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REPORT OF THE
SUBCOMMITTEE ON PORNOGRAPHIC LITERATURE
OF THE
ASSEMBLY INTERIM COMMITTEE ON JUDICIARY
House Resolution No. 224, 1957

PORNOGRAPHIC LITERATURE

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March, 1959



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LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, March 16, 1959

HON. RALPH M. BROWN
Speaker of the Assembly
Assembly Chamber, Sacramento

DEAR MR. SPEAKER: The testimony and evidence submitted have been summarized and reduced to the most valuable and significant essence and accompany this letter.

We herewith transmit to you, in accordance with House Resolution No. 224 of the 1957 Regular Session of the State Legislature, the final report of the activities of the Subcommittee on Pornographic Literature of the Assembly Interim Committee on Judiciary.

Respectfully submitted,

BRUCE F. ALLEN, Chairman

SUBCOMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, March 16, 1959

*Hon. Bruce F. Allen, Chairman
Assembly Interim Committee on Judiciary
California Legislature
State Capitol, Sacramento*

DEAR MR. ALLEN: Pursuant to your directive and in conformance with the provisions of House Resolution No. 224 of the 1957 General Session, the Subcommittee on Pornographic Literature herewith submits its report.

The subcommittee has held extensive hearings during the interim period on the subject of obscene and pornographic literature and pictures. We sincerely invite and urge you, the Members of the Assembly Interim Committee on Judiciary, the Members of the Legislature, and the public to join with the subcommittee in sponsoring and enacting legislation in this important field.

Respectfully submitted,

LOUIS FRANCIS, Chairman
Subcommittee on Pornographic Literature

March 13, 1959

I hereby accept the attached report of the Subcommittee on Pornographic Literature of the Assembly Interim Committee on Judiciary.

LOUIS FRANCIS, Chairman
HOWARD J. THELIN

I hereby accept in part the attached report of the Subcommittee on Pornographic Literature of the Assembly Interim Committee on Judiciary.

RICHARD T. HANNA

The law at the time of the writing of this report, outlaws the selling of obscene publications. If objectionable material is sold, it is not because of a weakness of the law, but because the present law is not being enforced, and the present law certainly should be enforced. I respectfully feel that censoring material which is not clearly obscene invites a loss of our cherished American freedom. There is a tendency in this report to increase the power of law enforcement officers to censor; past experience would dictate that such censorship would vary considerably from community to community. The publication of "hard core" obscenity is already outlawed, and I am not in favor of any relaxation of this present law. It would seem clear that the best recourse against borderline material is good reading habits encouraged by a healthy family background. To do otherwise, is to invite much censorship where it is not required and to encourage legislative invasion into local areas. There is nothing at the present time to prevent cities from passing ordinances as they see fit to cover activities in this field.

ROBERT W. CROWN

SUMMARY

INTRODUCTION

In an effort to reduce the publication, sale and distribution of obscene matter in California, particularly to minors, and to improve law enforcement, the Subcommittee on Pornographic Literature of the Assembly Interim Committee on Judiciary held extensive hearings in Los Angeles and San Francisco. The following is a summary of the final report of the subcommittee.

CALIFORNIA'S OBSCENITY LAWS

California's obscenity laws are found in Penal Code Sections 311, 312, 313, and 314. They were first enacted in 1858 and 1859, eventually codified in 1872, and have been attacked as antiquated, cumbersome, too broad and difficult to enforce.

PENAL CODE 311

This section now contains many separate offenses. The report recommends that these be broken down and handled separately as follows:

(1) *Indecent Exposure*

Penal Code Sections 311(1) and (2) deal with indecent exposure and will remain unchanged.

(2) *Exceptions for Actors*

Penal Code Section 311(6) makes it a crime to sing or speak lewd or obscene songs, ballads, or words in a public place. Penal Code Section 311 contains an exception in the case of actors that will be clarified.

(3) *Definitions*

The words "person," "obscene," "matter," "distribute," and "prepare" are used, but not defined, in Penal Code Section 311 and decisions applying to this section have been unclear as to the conduct included. The report attempts to define the above words.

(a) *Definition of "Obscene."* The recommended definition of the knotty word "obscene" is that used in *Alberts v. California*, 354 U. S. 476 (1957), which is that matter is obscene when it possesses a predominant appeal, considered as a whole, to prurient interest, i. e., a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters. Further whether a thing is obscene shall be judged with reference to ordinary adults.

(4) *Requirement of Intent*

Penal Code Section 311 has been interpreted to require a specific, "lewd" intent, lewd being synonymous with lustful, lascivious, or gross indecency. The requirement of proving this element in every case

makes it too difficult to acquire a conviction. The report recommends that the word "lewdly" be stricken and a "reasonable man" test substituted—i. e., that the defendant knew, or should reasonably have known, taking into consideration all surrounding circumstances, that the material was obscene.

(5) Advertising

Penal Code Section 311(4) provides that it is a misdemeanor to write, compose, or publish any notice or advertisement of obscene matter. Existing law permits prosecution if the advertisement is itself obscene or if the material advertised is obscene. It does not cover the situation when advertisements that are not, in themselves, obscene, are drawn up to suggest that the material advertised is obscene, when in fact it is not. The report makes this type of advertising illegal also.

TIE-IN SALES

In some instances, a distributor is required to buy obscene matter in order to get publications that he wants to sell that are not obscene. The report makes this practice illegal.

MINORS AND OBSCENITY

The report recommends legislation similar to that in other jurisdictions that makes it a crime for anyone to use minors to aid in the preparation or distribution of obscene matter.

INJUNCTIONS

California has no present legislation by which a person can be enjoined from distributing obscene literature. The report recommends such a statute be added to the Code of Civil Procedure.

SEIZURE OF OBSCENE MATTER

At present, Penal Code Sections 312, 313, and 314 provide for seizure and destruction of obscene matter. The report calls for substantially the same procedure except that the material not be destroyed unless the defendant either pleads guilty or until he is convicted of a violation of the obscenity sections.

MAILING AND TRANSPORTATION OF OBSCENE MATTER OR ADVERTISING

Present federal and state laws do not cover either the intrastate transportation of obscene matter or advertisements or the situation where the ad itself is not obscene but suggests that the material advertised is obscene when it really is not. The report proposes that it be made unlawful to deposit or receive, with intent to carry in intrastate or interstate commerce, obscene matter, equipment, or advertising that is itself obscene or that leads another to believe that the matter advertised is obscene whether it actually is or not.

Punishment. At present, violation of the obscenity laws is punished as a misdemeanor. The report recommends that there be stiffer penalties imposed for first and subsequent offenses, based upon the number of units of obscene matter involved. Greater penalties are also suggested where the offense involves minors.

FOREWORD

On September 19, 1957, Assemblyman Bruce F. Allen, Chairman of the Assembly Interim Committee on Judiciary, appointed a subcommittee on Pornographic Literature headed by Assemblyman Louis Francis, to ascertain, study, and analyze all facts relating to or affecting Penal Code Sections 311, 312, 313, and 314, including but not limited to the operation, effect, administration, enforcement, and needed revision of any and all laws in any way bearing upon or relating to the subject of H. R. No. 224.

The subcommittee held hearings on November 25 and 26, 1957, in Los Angeles; May 21 and 22, 1958, in San Francisco; September 10, 1958, in San Francisco; and September 12, 1958, in Los Angeles.

This final report incorporates much of the material set forth in the preliminary report of April 15, 1957.

The subcommittee wishes to express its appreciation to the many persons who contributed to this report by their appearance at hearings, their expressions of opinions, their expert knowledge, their correspondence, and their research on various aspects of the study. Their names appear in alphabetical order in Appendix II.

I. INTRODUCTION

This subcommittee, being concerned about the numerous problems caused by the publication, sale and distribution of pornographic literature, held the following hearings:

1. Los Angeles -----November 25 and 26, 1957.
2. San Francisco -----May 21 and 22, 1958.
3. San Francisco -----September 10, 1958.
4. Los Angeles -----September 12, 1958.

Evidence received at the above hearings showed a multimillion dollar business in the sale of so-called sexy and girly magazines. The California Attorney General's Office estimates that in California alone some \$500,000,000 is spent for such material each year. Particular emphasis at the hearings was given to the impact of such material on juveniles since it is estimated that approximately 75 percent of some 15,000,000 issues each month falls into the hands of teenagers.

We believe it to be a principle of our Nation that premarital or extramarital sexual activity is dangerous and unhealthy. Anything that incites or lures or glorifies such activity is objectionable. Obscenity laws protect the morals of society. We believe such protection is necessary since history shows that when the morality of a society is destroyed, the society itself is destroyed.

In considering changes in the present law it is not the desire or intention of this subcommittee to play the role of censor. We do not wish to infringe upon freedom of the press. We find that the legitimate press is not involved. We recognize, however, that there are certain constitutional limitations to the freedom of expression guaranteed by the Constitution. It has consistently been recognized in the courts that dissemination of obscene material does not fall within the above-mentioned freedom of expression.

A great deal has been accomplished on a local level through the voluntary co-operation of citizens' organizations, peace officers, retailers and distributors. Such progress will undoubtedly continue in the future. However, we believe that to achieve maximum progress corrective legislation is necessary on a state level.

It is the purpose of this report to set forth the criticisms and suggestions for improvement of present legislation and to make such recommendations for proposed legislation as the subcommittee feels is desirable. For convenience and clarity the report will be divided into major areas, each containing discussion and specific recommendations.

II. OBSCENITY AND SEX CRIMES

A. DISCUSSION

There appears to be substantial conflicting evidence of a positive correlation between obscene literature and sex crimes. However, if a person has a personality defect predisposing him to sex crimes, such literature might have a triggering effect although the positive factors which caused such a crime could reach back into childhood and be many and varied. This view seems to be supported by evidence that obscene literature is invariably found in the possession of the sexual pervert or in his bedroom.

Evidence received also indicates that it is not unusual for the sexual pervert who preys on children to use such literature as a means of conditioning himself and his victims to his advances. Used in this manner, such pornographic literature is doubly dangerous and a true menace.

B. RECOMMENDATIONS

Further study of the correlation between obscene literature and sex crimes should be undertaken.

III. CALIFORNIA'S OBSCENITY LAWS AND PROPOSED CHANGES

California's pornography laws (the terms "pornography" and "obscenity" will be used interchangeably unless otherwise noted) are found in the Penal Code Sections 311, 312, 313 and 314 (set forth in full in Appendix I. These laws were first codified in 1872, based upon the original laws enacted in 1858 and 1859. Since that time there have been few minor changes and they have been attacked as antiquated, cumbersome, too broad and difficult to enforce. Each of the major criticisms will be considered separately along with recommendations for improvement.

A. COMPLEXITY OF SECTION 311

1. *Discussion*

Particular criticism has been directed at Section 311 on the ground that it is a conglomeration covering a number of different offenses; indecent exposure, publication, sale, and distribution of lewd and obscene literature and equipment, and speaking or singing lewd songs or words. It was suggested that Section 311 should be broken down so that separate sections cover each of the major areas now covered in one section.

2. *Recommendations*

a. A new chapter should be established in Part 1, Title 9. Such chapter should be called "Chapter VII.5" and should be located between Chapter VII and VIII. Such chapter should contain all provisions relating to obscene matter.

b. The present Section 311 should be repealed and all provisions removed to new and appropriate sections.

c. A new section numbered "311.01" should be enacted to contain the legislation now found in Sections 311(1) and 311(2). The section should read substantially as follows:

311.01. Every person who willfully either:

1. Exposes his person or sexual organs in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or

2. Procures, counsels, or assists any person so to expose himself or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or to the view of any number of persons, such as is offensive to decency, or is adopted to excite to vicious or lewd thoughts or acts, is guilty of a misdemeanor.

Upon the second and each subsequent conviction under subdivision 1 of this section, or upon a first conviction under subdivision 1 of this section after a previous conviction under Section 288 of this code, every person so convicted is guilty of a felony, and is punishable by imprisonment in the state prison for not less than one year.

d. A new section numbered "311.02" should be enacted to contain the legislation now found in Section 311(6).

B. EXCEPTIONS FOR ACTORS

1. Discussion

It was pointed out by witnesses that the last paragraph of the present Section 311 makes an exception to the provisions of 311(6) in the case of actors. Two main criticisms were heard concerning these provisions. The first objection was that there is no good reason for making an exception in the case of an actor. The second objection is that, if an exception is made, the wording relating to the exception is ambiguous. It is argued that in its present form it reads that a person cannot be convicted for violating this section unless he is convicted first of violating this section.

2. Recommendations

The exception for actors should be clarified so that the proposed Section 311.02, discussed above, should read substantially as follows:

311.02. Every person who willfully sings or speaks any lewd or obscene song, ballad, or other words, in any public place, or in any place where there are persons present to be annoyed thereby, is guilty of a misdemeanor.

This section shall not apply to any person participating in violation thereof only as an actor or actress, unless and until a complaint has been filed against the owner, manager, producer, or director charging a violation of said section, and pending the determination thereof an actor or actress utters the particular word or words complained against or other word or words of the same or similar import, in connection with such performance, act, play, drama, exhibition, or entertainment.

C. ORGANIZATION

1. Discussion

Recent judicial decisions involving Section 311 have strained the language of the section considerably in order to find that certain activity was illegal. This came about primarily because the section was not organized so that all nouns were grouped together and all verbs grouped together. The straining of the section resulted when the courts had to take a verb away from one group of nouns and place it in another group of verbs before a different group of nouns.

To remove this and other difficulties it has been suggested that in the proposed Chapter VII.5 a section of definitions be enacted in which certain nouns and verbs should be defined in such a way as to include

a number of other nouns and verbs. By such a procedure it was suggested that the actual sections relating to illegal activity would be less complex, and consequently more understandable.

A comparative analysis, set forth in Appendix VII, has been made of statutes in California and certain other major states with a view toward integrating them into a single section of definitions so as to minimize possible loopholes in the formulation of the definitions.

2. Recommendations

a. The first section of the proposed Chapter VII.5, should contain definitions of the terms to be used in such chapter.

b. The first section should be numbered "310.01" and should read substantially as follows:

310 01. Definitions. As used in this chapter:

(1) "Person" shall mean any individual, copartnership, association or corporation.

(2) "Obscene" shall mean that the predominant appeal of a thing, when considered as a whole, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters.

(3) "Matter" shall mean any picture, photograph, stereographic photograph, daguerreotype, image, lithograph, engraving, print, painting, motion picture, television presentation, drawing, writing, newspaper, story-paper, paper, card, book, comic book, magazine, pamphlet, or any other written or printed material or publication, figure, model, statue, mold, cast, article, instrument, phonograph record, wire or tape recording. It shall be immaterial for purposes of this definition whether mechanical, chemical, or other means is necessary to transmit the foregoing into auditory, visual, or sensory representations.

(4) "Distribute" shall mean sell, lend, give, transmit, exhibit, show, or in any way furnish.

(5) "Prepare" shall mean write, draw, compose, print, photograph, engrave, copy, stereotype, design, paint, manufacture, publish, mold, cut, cast, or, in any other way produce.

D. DEFINITION OF OBSCENITY

1. Discussion

One of the major points involved in the hearings was whether it would be desirable to define the term "obscene" in such a manner as to attempt to make the term more objective and easier to apply to a given publication.

There appears little difficulty in applying the term to the obviously obscene literature. Most problems have arisen in the borderline areas. The major hurdle to a simple definition is the problem that no one seems to be able to agree even on the essential nature of pornography. Some find the key to it in the sense of shame, i.e., whatever violates the community sense of shame is obscene. Another writer has found it to be in whatever is "off the scene" and not openly shown on the stage of life. Others have taken an entirely different approach. To them the

obscene is that which arouses the "lower passions or indulgence in sensuality." Some writers have attempted to differentiate between "obscenity" and "pornography." One writer has said that "obscenity" is a broader word than "pornography" since it includes profanity and expletives whereas pornography is limited to books that are, or were intended to be, aphrodisiacs; however, pornography as a concept seems almost as hard to handle as obscenity.

The complexity of the idea of obscenity is another cause of difficulty. Obscenity appears to include three different factors: offensiveness; an ideological element that seeks to protect moral standards from criticism; and stimulation of sexual impulses and impure thoughts that may lead to immoral conduct.

Perhaps the most difficult of the problems inherent in any concept of obscenity concerns the effect of reading an obscene book, publication or picture. For purposes of clarity, this effect may be broken into various subcategories:

a. *The Effect on Thoughts.* The courts have used a variety of terminology in expressing this effect. The federal courts, for instance, using such phrases as "tending to suggest impure and libidinous thoughts," "suggesting lewd thoughts and exciting sensual desires," "stirring the sexual impulses," "leading to sexually impure and lustful thoughts," "arousing the salacity of the reader," "allowing or implanting obscene, lewd, or lascivious thoughts or desires." But what kind of desires, imaginations, impulses, or thoughts are impure, lascivious, lecherous, lewd, libidinous, lustful, obscene, sensual, or sexual? None of the cases give a clear answer. It is enough that reading the book or looking at the picture merely allows the thought to arise or suggests or leads to it, or must the book or picture stir, arouse, implant, excite or incite the prohibited thought? Only a few of the cases have discussed this question. In one case, the court suggested that the degree of likelihood of sexual stimulation as well as the degree of intensity of the resulting sexual thought, must outweigh the merits of the book. In *People v. Wepplo*, 79 Cal. App. 2d Supp. 959 (1947), the court seemed to indicate that the work must incite the prohibited thought when it said:

"[It is obscene] if it has a substantial tendency to deprave or corrupt its readers by *inciting* lascivious thoughts or arousing lustful desire" (emphasis added).

Alberts v. California, 354 U. S. 476 (1957), also involved Section 311 and the court approved the trial court's instruction that used the same definition of "obscene" as that quoted above in the *Wepplo* case.

b. *Relationship Between Thought and Conduct.* Some courts seem to hold that a book is obscene if it has an adverse effect upon the reader's mind. Other courts apparently hold that it is not obscene unless the matter leads to improper actions. In connection with this thought it is interesting to note several recent California cases.

- (1) In *People v. Wepplo*, *supra*, the court held that a book is obscene "* * * if it has a substantial tendency to deprave or corrupt its readers by inciting lascivious *thoughts* or arousing lustful *desire*" (emphasis added).

- (2) In the *Alberts* case, *supra*, involving Section 311 and decided after the *Wcpplo* case, *supra*, the court said that it is *not* necessary to show that there is a clear and present danger that reading of the writings in question will lead to commission of antisocial *acts*.

Thus, both cases appeared to hold the matter obscene if it has an adverse effect on the mind without considering whether such thoughts will lead to improper actions.

- (3) In *People v. Murao* (No. B27083) and *People v. Ferlinghetti* (No. B27585), both San Francisco Municipal Court cases, the court said, "The test of obscenity in California is that the material must have tendency to deprave or corrupt readers by exciting lascivious thoughts or arousing lustful desire to the point that it presents a clear and present danger of *inciting* to antisocial or immoral *action*" (emphasis added). This case appeared to take into consideration the effect of such thoughts.

c. *Audience to Be Used in Judging Effect.* Another major question is whether the effect of material upon its reader is to be judged by reference to normal adults, abnormal adults, or children. The newer view is that the normal person is to be used as the standard. The normal person, however, is not always a suitable hypothetical individual for testing the effect of a book upon its readers. Books, publications, and pictures, like other things, are sometimes directed toward and distributed in channels that reach certain classes of people. Faced with this problem many courts take into account the "probable audience." They hold that if the potentially obscene matter is prepared, advertised or distributed in such a way as to reach those upon whom it is not likely to have undesirable effects, it is not obscene; but if, on the other hand, the book, publication or picture is so prepared, advertised, and distributed as to reach those upon whom it is likely to have undesirable effects, it is obscene. Reference to the probable audience of a book, publication, or picture to determine its effect upon readers introduces a new variable into a problem that is already full of variables. In this view, a book is not obscene as such. A book may be obscene when distributed to one class of persons, but not when distributed to another. The weight to be given to literary, scientific, and educational values in the determination of what is obscene, has engendered much conflict.

Most jurisdictions, including California, have adopted the requirement that the publication must be judged as a whole, not by its parts taken out of context. Under this view, a publication is obscene if that is its dominant effect or its main purpose, or if it contains prohibited matter in such quantity or of such a nature as to flavor the whole and impart to the whole any of the qualities mentioned in the statute, so that the work as a whole can fairly be described as obscene.

d. *Author's Intention.* The problem of the author's purpose and its bearing upon the determination of whether a work is obscene, is another area of conflict among the courts. Some courts have emphasized the sincerity of the author while other courts seem to hold it immaterial.

This subcommittee has had Assembly Bill No. 3849 and Assembly Bill No. 4158 (set forth in Appendixes III and IV referred to it for

interim study from the 1957 Regular Session of the Legislature. Assembly Bill No. 3849 proposes to amend Section 311 and add Section 311.5. The proposed amendment continues to use the present words, "lewd," "obscene," and "indecent." The proposed Section 311.5 deals with distribution to minors and again uses the words "obscene" and "indecent" but also adds, "which tends to suggest, arouse, or excite lustful sexual desires or thought in minors of such age." Assembly Bill No. 4158 relates to the exhibition and furnishing of sanguinary literature to minors and proposes to add Section 653d to the Penal Code. It should be noted that Senate Bill No. 2310 was also introduced at the 1957 Regular Session (set forth in Appendix V) and proposed to amend Section 311 to include motion pictures. However, the proposed changes did not in any way affect the present definition of obscenity in Section 311. The bill was passed in the Senate, sent to the Assembly, read the first time, and referred to the Assembly Judiciary Committee.

There has been no interpretation of the word "indecent," but the general view is that it means the same thing as "obscene." There have been very few appellate court decisions interpreting what is meant by "obscene," "indecent," and "lewd." Until quite recently the only appellate court interpretation was in *People v. Wepplo, supra*, which was taken to the United States Supreme Court and considered along with the companion case of *Roth v. United States*, 354 U. S. 476 (1957). The majority opinion written by Justice William J. Brennan, Jr., used the same definition of obscene as that quoted above in the discussion of the *Wepplo* case. The Supreme Court added that "obscene material is material which deals with sex in a manner appealing to prurient interest." The court said that it could perceive no significant difference between the meaning of obscenity developed in the case law and the definition in the Model Penal Code (Sec. 207.10(2), Tent. Draft No. 6), to wit:

"A thing is obscene if, considered as a whole, its predominant appeal is to prurient interest, *i.e.*, a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters."

In a separate opinion, Chief Justice Earl Warren concurred in the result in the *Alberts* case, *supra*, but suggested that the majority opinion was worded too broadly, and the decision should be limited to the wording of the particular statute under consideration, which required "scienter," that is, required that the prohibited activity be done "wilfully and lewdly." Justice John Harlan wrote a separate opinion concurring in the result. He too thought that the opinion of the court was "painted with too broad a brush." He thought the court had mistakenly lumped together very different definitions of obscenity, such as the California definition and the Model Penal Code definition.

There is some conflict in the cases whether or not a "clear and present danger" must be present before material can be found to be obscene. The *Alberts* case, *supra*, said that since obscenity is not within the scope of constitutional guarantees of freedom of expression, it is *not* necessary to show that there is a clear and present danger that reading of the material will lead to commission of antisocial acts. The

Wepplo, *Murao*, and *Ferlinghetti* cases, *supra*, on the other hand, appeared to use a "clear and present danger" test.

In redefining obscenity, it is suggested that the State Legislature has two alternatives, one is to set standards that are static, based on the desire to raise the moral and ethical climate, or at least maintain it, and the other is to define the concept in such terms as to permit it to change with the change in moral and ethical climate. An example of the former alternative would be to spell out each and every situation wherein Section 311 would be applicable. It would be necessary to describe which portions of the anatomy could be shown and under what circumstances. In the latter alternative, it would be necessary to use different terms, or expand the present terms, in such a manner as to allow the definition of obscenity to change with the times.

All of the suggested definitions received by the subcommittee were subjected to the criticism that they did not minimize the difficulty of determining whether given material came within the definition.

2. Recommendations

a. The term "obscene" should be defined to substantially conform with the majority opinion of *People v. Alberts*, 354 U. S. 476 (1957), as follows:

310.01(2). "Obscene" shall mean that the predominant appeal of a thing, when considered as a whole, is to prurient interest, *i.e.*, a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters.

E. REQUIREMENT OF INTENT

1. Discussion

Section 311 is introduced by the provision that "Every person who willfully and lewdly" does certain acts is guilty of a misdemeanor.

In *People v. Wepplo*, *supra*, the court held that the wording requires a specific intent, *viz*, a lewd intent. "Lewd" has been defined in many ways, but it appears to be synonymous with lustful, lascivious, or gross indecency. However, the *Wepplo* case recognized the difficulty of showing direct proof of such a state of mind and held that such an intent might be inferred from evidence that a person knew of the character of the material. Apparently, though it is not clear, this inference can be rebutted by one charged with a violation of Section 311.

Prosecuting officials appearing before the subcommittee stated that the requirement that a defendant be shown to have acted "lewdly" throws a substantial block in the way of any prosecution, and in many cases, it is an impossible element to prove. They suggested that the following alternatives be considered by the subcommittee:

a. "*Strict Liability*." Such a suggestion has precedent in California legislation. Prior to the enactment of the Penal Code, the subject matter of the statute was dealt with by an 1859 Statute which contained no words requiring a specific intent to constitute the offense. The words "willfully and lewdly" were added at the time of the enactment of the

code, and the courts indicated that this was a material and substantial change and presumed that the Legislature intended to add a requirement of specific intent.

The theory behind strict liability is that which justifies the pure food and similar laws. In cases of distribution to minors an analogy is also drawn to the laws involving drugs, tobacco, liquor and firearms. It is argued that if minors are not intelligent enough to deal with the foregoing, they are not mature enough to deal intelligently with material that is potentially more harmful to the individual and to society.

Under present law mere possession of obscene matter is not an offense and there has been considerable discussion whether it should be made an offense. In this connection it is interesting to consider the testimony of Albert E. Hederman, Jr., Alameda County Deputy District Attorney, at the hearing on May 22, 1958, in San Francisco:

"We, of course, can speculate when such an individual, pervert or sex offender, is found in possession of such [obscene] materials perhaps around a school or around an area where juveniles are likely to be or play. We can speculate that perhaps it was his intention to sell or to display or exhibit these materials. But we have no other evidence than his mere possession and no evidence to justify a charge or a conviction under Section 311 as it now stands."

Such a problem as Mr. Hederman poses is compounded when an individual apprehended under suspicious circumstances has a prior record of sex offenses, but at the time of his apprehension has committed no punishable offense. There was general agreement among witnesses that possession *with intent* to sell, distribute, etc., should be an offense, and, indeed, it already is under present law under certain circumstances. A compromise solution on the mere possession issue was suggested whereby mere possession would be a crime if it is within a certain specified distance of schools, playgrounds or other places where juveniles are likely to gather.

If mere possession was made an offense, it was suggested that a rebuttable presumption be enacted holding that one who has obscene literature in his possession does so with knowledge of such possession, but that it would be a defense if the person charged could show ignorance of such possession.

Where prosecution is based on possession with intent to do certain specified acts, it was suggested that a rebuttable presumption be enacted holding that possession of a certain number of units of matter is evidence of possession with intent to do illegal acts.

b. "*Reasonable Man*" Test. The trier of fact in a criminal prosecution would first determine whether the matter is in fact obscene. If so found, and assuming all other necessary elements are shown, the trier of fact would then determine whether the defendant knew, or should reasonably have known, taking into consideration all surrounding circumstances, that the material was obscene.

This test would be less burdensome than the strict liability theory in many instances, but would still be burdensome enough to require self-policing based on the theory that distributors making a profit

should shoulder the responsibility that goes with being a merchant. The same problems relating to possession are present here just as they are under the "strict liability" theory, and reference should be made to discussion under (1) above.

c. "*Knowledge*" Test. The determining factor under this test is whether the defendant knows that the material in his possession contains the matter alleged to be obscene. It is immaterial whether the defendant knows or should know that it is obscene and in this respect it differs from the "reasonable man" test.

This test might be made more stringent by holding the defendant if a reasonable man in the defendant's position *should* have known that the material contained the matter alleged to be obscene.

The same problems relating to possession are present here just as they are under the previously described theories, and reference should be made to the discussion under (1) above.

2. Recommendations

a. The requirement that one act "lewdly" should be removed from California's obscenity legislation. In its stead should be substituted a "reasonable man" test.

b. Mere possession should not be made an offense.

c. A new section numbered "310.02" should be added to proposed Chapter VII.5 to contain the legislation now found in Section 311(3). The section should read substantially as follows:

310.02. Distribution of Obscenity; Articles and Methods. Every person who, with knowledge that such matter is obscene or who is in possession of such facts that he should reasonably have known that such matter is obscene, publishes or distributes, or offers or attempts to publish or distribute, or causes the publication or distribution, or possesses with intent to distribute obscene matter is punishable as provided in Section 310.11. [Considered later in this report.]

d. A new section numbered "310.03" should be added to proposed Chapter VII.5 to contain the legislation now found in Section 311(5). The section should read substantially as follows:

310.03. Equipment for Exhibiting or Producing Obscene Matter; Presumptions. (1) Every person who, with knowledge that such equipment contains obscene matter or who is in possession of such facts that he should reasonably have known that such equipment contains obscene matter, distributes, or offers or attempts to distribute, or causes the distribution, or possesses with intent to distribute, any slot machine, motion picture projector, or other mechanical contrivance containing obscene matter shall be punishable as provided in Section 310.11. [Considered later in this report.]

(2) Every person who, with knowledge that equipment is to be so used or intended to be used or who is in possession of such facts that he should reasonably know that such equipment is to be so used or intended to be used, prepares or distributes, or offers or attempts to prepare or distribute, or causes the preparation or dis-

tribution, or possesses with intent to distribute any recording, transcriptions, or mechanical, chemical or electrical reproductions, or any other articles, equipment, machines, or materials used or intended to be used in producing or reproducing any lewd or obscene song, ballad, or other words, whether spoken or sung, shall be punishable as provided in Section 310 11. [Considered later in this report.] For purposes of this section there is a rebuttable presumption that one in possession of such equipment has knowledge of possession of such equipment. This rebuttable presumption shall not extend to the issue of knowledge of the contents or intended use of such equipment.

F. ADVERTISING

1. Discussion

Testimony and exhibits received by this subcommittee indicate that obscene matter is advertised in three main ways: (1) it is placed where it is exposed to public view; (2) it is advertised in other publications; and (3) it is advertised in brochures, booklets, or pamphlets sent by mail, often unsolicited by the recipient, who frequently is a minor.

It being the policy of the law to suppress obscene matter wherever found, it follows that suppression of advertising of such matter is necessary to achieve that end. Such a policy is already expressed in Section 311(4) which provides that it is a misdemeanor to write, compose, or publish any notice or advertisement of obscene matter.

The only problem presented to the subcommittee was determining whether existing legislation was sufficient to eliminate such advertising.

It is the second and third types of advertising which present peculiar problems since the first type of advertising would be covered by the proposed Section 310 02. Testimony indicates that advertisements of the second and third type are drawn up in such a manner as to suggest, if not actually state, that the material advertised is obscene. Too often it appears that the advertised material is deceiving and misleading, or, in general, does not live up to its billing. Under present state and federal laws, criminal prosecution can be instituted only if there is fraud involved, or if the advertisement itself is obscene. In order to simplify the problems of prosecution in such cases, it has been suggested that it should be made a criminal offense to prepare or distribute such advertising.

2. Recommendations

A new section numbered "310.04" to be added to the proposed Chapter VII 5, should be enacted to contain the legislation now found in Section 311(4). The section should adopt the "reasonable man" test and read substantially as follows:

310.4 Advertising Obscene Matter. (1) Every person who, with knowledge that such matter or equipment is obscene or who is in possession of such facts that he should reasonably know that such matter or equipment is obscene, prepares or distributes any advertisement or notice of any kind giving information, directly

or indirectly, stating where, how, of whom, or by what means any obscene matter or equipment enumerated in Sections 310.02 or 310.03 can be purchased, obtained or otherwise had is punishable as provided in Section 310.11. [Considered later in this report.]

G. TIE-IN SALES

1. Discussion

Evidence was received that many distributors require retailers, newsstand dealers, and operators to buy obscene matter for resale if they wish to receive the major and popular nationally advertised publications. Although some dealers may have used this as an excuse for handling obscene matter, witnesses generally agreed that it would be desirable to enact legislation similar to the present package tie-in sale law to include such practices.

The present law, found in Business and Professions Code, Section 16603, was enacted in 1955 when there was a great deal of concern about comic books. It generally bars a wholesaler from requiring a retailer to buy an illustrated publication which shows the performance of certain specified crimes in order to get periodicals that the retailer would like to have for his ordinary business. One of the offenses mentioned in Section 16603 is rape; otherwise the section does not relate to sexual matters, but instead it relates to crimes of violence.

2. Recommendations

A new section numbered "310.05" should be added to the proposed Chapter VII.5 to read substantially as follows:

310.05. Tie-in Sales of Obscene Matter. Every person who, as a condition to a sale, or delivery for resale of any matter, requires that the purchaser or consignee receive for resale, any other obscene matter, is punishable as provided in Section 310.11. [Considered later in this report.]

H. MINORS AND OBSCENITY

1. Discussion

Among exhibits submitted at hearings was legislation in other major states making it a criminal offense to use minors to aid in the preparation or distribution of obscene matter. In view of the fact that California has no such legislation at the present time, it has been suggested that it would be desirable to enact a similar statute on the theory that it is particularly desirable to enact such legislation as is necessary to protect youth from such material.

Testimony received also shows that too frequently parents are unaware of the availability of obscene literature and pictures to their children. It is not uncommon to find that there are places near schools or other places, where minors gather, where they can buy not only borderline publications, but also material of the most filthy type. In addition, the subcommittee received evidence that mailed advertisements for obscene material are sent to minors, their names apparently taken from mailing lists, or high school graduation lists.

Most witnesses indicated that it would be helpful to have separate provisions whereby there would be different tests for obscenity and/or different penalties depending upon whether the distribution is to adults or minors.

A few witnesses indicated that they believed a different standard is set up by Welfare and Institutions Code Section 702, which relates to contributing to the delinquency of a minor. Other witnesses, however, have indicated that they did not feel that it was the legislative intent to make the section cover obscene matter and that there are difficult problems of proof involved in utilizing Section 702 for that purpose.

2. Recommendations

a. Greater penalties should be imposed on persons violating California's pornography laws when their activities involve minors than when only adults are involved.

b. A new section numbered "310.06" should be added to the proposed Chapter VII.5 to read, substantially, as follows:

310.06. Use of Minors. Every person who, with knowledge that such minor is in any way aiding in the preparation, or distribution of obscene matter, or equipment, or who is in possession of such facts that he should reasonably know that such minor is in any way aiding in the preparation or distribution of obscene matter or equipment, hires, employs, uses, or who, having the care, custody, or control of any minor, permits any minor to do or assist in doing, any act or thing mentioned in Sections 310.02, 310.03, 310.04, or 310.05 is punishable as provided in Section 310.11. [Considered later in this report.]

I. INJUNCTIONS AND SEIZURE OF OBSCENE MATTER

1. Discussion

It was recommended by various witnesses that it would be helpful to provide for issuance of an injunction to prevent distribution of obscene literature in view of the fact that California has no present legislation by which a person can be enjoined from distributing obscene literature.

Such legislation could be modeled after the Massachusetts and New York laws. Under such a procedure the court, upon the filing of a complaint showing a cause of action, would issue a preliminary injunction. There would then be a trial to determine whether the injunction would be made permanent. There is some problem, however, as to whether the trier of fact at the trial should be a judge, jury, or panel of judges. Such injunctive proceedings would be in addition to possible criminal prosecution under the Penal Code pornography provisions.

Proponents believe that it would be very useful in reducing the dissemination of obscene literature. They also point out the obvious advantage to the distributor in that it would enable him to have a reasonably fast adjudication as to whether or not he is distributing obscene material. It was suggested that a provision could be included whereby an adjudication in the action that the matter was not obscene would be a bar to criminal prosecution for distributing that matter.

Penal Code Sections 312, 313, and 314 currently provide for seizure of matter in the possession of a person arrested and charged with violation of Section 311. In substance, it is provided that the material must be taken before the magistrate before whom the person arrested is required to be taken. The magistrate, at the time of the examination of the accused, or if the examination is delayed without such examination, must determine whether the material is obscene. If he so finds, one copy is delivered to the district attorney and the rest destroyed. If the defendant is convicted, even the district attorney's copy is destroyed.

The obvious danger present in Sections 312, 313, and 314 is that the magistrate may find the material obscene and order it destroyed, except for the district attorney's copy, even though the defendant pleads not guilty and at trial the jury refuses to convict him because they do not believe the material obscene. The person tried then has to pursue his remedy, if he even has a remedy, to recover the value of the material destroyed.

2. Recommendations

a. A rapid injunction proceeding should be provided for issuance of an injunction to prevent dissemination of obscene literature. This legislation should be contained in a proposed new section (Section 535) to be added to Chapter III of Part 2, Title 7 of the Code of Civil Procedure. Section 535 should read, substantially, as follows:

Section 535. Abatement of Distribution of Obscene Articles

Section 535.01. Definitions. As used in Section 535:

(1) "Person" shall mean any individual, copartnership, association, or corporation.

(2) "Obscene" shall mean that the predominant appeal of a thing, when considered as a whole, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters.

(3) "Matter" shall mean any picture, photograph, stereographic photograph, daguerreotype, image, lithograph, engraving, print, painting, motion picture, television presentation, drawing, writing, newspaper, storypaper, card, book, comic book, magazine, pamphlet, or any other written or printed material or publication, figure, model, statue, mold, cast, article, instrument, phonograph record, wire or tape recording. It shall be immaterial for the purposes of this definition whether mechanical, chemical, or other means is necessary to transmit the foregoing into auditory, visual, or sensory representations.

(4) "Distribute" shall mean sell, lend, give, transmit, exhibit, show, or in any way, furnish.

(5) "Prepare" shall mean write, draw, compose, print, photograph, engrave, copy, stereotype, design, paint, manufacture, publish, mold, cut, cast, or, in any other way produce.

Section 535.02. Action to Enjoin. The district attorney of any county, or city and county, or city attorney or other prosecuting officer of any city in which a person prepares or distributes, or

causes the preparation or distribution of, or possesses with intent to distribute any:

- a. Obscene matter, or
- b. Any slot machine, motion picture projector, or other mechanical contrivance containing obscene matter, or
- c. Any recording, transcriptions, or mechanical, chemical, or electrical reproduction, or any other articles, equipment, machines, or materials used or intended to be used in producing or reproducing any lewd or obscene song, ballad, or other words, whether spoken or sung, may maintain an action in the name of the people of the State of California for an injunction against such person in the superior court to prevent activity charged.

Section 535.03. Temporary Writ. Whenever the existence of a cause of action as described in Section 535.02 is shown in such action by a complaint attesting the existence of facts showing such cause of action, the court or judge shall allow a temporary writ of injunction to prevent the activity charged.

Section 535.04. Time of Trial. The person sought to be enjoined shall be entitled to a trial of the issues within one day after joinder of issue and a decision shall be rendered within two days of the conclusion of the trial.

Section 535.05. Trial. The trier of fact shall be a three-judge panel selected by the presiding judge of the superior court.

Section 535.06. Disposition of Obscene Articles. In the event that the final order or judgment makes the injunction permanent, as to any, or all, of the material, such order shall contain a provision directing the person to surrender to the sheriff of the county in which the action was brought, any of the matter described in Section 535.02, and such sheriff shall be directed to seize and destroy the same.

Section 535.07. Proceeding as Bar to Criminal Prosecution. (1) In the event that the final order or judgment declares that the material which is the subject matter of the proceeding, or any portion thereof, does not fall within the provisions of Section 535.02, such material, or portion thereof, cannot be used as a basis of criminal prosecution under the provisions of Part 1 of Title 9 of Chapter VII.5 of the Penal Code.

(2) In the event that the final order or judgment makes the injunction permanent as to any, or all, of the material which is the subject matter of the proceeding, such order or judgment shall not be a bar to any criminal prosecution using such material as a basis for prosecution under the provisions of Part 1 of Title 9 of Chapter VII.5 of the Penal Code.

Section 535.08. Undertaking, Cost, and Damages. In any action brought as herein provided, such officer of the county, city and county, or city, shall not be required to file any undertaking before the issuance of the temporary injunction provided for in this article.

Neither shall such officer be liable for cost or damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person sought to be enjoined.

Section 535.09. Violation of Injunction. Any violation or disobedience of any injunction or order expressly provided for by this article shall be punishable as a contempt of court by a fine of not less than \$250 nor more than \$1,000 or, by imprisonment in the county jail for not less than thirty (30) days, nor more than six (6) months, or by both such fine and imprisonment.

b. A new section numbered "310.07," to be added to the proposed Chapter VII.5, of the Penal Code, should be enacted to contain the legislation now found in Section 312. The section should read substantially, as follows:

310.07. Seizure of Indecent Articles. At the time of the arrest of any person charged with violation of Sections 310.02, 310.03, or 310.04 of this Chapter, the arresting party shall seize any matter, equipment, or advertisements in the possession or under the control of the person so arrested which he believes violates such sections and deliver the same to the magistrate before whom the person so arrested is required to be taken.

c. A new section numbered "310.08," to be added to the proposed Chapter VII.5 should be enacted to contain the legislation now found in Section 313. The section should read, substantially, as follows:

310.08. Determination of Articles' Nature; Delivery to District Attorney; Destruction. The magistrate to whom such matter, equipment, or advertisements are delivered pursuant to the foregoing section must, upon the examination of the accused, or, if the examination is delayed, or prevented, without awaiting such examination, determine the character of such matter, equipment, or advertisements.

If the magistrate finds them to fall within the provisions of Section 310.02, 310.03, or 310.04, he shall deliver one unit of each category, or type, to the district attorney of the county in which the accused is liable to indictment or trial, and shall order the rest held pending the entering of a plea by the person charged.

If the person charged pleads guilty to violation of Section 310.02, 310.03, or 310.04, the matter, equipment, or advertisements covered by the plea shall, at once, be destroyed. If the person pleads not guilty, such matter, equipment, or advertisements, shall be examined by a three judge panel appointed by the presiding judge. In the event that the panel finds it to fall within the above-mentioned sections, the panel shall immediately order it destroyed. In the event that the panel finds that it does not fall within the provisions of the above-mentioned sections, the panel shall order the material held pending the outcome of the trial of the person charged.

d. A new section numbered "310.09," to be added to the proposed Chapter VII.5, should be enacted to contain the legislation now found in Section 314. The section should read substantially, as follows:

310.09. Destruction on Conviction of Accused. Upon the conviction of the accused, all material held pending the outcome of the trial and all material which remains in the possession, or under the control of the district attorney, seized from defendant pursuant to Section 310.07, shall immediately be destroyed.

J. MAILING AND TRANSPORTATION OF OBSCENITY

1. Discussion

California, and particularly Southern California, has been called the "smut capital of the Nation" and, by various means, its influence has been felt throughout the Country. A United States Post Office representative, appearing before the subcommittee, testified that people throughout the Country have frequently complained to the postal authorities about advertisements for the sale of obscene literature, pictures and materials, being mailed to them from California.

One of the great obstacles to prosecution was that a large portion of the complaints came from areas less sophisticated than California. Until 1958, under federal law in Title 18 of the United States Code, Sections 1461 through 1465, it was necessary to prosecute where the mail was posted rather than where it was received. The result was that although the complaint came from areas where juries were less sophisticated, prosecution had to be in California where metropolitan juries are more sophisticated and less prone to convict. It should be noted, however, that Congress amended Section 1461 in 1958 to allow prosecution in either place.

One of the problems arising under postal prosecution is that advertising sent out soliciting business is drawn up in such a manner as to suggest, if not actually state, that the material advertised is obscene, whereas, it is in fact, not obscene. It appears that under present federal law, prosecution can be had only if the advertisement itself is obscene.

Among exhibits received by the subcommittee were statutes in other jurisdictions, supplementing federal law, directed toward preventing the mailing and distribution of such material. Raymond M. Momboisse, California Deputy Attorney General, testified that he believed that there is definite merit to enactment of similar legislation in California, expressing the opinion that such legislation, if properly enacted, would be constitutional.

Another problem not covered by federal law, or present state law, is the intrastate transportation of obscenity. There is evidence that distributors of pornography, in order to avoid prosecution under postal laws, have used common carriers and other private carriers in the transportation of such material. While present federal law appears to cover interstate transportation, it does not cover such intrastate transportation. Such legislation has been suggested as necessary and desirable to curb such intrastate activities.

2. Recommendations

A new section numbered "310.10" should be added to the proposed Chapter VII.5 to read substantially, as follows:

310.10. Every person who, with knowledge that such matter, equipment, or advertisement is unlawful within the provisions of Sections 310.02, 310.03, or 310.04, or, who is in possession of such facts that he should reasonably have known that such matter, equipment, or advertisement is unlawful within the provisions of such sections, deposits in any post office or express office in this State, or places in charge of any person, to be carried or conveyed any matter, equipment, or advertisement falling within the provisions of Section 310.02, 310.03, or 310.04, is punishable as provided in Section 310.11 [Considered later in this report]

Every person, who, with knowledge that such matter, equipment, or advertisement is unlawful within the provisions of Sections 310.02, 310.03, or 310.04, or who is in possession of such facts that he should reasonably have known that such matter, equipment, or advertisement is unlawful within the provisions of such sections, receives any matter, equipment, or advertisement falling within the provisions of Sections 310.02, 310.03, or 310.04 with intent to carry or convey the same, except in the United States mail, is punishable as provided in Section 310.11 [Considered later in this report]

K. PENAL PROVISIONS

1. Discussion

Section 311 presently provides that violation of the obscenity provisions of that section is punishable as a misdemeanor. Under Penal Code Section 19 a misdemeanor is punishable as follows:

"Except in cases where a different punishment prescribed by any law of this State, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both.

Evidence received by the subcommittee suggested that it might be desirable to set a basic minimum fine for the first offense with an additional graduated amount based upon the number of units of pornographic matter involved. For example, the fine might be \$500 plus \$10 for each unit involved. Under this plan a small distributor apprehended with 10 magazines would pay \$600 while a big operator apprehended with 1,000 magazines would have to pay \$10,500. It has been urged that such a system is desirable in view of the tremendous amount of money spent each year in California for obscenity, more than any other state in the nation. It appears that the present small fine is no deterrent since big distributors willingly incur it as a necessary business risk.

Evidence was also received suggesting a minimum jail sentence for the first offense. This too, might be graduated, as has been suggested in the case of fines, according to the number of units involved.

There is presently no increased penalty for second and subsequent offenders and it has been suggested that such legislation would be effective.

Assembly Bill No. 3849, referred to the subcommittee for interim study, provides that in the case of distribution to minors under the age of 18 there shall be a minimum of 10 days and maximum of six months in jail, or minimum of \$50 and a maximum of \$500, or both. Second and subsequent offenses within three years draws not less than 30 days, nor more than six months, or not less than \$100 nor more than \$500, or both. It also provides that for second and subsequent offenses the minimum punishment shall be served, or the minimum fine paid, or both, as a condition of probation.

Evidence received indicates the desirability of stiffer penalties where the offender involves minors because of the possible greater harm which may result. Immature minds probably are more susceptible to the influence of such material than are more mature minds, and for this reason it would seem that a greater criminal offense is being committed.

2. Recommendations

A new section numbered "310.11," to be added to the proposed Chapter VII.5, should be enacted. It should read substantially, as follows:

310.11. Punishment.

(1) Violation of Sections 310.02, 310.03, 310.04, or 310.05, shall be punishable by:

- (a) A fine not exceeding \$500 plus \$10 for each additional unit of material coming within the provision of this chapter, or by
- (b) Imprisonment in the county jail, not exceeding six months, plus one day for each additional unit of material coming within the provisions of this chapter, such basic minimum and additional days not to exceed 360 days in the county jail, or by
- (c) Both such fine and imprisonment.

Second and subsequent offenses, committed within three years of a prior offense, shall be punishable by:

- (a) A fine of not less than \$100 nor more than \$500 plus \$15 for each additional unit of material coming within the provisions of the chapter, or by
- (b) Imprisonment in the county jail for not less than 10 days nor more than six months, plus one day for each additional unit of material coming within the provisions of this chapter, such basic minimum and additional days not to exceed 360 days in the county jail, or by
- (c) Both such fine and imprisonment.

(2) Distribution, or offer or attempt to distribute, or causing the distribution to minors under the age of 18 years of age in violation of Sections 310.02, 310.03, or 310.04, shall be punished by:

- (a) A fine of not less than \$50 nor more than \$500, plus \$10 for each additional unit of material coming within the provisions of this chapter, or by
- (b) Imprisonment in the county jail for not less than 10 days nor more than six months, plus one day for each additional unit of material coming within the provisions of this chapter, such basic minimum and additional days not to exceed 360 days in the county jail, or by
- (c) Both such fine and imprisonment.

Second and subsequent offenses, committed within three years of a prior offense, shall be punishable by:

- (a) A fine of not less than \$100 nor more than \$500 plus \$10 for each additional unit of material coming within the provisions of this chapter, or by
- (b) Imprisonment in the county jail for not less than 30 days nor more than six months, plus one day for each additional unit of material coming within the provisions of this chapter, such basic minimum and additional days not to exceed 360 days in the county jail, or by
- (c) Both such fine and imprisonment.

For second and subsequent offenses, the defendant may be granted probation only if a condition of the probation is that he serve the minimum term of imprisonment, or pay the minimum fine, or both, as specified in this subsection. In no event, does the court have the power to absolve such defendant of the obligation of spending at least such minimum time in the county jail, or paying such minimum fine.

(3) Violation of Section 310.06 shall be punishable by:

- (a) A fine of not less than \$100 nor more than \$500, or by
- (b) Imprisonment in the county jail for not less than 30 days nor more than six months, or by
- (c) Both such fine and imprisonment.

Second and subsequent offenses, committed within three years of a prior offense, shall be punishable by:

- (a) A fine of not less than \$250 nor more than \$500, or by
- (b) Imprisonment in the county jail for not less than 90 days nor more than six months, or by
- (c) Both such fine and imprisonment.

For second and subsequent offenses, the defendant may be granted probation only if a condition of the probation is that he serve the minimum term of imprisonment, or pay the minimum fine, or both, as specified in this subsection. In no event, does the court have the power to absolve such defendant of the obligation of spending at least such minimum time in the county jail, or paying such minimum fine.

IV. PRACTICAL PROBLEMS OF ENFORCEMENT

A. DISCUSSION

It appears that law enforcement officers, generally, have had little, if any, special training to aid them in the determination of whether given material comes within the prohibitions of Section 311. Law enforcement agencies are largely dependent upon the advice of prosecuting officials. Their judgment, for the most part, is based on their own experience and that of their department as to the type of material which has been prosecuted successfully in the past.

Success of a prosecution depends to a large extent upon the particular jury involved. Juries in larger communities, being more sophisticated, are less prone to convict than are juries in smaller communities. In addition, juries considering borderline cases usually resolve doubts in favor of the defendant so that many guilty men are freed for every innocent one convicted.

Prosecuting officials do not like to be placed in the position of being a censor, and, even if they did, present staffs would be extremely inadequate to read and analyze the multitude of publications published monthly. They also pointed out that if they were to read and clear certain publications as not being obscene, the public might accept this as a kind of recommendation; whereas the prosecutor's office would in fact not be recommending the publication and might believe it to be objectionable, although not sufficiently so as to be able to secure a conviction.

Law enforcement officers also have pointed out the large quantity of objectionable material that is being brought, and sent, into this State from Mexico. They indicated that it would be most helpful if the Legislature would, in some official manner, bring this to the attention of the appropriate officials of that country.

B. RECOMMENDATIONS

1. Schooling received by law enforcement officers should be broadened to include more training in enforcement of pornography laws.

2. The book and magazine industry itself, under the leadership of the largest and reputable publishers, should take immediate steps to organize an effective, all-inclusive, self-regulatory association to prevent the publication of obscene material.

3. The district attorneys and police departments of our State should take a more active interest in the elimination of obscene material now crowding many newsstands.

4. Voluntary citizen's community groups should be encouraged to make an active effort to seek the support of newsdealers, merchants and other distributors in refusing to offer obscene material for sale.

APPENDIX I

Penal Code Section 311. (Indecent exposures, exhibitions, etc.: Grade of offense: Application of subd. 6.)

Every person who willfully and lewdly, either:

1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels, or assists any person so to expose himself or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adopted to excite to vicious or lewd thoughts or acts; or,

3. Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, or book; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or molds, cuts, casts, or otherwise makes any obscene or indecent figure; or,

4. Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print or figure; or,

5. Produces, prepares, manufactures, sells, distributes, keeps for sale, exhibits, buys, rents, operates, uses, keeps, or maintains recordings, transcriptions, or mechanical, chemical, or electrical reproductions, or any other articles, equipment, machines, or materials, used or intended to be used in producing or reproducing any lewd or obscene song, ballad, or other words, whether spoken or sung; or,

6. Sings or speaks any lewd or obscene song, ballad, or other words in any public place, or in any place where there are persons present to be annoyed thereby, is guilty of a misdemeanor.

Upon the second and each subsequent conviction under subdivision 1 of this section, or upon a first conviction under subdivision 1 of this section after a previous conviction under Section 288 of this code, every person so convicted is guilty of a felony, and is punishable by imprisonment in the state prison for not less than one year.

The provision of subdivision 6 of this section shall not apply to any person participating in violation thereof only as an actor, unless and until the proper court shall have passed upon the matter and found the actor to have violated the said subdivision 6 of this section, except where after a complaint has been filed against the owner, manager, producer or director charging a violation of said subdivision 6 of this section, and pending the determination thereof an actor or actress utters the particular word or words complained against or other word or words of the same or similar import, in connection with such performance, act, play, drama, exhibition or entertainment.

Penal Code Section 312. (Seizure of indecent articles.)

Every person who is authorized or enjoined to arrest any person for a violation of subdivision 3 of the next preceding section, is equally

authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print, or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

Every person who is authorized or enjoined to arrest any person for a violation of subdivision 5 of the next preceding section, is equally authorized and enjoined to seize any recordings, transcriptions, or mechanical, chemical or electrical reproductions, or any other articles, equipment, machines, or materials, used or intended to be used in producing or reproducing any lewd or obscene song, ballad, or other words, whether spoken or sung.

Penal Code Section 313. (Summary determination of character of indecent articles: Delivery of copy to district attorney: Destruction of other copies.)

The magistrate to whom any obscene or indecent writing, paper, book, picture, print, or figure, or to whom any recordings, transcriptions, or mechanical, chemical or electrical reproductions, or any other articles, equipment, machines, or materials, used or intended to be used in producing or reproducing any lewd or obscene song, ballad, or other words, is delivered, pursuant to the foregoing section, must, upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, determine the character of such material or article, and if he finds it to be obscene or indecent, he must deliver one copy to the district attorney of the county in which the accused is liable to indictment or trial, and must at once destroy all the other copies.

Penal Code Section 314. (Destruction of articles upon conviction of accused.)

Upon the conviction of the accused, such district attorney must cause any matter or article, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed.

APPENDIX II

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William Tulloh Lieutenant, Alameda Police Department	Fred N. Whichello Deputy District Attorney Los Angeles County
Donald M. Redwine Assistant City Attorney City of Los Angeles	
William L. Ritzi Deputy District Attorney Los Angeles County	

APPENDIX III

Assembly Bill No. 3849, as finally amended.

An act to amend Section 311 of, and to add Section 311.5 to, the Penal Code, relating to sale of obscene and indecent literature to minors.

The people of the State of California do enact as follows:

SECTION 1. Section 311 of the Penal Code is amended to read:

311. Every person who willfully and lewdly, either:

1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels, or assists any person so to expose himself or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adopted to excite to vicious or lewd thoughts or acts; or,

3. Writes, composes, stereotypes, prints, publishes, or keep or offers for sale, or sells, distributes, or exhibits any obscene or indecent writing, paper, or book; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or molds, cuts, casts, or otherwise makes any obscene or indecent figure; or,

4. Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print or figure; or,

5. Produces, prepares, manufactures, sells, distributes, keeps or offers for sale, exhibits, buys, rents, operates, uses, keeps, or maintains recordings, transcriptions, or mechanical, chemical, or electrical reproductions, or any other articles, equipment, machines, or materials, used or intended to be used in producing or reproducing any lewd or obscene song, ballad, or other words, whether spoken or sung; or,

6. Sings or speaks any lewd or obscene song, ballad, or other words, in any public place, or in any place where there are persons present to be annoyed thereby, is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than six months, or by fine of not more than five hundred dollars (\$500), or by both

Upon the second and each subsequent conviction under subdivision 1 of this section, or upon a first conviction under subdivision 1 of this section after a previous conviction under Section 288 of this code, every person so convicted is guilty of a felony, and is punishable by imprisonment in the state prison for not less than one year.

The provision of subdivision 6 of this section shall not apply to any person participating in violation thereof only as an actor, unless and until the proper court shall have passed upon the matter and found the actor to have violated the said subdivision 6 of this section, except where after a complaint has been filed against the owner, manager, producer or director charging a violation of said subdivision 6 of this section, and pending the determination thereof an actor or actress utters the particular word or words complained against or other word

or words of the same or similar import, in connection with such performance, act, play, drama, exhibition or entertainment.

SEC. 2. Section 311.5 is added to said code, to read:

311.5. Every person who willfully offers for sale, sells, offers to give, gives, or distributes to any minor under 18 years of age, any obscene or indecent writing, paper, book, picture, print, or figure which tends to suggest, arouse, or excite lustful sexual desires or thoughts in minors of such age or who, having any such writing, paper, book, picture, print, or figure in his possession for sale, knowingly permits any minor of such age to read or examine it, is guilty of a misdemeanor punishable, for the first offense, by imprisonment in the county jail for not less than 10 days nor more than six months, or by fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), or by both, and for the second and each subsequent offense, committed within three years of a prior offense, by imprisonment in the county jail for not less than 30 days nor more than six months, or by fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by both.

For a second or subsequent conviction under this section defendant may be granted probation only if a condition of the probation is that he serve the minimum term of imprisonment, or pay the minimum fine, or both, as specified in this section. In no event does the court have the power to absolve such defendant of the obligation of spending at least such minimum time in the county jail or paying such minimum fine.

APPENDIX IV

Assembly Bill No. 4158

An act to add Section 653d to the Penal Code, relating to the exhibition and furnishing of sanguinary literature to persons under the age of 18 years.

The people of the State of California do enact as follows:

SECTION 1. Section 653d is added to the Penal Code, to read:

653d. Every person who sells, offers for sale, exhibits, distributes, or in any manner furnishes, to any person under the age of 18 years, any booklet, pamphlet, or magazine which contains drawings, except editorial drawings, showing human blood or bloodshed incident to crime or violence, including, but not limited to, a drawing of a dismembered human body or a human victim of violence lying in a pool of blood, is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than six months or by fine of not more than five hundred dollars (\$500), or by both.

SECTION 2. In adding Section 653d by this act, the Legislature finds as follows:

(a) The distribution and exhibition to children of publications of the types referred to in Section 653d have often corrupted the morals of children and incited crime among children;

(b) Pictorial presentation of scenes of human bloodshed and blood incident to crime or violence is particularly dangerous in its effect on children, who are naturally impressionable and imitative and who have, in fact, been incited by viewing such pictorial presentations to commit sanguinary crimes;

(c) There is a clear and present danger that if distribution and exhibition of such publications to children are allowed to continue, the morals of children will further be corrupted and there will be more incidents of children being incited to the commission of sanguinary crimes;

(d) This act is a reasonable means of averting the clear and present danger described in finding (c) above.

APPENDIX V

Senate Bill No. 2310

An act to amend Section 311 of the Penal Code, relating to possession of obscene and indecent writings, recordings, pictures, and other objects.

The people of the State of California do enact as follows:

SECTION 1. Section 311 of the Penal Code is amended to read:

311. Every person who willfully and lewdly, either:

1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels, or assist any person so to expose himself or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adopted to excite to vicious or lewd thoughts or acts; or,

3. Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, book, picture, print, or motion picture or print; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or molds, cuts, casts, or otherwise makes any obscene or indecent figure; or,

4. Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print or figure; or,

5. Produces, prepares, manufactures, sells, distributes, keeps for sale, exhibits, buys, rents, operates, uses, keeps, or maintains recordings, transcriptions, or mechanical, chemical, or electrical reproductions, or any other articles, equipment, machines, or materials, used or intended to be used in producing or reproducing any lewd or obscene song, ballad, or other words, whether spoken or sung; or,

6. Sings or speaks any lewd or obscene song, ballad, or other words, in any public place, or in any place where there are persons present to be annoyed thereby, is guilty of a misdemeanor.

Upon the second and each subsequent conviction under subdivision 1 of this section, or upon a first conviction under subdivision 1 of this section after a previous conviction under Section 288 of this code, every person so convicted is guilty of a felony, and is punishable by imprisonment in the state prison for not less than one year.

The provision of subdivision 6 of this section shall not apply to any person participating in violation thereof only as an actor, unless and until the proper court shall have passed upon the matter and found the actor to have violated the said subdivision 6 of this section, except where after a complaint has been filed against the owner, manager, producer or director charging a violation of said subdivision 6 of this section, and pending the determination thereof an actor or actress utters the particular word or words complained against or other word or words complained against or other word or words of the same or similar import, in connection with such performance, act, play, drama, exhibition or entertainment.

APPENDIX VI

Welfare and Institutions Code Section 702. Contributing to delinquency of minor.

(Acts Constituting Misdemeanor: Punishment.) Any person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 21 years to come within the provisions of any of the subdivisions of Section 700 or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands, or persuasion, induces or endeavors to induce any person or ward of the juvenile court under the age of 21 years to fail or refuse to conform to a lawful order of the juvenile court, or to do or to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause any such person to become or to remain a person within the provisions of any of the subdivisions of Section 700, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in a county jail, or may be released on probation for a period not exceeding five years.

(Jurisdiction of Prosecutions: Probation: Bond.) The juvenile court shall have original jurisdiction over all misdemeanors defined in this section, and in all prosecutions hereunder shall cause the defendant to be duly arraigned, and plead to the charge made against him in the manner provided in the Penal Code upon an indictment or information. In all cases where the defendant prosecuted under this section enters a plea of guilty, the juvenile court shall have jurisdiction to impose sentence or in its discretion to grant probation upon such terms as it deems proper. The court may, as a condition of such probation, require a bond in such sum as the court may designate to be approved by the judge requiring it, to secure the performance by such person of the condition imposed by the court on such probation. The bond shall by its terms be made payable to the State of California, and any moneys received for the breach thereof shall be paid into the county treasury.

APPENDIX VII

Comparative Analysis

August 15, 1959

To: Honorable Louis Francis

From: L. J. Dewald, Consultant

Subject: Obscenity and Pornography Legislation

Pursuant to your request I have prepared a short comparative analysis of statutes on obscenity in California, Pennsylvania, Michigan, Indiana, and New York. I have selected those particular states since I believe that they give a fairly good sampling of the better legislation in the field.

The analysis is directed primarily to the areas involving pictures, writings, figures, articles and records of an obscene nature and only secondarily to matter depicting lust and crime. No discussion is included of songs, speech, acts or conduct.

Table I, attached, is an analysis of the statutes of California, Pennsylvania, Michigan, Indiana and New York relating to the objects covered, the means of preparation barred, and the methods of distribution barred. As can be seen by a comparison of the six columns there is a wide divergence between the objects, preparation and distribution covered in California and in other jurisdictions, such as New York, which have more comprehensive legislation on the subject of obscenity. Perhaps this divergence is more apparent than real because of the fact that a California court might construe Section 311 so liberally as to make it virtually as comprehensive as any of the more comprehensive statutes. In any event, the proposed legislation which I have prepared is so worded as to make it more comprehensive than any existing statute so far as preparation and distribution of obscene matter is concerned.

Table II shows the provisions of the above-mentioned states on the subject of advertising. The same general discussion would seem to apply here also. An addition observation might be made here, and that is that the proposed legislation would clarify the present Penal Code section so as to make it clearly applicable to the equipment mentioned in the present Section 311(5).

Table III is a summary of the other provisions which can be found in other jurisdictions on the subject of obscene and pornographic literature. Only the provisions relating to use of minors, tie-in sales and injunctions have been utilized in the proposed legislation.

Sections 310.07, 310.08 and 310.09 of the proposed legislation do not make any changes in existing legislation other than to renumber the sections so that they will be in a separate chapter with the other provisions on this particular subject.

The proposed legislation on the subject of indecent exposure is substantially the same as Sections 311(1) and 311(2), with some modification. The proposed changes are included only because the Subcommittee on Pornographic Literature had heard some criticism of the wording of those subsections, and it is with a view to correcting those inadequacies that there is a change in the wording as well as in the organization.

The discussion immediately above would equally apply to the proposed legislation on lewd conduct.

Table I. Distribution

	<i>Calif.</i>	<i>Penn. 3</i>	<i>Penn. 5</i>	<i>Mich- igan</i>	<i>Indiana</i>	<i>New York</i>
<i>A. Objects covered by B and C unless otherwise shown</i>	<i>1</i>	<i>2</i>	<i>4</i>	<i>4</i>	<i>6</i>	<i>7</i>
1. Writing -----	x		x	x		x
2. Paper -----	x		x	x	x	x
3. Book -----	x		x	x	11	x
4. Card -----						x
5. Comic Book -----		x				
6. Magazine -----		x	x	x		x
7. Other Publication ---		x				
8. Pamphlet -----			x	x	x	x
9. Newspaper -----			x	x		x
10. Storypaper -----			x	x		x
11. Drawing -----			x	x	x	x
12. Stereo Picture -----					x	x
13. Photograph -----			x	x	x	
14. Daguerreotype -----					x	
15. Figure -----			x	x		
16. Image -----			x	x		
17. Any indecent written or printed matter ---			x	9		9
18. Articles or Instru- ments -----			8		12	8
19. Filthy and obscene libel -----						
20. Print -----						
21. Model -----					x	
22. Statue -----						
23. Cast -----					x	
24. Places -----						
25. Phonograph record --				x		x
26. Lithograph -----					x	
27. Picture -----				10	x	13
28. Engraving -----					x	
29. Wire or tape recording				x		

Table 1. Distribution—Continued

	<i>Calif.</i>	<i>Penn. 3</i>	<i>Penn. 5</i>	<i>Mich- igan</i>	<i>Indiana</i>	<i>New York</i>
<i>B. Methods</i>	<i>1</i>	<i>2</i>	<i>4</i>	<i>4</i>	<i>6</i>	<i>7</i>
1. Sell -----	x	14	14	14	14	14
2. Attempt to sell -----		x				
3. Exhibit -----	x	x	14		x	
4. Show -----			14	14		14
5. Lend -----			14	14	14	14
6. Give -----		x	14	14	14	14
7. Keep with intent to sell or give -----	x	x	15	15	16	15
8. Distribute -----	x		14	14		14
9. Any way furnish -----		x				
10. Utter -----						
11. Transmute -----				14		14
12. About to acquire with intent to sell or dis- tribute -----						17
<i>C. Preparation</i>						
1. Writes -----	x					
2. Composes -----	x					
3. Stereotypes -----	x					
4. Prints -----	x		19		x	x
5. Publishes -----	x		19			x
6. Designs -----	18		19			x
7. Copies -----	18		19			x
8. Draws -----	18		19		20	x
9. Engraves -----	18					
10. Paints -----	18					
11. Otherwise prepares --	18		19			x
12. Photographs -----			19			x
13. Utters -----			19			x
14. Manufactures -----					x	x
15. Mold -----	21					
16. Cut -----	21					
17. Cast -----	21					
18. Otherwise make -----	21					

FOOTNOTES TO TABLE I:

1. Obscene or indecent objects
2. Obscene, lewd, lascivious, filthy, indecent or disgusting objects which teaches or advocates use of narcotics.
3. Statute applicable to persons under 18 only
4. Same as "2" except that it omits objects which teach or advocate use of narcotics
5. Statute applicable to all persons over 18.
6. Obscene, lewd, indecent, or lascivious
7. Same as "2" except that it omits portion on narcotics and adds the words sadistic and masochistic.
8. Articles or instruments of, purporting to be for, indecent or immoral use or purpose
9. Any indecent written, printed or recorded matter which may or not require mechanical or other means to be transmitted into auditory, visual or sensory representations
10. Includes motion pictures
11. Sec 10-4704 (Burns) provides also that "It shall be unlawful for any person, firm or corporation to expose for sale or cause to have exposed for sale any * * * paper novels with covers bearing dangerous, or incendiary or obscene pictures in any showcase or window along any streets or in any store."
12. Articles or instruments of indecent or immoral use, for procuring abortion, or for self-pollution, or medicine for procuring abortion, or preventing conception
13. See also P C 1141 (1) dealing with peep shows etc
14. Or offer to
15. Or lend, distribute or show.
16. Or lend
17. Covered in C.C.P. Sec 22-a(1) dealing with injunctions.
18. Refers only to any picture or print
19. Same as all objects under "A" except that picture is added and photograph is subtracted.
20. And exposes, or with intent to sell or have sold.
21. Figures only.

Table II. Advertising

	<i>Calif.</i>	<i>Penn. 3</i>	<i>Penn. 5</i>	<i>Mich- igan</i>	<i>Indiana</i>	<i>New York</i>
A. Objects Covered -----	1	2	4	4	6 22	6 22
1. Writing -----	x		x	x		
2. Paper -----	x		x	x		
3. Book -----	x		x	x		
4. Picture -----	x			10		
5. Print -----	x					
6. Figurine -----	x					
7. Equip for reproduc- ing obscene songs, ballads or other words spoken or sung.						
8. Magazine -----			x	x		
9. Pamphlet -----			x	x		
10. Newspaper -----			x	x		
11. Storypaper -----			x	x		
12. Drawing -----			x			
13. Photograph -----			x			
14. Figure -----			x	x		
15. Image -----			x	x		
16. Any written or printed matter of an indecent character -----			x	9		
17. Record -----				23		
B. Form of Advertising ---				25		
1. Writes -----	x		x			x
2. Composes -----	x					
3. Publishes -----	x		24			x
4. Prints -----			24			x
5. Utters -----			24			x

FOOTNOTES TO TABLE II:

1. Obscene or indecent objects
2. Obscene, lewd, lascivious, filthy, indecent, or disgusting objects which teach or advocate use of narcotics.
3. Statute applicable to persons under 18 only.
4. Same as "2" except that it omits objects which teach or advocate use of narcotics.
5. Statute applicable to all persons over 18.
6. Obscene, lewd, indecent, or lascivious.
9. Any indecent written, printed or recorded matter which may or may not require mechanical or other means to be transmitted into auditory, visual or sensory representations
10. Includes motion pictures.
22. Same as Articles under Distribution.
23. Phonograph, tape or wire
24. Or causes to be.
25. See Secs 10-2803 and 10-2804.

Table III. Other Provisions

	<i>Calif.</i>	<i>Penn. 3</i>	<i>Penn. 5</i>	<i>Mich- igan</i>	<i>Indiana</i>	<i>New York</i> x
1. Presumption of violation_						
2. Provision covering articles of indecent or immoral use			x			
3. Provisions dealing with use of minors -----			28	33		30
4. Provisions dealing with crime literature -----			28	32	26	
5. Provisions authorizing is- suanee of injunctions ---						29
6. Tie-in sale statute -----			27			31

FOOTNOTES TO TABLE III:

3. Statute applicable to persons under 18 only.
 5. Statute applicable to all persons over 18.
 26. See Sec 10-2805 (Burns).
 27. See Sec 3832 (Purdon).
 28. See Sec. 4524 (Purdon).
 29. See N.Y. Code of Criminal Procedure Sec 22(a).
 30. See N. Y. Penal Code Sec. 1141(2).
 31. N Y Penal Code Sec 1141(b)
 32. Mich Laws (1948) Sec. 750 344.
 33. Mich Laws (1948) Sec 750 345.

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