography that somehow perhaps we consider changing the jurisdictional base from that which involves those things found in interstate commerce and that which affects interstate commerce.

The chairman was forthright in suggesting that that may be something we might look at in the future; however, there was some concern that that might impede our ability to get this

bill up on the Suspension Calendar and passed this year, together with the other body, out into a single form, and sent to the President.

I agree with the gentleman's decision at this point. I hope that perhaps at some other time, in the next Congress, perhaps, we might look at the question of expanding the jurisdictional base to acts of trafficking in child pornography that impact on or affect interstate commerce, as opposed to merely being in interstate commerce.

That may seem like an arcane difference, but some have suggested it does make a difference in particular cases.

□ 1425

Short of that, Mr. Speaker, I would just say that we ought to be proud of this legislation, proud of the fact that the subcommittee expedited its consideration and got it to the full committee and it is on the Suspension Calendar.

I would hope that all Members would be able to vote for this as just one other tool to give law enforcement on this level, the Federal level, in their war against child pornography.

Mr. McCOLLUM. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. HUGHES] that the House suspend the rules and pass the bill, H.R. 5560, as amended.

The question was taken.

Mr. HUGHES. Mr. Speaker, on that, I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Pursuant to clause 5 of rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. HUGHES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

HOUSING ACT AMENDMENTS

Mr. LUNDINE. Mr. Speaker, I move to suspend the rules and pass the bil (H.R. 5564) to amend the National Housing Act to provide for the eligibility of certain property for single family mortgage insurance.

The Clerk read as follows:

H.R. 5564

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 203 of the National Housing Act is amended by adding at the end the following new subsection:

"(q)(1) Notwithstanding any other provision of this section or any other section of this title, the Secretary may insure and commit to insure, under subsection (b) as modified by this subsection, any mortgage secured by property located on land that—

"(A) is within the Allegany Reservation of the Seneca Nation of New York Indians; and

"(B) is subject to a lease entered into for a term of 99 years pursuant to the Act of February 19, 1875 (Chapter 90; 18 Stat. 330) and the Act of September 30, 1890 (Chapter 1132; 26 Stat. 558).

"(2) A mortgage shall be eligible for insurance under subsection (b) as modified by this subsection without regard to limitations in this title relating to marketability of title or any other statutory restriction that the Secretary determines is contrary to the purpose of this subsection.

"(3) The Secretary, in connection with any mortgage insured under subsection (b) as modified by this subsection shall have all statutory powers, authority, and responsibilities that the Secretary has with respect to other mortgages insured under subsection (b), except that the Secretary may modify such powers, authority, or responsibilities if the Secretary determines such action to be necessary because of the special nature of the mortgage involved.

"(4) Nothwithstanding section 202, the insurance of a mortgage under subsection (b) as modified by this subsection shall be the obligation of the Special Risk Insurance Fund created in section 238.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from New York [Mr. LUNDINE] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. WYLIE] will be recognized for 20 minutes.

The Chair recognized the gentleman from New York [Mr. LUNDINE].

Mr. LUNDINE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we are considering a bill designed to provide a very special kind of assistance to a small city in our district, Salamanca, NY. This provision is noncontroversial: it was part of the housing bill which has already passed the House of Representatives.

This legislation enables the Federal Housing Administration to ensure, under the provisions of the National Housing Act, residential mortgages secured by property located on land that is within the Allegany Reservation of the Seneca Nation of Indians. This revenue-neutral provision is of paramount importance to Salamanca.

The city of Salamanca is in a unique situation. Approximately 85 percent of the land upon which the city is located lies within the Allegany Reservation of the Seneca Nation of Indians. The Indian lands are occupied under 99-year leases which are due to expire in 1991. The leases were ratified by Congress in February 1892, under authority of two special acts of Congress.

The impending expiration of these leases and the uncertainties surrounding the method of renewal or renegotiation of the leases have been causing extreme economic hardships for the citizens of Salamanca. While the lease situation has resulted in a gradual erosion of the city's economic base for nearly 10 years, the situation is becoming increasingly urgent due to the complete lack of mortgage financing in the community. As of January 1, 1985, the city's lending institutions have refused to make any loans in Salamanca beyond a 5-year term.

The lack of available financing for industrial, commercial, and even residential transactions has brought most economic activity to a standstill. Failure to address this problem will continue to have serious implications for the city's ability to attract new business, create jobs, and stimulate economic growth. The lack of money for residential mortgages has been a tremendous hardship for families wishing or needing to relocate, as well as for those families wishing to purchase a home in Salamanca.

If there is any community in the country that needs or deserves FHA assistance, it is certainly Salamanca. This city desperately needs the rejuvenation that FHA insurance or residential mortgages will make possible. While the ultimate resolution of this problem must be achieved by the city and the Seneca Nation, the situation in Salamanca is now so serious I feel that outside assistance is essential. Time is running out for Salamanca. Adoption of the legislation before us today will give the city the boost it desperately needs and deserves.

This measure is revenue neutral. Further, it does not represent an unreasonable risk for FHA. The law under which these leases were ratified clearly allows for renewal of the leases; the only unresolved question is the terms of the renewal. All parties involved have a common interest in assuring that these terms are reasonable and that they foster residential and commercial growth for Salamanca's future.

I urge the Members of this body to pass this legislation expeditiously.

Mr. WYLIE. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I think H.R. 5564 is all right and urge its passage. I understand that the gentleman from New York does have a unique problem concerning the FHA that would be alleviated by this legislation.

This legislation, as the gentleman has stated, merely provides for the security of FHA insurance in order to enable some local lenders or other lenders to recommence mortgage lending in the city of Salamanca, NY.

Mr. Speaker, this is not the first time we have addressed the problem of

the second person. I have learned a lot from you: it is that tenacity and courage and stick-to-itiveness, and yet that good humor and joviality that help to brighten our day. It is a pleasure to serve with you.

I think you have done a good job. I hope that whatever faults are mine that have surfaced from time to time can be accepted as those human frailties that I guess are found in some people.

□ 1720

And if I have at any moment acted in a way that I could have acted better, I hope the distinguished majority leader will forgive me and know that I am going to be working with him in the next year and will enjoy it as I have in the last year.

I salute him and count him as my friend.

Mr. DOLE. Mr. President, let me just thank the minority leader and let me also make the same statement. I know there are a couple of times things were fairly tense around here and I certainly apologize for any misunderstanding.

CALENDAR

Mr. DOLE. Mr. President, I know other Members wish to speak. I wonder if we might be able to take up quickly the four items the House is waiting for and then I know the Senator from South Carolina has a statement and the Senator from Nebraska has a statement.

Would there be any objection to doing these in about 1 minute?

Mr. THURMOND. No objection.

Mr. DOLE. They have been cleared.

CHILD ABUSE VICTIMS RIGHTS ACT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 872, S. 985, the Victims of Child Abuse.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 985) to protect the rights of victims of child abuse.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike out all after the enacting clause, and insert the following:

That this Act may be cited as the "Child Abuse Victims' Rights Act of 1986".

FINDINGS

SEC. 2. The Congress finds that—

(1) child exploitation has become a multimillion dollar industry, infiltrated and operated by elements of organized crime, and by a nationwide network of individuals openly advertising their desire to exploit children;

(2) Congress has recognized the physiological, psychological, and emotional harm caused by the production, distribution, and display of child pornography by strengthening laws prescribing such activity;

(3) the Federal Government lacks sufficient enforcement tools to combat concerted efforts to exploit children prescribed by Federal law, and exploitation victims lack effective remedies under Federal law; and

(4) current rules of evidence, criminal procedure, and civil procedure and other courtroom and investigative procedures inhibit the participation of child victims as witnesses and damage their credibility when they do testify, impairing the prosecution of child exploitation offenses.

INCLUSION OF SEXUAL EXPLOITATION OF CHILDREN UNDER RICO

SEC. 3. Section 1961(1)(B) of title 18, United States Code, is amended by inserting after "section 1955 (relating to the prohibition of illegal gambling businesses)," the following: "sections 2251 and 2252 (relating to sexual exploitation of children),".

CIVIL REMEDY FOR PERSONAL INJURY

SEC. 4. (a) Chapter 110 of part I of title 18, United States Code, is amended by redesignating section 2255 as section 2256, and by inserting after section 2254 the following:

§ 2255. Civil remedy for personal injuries

"(a) Any minor who is a victim of a violation of Section 2251 or 2252 of this title may use in any appropriate United States district court and shall recover threefold the damages such minor sustains and the cost of the suit, including a reasonable attorney's fee. Any minor as described in the preceding sentence shall be deemed to have sustained damages of no less than $50,000 in value".

(b) Any action commenced under this section shall be barred unless the complaint if filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later that three years after the disability.".

(b) The table of sections for chapter 110 of part I of title 18, United States Code, is amended by striking out the item relating to section 2255 and inserting in lieu thereof the following:

"2255. Civil remedy for personal injuries.

"2256. Definitions for chapter.".

MINIMUM SENTENCE FOR REPEAT OFFENDERS

SEC. 5. (a) Section 2251(c) of title 18, United States Code, is amended by striking out "or imprisoned not less than two years" and inserting in lieu thereof "or imprisoned not less than five years".

(b) Section 2252(b) of title 18, United States Code, is amended by striking out "or imprisoned not less than two years" and inserting in lieu thereof "or imprisoned not less than five years".

ATTORNEY GENERAL REPORT

SEC. 6. (a) Within one year after the date of enactment of this Act, the Attorney General shall submit a report to Congress detailing possible changes in the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure, and other Federal courtroom, prosecutorial, and investigative procedures which would facilitate the participation of child witnesses in cases involving child abuse and sexual exploitation.

(b) In preparing the report, the Attorney General shall consider, but not be limited to, such changes as—

(1) use of closed-circuit cameras, two-way mirrors, and other out-of-court statements;

(2) judicial discretion to circumscribe use of harassing, overly complex, and confusing questions against child witnesses;

(3) use of videotape in investigations to reduce repetitions of interviews;

(4) streamlining investigative procedures; and

(5) improved training of prosecutorial and investigative staff in special problems of child witnesses, including handicapped children.

CHILD EXPLOITATION

● Mr. GRASSLEY. Mr. President, today, I urge my colleagues to support S. 985, the "Child Abuse Victims' Rights Act," as amended in the Judiciary Committee. This legislation will greatly improve our ability to stop the ongoing and ever growing problem of child exploitation. S. 985, as amended, has been passed unanimously by the Senate Judiciary Committee.

Essentially, the bill will do the following:

First, make child pornography a "racketeering" offense under the Racketeer Influenced and Corrupt Organizations Act (RICO);

Second, create a civil remedy for victims of child pornography that will provide for victim compensation, as well as further deterrence for these crimes;

Third, provide for an Attorney General report issuing model recommendations for ways to improve courtroom procedures involving child-victim witnesses; and

Fourth, increase penalties for repeat child pornographers.

Mr. President, Congress has already concluded that child pornography and prostitution are highly organized, multimillion dollar industries that operate on a nationwide scale. It has been estimated that each year 50,000 children disappear and more than 1.5 million are sexually molested, filmed, or photographed for the use of pornography.

In the past, Congress has had success in attacking the problem of child exploitation. Because of the Child Protection Act of 1984, which removed the "obscenity and engaged for profit" requirements, there has been an increase in child pornography prosecutions and convictions. Nevertheless, most exploiters escape prosecution. So there remains much to be done by the Congress.

Under current law, only the producers or distributors of child pornography can be prosecuted. My bill will authorize the prosecution of "masterminds" and behind the scenes financiers who control and bankroll these criminal activities. Child pornography will never effectively be dealt with until the people calling the shots are effectively dealt with.

In addition, victims of these criminals will have the authority to sue their victimizers for treble damages, court costs and attorney fees under a

new remedy created under chapter 110 of title 18.

Mr. President, we all want to put a stop to child pornography. S. 985 is a great step forward toward accomplishing this goal.

Therefore, I urge my colleagues to help protect our children from unscrupulous criminals by voting for this bill.

Our children are not for sale.●

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 985) was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SEXUAL ABUSE

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar call No. 1082, H.R. 4745, with respect to sexual abuse.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4745) to amend title 18, United States Code, with respect to sexual abuse.

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 4745) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CHILD PORNOGRAPHY

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to H.R. 5560, the child pornography bill now being held at the desk.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5560) To amend title 18 of the United States Code to ban the production and use of advertisements for child pornography or solicitions for child pornography, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

● Mr. ROTH. Mr. President, I rise in support of H.R. 5560, the Child Sexual Abuse and Pornography Act of 1986, which is the House counterpart to my bill, S. 2398. The bill would outlaw the advertising of child pornography and tighten child abuse laws by eliminating all references to gender in the statute prohibiting the interstate transportation of minors for prohibited sexual conduct, popularly known as the Mann Act. There is clearly a direct link between child pornography and the sexual abuse and exploitation of our Nation's children. After a yearlong investigation by the Permanent Subcommittee on Investigations, which I chair, as well as public hearings by both my subcommittee, the Subcommittee on Juvenile Justice, and the House Judiciary Subcommittee on Crime, it is established beyond any doubt that pedophiles—emotionally disturbed individuals who are sexually attracted to children—make extensive use of child pornography to stimulate and justify their ugly behavior and to entice and blackmail their helpless young victims. For the sake of our children, we must do more to restrict the availability of child pornography to these individuals. For this reason, I introduced the Child Sexual Abuse and Pornography Act of 1986, S. 2398.

As I indicated when I introduced S. 2398, my subcommittee's investigation disclosed the existence of a seamy underground network of child molesters—adults who seek out children for sexual gratification—and it showed that the very lifeblood of this loosely organized underground society is child pornography. Virtually every expert on the subject who testified before the subcommittee or discussed child abuse with subcommittee investigators, including several convicted child molesters, confirmed the central role of child pornography in the life of the pedophile.

The production and distribution of child pornography is, of course, illegal; and action taken by Congress in 1984 to strengthen the laws against child pornography has resulted in a dramatic and encouraging increase in child pornography indictments and convictions. Despite increased vigilance on the part of the U.S. Customs Service and other Federal authorities, however, commercial and noncommercial child pornography continues to be widely sold and traded by pedophiles in this country.

One reason that the trade in child pornography continues to flourish, Mr. President, is that this salacious and clearly illegal material—photos, films and videotapes depicting nude young children and children engaged in explicit sexual behavior—is being openly advertised, traded and sold in pedophile newsletters and other publications within the United States. Even more shocking, these publications sometimes contain thinly disguised advertisements and solicitations for child prostitution, including such things as child sex tours to foreign countries where pedophiles can obtain children for purposes of sexual molestation. While the goods and services offered in these ads are illegal, Mr. President, the advertisements themselves are not.

H.R. 5560, like S. 2398, would close this and other loopholes in our laws against child abuse. For the first time, it would be illegal to produce and publish advertisements for child pornography as well as solicitations for child pornography and sex with children. Violations would be punishable by prison terms of up to 10 years, and up to 15 years for a second conviction. This bill would enable Federal authorities to intervene at a critical juncture—they could prosecute those who would molest children or solicit child molestation before the innocent child is irreparably harmed.

This bill also would amend the portions of title 18 of the United States Code known as the Mann Act, which prohibits the interstate transportation of females for the purpose of prostitution and other immoral purposes. Our investigation revealed that children of both sexes are victimized by pedophiles, who sometimes trade their young victims by transporting them back and forth across State lines. H.R. 5560, like S. 2398, will make this law sex neutral, so that it will protect males as well as females and it will apply whether or not the defendants seek to obtain any financial advantage. In addition, the bill will expand the Mann Act's scope. Now, in order to prosecute someone for transporting a minor for purposes of prohibited sexual conduct, that conduct must be shown to be commercially exploited. The subcommittee's investigation showed that minors and recordings of minors engaged in prohibited sexual conduct are often traded by pedophiles strictly for purposes of sexual gratification, with no money changing hands. H.R. 5560 will place these individuals within the reach of the Mann Act.

Mr. President, those who advertise in order to receive or deal in child pornography and child prostitution are as guilty of child abuse as the actual child molester—in fact, in many cases it is the same person. It is important to recall that every piece of child pornography represents the depiction of a terrible crime—the sexual exploitation

of a child. Child sexual abuse can literally destroy a childhood, turning one of life's most precious times into a psychic nightmare of guilt and shame. This legislation would make it so costly to advertise any sexually explicit material involving children that the risk of prosecution will outweigh any possible incentive to engage in this activity. I hope the Senate will act quickly to close the loopholes which we have identified in our child abuse and child pornography laws. Nothing less than the well-being of our Nation's children is at stake.

Mr. President, I wish to thank my distinguished colleague from Alabama, Senator DENTON, for his outstanding assistance in bringing this legislation to fruition. Senator DENTON has been an advocate in the fight against child pornography, and I wish to commend him for his support.●

● Mr. DENTON. Mr. President, I rise in support of H.R. 5560, the Child Sexual Abuse and Pornography Act of 1986, a bill to outlaw the advertising of child pornography and to strengthen the Mann Act's protection against the sexual exploitation of minors. I commend my distinguished colleague from Delaware [Mr. ROTH] for his leadership in the fight against pornography and for sponsoring S. 2398 the Senate companion measure.

Mr. President, pornography attacks human dignity itself at its very core. It is an epidemic that devastates the personal and social well-being of contemporary society. We must remain alert to its effects and take countermeasures to prevent its spread. Pornography encourages the sexual exploitation and abuse of men, women, and children, with tragic consequences.

Testimony received in the Senate Judiciary Subcommittee on Juvenile Justice indicated beyond a doubt that the effects of pornography are devastating, both to the individual and to society. The sex industry abuses and exploits not only those who engage in making pornography, and those who are exposed to it, but also those who are victimized by its effects on other people. It uses every means of social communication: books, magazines, tabloids, films, video cassettes, subscription television, video games, coin-operated machines, computers, and erotic telephone messages.

Pornography is an offense against the rights of all people. It is a problem which victimizes everyone. In order to deal effectively with the problem we must recognize that pornography victimizes all members of society, regardless of sex, age, race, religion, or social station. Pornography is particulary egregious when children become unwilling participants or when children are sexually abused or exploited as a result of the pornography.

Mr. President, hearings conducted by the Senate Judiciary Subcommittees on Juvenile Justice, Criminal Law, and the Subcommittee on Security and Terrorism, which I chair, have demonstrated beyond doubt that there is a direct link between child pornography and the sexual abuse and exploitation of our Nation's children. In fact, at the Subcommittee on Security and Terrorism hearing, testimony was presented by the FBI that pedophiles make extensive use of child pornography to stimulate and justify their behavior, to lower the child's inhibitions and reluctance, to blackmail the child victim and to establish a medium by which they can communicate with other like-minded criminals.

Mr. President, the Congress must work to eliminate the production of child pornography and the sexual exploitation and abuse of our children. It is only through hard work and cooperation that, we can find a way to solve the problem of child sexual exploitation which, because of past errors, has been allowed to flourish unabated. The production of child pornography degrades and exploits children in a fundamental, inhumane, uncivilized way, and harms all of society in the process.

Mr. President, the Child Sexual Abuse and Pornography Act of 1986, provides a useful tool in our fight against child pornography. The bill creates a criminal penalty for advertising or soliciting child pornography and child sexual abuse, revises the Mann Act so that it will apply to males as well as females and outlaws the "trading" of young children by pedophiles across State lines, regardless of whether the activity is done for "commerical" purposes.

Mr. President, I urge my colleagues to support this important piece of legislation.●

The PRESIDING OFFICER. The bill is before the Senate and open to amendment.

If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 5560) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TECHNICAL CHANGES IN ENROLLMENT OF H.R. 3614

Mr. DOLE. Mr. President, I send a concurrent resolution to the desk on behalf of Senator DENTON and ask for its immediate consideration.

It makes technical changes in the enrollment of H.R. 3614.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 175) correcting the enrollment of H.R. 3614.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 175) was agreed to as follows:

S. CON. RES. 175

Resolved by the Senate (the House of Representatives concurring. That, in the enrollment of the bill (H.R. 3614) to restrict the use of government vehicles for transportation of officers and employees of the Federal Government between their residences and places of employment, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

In section 1344 of title 31, United States Code (as amended by subsection (a) of the first section of the bill)—

(1) strike out paragraph (3) of subsection (b) of such section 1344 and insert in lieu thereof the following:

"'(3) the Postmaster General of the United States;";

(2) strike out paragraph (7) of such subsection and insert in lieu thereof the following:

"'(7) the Comptroller General of the United States;";

(3) strike out the period at the end of paragraph (8) of such subsection and insert in lieu thereof a semicolon and "and";

(4) immediately after such paragraph (8) insert the following new paragraph:

"'(9) principal diplomatic and consular officials abroad, and the United States Ambassador to the United Nations."; and

(5) in the first sentence of subsection (d)(2) of such section 1344, strike out "a period of not more than 90 additional calender days" and insert in lieu thereof "one or more periods, each not in excess of 90 additional calendar days".

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INDEPENDENT JURY SYSTEM FOR THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 964, H.R. 2946, dealing with the D.C. court system.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2946) to establish an independent jury system for the Superior Court of the District of Columbia.

Knox v. U.S.

No. 92-1189

In the Supreme Court of the United States

OCTOBER TERM, 1992

STEPHEN A. KNOX, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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POLICE DEPARTMENT
SUPREME COURT, U.S.

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QUESTIONS PRESENTED

1. Whether videotapes that focused on the genitals and pubic area of minor females constituted a "lascivious exhibition of the genitals or pubic area" under the child pornography statutes, 18 U.S.C. 2252, 2256(2)(E), even though those body parts were covered by clothing.

2. Whether the child pornography statutes, as interpreted by the court of appeals, are unconstitutionally vague and overbroad.

3. Whether petitioner had the requisite mental state to violate 18 U.S.C. 2252.

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In the Supreme Court of the United States

OCTOBER TERM, 1992

No. 92-1183

STEPHEN A. KNOX, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-25a) is reported at 977 F.2d 815. The opinion of the district court denying petitioner's pretrial motion to dismiss the indictment is reported at 776 F. Supp. 174.

JURISDICTION

The judgment of the court of appeals was entered on October 15, 1992. The petition for a writ of certiorari was filed on January 12, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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STATEMENT

Following a bench trial in the United States District Court for the Middle District of Pennsylvania, petitioner was convicted on one count of knowingly receiving through the mail visual depictions of a minor engaged in sexually explicit conduct, and one count of knowingly possessing such visual depictions, in violation of 18 U.S.C. 2252(a)(2) and (4). He was sentenced to concurrent terms of five years' imprisonment on each count. The court of appeals affirmed. Pet. App. 1a-25a.

1. In March 1991, the U.S. Customs Service intercepted an order from a company in France for two videos, "Little Girl Bottoms (Underside)" and "Little Blondes." The order requested that the videos be sent to J. Richard Scott, 210 West Hamilton Avenue, No. 108, State College, Pennsylvania. Included was a check drawn on the account of petitioner Stephen Knox and bearing his signature. The check showed Knox's address as 210 East Hamilton Avenue, No. 25, State College, Pennsylvania. The Customs Service that month intercepted a mailing addressed to J. Richard Scott from the Netherlands, which contained a catalog advertising for sale videotapes of nude, semi-clothed, and clothed minors. The Customs Service investigators knew that Knox previously had been convicted of receiving child pornography through the mail. With the help of the Pennsylvania State Police, the Customs agents obtained a search warrant and conducted a search of Knox's apartment. Pet. App. 2a-3a.

Seized from petitioner's apartment were three video cassettes produced by the Nather Company, based in Las Vegas, Nevada. Agents also seized a

catalog from the Nather Company, with checkmarks by several videotape selections, envelopes addressed to Nather, mail order forms from Nather, and a carbon copy of a money order payable to the Nather Company for an amount about equal to the price of a single video. Pet. App. 3a.

The tapes showed various females between the ages of 10 and 17 dressed in bathing suits, leotards, underwear, or other similar attire. The children struck provocative poses, apparently at the direction of someone off-camera. The camera would typically zoom in on the children's pubic and genital area and display a close-up of that area for an extended time. The tapes themselves and the promotional materials distributed by Nather showed that the tapes were designed to pander to pedophiles. For example, one of the advertising catalogs stated (Pet. App. 5a):

> 'Sassy Sylphs' will blow your mind so completely you'll be begging for mercy.
>
> Just look at what we have in this incredible tape: about 14 girls between the ages of 11 and 17 showing so much panty and ass you'll get dizzy. There are panties showing under shorts and under dresses and skirts; there are boobs galore and T-back (thong) bathing suits on girls as young as 15 that are so revealing it's almost like seeing them naked (some say even better).

2. In 18 U.S.C. 2252, Congress made it a crime to transport, receive, or distribute any visual depictions that involve "the use of a minor engaging in sexually explicit conduct." It defined "sexually explicit conduct" in 18 U.S.C. 2256(2)(E) to include "lascivious exhibition of the genitals or pubic area of any person."

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Based on the videotapes seized from his apartment, petitioner was charged with receiving and possessing child pornography, in violation of Section 2252.

Petitioner moved to dismiss his indictment before trial, on the ground that the videos did not contain an "exhibition" of the genitals or pubic area, since those areas were in all cases covered by clothing. The district court viewed portions of the videotapes that the parties stipulated were representative, and denied the motion. The court reasoned that the uppermost portion of the inner thighs, being in close proximity to the genitals, were included in the definition of "pubic area." Since the upper portion of the inner thigh was clearly exposed in the videotapes, the court held that the tapes contained an exhibition of the pubic area. Pet. App. 4a-5a.

After the court found petitioner guilty on both counts, he filed a motion for judgment of acquittal, along with an affidavit from a physician stating that it is anatomically incorrect to say that the pubic area includes the upper portion of the inner thigh. The district court denied the motion, finding that its filing three months after the entry of the verdict was untimely. Pet. App. 6a.

3. The court of appeals determined that the district court erred in its definition of "pubic area." Displaying any portion of the inner thighs, the court of appeals held, "does not constitute an exhibition of the pubic area under 18 U.S.C. § 2256(2)(E)." Pet. App. 9a. The court of appeals went on to hold, however, that the statute's proscription of a "lascivious exhibition" of the genitals or pubic area did not mean that those body regions had to be nude. *Id.* at 9a-17a. Examining the language of the statute, the court of

appeals noted that the dictionary definition of "exhibit" is "to present to view," "to show publicly," or to "put on display in order to attract notice." The court of appeals found that the visual depictions at issue here clearly put the genitals and pubic area of the young girls "on display." Indeed, the obvious purpose of the tapes "was to 'attract notice' specifically to the genitalia and pubic area." *Id.* at 11a.

An examination of the legislative history of Section 2252 further persuaded the court that Congress did not intend to limit the statute's scope to nude displays. In earlier proposed legislation, it was clear that only nude displays were targeted, for the proposed statute would have proscribed "nudity, which nudity is depicted for the purpose of sexual stimulation or gratification of any individual who may view such depiction." Pet. App. 11a (citing S. 1011, 95th Cong., 2d Sess. (1977)). Because Congress omitted any reference to nudity in the legislation that was enacted, the court of appeals considered the change to indicate Congress's intention to "criminalize both clothed and unclothed visual images of a child's genitalia if they were lewd." Pet. App. 12a. Nor was there any indication in the extensive legislative history that the statute as enacted was intended to prohibit only nude portrayals. *Id.* at 13a.

The court of appeals also considered the rationale behind the federal child pornography statutes and the particular governmental interest in protecting the safety and welfare of children, and concluded that its interpretation of the statute was consistent with the purpose of the law. The court of appeals concluded (Pet. App. 15a-16a): "The rationale underlying the statute's proscription applies equally to *any lascivi-*

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ous exhibition of the genitals or pubic area whether these areas are clad or completely exposed."

The court of appeals further held that its construction did not render the statute unconstitutionally overbroad, because the requirement in the statute that the depiction be lascivious was a sufficient limiting principle. Pet. App. 17a-19a. And because only a very small fraction of all pictures of minor children would be sufficiently sexually suggestive to qualify as lascivious, the court found that the statute was "directed at the hard core of child pornography." *Id.* at 19a (quoting *New York* v. *Ferber*, 458 U.S. 747, 773 (1982)).

The court of appeals also found the evidence sufficient to support the district court's finding that the videotapes traveled through the mail and that petitioner knowingly received and possessed the tapes. Pet. App. 19a-24a.

ARGUMENT

1. Petitioner renews his contention (Pet. 10-22) that the federal child pornography statute does not apply to lascivious depictions of children whose genitals and pubic areas are covered by clothing. There is no conflict among the circuits on this issue, as this case is one of first impression. Further review is therefore unwarranted.

Petitioner claims (Pet. 10-11) that the court erred in finding that the language of the statute covers the visual depictions in this case since, he argues, an "exhibition" of the genitals or pubic area presupposes nudity of the area. But as the court of appeals pointed out, "exhibition" means "put on display," and "[t]he genitals and pubic area of the young girls in the Nather tapes were certainly 'on display' as the

camera focused for prolonged time intervals on close-up views of these body parts." Pet. App. 11a. Just as a foot or hand could be "exhibited" while covered with a sock or glove, so here the genitals and pubic area were "put on display in order to attract notice" to those areas. *Ibid.* (quoting *Webster's Third New International Dictionary, Unabridged* 796 (1976)).

The court of appeals correctly found no indication of any contrary intention in the legislative history. Petitioner cites several comments concerning the original legislative proposal on child pornography, which would have specifically prohibited "nudity * * * depicted for the purpose of sexual stimulation or gratification" (Pet. 12), and he argues that when the language was changed to drop any reference to "nudity," the understanding was still that only nude portrayals would be prohibited. As the court of appeals pointed out, however, the fact that Congress dropped any mention of the word "nudity" in the law as enacted indicates that Congress "repudiated its earlier intention to confine the statute's coverage to nude exhibitions." Pet. App. 12a-13a.

Subsequent legislative history also supports the court of appeals' interpretation. When several amendments to the child pornography statutes were made in 1983, an early version of a Senate bill, S. 57, 98th Cong., 1st Sess., would have defined the word "simulated," a word used but not defined in the then-current law, to mean "the explicit depiction of any ['sexually explicit conduct' as defined] which creates the appearance of such conduct and which exhibits any uncovered portion of the genitals or buttocks." S. Rep. No. 169, 98th Cong., 1st Sess. 13 (1983). A letter

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from the Department of Justice criticized this proposed language (*ibid.*):

> We believe that S. 57 defines the term "simulated" too narrowly and that certain conduct excluded by the definition should be included within the law's proscriptions. For example, the child pornography provisions should protect a child against pornographers who would film him or her totally clothed in a body stocking engaging in simulated sexual intercourse with an adult or another child. The harm to children used by adults in this manner to produce pornography is significant even though the child may be clothed. * * * S. 57's definition of "simulated" in our view could prove to be a significant loophole to imaginative pornographers.

The language was then dropped from the amendments that were enacted. The legislative background thus provides support for the court of appeals' conclusion that the term "exhibition" should be given its natural meaning, *i.e.*, not to require that the areas exhibited be nude.

2. Petitioner further argues (Pet. 26-30) that the court of appeals' interpretation of the statute renders it unconstitutionally vague and overbroad. He contends that the Third Circuit's construction of the statute to cover clothed depictions of minors threatens to criminalize a wide variety of innocent and harmless photographs of children. The court of appeals correctly rejected that argument.

The court of appeals found that the federal statute was not vague and overbroad. As the court of appeals stated, "[o]nly a minuscule fraction of all pictures of minor children will be sufficiently sexually suggestive and unnaturally focused on the genitalia to qualify as lascivious." Pet. App. 19a. Furthermore, the court observed that "[e]ven fewer images where a minor's genital area is not fully exposed will constitute a lascivious exhibition since the fact that a child's genital area is covered is a factor militating against a finding of lasciviousness." *Ibid.*; see *United States* v. *Dost*, 636 F. Supp. 828, 832 (S.D. Cal. 1986), aff'd *sub nom. United States* v. *Wiegand*, 812 F.2d 1239, 1245 (9th Cir.), cert. denied, 484 U.S. 856 (1987); see also *United States* v. *Wolf*, 890 F.2d 241, 244 (10th Cir. 1989); *United States* v. *Villard*, 885 F.2d 117, 123 (3d Cir. 1989). In short, the court of appeals correctly found that "including scantily clothed displays of the genitals within the meaning of an exhibition leaves the statute 'directed at the hard core of child pornography.'" Pet. App. 19a, quoting *New York* v. *Ferber*, 458 U.S. at 773.

3. Petitioner finally contends (Pet. 22-26) that he lacked the necessary mental state to be found guilty of violating Section 2252, because he had no idea that the depictions he received and possessed were prohibited by the statute. The court of appeals correctly rejected that claim.

Petitioner's claim is essentially that he made a mistake of law, and that no reasonable person would have expected that depictions of the type he possessed would be held to fall within the definition of child pornography. That claim is undermined by petitioner's use of a false name and address in communicating with purveyors of the materials he purchased. Pet. App. 2a-3a. And, as the court of appeals stated, petitioner clearly was "aware that the videotapes contained sexually oriented materials designed to

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sexually arouse a pedophile." *Id.* at 24a. Indeed, the promotional brochures made clear that the tapes portrayed children. *Id.* at 5a. This Court said in *Hamling* v. *United States*, 418 U.S. 87, 123 (1974), in the context of an obscenity statute, that it was sufficient to show that the defendant had knowledge of the nature and contents of the materials, and that he need not be shown to know that they were illegal. There is similarly no requirement in the child pornography statutes that the defendant know the materials are illegal. Pet. App. 22a-23a. See also *United States* v. *Moncini*, 882 F.2d 401, 405-406 (9th Cir. 1989).

In light of the explicit descriptions of the materials petitioner ordered and the finding of the courts below that he was aware of the nature of the materials, "he must bear the risk of the potential illegality of his conduct." *United States* v. *Moncini*, 882 F.2d at 405. Although there had not been any prosecutions involving minors who were clothed, or any court decisions reaching the question whether clothed depictions may constitute "lascivious exhibition," there was no decision contrary to the interpretation reached by the court of appeals in this case. Moreover, as the court explained, its interpretation of the statute is supported by the language of the statute, its legislative history, and the underlying rationale of child pornography statutes. In short, "[t]his is not a case where due process prohibits convicting a defendant who has unwittingly broken the law through conduct which an ordinary person would not assume to be at least potentially criminal." *United States* v. *Moncini*, 882 F.2d at 406. Compare *Bouie* v.

City of Columbia, 378 U.S. 347 (1964); *Lambert* v. *California*, 355 U.S. 225 (1957).*

* The Ninth Circuit has recently held 18 U.S.C. 2252 unconstitutional on its face because of that court's finding that the statute contains no requirement that the defendant have knowledge that the persons depicted in the materials are children. *United States* v. *X-Citement Video, Inc.*, 982 F.2d 1285 (1992). Every other circuit that has considered the question has found to the contrary, either directly or implicitly. See, *e.g.*, *Rodriguez* v. *Clark Color Laboratories*, 921 F.2d 347, 349 (1st Cir. 1990); *United States* v. *Petrov*, 747 F.2d 824, 828-829 (2d Cir. 1984), cert. denied, 471 U.S. 1025 (1985); *United States* v. *Osborne*, 935 F.2d 32, 34 & n.2 (4th Cir. 1991); *United States* v. *Marchant*, 803 F.2d 174, 176-177 (5th Cir. 1986); *United States* v. *Johnson*, 855 F.2d 299, 306 (6th Cir. 1988); *United States* v. *Duncan*, 896 F.2d 271, 277-278 (7th Cir. 1990); *United States* v. *LaChapelle*, 969 F.2d 632, 638 (8th Cir. 1992); *United States* v. *Garot*, 801 F.2d 1241, 1246-1247 (10th Cir. 1986). A rehearing petition is pending in the *X-Citement Video* case, and petitioner does not argue that Section 2252 lacks a scienter requirement. Moreover, it is clear in this case that petitioner knew both the nature and character of the contents of the tapes he ordered, as well as the fact that the persons depicted on the tapes were minors.

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CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 1993

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PRESERVATION

The Washington Times ★FRIDAY, NOVEMBER 19, 1993

Aide blamed for porn-law proposal

Bender has long sought liberalization

By Jerry Seper
THE WASHINGTON TIMES

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Critics of an abortive Justice Department move to loosen child pornography laws are blaming a former law professor with a long history of trying to liberalize the country's anti-smut statutes.

Deputy Solicitor General Paul Bender acknowledges he was involved but says he did not originate — and was not the principal force behind — the Justice Department proposal.

Neither Mr. Bender nor a department spokesman would say who was the original architect of a proposed change in the Child Protection Act of 1984, outlined in a brief filed before the Supreme Court. It was criticized by the Senate in a rare 100-0 vote and in an equally rare public rebuke by President Clinton of his own attorney general.

"Paul Bender was the chief counsel on a 1970 presidential commission that recommended the total abolishment of all pornography laws," said Patrick A. Trueman, who headed the Justice Department's child exploitation and obscenity section during the Reagan and Bush administrations.

"Now he's the principal adviser to the solicitor general. Is Mr. Bender trying to carry out the commission's 1970 recommendation even though Congress overwhelmingly rejected it at the time, or does he have a private agenda?" Mr. Trueman asked.

A former Arizona State University law professor, Mr. Bender advises Solicitor General Drew S. Days III on cases before the Supreme Court, argues cases himself and supervises lawyers who prepare briefs for arguments before the high court.

As Mr. Days' principle adviser, and often referred to as "the political deputy," Mr. Bender would not normally have handled a brief in a pornography case.

But since it involved a change in department policy, it would have automatically gone to him to sign off on, said a Justice Department official familiar with the office.

The brief in question, filed with the Supreme Court in Knox vs. the

see BENDER, page A14

BENDER

From page A1

United States, argued that nudity or "visibility" of the body parts through or beneath the clothing is required for a conviction, and to be classified as child pornography, the material "must depict a child lasciviously engaging in sexual conduct."

Department sources said Mr. Bender signed off on the Sept. 17 brief after others in the section, including William Bryson, the department's senior career deputy solicitor, either refused to sign off or counseled against it because they felt it weakened the Child Protection Act.

Mr. Bryson, who normally would review briefs involving criminal cases, declined comment.

In an interview, Mr. Bender, chief counsel in 1970 to the Commission on Obscenity and Pornography, which recommended the elimination of state and federal obscenity laws, did not elaborate on his role in the brief's approval. He said others prepared and reviewed the document, including Mr. Days.

"Although I was aware of it, it would not be correct to say that I wrote the brief," Mr. Bender said.

Mr. Days, an assistant attorney general for civil rights in the Carter administration, was a professor at Yale Law School when he was nominated by Mr. Clinton to serve as solicitor general. He did not return calls to his office for comment on the child pornography brief.

Attorney General Janet Reno, who said during a Senate hearing last week that she ultimately approved the brief, said in letters to Sen. Joseph R. Biden, Delaware Democrat and chairman of the Senate Judiciary Committee, and Sen. Orrin G. Hatch, Utah Republican and the committee's ranking GOP member, it was meant to "strengthen prosecutive efforts" against child pornographers. She said the current law needed to be amended to cover "clearly all forms of child pornography."

The commission on pornography was created by President Johnson.

It is not a view shared by everyone on Capitol Hill.

"If it ain't broke, don't fix it," said Sen. William V. Roth, Delaware Republican, one of several senators who called for the resolution condemning the department's brief.

"I urge that you reverse your department's position and return to a policy of vigorous enforcement of our nation's federal pornography laws to prevent further exploitation of children," said Rep. Henry J. Hyde, Illinois Republican.

Concern over Mr. Bender's purported role in the brief is outlined in letters by Mr. Trueman, now director of governmental affairs for the American Family Association, to Mr. Biden and Mr. Hatch.

In addition to the Senate, 125 Democrats and Republicans in the House also have expressed concern over the department's brief, saying it was "clearly incorrect."

Mr. Bender, 60, was hand-picked by Mr. Days for the position of deputy solicitor general, a position that does not requib08"

He also said sexually-explicit material should not be removed from public display "just because it's disgusting."

The Commission on Obscenity and Pornography, which Mr. Bender advised, was created by President Johnson. It concluded in a 1970 report there was no evidence to support allegations that pornography hurt individuals or society.

President Nixon called its conclusion "morally bankrupt" and refused to accept its final report. He instead supported legislation to restrict the publication of obscene material. The Senate voted 95-5 to reject the commission's findings.

The Justice Department's brief in the Knox case involved the discovery of videotapes during a search of the Pennsylvania home of Steven A. Knox. The tapes featured partially clad girls in sexually explicit but not nude poses.

Knox, 38 at the time, argued during his 1991 trial that as long as the girls were clothed, there was no pornography.

He was sentenced to five years in prison for possessing child pornography and receiving it in the mail. He appealed the conviction to the Supreme Court.

Mr. Clinton, in a letter to Miss Reno on Tuesday, rejected the department's brief and ordered the attorney general to seek legislation to ensure that child pornography laws were strongly enforced. The president ordered Miss Reno to submit new legislation to make the law cover "all forms of child pornography."

That proposed legislation was offered on Wednesday, but its consideration by the full Senate, which believes existing laws are adequate, is doubtful.

Miss Reno has said that protecting America's children is a top Justice Department prority. "America must take better care of its children before they get into trouble and not abandon them once they are in trouble," she said recently.

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The Washington Times ★ FRIDAY, NOVEMBER

Clinton makes a few enemies on trade vote

By Ronald A. Taylor
THE WASHINGTON TIMES

While President Clinton called for aling wounds opened during the ittle over NAFTA, the White ouse's biggest victory to date drew gry blasts yesterday from deep thin the Democrats' most loyal nstituencies.

"I want to say again how grateful am to the [House] members who ted with us and how deeply I reect the opinions and convictions of ose who did not and those who supted them," Mr. Clinton said.

He started mending fences before iving for Seattle and continued the ocess on the way to the Asia Paic Economic Cooperative gather- with phone calls to AFL-CIO esident Lane Kirkland and the ief NAFTA opponents — House ajority Leader Richard A. Gepdt of Missouri and Rep. David E. nior of Michigan.

Still, even as the president hailed NAFTA victory in the House as long step in the right direction" of ening trade in "our own hemiere," a chorus of complaints ipted, along with warnings about Mr. Clinton's victory with 156 use Democrats in opposition foredows future legislative battles.

In remarks to reporters yesterday, leaders of organized labor, one of most loyal elements of the mocratic Party, and a coalition of sumer advocates rejected Mr. nton's extension of an olive nch and continued to assail him using deals to win votes for the le pact with Canada and Mexico.

Amid all the planes, trains and dges — and all the protections for us, peanuts, sugar and wheat — re was not one word about the nts of workers," Mr. Kirkland d.

The NAFTA battle "has not been ain, and it is not over," Mr. Kirkd said. "The voting list on this e will be examined very, very efully."

It is not a threat to suggest to a nber of Congress . . . that this is ssue of burning importance . . . that that will weigh heavily on response to their appeals," he d.

In a phone call from Air Force , Mr. Clinton and Mr. Kirkland what White House officials ed a "warm visit" in which the sident invited the labor leader to meet with him at the White House.

Mr. Clinton also spoke with Mr. Gephardt and Mr. Bonior, who told the president he was collecting signatures of House co-sponsors for the health care reform legislation now in the works.

Senior White House aides said there would be not lingering bitterness over the 234-200 House vote Wednesday night.

"I asked the president about that [Wednesday] night, and he told me that the healing process will begin and accelerate as we work on positive issues such as health care and worker retraining," said presidential Counselor David Gergen.

Other White House aides said the necessary votes were accumulated by Tuesday night and that none of the members asked to be released from their commitment after the White House bagged the 218 votes needed for victory in the 435-member House.

Even so, House members who opposed the president predicted residual effects on future battles.

Rep. Marcy Kaptur, an Ohio Democrat who voted against Mr. Clinton on NAFTA, said the president damaged his image as a populist in the battle.

"I don't know who the president of the United States is," she told reporters. "He [Mr. Clinton] is a [president] of Wall Street, not Main Street."

The NAFTA battle crystallized the anti-NAFTA coalition of labor unions and consumer, environmental and human-rights advocates into a permanent anti-Clinton lobby, according to Jim Jontz, director of the Citizens Trade Campaign. He said his group represents Americans who "are now a part of the public debate in a way they were not before, and we are not going to go away."

"They're going to be there when other issues come before the Congress. People are no longer going to let a few people in the corporate board rooms with their friends in government make decisions by themselves. That's never going to happen again," Mr. Jontz said.

Asked about his attitude toward the Clinton White House, William Bywater, president of the International Union of Electronic Workers, one of the most hawkish labor leaders in the NAFTA battle, asked a female associate standing nearby to step away before responding with an epithet.

Clinton, seeking to fan trade fires, enters Asia talks

By Frank J. Murray
THE WASHINGTON TIMES

SEATTLE — A confident President Clinton yesterday made a jubilant entry to the Pacific trade talks here, where he hopes to parlay his NAFTA victory into a worldwide "triple play."

"We'll be focusing on what we can do to help our own people. Make no mistake about it, ultimately this meeting is about the jobs, the income and the future of the American people," Mr. Clinton said as he arrived for the first summit-level Asia Pacific Economic Cooperation conference.

As Secretary of State Warren Christopher raised expectations at the conference, Mr. Clinton was buoyed by airport cheers, even from thousands of Boeing's union machinists, who had opposed his campaign to lower trade barriers with Mexico.

In so many words, Mr. Clinton's attitude was: today NAFTA, tomorrow the world.

"One thing is clear: By taking the courageous step of opening trade in our own hemisphere, we have the economic, the political and the moral standing to make the case that that ought to be done throughout the world," Mr. Clinton said as he left Washington.

During an arrival rally at Boeing Co., the nation's leading exporter, Mr. Clinton asked a jubilant crowd to stick through the economic downturn that has led to thousands of layoffs at Boeing and in the region.

"The meeting of the leaders of APEC, if we make wise decisions and if we begin a long-term disciplined partnership for growth and opportunity, can create jobs here and jobs across the Pacific, can raise incomes here and give hope to people who never had it all across the largest ocean on the globe," Mr. Clinton said.

He declared support for working-group recommendations to convert APEC from an informal discussion club into a trade alliance to expand Pacific trade and investment. Mr. Clinton wants to turn those suggestions into instant action instead of waiting three years for the next step.

"We hope to complete a triple play," Mr. Christopher told reporters here. "All of you who are baseball fans know how difficult the triple play is. We are going to be working on it and hope to succeed."

Mr. Christopher was referring to the administration's goal of wrapping up NAFTA, talks on the General Agreement on Tariffs and Trade and the APEC conference.

Mr. Clinton planned to lobby the new prime ministers of Japan and Canada today and perhaps move the APEC meeting into higher gear, a tall order for an organization that now comprises 17 "economies."

That term is used instead of "governments" to deal with China's sensitivity about equivalency with Hong Kong or the Taiwan regime referred to here as "Chinese Taipei."

Chau Tak-hay, Hong Kong's secretary for trade and industry, said the House's 234-200 vote on NAFTA Wednesday strengthened Mr. Clinton's hand here by showing that his policies for liberalized trade have support.

"Clinton will be able to deliver," he said.

However, South Korean Foreign Minister Han Sung-joo warned the United States that it could face retaliation from East Asian countries if the North American Free Trade Agreement is used in ways that block their products.

"Should NAFTA increase barriers such as local-content requirements, then this may provoke a similar reaction on the other side of the Pacific," Mr. Han said.

To underscore the NAFTA-APEC linkage, Mexico was admitted yesterday to APEC membership along with Papua New Guinea.

The admission of Mexico was approved so suddenly late Wednesday that Mexico's president could not get here yesterday, although Foreign Minister Fernando Solana did arrive.

In meetings this morning with Japan's prime minister, Morihiro Hosokawa, Mr. Clinton will seek more access for American goods.

Afterward, Mr. Clinton will hold what promises to be a historic if somewhat stormy meeting with Chinese President Jiang Zemin.

Mr. Jiang says the United States should accept his country's "differences" in its efforts to forge a cooperative relationship.

For Solicitor General's Office, New Directions in Old Cases

By Joan Biskupic
Washington Post Staff Writer

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In 1992, candidate Bill Clinton promised California that if he won the presidency, he would make sure the federal government sided with California in a big tax case now at the Supreme Court.

Last month, President Clinton delivered.

The solicitor general, the nation's top lawyer before the court, reversed the government's long-standing position that California's aggressive scheme for taxing foreign-based companies is unconstitutional. A day later, Clinton dashed off a note to Sen. Barbara Boxer (D-Calif.) emphasizing that he was "foursquare" behind the nation's most populous state. California officials say billions of dollars in refunds are at stake.

The legal flip-flop is one of a series of recent episodes that have lawyers questioning how large a role politics plays in the solicitor general's office—a division of the Justice Department that enjoys a special status and winning record at the Supreme Court.

Alan Horowitz, an assistant solicitor general from 1979 to 1990, said the switch in the California case was unusual because it did not flow from an overall policy change by a new administration. "It just seems like a position designed to help out California," he said.

"The office used to be considered completely nonpolitical," said Andrew Frey, a former deputy solicitor general who joined the office in 1972 and left in 1986. "One of the unfortunate legacies of the Reagan administration, which may be being carried on by the present administration, is that the office is becoming much more political."

Even so, the ideal of the neutral "10th justice" is at the core of the solicitor general's identity. It is as much a part of the legend of the office as the formal dark vests, tails and striped pants the

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solicitor still wears in appearances before the justices.

The solicitor general is involved in about two-thirds of the court's cases, either representing the government as a direct party in a dispute or as a "friend of the court" giving the justices guidance. Indicative of his privileged spot among other lawyers who argue at the court is the solicitor general's second office there.

But under Drew S. Days III, the office has been accused of playing politics. Since Days was appointed last year, the most controversial episodes have been switching sides on a child pornography law and on California's taxation of foreign-based businesses. Days would not comment in an interview about either of the new positions, and said legal integrity, not politics, is his overriding concern.

Days has appointed a political deputy, continuing the practice that began in the 1980s. Reports of conflicts between that deputy, former Arizona State University law dean Paul Bender, and some of the career assistants are so widespread that appellate lawyers far outside the Beltway have been asking about the atmosphere in the solicitor's office.

About one-third of Days's assistants have left during the past year. The more conservative lawyers have been replaced by more liberal ones.

In part, this is a reaction to the high-profile conservatism of the office during the 12 years under Presidents Ronald Reagan and George Bush. Their solicitors pressed, to varying degrees, the GOP agenda on abortion, school prayer and affirmative action.

"Once you start making ideology important in the office," Frey said, "it's very hard to stop. If the Republicans have been doing it for a few years, then the Democrats, when they come in, want to make their changes."

Carter Phillips, an assistant solicitor general from 1981 to 1984, said he doubts the historical "neutrality" was ever true. "It's a myth," he said. But Phillips, reflecting on recent developments, also said that if the court finds the solicitor's office too politically minded, the deference paid government lawyers will fade.

Mistrust of the solicitor general's independence arose intermittently before the Reagan era, but it was in the 1980s that the office's attention to politics came under scrutiny and criticism. It might have diminished the influence of the solicitor general's office too: Former clerks to the justices claimed some arguments appeared so politically inspired that the court discounted them.

Days, in an interview, said he believes in the tradition of an objective solicitor general, true only to the law. "For the SG to be perceived as someone who is a mouthpiece is not helpful," Days said. He asserts that while he weighs political interests, he is, above all, independent and offering the court sound legal arguments.

Days, a former chief of the Justice Department's civil rights division, is a temperate man known for his evenhanded approach and constant self-reflection. Even those lawyers who claim politics pervades the office say the soft-spoken Days, who is on leave from Yale Law School, has not overplayed his hand with the court as critics said the Reagan administration did.

"There is a lot of awareness that we're dealing with a court dominated by Republican appointees," said one lawyer in the office. "No one thinks the justices will respond to blatant political appeals from this administration."

Days said he continued the practice of appointing a political deputy because he wanted a confidant on policy concerns.

Bender, his appointee, has been a target of criticism by assistants who think the office is showing too liberal a stripe. Bender worked in the solicitor general's office in the 1960s when Archibald Cox and Thurgood Marshall were in charge, and he is bolder and readier than Days to challenge his associates.

Bender was influential in the office's decision to narrow its definition of what constitutes hard-core pornography in a case involving videos of scantily clad girls. The new position reversed a stance taken just eight months earlier, in March 1993.

A lower court had ruled that videos showing clothed, but suggestively posed, children violated federal child pornography law, as a U.S. attorney had argued. Days told the justices that the lower court had erred in not finding that the law required, for a conviction, "a visible depiction of the genitals," either clothed or unclothed. He argued that it required that the children be "lasciviously engaging" in sexual conduct.

Days said the earlier interpretation was unconstitutionally broad. The Supreme Court returned the case to lower courts.

To Days and Bender, the episode demonstrated their independence despite today's pressure to be "tough on crime." To some of the office's lawyers, it showed liberal inclinations that could hurt law enforcement.

Bender served from 1968 to 1970 as counsel to a national commission that criticized harsh anti-pornography laws. He said, as a strong free-speech advocate, that he believes obscenity should be protected by the First Amendment as most other speech is, but he said he would not actively seek out a case to push his views.

The Senate unanimously adopted a resolution criticizing the Days position, and President Clinton ordered Attorney General Janet Reno to prepare legislation that would broaden the department's stance on what constitutes child pornography.

"The driving thing for me is that I believe in absolute intellectual honesty before the court," said Bender, who was speaking generally and declined to comment on the pornography case. "Winning is not all there is. We're in the business of helping the court decide the case correctly."

The California tax case to be argued next month involves the state's policy of taxing a company based on a percentage of its worldwide income. The tax policy incited protests from the international community, threats of trade retaliation and a lawsuit by Barclays Bank, a multinational corporation based in Britain.

Prior administrations sided with Barclays, saying the California policy interfered with the executive's foreign policy and alienated important trading partners. California has argued that the method is fair, proper and not inconsistent with congressional dictates. The state has focused on the power of Congress, not the executive, over foreign commerce.

During the campaign, Clinton pledged to be "pro-California in this litigation." His new administration worked to avoid bringing the issue to a head at the Supreme Court by successfully encouraging California to adopt an alternative taxing method and then advising the justices that the case was no longer relevant.

Still, the court took the case, and Days had the choice of ignoring Clinton's campaign promise or turning his back on the federal government's long-held view that the so-called worldwide unitary tax breached the Constitution. He chose the latter course, and Clinton wrote to Boxer, "I am pleased [that] the United States has provided such strong legal support for California's position."

The new argument is that federal policies in effect when the tax was levied, in 1977, did not prohibit the California method, so it should be upheld. In his brief to the court, Days said that earlier government filings were flawed because they failed to compare executive branch policy with California's taxation specifically in 1977. (Executive action in later years arguably conflicted with the state policy.)

It is now up to the Supreme Court to decide which party makes the best case.

Charles Fried, the most controversial of Reagan's solicitors general, said, "The issue is not whether you change your mind, or have a different point of view, but how well you do it."

SUPREME COURT CALENDAR

The Supreme Court will hear oral argument today from 10 a.m. to 2 p.m. in the following cases:

No. 93-405. *Digital Equipment Corp. v. Desktop Direct Inc.* Appellate procedure when a judge sets aside a settlement agreement on grounds of fraud. (One hour.)

No. 92-1964. *National Labor Relations Board v. Health Care & Retirement Corp. of America.* Whether nurses who also supervise aides are excluded from federal labor law protection. (One hour.)

No. 92-8841. *Powell v. Nevada.* Whether a 1991 court ruling—that damaging statements made by a suspect who was jailed longer than 48 hours before a hearing must be suppressed—should apply to case pending at the time of the ruling. (One hour.)

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FCC to Cut Cable TV Rates Again

Reductions of at Least 7 Percent Slated

By Paul Farhi
Washington Post Staff Writer

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Federal regulators will order cable television companies to reduce their rates by at least 7 percent today, sources said yesterday, in the government's second attempt in 10 months to lower prices for the nation's 58 million cable households.

The Federal Communications Commission, whose original rules requiring price cuts last year created confusion and drew criticism, will announce the new reductions at a meeting today.

Last April, the FCC adopted rules to reduce cable programming charges up to 10 percent or more, and forced reductions in equipment prices as well. The reductions were supposed to lower the monthly bills and save as much as $1.5 billion a year.

Instead, the FCC found in a preliminary survey last fall that one-third of all cable customers saw their bills rise, as cable providers found loopholes that enabled them to raise some prices. Among other things, the rules allowed operators whose program prices were below government-mandated "benchmarks" to raise their prices up to a certain level to offset their reductions in prices for equipment like remote control devices.

The 7 percent reduction that will be announced today could have a more comprehensive effect on prices, said a congressional source, because cable companies have no other ways to offset the rollback by raising other prices.

"I think we're looking at a broader, across-the-board effect this time," said the source, who hastened to add that loopholes may still exist.

Rather than a blanket order, the FCC will adjust its benchmarks, the maximum price that cable operators can charge for each channel of programming. Because nearly all cable companies are at the benchmarks, virtually every one will have to drop down 7 percent.

The FCC prices cover "basic" program packages, which include local broadcast stations, and "expanded basic" packages, which include popular cable-only channels such as MTV and CNN. They do not affect premium services such as HBO or pay-per-view.

Prices vary throughout the 11,000 cable systems in the United States, but a 7 percent reduction on

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a $20 monthly bill would amount a savings of $1.40.

Sources said FCC Chairman Reed Hundt pressed for larger reductions than the 7 percent or more apparently agreed to, but was forced to compromise by commissioners James Quello and Andrew Barrett, the lone Republican among the three commissioners.

Agreement on the new rates, which were proposed by the FCC staff, came yesterday. The commissioners' vote today is seen as a formality.

The FCC's new cut is seen by political observers as an acknowledgment that its first attempt did not result in the widespread reductions that Congress had in mind when it passed a new cable TV law in the fall of 1992.

Reconsideration of the cable rules was proposed by Hundt, a prep school classmate of Vice President Gore who was appointed FCC chairman in late November.

THE WASHINGTON POST TUESDAY, FEBRUARY 22, 1994

Today's FCC vote comes after an intense lobbying campaign by the cable industry, whose representatives argued that further rate cutbacks would harm the industry's ability to construct advanced TV and phone systems that would make up the backbone of the so-called information superhighway.

The industry reinforced the point by sending a group of bankers to the FCC earlier this month to express their concerns about cable operators' ability to repay loans in the face of reduced revenue.

"We think Congress's goals have already been achieved" under the FCC's current rules, said Decker Anstrom, president of the National Cable Television Association, in an interview last week.

New cuts would give the regional Bell telephone companies an unfair advantage over cable operators in building the new information networks, he said.

Further, cable companies have protested a government-ordered rate freeze that has been in effect since last April.

The freeze, which has been extended three times and now will last until mid-May, permits the companies to adjust individual rates but prevents them from raising their total revenue.

But consumer advocates and Democrats on Capitol Hill who favor more regulation said the industry's arguments are bogus in light of prices that are still "excessive."

They said the strong performance of cable-company stocks since reregulation began in September counters claims that regulation had caused financial problems.

"Captive customers should not be forced to pay prices above competitive market levels . . . to pay for the superhighway," said Bradley Stillman of the Consumer Federation of America, which asked the FCC to reduce prices another 20 percent and close loopholes.

The FCC yesterday was also working out a new formula under which cable operators could charge a relatively higher amount for new channels they add to their current lineups.

This provision is designed to give cable operators incentives to upgrade their delivery systems and add new channels.

Justice Department flip-flops on child-pornography case

Reno wins internal battle, backs strict reading of law

By Jerry Seper
THE WASHINGTON TIMES

Attorney General Janet Reno yesterday reversed the Justice Department's position in a controversial child-pornography case, saying the department will now advocate a stricter interpretation of federal child-pornography laws.

Miss Reno, who came under fire from Congress this year when the department said it would argue against a court ruling upholding the conviction of a Pennsylvania man, said the government will now oppose a review of the case by the Supreme Court.

The last-minute reversal, detailed in a 21-page brief signed by Miss Reno, came two days after Republicans won control of the Senate and House and highlighted her disagreement over the case with Solicitor General Drew S. Days III, who initially said the department would fight the ruling by the 3rd U.S. Circuit Court of Appeals.

"As I am ultimately responsible for the positions taken by the United States, the brief filed today adopts the interpretation made by the Third Circuit, which I believe to be the correct one," Miss Reno said in a statement. "For that reason, it bears my signature rather than that of the solicitor general."

Miss Reno added that the case involves issues "upon which reasonable people, applying the law in good faith, can and have disagreed."

Justice Department sources said Mr. Days declined to sign the brief, standing by his initial arguments in the case. He was not available for comment.

John McMickle, litigation coordinator for the National Law Center for Children and Families, praised Miss Reno's decision.

"The department has done a full 180-degree reversal, and we believe this decision is on target," said Mr. McMickle, who led a vigorous fight by his organization against the department's previous position. "The Justice Department's latest position is a result of over a year's worth of effort and the Clinton administration's defeat in the Tuesday elections."

> *"If they had not backed down, it would have been an act of political stupidity."*
>
> — *John McMickle*

Mr. McMickle described the reversal as the "first indication we have from the Clinton administration of how they are going to react in a more conservative, Republican world. If they had not backed down, it would have been an act of political stupidity on their part."

The case involves Stephen A. Knox, 38, who was convicted of possessing child pornography after three videotapes were found in his home. The tapes depicted adolescent girls and children as young as 8 in bikinis, underwear and stockings and often zoomed in on their crotches.

Knox was convicted in 1991 under a federal law against receiving through the mail or possessing "any visual depiction [of] a minor engaging in sexually explicit conduct," which includes "lascivious exhibition of the genitals or pubic area."

At issue is how the words "exhibition" and "lascivious" are defined. If "exhibition" were defined to mean only the nude display of children's genitals, Knox could not be prosecuted. If "lascivious" were interpreted to apply only to the child's behavior rather than portrayal, Knox also would be off the hook.

The Bush administration argued that the exhibition of clothed genitals of a child violated federal pornography laws if the context was an attempt to attract sexual attention to the child.

Knox argued for a definition of "exhibition" that would require a child's body parts to be exposed to the camera.

The Court of Appeals concluded that "nudity was not a prerequisite" and that the tapes "clearly were designed to pander to pedophiles."

Knox, a graduate student at Penn State University and a former grade-school teacher who previously was convicted of receiving pornography, appealed to the Supreme Court.

The Clinton Justice Department first urged the Supreme Court not to take the case and to let the 3rd Circuit ruling stand. But in a surprising reversal, it sided with Knox, arguing for a lenient interpretation of the law.

A nearly unanimous Congress repudiated the Justice Department. All 100 senators and all but three members of the House said they intended the law to apply to people like Knox. They voted to urge the department to enforce the strict interpretation of the law.

The public furor over the Justice Department's position was so great that President Clinton distanced himself from the issue, saying the Justice Department interpretation was technically correct but that Congress was right about what the law should say. He asked the department to draft language that would amend the law to cover people like Knox.

In the interim, the high court sent the case back to the 3rd Circuit to consider the government's new position: that children's behavior, not just their portrayal, in pornographic videos must be "lascivious." Mr. Days had argued for that position.

Mr. Days had said the appeals court erred in upholding the conviction because it "utilized an impermissibly broad standard" for determining child pornography.

FRIDAY, NOVEMBER 11, 1994 The Washington Times

Beyer's suicide rulings questioned twice before

THE WASHINGTON TIMES

Before the Tommy Burkett case came to the FBI's attention, medical examiner Dr. James C. Beyer had faced scrutiny for two other suicide rulings.

The first, in the 1989 stabbing death of Timothy Easley, 21, of Centreville, later fueled questions about the thoroughness of Dr. Beyer's autopsy in the 1993 shooting death of White House Deputy Counsel Vincent Foster, 48.

Dr. Beyer ruled that Mr. Easley had stabbed himself to death.

But the death later proved to be a homicide after his mother, Pam Easley, arranged for a second autopsy. Its findings suggested Dr. Beyer's autopsy contained errors, such as overlooking a stab wound in the victim's hand indicating he had tried to defend himself.

The hand wound was "definitely ante-mortem [before death] and a classical defense wound suffered while trying to avoid the knife," wrote Dr. Harry J. Bonnell, chief deputy medical examiner in San Diego, who reviewed the Easley case.

Dr. Bonnell also wrote it was nearly impossible for Mr. Easley to have stabbed himself in the way Dr. Beyer concluded.

Police re-interviewed Mr. Easley's girlfriend, Candy Wharton, 34, who confessed to stabbing him. She was convicted of manslaughter last year and is serving a five-year sentence.

After Mr. Foster's body was found July 20, 1993, at Fort Marcy Park off the George Washington Parkway, Dr. Beyer ruled he had shot himself in the head. No bullet was ever found at the scene.

George Gonzalez, a Fairfax County paramedic, told reporters that Mr. Foster's body was lying neatly on a gentle incline, a .38-caliber revolver in one hand.

"Usually a suicide by gunshot is a mess," Mr. Gonzalez said, but he recalled seeing only a "thin trickle of blood" at the corner of Mr. Foster's mouth. He said the body was laid out neatly "as if ready for a coffin."

One pathologist told The Washington Times that it is "extremely rare" to find the gun in the hand of a man who has shot himself in the mouth.

"A reflex action of the arm usually propels the gun a fair distance from the body, up to 20 to 30 feet," he said.

— Greg Seigle

Parents, conflicting autopsies pull FBI into probe of '91 death

By Greg Seigle A1
THE WASHINGTON TIMES

The FBI is reviewing a 3-year-old investigation of a college student's death in Fairfax County that was ruled a suicide by the same coroner whose work was challenged in the mysterious death of White House aide Vincent Foster.

An earlier death that the coroner called a suicide was ruled a murder in a second autopsy.

FBI agents met Monday with the parents of Tommy Burkett, 21,

Coroner in case made Foster ruling

who county authorities determined killed himself with a .357-caliber Magnum revolver in his bedroom at the family's Herndon home.

Tommy's parents, who have pushed to reopen the case, say they think their son did not commit suicide, but was shot in the head after dying.

They question the conclusions of Dr. James Beyer, the state medical examiner who conducted the autopsy and ruled that the Marymount University student died of a self-inflicted gunshot wound.

The Burketts and an independent medical examiner hired by them argue that Dr. Beyer, 76, overlooked signs of a struggle, including a broken jaw, a blow to the ear and scratches on the chest.

A second autopsy, performed in

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DEATH

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New York in November 1992 after the Burketts had their son's body exhumed, documented the broken jaw and other problems with the official autopsy.

Dr. Beyer, the state coroner for Northern Virginia since 1971, had no comment on the Burkett case.

Dr. Marcella F. Fierro, Virginia's chief medical examiner, said yesterday that she reviewed Dr. Beyer's autopsy and found no faults.

"If there's evidence to the contrary, I'd like to see it," she said. "I hope we can get this all cleared up."

Dr. Beyer ruled last year that Mr. Foster, the White House deputy counsel whose body was found in Fort Marcy Park on July 20, 1993, shot himself. Despite evidence that raised questions about that finding, Dr. Beyer's verdict was upheld by federal investigators.

When questions arose about the finding, however, The Washington Times disclosed Dr. Beyer's mistaken ruling in the 1989 death of a Centreville man.

In that case, Dr. Beyer determined that Timothy Easley, 21, committed suicide with a knife. But a second autopsy revealed clear signs that Mr. Easley had attempted to defend himself from the knife that killed him.

His girlfriend later confessed to killing Mr. Easley and was convicted of manslaughter. She is serving a five-year sentence.

Fairfax County police classify Tommy Burkett's death as a suicide but say a homicide investigation could result from the FBI probe.

Agents have been involved in the case since March, when the Justice Department responded to a request from Sen. John W. Warner, Virginia Republican, and other members of Congress for a new inquiry into the death.

"We're not redoing a homicide investigation," FBI agent Susan Lloyd said. "We're doing a preliminary civil rights inquiry."

At the Burkett home on Muirkirk Lane, blood still stains the walls of the bedroom where Tommy's parents found his body the night of Dec. 1, 1991.

Thomas C. Burkett Sr. and his wife, Beth George, say they have kept the room just as it was that night.

"There's not a shred of evidence that proves he killed himself," said Mr. Burkett, a teacher at Oakton High School.

Though sympathetic, county police say the grief-stricken Burketts simply cannot accept that their son, a B student known by some at Marymount as a reclusive heavy drinker, could kill himself.

Investigators say they exhausted all leads without finding proof of foul play in the death of the 1988 graduate of Chantilly High School, who was studying psychology and business at the Arlington university.

But many questions puzzle the Burketts as well as a private investigator and outside observers who have reviewed the case. The TV program "Unsolved Mysteries" will air a segment on the death at 8 tonight on WRC-TV (Channel 4).

Among the mysteries:

- Dr. Beyer's autopsy overlooked the broken jaw and other injuries found during an examination in November 1992 by Dr. Erik Mitchell, who was the medical examiner in Onondaga County, N.Y.
- Police concluded that Tommy killed himself at a time when, according to paramedics' report on the state of rigor mortis, he must have been dead "for several hours."
- The Burketts insist the cylinder of the revolver was open when they found it in their son's hand, making it impossible for him to have fired a shot.

Police spokeswoman Lt. April Kranda said the Burketts had tampered with the revolver, "so we don't know what condition the gun was in after it was fired."

- Another Marymount student had Tommy's wallet and bank card when he died over the Thanksgiving holiday. Mr. Burkett said up to $2,000 was missing from his son's bank account. Tommy's jacket and glasses were missing and never recovered.

The report by the Fairfax County Fire and Rescue Department said that when paramedics arrived about 6:10 p.m., rigor mortis had set in from Tommy's head to his fingertips.

That process takes a few hours after death. But Thomas J. Lyons, who retired as a Fairfax County police inspector in 1992 after 20 years on the force, concluded that Tommy shot himself at 6 p.m., moments before his parents pulled into the driveway after being away all day.

"There's absolutely nothing unusual about this case," Mr. Lyons said in a September telephone interview. "The physical evidence in this case points to a self-inflicted wound."

In his autopsy, Dr. Mitchell discovered that the lower left jaw was broken.

"The jaw was hit," Dr. Mitchell said in an interview, acknowledging that the kick of the revolver could have broken Tommy's jaw if he pulled the trigger.

Dr. Mitchell, now a forensic pathologist in Topeka, Kan., said there were several scratches on Tommy's left upper chest, and his right ear was discolored, indicating a blow to the side of the head.

Dr. Mitchell resigned as Onondaga County medical examiner in January after he admitted taking organs from bodies for research without permission from families.

Mr. Lyons' police report said Tommy fired the revolver inside his mouth and that the bullet exited the top of his head. Both autopsies, however, found the exit wound in the back of the head.

The police report said the exit wound created by the hollow-tip bullet was a quarter-inch wide and a half-inch high.

Hollow-tip bullets generally create large exit wounds. Firearms experts say a shot fired in the mouth likely would blow the back of the head off.

Mr. Burkett believes that his son was dead when he was shot and that the bullet did not create a large exit wound because the head was hardened by rigor mortis.

Dr. Beyer's autopsy report did not mention an absence of gunpowder in Tommy's mouth, but Dr. Mitchell noted it.

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Reno Takes Tougher Stance on Child Pornography

By Pierre Thomas
Washington Post Staff Writer

The Justice Department yesterday reversed an interpretation of federal child pornography law that critics had argued would have seriously weakened efforts to prosecute commercial exploitation of children.

The dramatic reversal in a case before the Supreme Court was immediately seized upon by conservative activists as the first evidence that the Clinton administration had gotten the message from Tuesday's overwhelming Republican election victory.

"This is the first indication of how the Clinton administration will react in a more conservative Republican world," said John McMickle, spokesman for the National Law Center for Children and Families, which had filed briefs opposing the department's earlier stance. "We strongly believe that the Justice Department's latest position is the result of one year's worth of effort and Tuesday's election."

Department spokesman Carl Stern denied that, saying the "election had nothing to do with the case." He said Attorney General Janet Reno, upon further consideration, had determined that the department's earlier position needed bolstering.

At issue was the department's stance on *Knox v. United States*, which involved the federal government's prosecution of Stephen A. Knox for distribution of videotapes of 10- to 17-year-old girls wearing bathing suits, leotards or panties with close-ups of the girls' genital areas.

The Bush administration had argued that the videos were pornographic even though the girls' genitals were covered. Knox, unsuccessful in lower courts, sought reversal in the Supreme Court, contending that the child pornography law only addressed nude depictions.

The Clinton administration, under Solicitor General Drew S. Days III, argued that federal law required a "visible depiction of the genitals," either clothed or unclothed. Days also contended that the children must be "lasciviously engaging" in sexual conduct. The administration argued that even under Days's standard, the videotapes could still be pornographic.

Days's position prompted sharp congressional criticism and an outcry from conservative activists. A year ago, the Senate unanimously approved a resolution attacking the Justice Department's position. This prompted President Clinton to take the unusual step of ordering Reno to toughen a stance she had been defending.

Yesterday, in a brief filed at the Supreme Court, Reno overruled Days, and took the somewhat unusual position of signing the brief herself. Reno, in a statement yesterday, agreed that federal law covers all "lascivious exhibitions of a minor's genitals—and not only those where the genitals are nude or discernible under clothing, as suggested by the Solicitor General."

Reno added that the government must argue for an "interpretation of the statute which prohibits the receipt and possession of child pornography to maximum extent allowed under the Constitution."

In light of Days's stance, the Supreme Court remanded the case back to the 3rd U.S. Circuit Court of Appeals, which held in June that the solicitor general's position was wrong and that under either interpretation Knox's conviction would stand.

Reno said she had discussed the case at length with Days but had sided with the 3rd Circuit's interpretation.

"This is an issue which reasonable people, applying the law in good faith, can and have disagreed," Reno wrote. "As I am ultimately responsible for the positions taken by the United States, the brief filed today adopts the interpretation made by the 3rd Circuit, which I believe to be the correct one. For that reason, it bears my signature rather than that of the Solicitor General."

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FINAL

PHOTOCOPY
PRESERVATION

WHEN MONEY IS BARELY ENOUGH

Despite outspending their opponents by $500,000 or more, 16 House incumbents—14 of them Democrats—won reelection Tuesday with 55 percent or less of the vote.

Fazio
Party leader outspent rival by **$1.6 million.**

Rose
Potential House speaker outspent rival by **$980,000.**

Obey
Appropriations chairman outspent rival by **$727,000.**

Gibbons
Ways & Means chairman outspent rival by **$667,000.**

Incumbent in **Bold**	% of vote	Total campaign resources	Incumbent advantage
Vic Fazio (D-Calif.)	49%	$1,797,431	$1,628,995
Tim Lefever (R)	47	168,436	
Martin Frost (D-Tex.)	53	1,546,345	1,099,539
Ed Harrison (R)	47	446,806	
Charlie Rose (D-N.C.)	52	1,029,039	980,072
Robert Anderson (R)	48	48,967	
Sander M. Levin (D-Mich.)	52	1,273,489	909,615
John Pappageorge (R)	47	363,874	
John J. LaFalce (D-N.Y.)	55	1,057,097	861,319
William Miller Jr. (R)	43	195,778	
Richard J. Durbin (D-Ill.)	55	842,672	802,713
Bill Owens (R)	45	39,959	
Bart Gordon (D-Tenn.)	51	1,248,780	794,809
Steven Gill (R)	49	453,971	
Gary L. Ackerman (D-N.Y.)	55	1,040,806	779,595
Grant Lally (R)	44	261,211	
David R. Obey (D-Wis.)	54	800,469	727,009
Scott West (R)	46	73,460	
Sam Gibbons (D-Fla.)	52	961,903	667,530
Mark Sharpe (R)	48	294,373	
Dale E. Kildee (D-Mich.)	51	759,705	552,935
Megan O'Neill (R)	47	206,770	
Charles W. Stenholm (D-Tex.)	54	703,614	542,339
Phil Boone (R)	46	161,275	
Lewis F. Payne Jr. (D-Va.)	53	809,123	530,672
George Landrith III (R)	47	278,451	
Carlos J. Moorhead (R-Calif.)	52	944,856	527,808
Doug Kahn (D)	43	417,048	
Peter I. Blute (R-Mass.)	55	879,875	522,199
Kevin O'Sullivan (D)	44	357,676	
Gerald D. Kleczka (D-Wis.)	54	588,613	504,698
Tom Reynolds (R)	45	83,915	

SOURCE: Common Cause

THE WASHINGTON POST

Cash Is Shock Absorber On the Road to Election

By Charles R. Babcock
Washington Post Staff Writer

The enormous Republican gains in Tuesday's elections seem to affirm an analogy comparing money in an election to gas in a race car: Having it doesn't mean you'll win the race, but you can't run without it.

There were races Tuesday where sizable financial advantages did not equal victory. For example, Rep. Michael Huffington (R) spent more than $28 million of his own money and lost a Senate race in California. Oliver L. North lost in Virginia even though he raised more than $17 million, four times more than Sen. Charles S. Robb (D). Millionaire House candidate Eugene Fontenot (R) lost too, as did Rep. Marjorie Margolies-Mezvinsky (D-Pa.), who had raised $1.4 million through Oct. 19.

On the other hand, most of the 34 winning Republican House challengers had enough money to be competitive. Although only five outspent their incumbent opponents, they averaged spending nearly $407,000 each—compared with an average of $136,485 by all challengers—a post-election analysis by Common Cause shows. That does not count the $60,000 or so party committees can spend on a candidate and which does not have to be reported by the candidate. Dan Leonard, spokesman for the National Republican Congressional Committee, said all 73 GOP freshmen got some funding from the national party.

And some were helped by outside groups that made independent campaign expenditures. The National Rifle Association and groups supporting term limits bought advertising in Washington state to help George R. Nethercutt Jr. (R) beat House Speaker Thomas S. Foley (D), who raised nearly $2 million. Nethercutt raised more than $700,000 himself.

Herbert Alexander, a University of Southern California political science professor who has written several books about the role of money in politics, said it is difficult to determine how much money a challenger needs to make a real run at an entrenched incumbent. "Candidates need money for name recognition, to get their message across," he said. He calls it "a doctrine of adequacy. It's something you can't put a figure on; you define it in each case."

More than 100 Republican challengers—almost twice as many as Democratic challengers—had raised at least $250,000 through Oct. 19. The Common Cause analysis noted that 95 percent of the House incumbents who outraised their opponents by more than 2 to 1 won reelection. But only 65 percent of House incumbents won if they had less of a financial advantage over their challengers.

Common Cause President Fred Wertheimer said the GOP rout could have been larger if 40 other Democratic incumbents, who won with less than 55 percent of the vote, had not had cash cushions. All but four outraised their challengers, sometimes more than 10 to 1.

Incumbents also had a big financial edge in some of the races still too close to call. Rep. Sam Gejdenson (D-Conn.), who barely beat Edward Munster two years ago, is headed for a recount again despite outraising his foe $1.2 million to $358,000. Rep. Jane Harman (D-Calif.) was in the same predicament, although she had outraised Susan Brooks (R) $1.1 million to $411,000.

In a few cases, other factors helped a long shot overcome a lack of money. The most striking example was in Chicago, where Michael Flanagan raised only $70,000 but unseated Rep. Dan Rostenkowski (D-Ill.), who is under indictment on corruption charges.

A review by the Center for Responsive Politics shows Flanagan was the only one of 147 House challengers who won after raising less than $100,000. Six of the 62 challengers who raised between $100,000 and $250,000 won; 13 of 19 who raised more than $500,000 won.

In open-seat races, where the GOP picked up another 18 House seats, funding historically has been more evenly matched, with both parties and their allies pouring resources into races.

Besides Huffington and North, only two Senate challengers outraised incumbents. Both were Republicans and both won—Rep. Rick Santorum of Pennsylvania and Bill Frist of Tennessee.

Absentee Ballots Are Still Being Counted

2 Gubernatorial Races and 6 House Contests Hang in the Balance

Associated Press

Absentee ballots still are being counted for undecided governors' races in Alaska and Maryland and for six undecided House contests in four other states.

In Alaska, Democrat Tony Knowles held a razor-thin lead of 339 votes over Republican James Campbell, but an undetermined number of absentee votes could determine the winner.

In Maryland, Democrat Parris N. Glendening led Republican Ellen R. Sauerbrey in unofficial returns before absentee ballots were counted.

If current leads hold up in the six undecided House races, there will be 230 Republicans in the new House, 204 Democrats and one independent.

- In California's 22nd District, Assemblywoman Andrea Seastrand (R) was leading Walter Capps (D) by 969 votes out of more than 180,000 cast.
- In California's 36th District, state Rep. Jane Harman (D) was trailing Susan M. Brooks (R) by 93 votes out of the more than 164,000 cast.
- In New York's 26th District, freshman Rep. Maurice D. Hinchey (D) was in a virtual dead heat with Bob Moppert (R), whom Hinchey narrowly defeated two years ago. With 96 percent of the vote counted, Hinchey led by fewer than 900 votes.
- In Connecticut's 2nd District, an unofficial tally showed Rep. Sam Gejdenson (D) edging Edward W. Munster (R) by only two votes—79,169 to 79,167.
- In Oregon's 1st District, freshman Rep. Elizabeth Furse (D) led Bill Witt (R) by 8,652 votes with an estimated 47,000 absentee ballots yet to be counted.
- In Oregon's 5th District, 60,000 to 67,000 absentee ballots will decide whether Catherine Webber (D) will hold her 2,133-vote lead over Jim Bunn (R).

Improved Schools at a Profit: Is a Private Effort Working?

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By GEORGE JUDSON
Special to The New York Times

BALTIMORE — Yet another tour group was moving through Sarah M. Roach Elementary School, one of nine schools here managed by Education Alternatives, the nation's biggest for-profit company running public schools. Once again, it was 8-year-old Tamira Griffin's turn to perform.

Shy but determined, Tamira stood in her classroom, surrounded by visiting school superintendents from Pennsylvania, and described what she and her third-grade classmates were studying. "I like school," she concluded.

The superintendents were charmed. The condition of the building and the classroom equipment and the enthusiasm of the children and teachers were remarkable for an inner-city school. But as administrators with budgets of their own, the visiting superintendents also wondered how this private company had accomplished the transformation within Baltimore's limited public school budget.

"There are a lot of good things going on here," said Alan F. Fager, a Superintendent from Boyertown, Pa., as he watched 4-year-olds work on computers in a prekindergarten class. "But I still don't get the finances."

Few people do. Two years after Baltimore awarded the private company a $135 million contract to manage the schools, no one is quite sure of the experiment's precise finances or educational results.

The experiment is being watched closely around the country as communities see themselves spending more and more on education but are finding that it often produces mediocre results. Only last month, Hartford signed a five-year, billion-dollar deal in which Education Alternatives would manage the city's entire school system.

In Baltimore, the company has to date produced a better-than-average-looking inner-city school by spending more than the average amount of money. In this sense, Education Alternatives has not begun to

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deliver on its promise, that private enterprise can do a better job for less in running big-city public schools.

And as impressive as the classrooms look because of the extra investment, standardized test scores have declined in several of these schools. While attendance at the Education Alternative schools has increased, other Baltimore public schools have gained even more.

To date, what Education Alternatives has been able to do ahead of other private initiatives like the Edison Project is turn a group of nine public schools into the equivalent of a real estate developer's lavishly furnished model homes.

But at a time when Education Alternatives' corporate success — and the value of its publicly traded stock — depends more on its ability to attract additional clients than on showing a clear profit, questions remain about whether the Baltimore schools are a fair test of the company's business proposition: that it can achieve more without spending more.

"I'm very comfortable with what they're trying to do and what they're trying to say," Mr. Fager, the Superintendent, said after the tour. "And if they're expecting to make a profit, that's fine. I just don't understand to what extent. There has to be more to it, unless this is a loss leader for a bigger contract like Hartford."

Many urban school districts have used extra money to improve individual schools, including Baltimore, where Federal grants, for example, allow a handful of schools to use the "Success for All" reading program developed at Johns Hopkins University.

Education Alternatives' promise has been different: to operate schools more efficiently and use the savings to improve instruction — and to earn a profit — at no extra cost.

The savings are to come in large and small amounts from the expertise of its building-maintenance, accounting and computer-curriculum partners and from their ability to buy in huge amounts. In Baltimore, for example, the company installed 1,100 computers, but discount leases slashed the annual cost.

"The 'anti' people say, 'We could have done the same thing,'" said Philip E. Geiger, Education Alternatives' divisional president. "And the answer to that is, no, you couldn't."

The savings will ultimately be possible, Mr. Geiger said, because the company is not part of the passive culture of the education bureaucracy, where schools are sometimes seen as providers of jobs as much as of education. Baltimore's Superintendent, Dr. Walter G. Amprey, describes the company's role as "piercing the bureaucracy."

Mr. Geiger said: "We've got a contract that says: perform these services. Otherwise, we're history."

Entrepreneurial drive alone, however, has not rewired and repaired the company's nine schools, installed the computers and filled classrooms with new desks and chairs. The company spent $7.5 million of its own, in addition to its budget from the city, and that money is largely responsible for the fresh look of the schools.

The company admits that its money is at risk in Baltimore, where the district is obligated to pay only a set

Classroom morale is improved, but what do the test scores show?

amount for each pupil. Similarly, the company is free to spend as much as it wants in Hartford, but the city is obligated to pay it no more than the budget approved by the City Council.

To teachers at the schools, where two years ago the bathrooms lacked toilet paper, the more the company lavishes on the schools, the better.

"I could care less where the money is coming from," said Ellen Drennan, a first-grade teacher at Sarah M. Roach. "The materials are here, so I don't care."

Beyond its own investment in its schools, Education Alternatives is also accused by critics, led by the American Federation of Teachers and its Baltimore local, of negotiating a contract here that in fact gives its schools more money than others in the district.

The company receives Baltimore's average spending per pupil — $5,846 this year — for the more than 4,000 children in its schools and then pays all expenses: teacher salaries, maintenance, supplies, book-

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keeping, even an overhead charge for use of city buildings.

But almost all other city schools receive less — often much less. Carl Stokes, chairman of the City Council's education and human resources committee, said a comparison of per-pupil financing showed that the company is paid an extra million dollars per school each year.

The city schools, however, do not pay overhead, and they do not pay for bookkeeping and other services provided by the central office. The company says the district's finances are so complicated that comparisons cannot be made — which is one reason it proposed a flat payment per pupil.

"I don't think there's a number you can pick that won't be criticized," Mr. Geiger said.

The allegation that Education Alternatives is earning a profit from money in effect siphoned off from other city schools — as city teachers are paid salaries well below those of suburban teachers — has helped fuel the Baltimore Teachers Union's campaign against the company.

That campaign has focused almost entirely on test scores, which many educators criticize as too narrow a measure of school performance. But they also say it is fair to look for improved scores after the first full year of an education experiment.

Education Alternatives offered test results even earlier, in August 1993, after its computer labs had been operating in most schools only a few months. Scores on its computer curriculum showed sharp improvement. But last June, the company acknowledged that the gains were greatly overstated.

Also in June, as Hartford was negotiating with the company, Baltimore released standardized test scores for its nine schools that also showed improvement. But when the district released the scores for all schools in October, the numbers for the company's schools were different — and showed declines in most, rather than increases.

Each time, the company said, clerical errors were to blame. In June, for example, the district employee preparing the numbers mistakenly placed 1991 scores in the column for 1993. Similarly, last month, when the company released attendance figures showing increases in its schools, one had a remarkable increase of 22.2 percentage points.

"I keep saying, if kids don't show up, you can't do much about teaching," Mr. Geiger said with satisfaction as he proofread the release in his sparely furnished office here.

That night, however, a revised release was rushed out. Someone had misread an 89 in a column of figures as 69; the increase in the standout school was in fact 2.2 percentage points.

In addition, the company, with so much at stake, can afford to analyze data in a way the district cannot. When the disappointing test results were released in October, Mr. Geiger called in a team of educators to analyze the scores of each pupil. A quick look found that some pupils scored zero in 1993, after doing well the year before. Had the students even taken the test, company officials asked, or was there sabotage?

Regardless of what the analysis finds, however, the results cannot be compared with those of other schools in the district, because their scores are not being examined for similar problems.

The contract does not set performance standards for the company to meet, and to people interested in the experiment, the question of accountability is troubling.

Jeff Valentine, vice president of the Greater Baltimore Committee, a business group, said an independent evaluation that the district recently commissioned from the University of Maryland Baltimore County is overdue.

"We want them to succeed, but we also want them to be measured," he said of Education Alternatives. "It's amazing that when they came in, they said, 'We will be held accountable,' and here we are two years into the program and we're just saying, hey, we ought to set up some measures.

"I mind that the school system seems to be playing along, and then they keep getting caught by someone saying these scores don't match up with reality. At a certain point, where does incompetence veer into conspiracy?"

Education Alternatives officials say the company doesn't have to raise test scores more than other schools to succeed; its aim is improvement, and if other schools improve more, good for them. Mr. Geiger and Dr. Amprey suggest that other city schools may be improving partly because of the competition with Education Alternatives.

For now, Mayor Kurt L. Schmoke has said any decision on continuing the experiment will wait until the University of Maryland researchers release their evaluation at the end of the school year.

The evaluation will be based not only on an analysis of standardized test scores and attendance rates, but also on observations of classrooms, where Baltimore teachers use a collection of teaching methods that the company has drawn from current research and trademarked as the Tesseract Way.

"Our basic question is, how is what is happening in Tesseract schools actually different from the comparison schools?" said the head of the research team, Dr. Lois Williams.

The Superintendent has strongly defended the experiment. "There is nothing about what we're doing that is injurious to young people," Dr. Amprey said after the latest controversy over test scores. "All of the arguments against it are special interests centered around adult kinds of concerns."

But the teachers' union defends its criticism of the company.

"We hop on test scores because that's what they began with," said Loretta Johnson, a teachers' union vice president. "They said they could do better without more money. We're only holding them to what they said they could do."

Do you have The Times delivered?