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How the Report of the Commission of Pornography and Obscenity and the Supreme Court Decisions of June 21, 1973 Effected Citizen Action Groups, 1970-1975

Dennis A. Hinrichs
University of Northern Iowa

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HOW THE REPORT OF THE COMMISSION ON PORNOGRAPHY AND OBSCENITY
AND THE SUPREME COURT DECISIONS OF JUNE 21, 1973
EFFECTED CITIZEN ACTION GROUPS, 1970 - 1975

A Research Paper
Presented to the
Faculty of the Library Science Department

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of the Requirements for the Degree
Master of Arts

Dennis A. Hinrichs
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Read and Approved by

Leah Hiland

Elizabeth Martin

Accepted by Department

Elizabeth Martin

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INTRODUCTION

In the last six years there have been two major events that have affected the efforts of community citizen action groups in their attempts to suppress materials that they have determined to be overtly sexually oriented. The first event occurred September 30, 1970 when the findings of a commission established by Congress in 1967 were published. The second event occurred June 21, 1973 when the Supreme Court, in a series of five related rulings, established and revised legal standards for considering sexually explicit materials obscene. In order to understand the impact of these two events, this paper will first review the history of each event and discuss some of the implications for citizen action groups.

Commission on Obscenity and Pornography

On October 3, 1967, Public Law 90-100 created the Commission on Obscenity and Pornography. The act stated:

The Congress finds that the traffic in obscenity and pornography is a matter of national concern. The problem, however, is not one which can be solved at any one level of government... It is the purpose of this Act to establish an advisory commission whose purpose shall be, after a thorough study which shall include a study of the causal relationship of such materials to antisocial behavior, to recommend advisable, appropriate, effective, and constitutional means to deal effectively with such traffic in obscenity and pornography.¹

The duties of the Commission described in the Act were:

1. ... to analyze the laws pertaining to the

¹"Public Law 90-100: An Act Creating a Commission to be Known as the Commission on Obscenity and Pornography", United States Statutes at Large, 1967, vol. 81 (Washington, D. C.: United States Government Printing Office, 1968) p. 253.

control of obscenity.... and to evaluate and recommend definitions of obscenity and pornography.

2. to ascertain the methods employed in the distribution.... and volume of traffic in such materials.

3. to study the effect.... upon the public, and particularly minors, and its relationship to crime and other antisocial behavior.

4. to recommend such legislative, administrative, or other advisable and appropriate action as the Commission deems necessary to regulate effectively the flow of such traffic....²

With the establishment of the Act, the Commission had to wait until July 1, 1968 for funding in order to proceed with its duties. While PL 90-100 authorized the members of the Commission to elect their chairman, President Lyndon Johnson appointed William B. Lockhart, Dean of the Law School of the University of Minnesota, to head it. He also appointed the seventeen other members of the Commission. These eighteen commissioners were drawn from the disciplines of law, religion, business, sociology, psychology, and teaching. The divergent opinions held by the group became evident with the release of the Report.

Commissioner Kenneth Keating resigned in June, 1969 to become ambassador to India. President Richard Nixon appointed Charles H. Keating (who was not ~~relationship~~ to Kenneth Keating) to replace him. Charles Keating was at that time President of Citizens for Decent Literature, an anti-pornography group.³

The Commission, during its organizational meetings, established four panels to implement its work and organize its findings. The four panels were: The Traffic and Distribution Panel, The Effects Panel, The Positive Approaches Panel, and The Legal Panel. Each Panel investigated its special area and reported directly to the Commission.⁴

²Ibid., p. 254.

³United States Commission on Obscenity and Pornography, The Report of the Commission on Obscenity and Pornography (Washington, D. C.: U. S. Government Printing Office, 1970) p. 518.

⁴Ibid., p. 2.

Since the funding of the Commission had not begun until July 1, 1968 the Commission received an extension of time to do its work and on September 30, 1970 released its report to the President and the Congress of the United States. In addition to the overview of findings, the recommendations, and the report of the panels, the Report also contained separate statements by members of the Commission who filed minority opinion reports. There were also eight separate statements by various commissioners that made some statements disagreeing with certain parts of the conclusion of the major report.⁵

The majority report of the Distribution Panel discussed the volume of traffic and patterns of distribution of pornography to be far more limited in its impact than previously thought.⁶ Their best estimate of the "adults only" book market for 1969 was set at between seventy and ninety million dollars.⁷ The market for "under-the-counter" pornographic material was established at between five and ten million dollars.⁸

To determine the effects of reading and viewing explicit sexual materials, extensive research was commissioned by the Effects Panel. The general finding was that exposure to sexually explicit materials played no significant role in the "causation of delinquent or criminal behavior among youth or adults."⁹ There was disagreement among the commissioners as to whether this conclusion was valid or not.¹⁰

The Positive Approaches Panel discussed three possible ways of controlling undesirable, sexually explicit materials. These were sex education, industry self regulation,

⁵Ibid., pp. 511-549.

⁶Ibid., p. 7.

⁷Ibid., p. 17.

⁸Ibid., p. 19.

⁹Ibid., p. 27.

¹⁰Ibid.

and citizen action groups. Each was discussed and the strengths and weaknesses of each was pointed out by the panel.

In its findings the Commission, through the Legal Panel, made four non-legislative recommendations. Prefacing their recommendations they stated:

The Commission believes that interest in sex is normal, healthy, good. Interest in sex begins very early in life and continues throughout the life cycle although the strength of this interest varies from stage to stage.... The individual needs information about sex in order to understand himself, place his new experiences in a proper context and cope with his new feelings.¹¹

The Commission then made the following recommendations:

1. that a massive sex education effort be launched.
2. continued open discussion, based on factual information, of the issues regarding obscenity and pornography.
3. that additional factual information be developed.
4. that citizen action groups organize themselves at local, regional, and national levels to aid in the implementation of the foregoing recommendations.¹²

In addition to the non-legislative recommendations, the Commission, in accordance with PL-100, made specific legislative recommendations. These recommendations covered statutes relating to adults, statutes relating to young persons, and to statutes relating to public display of sexually explicit materials and unsolicited mail. As the Commission reviewed the law, they felt:

1. legislation should not seek to interfere with the right of adults who wish to do so to read, obtain, or view explicit sexual materials.
2. Restrictions should be placed upon the sale of sexual materials to young persons who do not have the consent of their parents.

¹¹Ibid., p. 47.

¹²Ibid., pp. 48-49.

3. Restrictions should be made to protect individuals from having sexual material thrust upon them without their consent through the mail or through open public display.¹³

Separate statements were issued by ten of the eighteen members. The separate statements of Irving Lehrman, Joseph T. Klapper, G. William Jones, Otto Larsen, and Marvin Wolfgang expressed their viewpoint on why they voted with the majority on the key recommendations in spite of some personal reservations about the findings. The statement of Morris Lipton and Edward Greenwood explained that they felt further research was needed before all legislative recommendations could be followed.

The remaining statements, one issued by Morton Hill with Winfrey Link and the other issued by Charles H. Keating, raised many dissenting points to the Report. Both statements condemned the majority report for its suggested relaxation of the obscenity laws. They felt "the Commission's majority report is a Magna Carta for the pornographer."¹⁴ The Hill-Link minority report also felt the Commission failed its duty by not making available model obscenity statutes for state and local governments to consider. In the appendixes to their report they offered several models.¹⁵

The Keating dissent also criticized Commissioner Lockhart and the way the Commission was organized. He criticized the finding of projects and its non-compliance with the stipulations of PL 90-100. He felt the Commission failed in its duty, was discourteous to members who expressed minority opinions, and particularly, was concerned about the Commission's failure to provide legal solutions to the problem of pornography.¹⁶

The reaction to the Report by Congressional leaders

¹³Ibid., p. 51.

¹⁴Ibid., p. 385.

¹⁵Ibid., p. 425.

¹⁶Ibid., pp. 513-549.

and the President was in closer agreement to Keating, Hill, and Link, than to the majority of the Commission. On October 14, 1970, Senator John McClellan introduced a resolution that the findings of the Commission on Obscenity and Pornography be rejected. As reported in the New York Times, the vote was sixty to five in a roll call vote. Senator McClellan is quoted as saying, "The Congress might just as well have asked the pornographers to write this report."¹⁷ While the rejection ^{was} is not legally binding, it did reflect the mood of the Congress.

In a front page report on October 25, 1970, the New York Times reported that President Nixon issued a statement rejecting the findings of the Commission. The President was quoted as saying, "As long as I am in the White House there will be no relaxation of the national effort to control and eliminate smut from our national life." According to the article, "this was the first time in many years that a president has flatly rejected the report of a Presidential Commission." The news story also mentioned that Vice-President Agnew and other White House spokesmen had disowned the report.¹⁸ Eli M. Oboler in a Library Journal report on the Commission felt this move was motivated entirely by politics. 1970 was an election year and "smut was easy to attack."¹⁹

Commenting on the release of the Report and on Charles Keating's dissent, the Library Journal noted that the Commission had:

kept a two-year damper on the fires of censorship which have been threatening to breakout with renewed

¹⁷ Associated Press, "Senate Votes, 60 to 5, to Reject and Censure Obscenity Report", New York Times CXX (October 14, 1970) p. 30.

¹⁸ Weaver Warren, Jr., "Nixon Repudiates Obscenity Report as Morally Void", New York Times CXX (October 25, 1970) p. 1.

¹⁹ Eli M. Oboler, "Politics of Pornography", Library Journal XCV (December 15, 1970) p. 4228.

vigor. The members turned what was supposed to be a tool to allow censorship into a weapon against it...²⁰ but the other team will probably be up to bat soon.

The Supreme Court Decisions
of June 21, 1973

To use the Library Journal's term, the other team came up to bat on June 21, 1973. On that date the Supreme Court ruled on five related cases that involved issues under the First Amendment to the Constitution. The five cases were: (1) Miller v. State of California, (2) Paris Adult Theatre I et. al. v. Lewis R. Slayton, et. al. (3) Kaplan v. State of California, (4) United States v. 12 200 ft. Reels of Super 8mm. Film et. al., and (5) United States v. Joseph Orito. In all five cases the vote was five to four with Chief Justice Berger, Justices White, Blackmun, Powell, and Rehnquist voting in the majority. Justices Douglas, Brennan, Stewart, and Marshall offered various dissenting opinions.

The Miller case arose out of a jury trial in California. The defendant, Marvin Miller, had made a mass mailing of "unsolicited advertising brochures containing pictures and drawings depicting sexual activities"²¹ In the majority opinion, Chief Justice Berger held that:

1. Obscene material was not protected by the First Amendment.
2. The proper First Amendment standards to be applied by the states in determining whether particular material was obscene and subject to regulation were (a) whether the average person applying contemporary community standards would find that the work, taken as a whole, appealed to the prurient interest, (b) whether the work depicted or described in a patently offensive

²⁰"Keating Releases Dissent to Porno Report", Library Journal XCV (October 15, 1970) p. 3424.

²¹United States Supreme Court Reports October Term, 1972 vol. 412, (Rochester, New York: Lawyers Co-operative Publishing Company, 1974) p. 419.

way, sexual conduct specifically defined by the applicable state law as written or authoritatively construed, and (c) whether the work, taken as a whole, lacked serious library, artistic, political, or scientific value.

3. There was no requirement that the material must be shown to be 'utterly without redeeming social value.'

4. The requirement that state law, as written or construed, must specifically define the sexual conduct as to which depiction or description was proscribed, provided fair notice as to which public and commercial activities would bring prosecution.

5. Obscenity was to be determined by applying 'contemporary community standards' not 'national standards'.²²

The Paris Adult Theatre I case originated in Georgia with the defendants being charged with showing films that were obscene as defined in a Georgia criminal statute. The case proceeded through the state system with the Georgia Supreme Court ruling the movies were obscene, and their being shown at the defendant's theatre could be prohibited even if shown only to consenting adults.²³

In a five to four decision with Chief Justice Berger again expressing the majority view, the Supreme Court upheld the Georgia Supreme Court ruling.²⁴ Repeating arguments given in Miller v. California, the majority opinion again pointed out that the First Amendment does not protect obscene materials. In this ruling, Chief Justice Berger further stated, "Nor was it error to fail to require 'expert' affirmative evidence that the materials were obscene when the materials themselves were actually placed in evidence. the films obviously, are the best evidence of what they represent."²⁵ He further argued that while states have the freedom to adopt a laissez faire policy toward commercialized obscenity, they are not

²²Ibid.

²³Ibid., p. 446.

²⁴Ibid.

²⁵Ibid., p. 456.

constitutionally obliged to do so.²⁶

In his dissent in this case, Justice Douglas, in a footnote, saw what he felt could be a dangerous trend toward anyone of influence demanding removal of a book. He stated:

What we do today is rather ominous as respects librarians. The net now designed by the Court is so finely meshed that, taken literally, it would result in raids on libraries.... If what is offensive to the most influential person or group in a community can be purged from a library, the library system would be destroyed.²⁷

The Kaplan v. California case also reinforced the decisions as established in Miller v. California. A bookseller, Kaplan, sold an unillustrated plain-cover book to a police officer. The book was declared obscene in a jury trial. The appellate court in California affirmed the decision even though no expert testimony was offered to show that the book was obscene under national standards.

In another five to four majority ruling, Chief Justice Berger agreed with the appellate court. He held that:

1. An obscene book was not protected by the First Amendment merely because it contained no pictures.
2. Commercial exposure and sale of obscene materials to anyone, including consenting adults, could be constitutionally regulated by the states.
3. In a state court prosecution, contemporary community standards of the state, as opposed to national standards were constitutionally adequate to establish obscenity....
4. In such a prosecution, there was no constitutional need for expert testimony on behalf of the prosecution, once the allegedly obscene materials themselves were placed in evidence.²⁸

The case of United States v. 12 200 ft, Reels of Super 8mm. Film resulted from a border seizure of certain

²⁶ Ibid., p. 452.

²⁷ Ibid., p. 456.

²⁸ Ibid., p. 492.

films, slides, and photographs being brought into the United States from Mexico. The District Court ruled that since the material was for private use it could not be held and dismissed the case. On direct appeal, the Supreme Court overruled the District Court and stated that the United States had the constitutional right to forbid the importation of obscene material even if that material was for private use. As Chief Justice Berger stated:

The protected right to possess obscene material does not give rise to a correlative right to have someone sell or give it to others. Nor is there any correlative rights to transport obscene material in interstate commerce.²⁹

The United States v. Orito case further develops the idea of possession of obscene materials in the privacy of one's own home. As Chief Justice Berger pointed out, "It is hardly necessary to catalog the myraid activities that may be lawfully conducted within the privacy and confines of the home, but may be prohibited in public."³⁰ He also restates the argument that the First Amendment right to possess obscene material in the privacy of one's home did not create a correlative right to transport such material.³¹

The combined effect of these five cases was, as reported in a Congressional Quarterly Weekly Report, unsettling in its local interpretation.

Popular men's magazines such as Playboy have been seized from the newsstands in a variety of small towns across the country -- while the same issues have been left undisturbed by an unconcerned sheriff in the next county.

The New York Times reported on June 23, 1973 that

²⁹ Ibid., p. 506.

³⁰ Ibid., p. 518.

³¹ Ibid.

³² "Obscenity: A Question of Taste, Tests, and Controls", Congressional Quarterly Weekly Report XXXI (November 17, 1973) p. 3029.

there was considerable confusion as to the meaning of the rulings, but that there would probably be an increase in the number of prosecutions made by various law officials.³³

THE PROBLEM

With the Report and the Supreme Court decisions at such variance with one another on the subject of sexually explicit materials, the reaction to each may have produced different reactions among certain citizen action groups working with the suppression of sexually explicit materials. This paper's intent will be to determine if the number of actions taken by citizen action groups were as successful following the release of the Report, as they were following the Supreme Court decisions. The paper will also discuss the increase, if any, in the number of group actions after the court decisions.

The specific problem to be discussed is stated as follows: Was there a difference in the number of successful actions taken by citizen action groups after the publication of the Report of the Commission on Obscenity and Pornography and the number of successful actions taken by citizen action groups following the Supreme Court rulings of June 21, 1973?

Hypotheses to be Tested

The following hypotheses ^{were} ~~are~~ to be tested:

1. There were ten per cent more unsuccessful than successful attempts to suppress sexually oriented materials by citizen action groups following the release of the Report.
2. There was a twenty five per cent increase in the number of attempts by citizen action groups to suppress sexually oriented materials following the Supreme Court decisions.

³³Lesley, Oelsner, "High Court's Obscenity Rulings Provoke Confusion and Debate", New York Times CXXII (June 24, 1973) p. 1.

3. There were ten percent more successful than unsuccessful attempts by citizen action groups to suppress sexually oriented materials following the Supreme Court decisions.

agreement
Initial reaction to the Report in popular magazines and newspapers were varied but usually negative.³⁴ The U. S. News and World Reports Magazine referred to the Report as the "official findings that set off a furore."³⁵ The Commission noted in its report that conflicting viewpoints will effect citizen action groups when they perceive community standards were no longer being upheld. If citizen action groups perceived the reaction to the Commission report as unsettling to their tradition, then some action would be taken. With the additional backing of having the President and Congressmen reject the Commission findings, citizen action groups would have reason to dispute any introduction of pornographic material into their community.

However, the law itself had not changed and the Report did mention the non-harmful aspects of exposure to have some dampening effect on the "fires of censorship" that the Library Journal spoke about. The social climate would have been such that any case a citizen action group would undertake, would not have had the full approval of the larger community. The attempts at suppression would be balanced between obedience to the letter of the law and the desire to maintain community standards. Therefore, the successful pursuit of suppressing materials would be low.

However, there may have been social, political, and legal climate changes after the Supreme Court decisions were announced.³⁶ The decisions would indicate that, even though

³⁴Terrance, Shea, "Panels Dissenters Battles Its Findings on Smut", National Observer IX (September 14, 1970) p. 15.

³⁵"Pornography Report", U. S. News and World Reports LXIX (October 12, 1970) p. 60.

³⁶"Obscenity a Question...." loc. cit.

there may be confusion among law officials, the time would be right for more strict interpretation of local obscenity laws. Citizen action groups could then have greater expectations of opportunities for success. The New York Times on June 24, 1973 reported that law officials were preparing to move against certain booksellers.³⁷ The National Observer reported on the changing status of "The Combat Zone" of Boston, Massachusetts, an area well known for its sexually explicit films and shows.³⁸ The national climate had changed to favor suppression of sexually explicit materials. Attempts at suppression should increase markedly and the success rate should also increase.

Significance and Limitations of the Study

This study will point up the effect the Report and the Supreme Court decisions had on the responses of citizen action groups. It will compare any increase that may occur in the number of successful cases brought before various library boards, boards of education, and courts following the Supreme Court decisions.

This paper is limited to the study of cases requesting the removal, suppression, or banning of sexually explicit materials by citizen action groups following the Report of the Commission on Obscenity and Pornography and the Supreme Court decisions of June 21, 1973. Both events were concerned with the availability of pornographic materials in the open market place. Since the Report discussed the role citizen action groups play in the removal of this material, other forms of censorship will not be considered in this paper, for example religious, scientific, or political works.

³⁷Oelsner, loc. cit.

³⁸Lawrance, Masher, "Court Ruling Aftermath Banning in Boston: How One City Renews Porn Fight", National Observer XI (August 18, 1973) p. 4.

In order for a case to be considered for this study, a citizen action group must be either the initiator or a major supporter of a case involving sexually explicit materials. Internal censorship problems of organizations, e.g. the showing of a film on national television, will be discussed only when there is evidence that there was external pressure applied by a citizen action group.

Another limitation placed on this study is the source of the reports of cases. The Newsletter for Intellectual Freedom ^{case} will be used as the sole reporting source for suppression cases. The cases reported in the Newsletter are sent in by readers who are concerned with censorship problems throughout the United States. While not all cases that occur may be printed in the Newsletter, if there is an increase in actual cases after the Supreme Court decisions, there should be an increase in the reported number of cases in it. While the use of one source will limit the actual count of the total number of cases that occurred during the time period involved, November 1970-May 1975, the Newsletter, does give national coverage to censorship cases, it does cite sources for the cases printed, and when possible, will give a follow-up report on the case so that the final action taken can usually be noted.

REVIEW OF RELATED LITERATURE

How Literature to Review was Selected

Reviewing the literature was divided into four parts: The Report, the decisions, reports on citizen action groups, and materials on obscenity and pornography reports.

Articles on the Report in the professional journals had favorable reactions. The Library Journal, as previously quoted, was pleased to note that the Report was not a new tool for the censor to use. Charles Keating was described as the most vociferous dissenting member of the panel.

It took Keating to task for wanting to turn the Report into a pornographers sampler.³⁹

Popular conservative magazines, such as Reader's Digest and the National Observer were more critical of the Report. Charles Keating wrote for the Reader's Digest an article entitled "The Report that Shocked a Nation" in which he repeated much of what he had said in his dissenting report to the Commission. Since Keating was not placed on the panel until late 1969 and refused to participate in many of the debates that constituted much of the Report, his findings could not be considered as valid as those who did participate in the give and take of open debate. Keating came to the commission with preconceived notions and listened to only those ideas that reinforced his own. The same devotion to the idea of the corruption possibilities of pornography was evident in a National Observer interview with Commissioner Morton Hill, who was also President of Morality in Media. He also repeated much of what he had said in his dissenting report in the interview.

Contemporary news accounts of the Supreme Court rulings and later reviews of the decisions in law journals were reviewed to gain reaction of the legal profession to the decisions. The Harvard Law Review was very critical of the findings, citing the closeness of the decisions and the ambiguity of the obscenity definition. They felt further court cases would be necessary to further test the new Miller standards. The criticism made by the Harvard Law Review lends credence to the idea of a sharply divided and increasingly conservative court.

A search of the literature for accounts of citizen action groups, their formation, and their organization yielded very little concrete information. The Newsletter for Intellectual Freedom would mention names of several (e.g.

³⁹"Keating Releases ...", loc. cit.

DAD--Dads Against Dirt, or The National Youth Moratorium on Indecency), but no additional information could be found. Three major citizen action groups that are organized nationally, Citizens for Decency through Law, Christians United for Responsible Entertainment, and Morality in Media are listed in the ninth edition of the Encyclopedia of Associations but other information about them has proven difficult to locate.⁴⁰ Volume five of the Technical Reports contained a lengthy study of two local citizen action groups. The findings are discussed in more detail below in the subject "Studies Related to the Research Problem."

Books covering the history of censorship, the rise of pornography and obscene literature were reviewed for their background value to the problem. Two books were collections of writings by several authors that gave varying opinions on how they felt about the "good" or "evil" of censorship and pornography. Censorship: For and Against, edited by Harold Hart, is an example of such a book. Another book similar to that, but one that contained selections written for other books and periodicals, was a book edited by Douglas Hughes titled Perspectives on Pornography. Both books were well edited and had some balance to their viewpoints presenting divergent viewpoints. A general history of pornography and its impact on the literature of a country is discussed in the book A History of Pornography by H. Montgomery Hyde. Originally published in England in 1963, the book interrelated the censorship patterns of England and the United States. It may have been printed in the United States in 1964 to take advantage of the Fanny Hill case, then in the news.

E. M. Oboler in The Fear of the Word gives a very broad history of the censorship of sexually explicit

⁴⁰ Encyclopedia of Associations, Volume one (Detroit, Michigan: Gale Research, 1973) pp. 788-789.

materials. While not an unbiased study, he does present a scholarly approach to the suppression of sexually oriented materials. He cites examples and case histories that develop his main theme--those who are concerned about the freedom of speech must be wary of the person who wished to censor.

Studies Related to the
Research Problem

A study reported in the November 1974 Newsletter on Intellectual Freedom analyzed the source of pressure and the number of incidents in censorship cases from November 1971 through May 1974 as reported in the "Censorship Dateline" of the Newsletter on Intellectual Freedom. "An attempt was made to arrive at an assessment of the prominence of roles played by individual citizens in efforts to control the availability and use of print and non-print materials."⁴¹ Ten categories were established analyzing the type of incident (e.g. local citizen self censorship by media), and thirteen categories for the point of controversy (e.g. schools, bookstores, newspapers). Geographically the number of incidents reported corresponded to the population density of the state and more cases were reported on the coasts than in middle America.⁴² This present study was assisted by adapting the methodology used by researchers. It also pointed out that citizen action groups were involved in several of the incidents noted. The report was concise and covered the topic well.

In their findings, the Commission on Obscenity and Pornography also reported on citizen action groups that were formed to deal with the problem of sexually explicit material in their communities. They summarized their findings by

⁴¹John M. Tucker, "An Analysis of Censorship News Reporting", Newsletter on Intellectual Freedom XXIII (November, 1974) p. 143.

⁴²Ibid.

stating:

Two studies completed for the Commission indicate that citizen action groups tend to attract as members socially and politically conservative individuals, those in the community who are more religiously and traditionally oriented, those who are older, and those who have had less formal education.... Frequently they engage in activities that are more symbolic than utilitarian. Such groups can be a positive force in the community if they are truly representative of that community and if their goals are positive.⁴³

The study was an extensive cross-discipline research project that demonstrated very well the differences between a successful and an unsuccessful citizen action group. The Report summarized the difference by saying citizen action groups:

... can seriously interfere with the availability of legitimate materials in a community by generating an overly repressive atmosphere and by using harrassment in seeking to implement their goals. However, they can be effective if they genuinely reflect the opinion of the community and if they pursue specific, positive, well-defined, constructive goals.⁴⁴

Summary of Literature Reviewed

The professional literature on or about the Report was favorable toward the findings of the Commission. The May, 1971 edition of the Newsletter on Intellectual Freedom published a coalition statement that supported the commission, recognized the difficult work they had done, and supported the idea of continued research based on reason and valid scientific procedures.⁴⁵ When President Nixon, the Congress, and several national leaders rejected the commission's report, the Wilson Library Bulletin referred to the Congress as "the enemies of reasoning." In commenting on Senator

⁴³Report, op. cit., p. 338.

⁴⁴Ibid., p. 33.

⁴⁵"Coalition Statement on COP Report", Newsletter on Intellectual Freedom XX (May, 1971) p. 57.

John McClellan's remark that "Congress might just as well have asked the pornographers to write this report," the Bulletin responded that "Congress might just as well write its own reports, if all it wants is a scientific-sounding confirmation of its preconceptions and politically safe postures."⁴⁶

The professional literature had the opposite viewpoint on the Supreme Court decisions. The Newsletter on Intellectual Freedom found it incredible that the "Nixon Court", in the midst of the Watergate hearings, could continue to limit the meaning of the First Amendment. In his article, Funk argues each of the main points brought out by the court and finds their reasoning faulty. His conclusion is that the courts have said:

You may have a right to possess 'obscene' material in your home, but you may not purchase, acquire, or import such material from any source. Apparently, everyone will have to write his own 'dirty' books in his basement.⁴⁷

The American Library Association filed an Amicus Curiae brief July 16, 1973 to attempt to rehear the Kaplan v. California case. American Libraries reported in their December 1973 issue that the petition had been refused. ALA was concerned that librarians might become involved in suits involving the distribution of obscene materials, if a court ruled on materials that were on library shelves. Based on Justice Douglas' footnote, as mentioned above under the review of the decisions, the ALA had reason to be concerned.

Literature on the subject of pornography and the critical analysis of it has recently become more available as the technical reports of the commission are evaluated and

⁴⁶A. Plotnik, "Enemies of Porno---and of Reasoning an Analysis", Wilson Library Bulletin XLV (November, 1970) p. 232.

⁴⁷Roger L. Funk, "Protecting the Gullible", Newsletter on Intellectual Freedom XXII (September, 1973) p. 97.

analyzed. The book Pornography and Sexual Deviance, 1973, was an outgrowth of the original studies done for the Commission on Pornography and Obscenity. The study "involves the possible link between pornography and the development of nonheterosexual or anti-social sexual behavior."⁴⁸ The conclusions supported the main findings of the commission. The researchers also felt further study of an unbiased nature was needed.

Three books that attacked pornography and found it to be unrelentingly evil were published in 1973 and 1974. The most literate and reasoned of the three was The Case Against Pornography, edited by David Holbrook. Using a wide variety of authorities to make his point, Holbrook points out the degrading, dehumanizing, debasing aspects of pornography. He attacks the idea that pornography may have value as a release for the sexually inhibited and stresses the anti-cultural aspects of pornography. The articles he selected to be included in the anthology did increase the debate over the value of pornography. The other two books, however, close the debate and view the subject as so vile and so debasing that it is not worthy of discussion. Rousas Rushdoony in The Politics of Pornography sees a difference in new and old pornography. He says:

... It (the new pornography) is now a crusade for a new freedom and an all-out war against God and His law.... The pornography factories still turn out the old garbage, but now with a difference: it has become garbahzh, pretentious garbage masquerading as the new enlightenment and the new freedom.⁴⁹

He further views the problem as a Christian problem that must be met with Christian solutions of proper training aided by strict laws.

⁴⁸Michael J. Goldstein, and Harold Sanford Kant, Pornography and Sexual Deviance (Berkeley, California: University of California Press, 1973) p. 1.

⁴⁹Rousas Rushdoony, The Politics of Pornography (New Rochelle, N. Y.: Arlington House, 1974) p. 1.

Pornography: The Sexual Mirage by Jack Drakeford and Jack Hamm is the most pretentious of the books attacking pornography. Filled with Bible quoting cartoons drawn by Jack Hamm, the book describes in some detail examples of pornography and exclaims over the vileness of it all. His solutions are combative: mobilize public opinion, refuse to purchase groceries at supermarkets that display "pornographic" materials, and utilize legal channels to their fullest.

METHODOLOGY

The Newsletter for Intellectual Freedom has as one of its publishing goals the recording of accounts of the suppression of information taken by individuals, citizen action groups, boards of education, law enforcement agencies, and others. As a result of this goal, the Newsletter acts as a barometer of the censorship climate around the nation.

A search of the periodical was made for censorship cases involving citizen action groups and sexually explicit materials from November 1970 to June 1973, the period covering the release of the Report and before the announcement of the Supreme Court decisions. Another search was made for the period July 1973 to June 1975, the time covering the Supreme Court decisions to the most recent issue of the Newsletter. The sections reporting censorship actions, "Censorship Dateline" and "Success Stories", were searched in each issue for complaints filed by citizen action groups. The sections covering court cases and legal actions involving censorship "From the Bench" and "Is it Legal" were also screened for those cases that had any reference to actions that had been taken to court by citizen action groups concerned with sexually oriented materials.

As each case that applied to the conditions of

this paper was located, a card was filled out recording the date, the place, and the group involved. The action taken was noted as it was located in further editions of the periodical. Many cases had a report of the action taken by the governing board in the same issue, but often there was a time lapse between the time the action was first taken and the final disposal of the case. In such cases, the time the case was first reported in the Newsletter is the time reference used for this paper. See the appendix for a sample of the card used in compiling the cases and a full explanation of how each card was filled out.

The total number of cases were compiled and divided into three areas: successful actions, unsuccessful actions, and undetermined. An action that was either still pending final action or no final action could be located was placed in the undetermined category.

The cases were then further subdivided by the dates November, 1970 to June, 1973 and July, 1973 to May, 1975. The first date group covered the period following the release of the Report up to the first month of the Supreme Court decisions. The second date group follows the Supreme Court decisions to the last published issue of the Newsletter June, 1975.

The Newsletter was used as the only source for analysis to control the input on the number of cases involved. The use of primary sources, while more desirable would have resulted in much duplication and repetition of effort with an extensive amount of time in searching each case. This was hopefully avoided, but not at the expense of decreasing the number of cases involved.

Operational Definitions

Citizen action groups are: (1) Citizens of a community bonded together for a temporary period to take particular action specific sexually explicit materials. (2) National organizations and/or their local affiliates

that have organized to request the removal of sexually explicit materials from libraries, bookstores, supermarkets, movie theatres, or television studios. (3) An informally structured group that confronts a local government organization to demand action on sexually explicit materials. A reported term such as "a large group of concerned parents" or "100 angry taxpayers" ^{see} will be considered as a citizen action group.

Materials: "The entire range of depictions or descriptions in both textual and pictorial form--primarily books, magazines, photographs and films."⁵⁰

Obscene Materials: "Those materials that have been legally prohibited."⁵¹

Pornography: Not defined by the Commission on Pornography and Obscenity, the term refers to, and is used in the same context as, "explicit sexual materials," "sexually oriented materials," and "erotic materials."

Successful Actions: A case requesting action against sexually explicit materials will be considered successful if either (1) the material was banned, censored, or suppressed in some manner or (2) a fine, penalty, or judicial sentence was passed by court or police authority.

Unsuccessful Actions: A case requesting actions against sexually explicit materials will be considered unsuccessful if either (1) the material was not banned, suppressed, or removed as requested or (2) there was no judgment made by a court or police authority that resulted in any fines, penalties, or other restraining action.

⁵⁰United States Commission on Obscenity and Pornography, The Report of the Commission on Obscenity and Pornography (New York: Random House, 1970) p. 5.

⁵¹Ibid.

ANALYSIS OF DATA

Findings

The influence of the Report and the Supreme Court decisions on the activities of citizen action groups may not be as great as was assumed by the ^{author} paper. Table 1 indicates that there were more unsuccessful actions than successful actions carried out by the groups.

Table 1
Reported Cases Following the Report
On Obscenity and Pornography
November 1970 - June 1973

Action Taken	Number of Cases Reported	Percent
unsuccessful	20	47
successful	16	37
undetermined	7	16
total	43	100

In the thirty-two month period between the release of the pornography report and the announcement of the Supreme Court decisions, there were a total of forty-three actions taken by groups of citizens who felt they were, in some manner, being offended by sexually explicit materials. When the citizens complained to a school board, library board, civil court, or police office, they were successful in having the material banned or a fine charged sixteen times. They were unsuccessful in their actions twenty times.

This would indicate an acceptance of the first hypotheses that there would be ten per cent more unsuccessful than successful attempts to suppress sexually explicit

materials following the release of the Commission's report.

Table 2 demonstrates that the second hypotheses, which stated there would be a twenty five per cent increase in the number of attempts to suppress sexually oriented materials, must be rejected. While sufficient time has not elapsed to fully determine whether or not there has been any influence of the Court decision on the pending cases, it can be seen that there was not an increase in the actual number of cases attempted by citizen action groups. Table 2 shows a slight decline in the average number of reported cases.

Table 2

Total Number of Cases Reported
November 1970 -- May 1975
Averaged and Compared

	Report Nov.. 70 - June 73	Supreme Court Decisions July 73 - May 75
Total Number of Cases Reported	43	26
Average Per Year	18	13
Average Per Month	1.34 [?] (22 mo.) 100	1.13 (26 mo.) 108

Computing this same information in another way, Table 3 further clarifies the slight differences in the number of cases over the whole five and one half year range. The largest percentage of cases occurred during the time following the release of the Report and before the Supreme Court decisions. There is no indication that the predicted increase in the number of attempts citizen action groups would make toward the suppression of sexually explicit materials *did occur*.

Table 3
A Yearly Comparison of the Total Number
of Cases Reported 1970 - 1975

Year	Number of Cases	Percent of Total	Time Frame	Percent of Total
1970 Nov. - Dec.	6	8	Commission Report	60
1971	14	20		
1972	17	24		
1973	9	13	Supreme Court Decisions	40
1974	14	21		
1975 Jan. - May	9	13		
Total	69	99		100

In studying the number of cases closer, there is an indication that the third hypotheses must also be rejected. In the twenty-four month period following the announcement of the decisions to May 1975, there were twenty-six actions by citizen action groups. As Table 4 demonstrates of the total number of twenty-six cases reported; ten were brought to an unsuccessful conclusion, and nine were brought to a successful conclusion, with seven cases as yet undetermined. The third hypotheses stated that following the Supreme Court decisions there would be a ten per cent difference in the number of successful attempts over the number of unsuccessful attempts. The table shows the unsuccessful attempts to be five per cent higher than the successful attempts.

Table 4
Reported Cases Following the Supreme Court Decisions
June 21, 1973 - May 1975

Action Taken	Number of Cases Reported	Percent
Unsuccessful	10	39
Successful	9	34
Undetermined	7	26
Total	26	100

Sample Cases Report Period

Below are given two sample cases for the period November 1970 to June 1973, the time period between the Report and the Supreme Court decisions. Sample A is a successful case for a local citizen action group and sample B is an unsuccessful action by a local group.

Sample A: successful The case occurred in Decatur, Illinois following complaints from the Citizens for Decency (a local anti-pornography group). F. Dufay Montgomery owner of Morey's Newstand was fined \$200 for the sale of pornographic material. The case was extracted from the Decatur Review, June 1, 1972 and reported in the September, 1972 issue of the Newsletter.

Sample B: unsuccessful This case was first reported in the September 1973 issue of the Newsletter. After spending months "reading their eyes out" a group of parents called "Guardians for Traditional Education" called for the removal of sexually explicit and "inappropriate" books and programs from county schools. The group of mothers raised objections to The Godfather, Catcher in the Rye, and Go Ask Alice.... In a follow-up report in the March 1974 issue, the Newsletter said after the books were reviewed by ad hoc committees composed of teachers, students, parents, and librarians, the decision to keep the books on

library shelves was announced. The decisions was reported as being unanimous.

Sample Cases Supreme Court Decision Period

Below are given two sample cases for the period July 1973 - May 1975, the period following the Supreme Court decisions. Sample A is a report of a successful venture by a national citizens action group. Sample B is an unsuccessful action by a local citizens action organization.

Sample A: Successful According to a report in Variety, November 6, 1974 and November 13, 1974 and reported in the January 1975 Newsletter, the film Midnight Cowboy had twenty-three minutes cut from it by the ABC television network when it aired on national television. The most prominent group protesting the airing was Morality in Media. Three ABC affiliates refused to air the film.

Sample B: Unsuccessful In the May 1975 issue of the Newsletter the Greenwich (Conneticut) Board of Education was reported as voting to retain the book Soul on Ice on its high school library shelves after complaints that the book was "crime provoking and anti-American as well as obscene and pornographic" as charged by the Concerned Citizen's Committee of Greenwich.

Analysis and Interpretation of Data

A possible explanation for the rejection of the second hypotheses of this paper, stating that there would be a twenty-five per cent increase in the number of attempts by citizens action groups following the release of the Supreme Court decisions may lie in an analysis offered by the Commission on Pornography and Obscenity in their report on citizens action groups. As mentioned earlier in this paper under Related Studies, a citizens action group usually formed when the traditions of a community were

threatened. A successful group would limit its goals and have a positive approach toward those goals. The difference in the number of cases reported over the five year period following the Report did not vary much and, in fact, has shown a slight decrease since the release of the Supreme Court decisions. The Report may have represented a challenge to traditional standards that citizen groups felt they had to make some response, while the Supreme Court decisions confirmed their viewpoint and allowed them to feel the law could now act as guardians of the public morals. They no longer felt the need to respond as a group to local pornographic problems.

Another possible explanation for the decline in the number of actions by these groups may lie in the legal troubles of a large national citizens action group, the Citizens for Decency through Law. According to a report in the March 1974 Newsletter on Intellectual Freedom, the CDL has been under continuous investigation for its fund raising activities.⁵² These legal troubles may have lessened its abilities to offer national coordination and support to local affiliates which would result in less action on the local front.

The rejection of the third hypotheses may be temporary. The number of pending cases may shift the actual percentage either way depending on how local governing boards view their communities' wishes, standards, and attitude toward freedom of expression as opposed to suppression of materials.

Tables 2 and 3 also point out one other possible conclusion that may have been drawn from the tabulation of these figures. The average number of cases did not vary discernibly between November 1970 and May 1975. It may be

⁵²"CDL Troubled", Newsletter on Intellectual Freedom XXXVIII (March, 1974) p. 47.

that national events such as the publication of the Report of the Commission on Obscenity and Pornography and the Supreme Court decisions of June 21, 1973, have little bearing on the actions of local community action groups who see not the national problem of the possible corruption of morals or the national problem of suppression of the freedom of speech, but only the problem of what to do about those "dirty books" being sold at the local book store or supermarket. This may be discovered if a study were made of a local citizens action group that has existed over the same period of time as this study.

SUMMARY

Two events that may have effected the efforts of citizens action groups and their attempts to suppress sexually explicit materials were the publication of The Report of the Commission on Obscenity and Pornography and the Supreme Court decisions of June 21, 1973. The Report found that the problem of pornography was not as great as some had imagined and made several non-legislative and legislative recommendations for governing the sale and distribution of such materials. The decisions of five cases the Supreme Court announced on June 21, 1973 redefined legal definitions for obscene materials and in the Miller v. California case established new criteria law officials and courts could use in the prosecution of obscenity cases.

This paper was written to determine the effect these two events had on the efforts of citizens action groups from November 1970 (the month following the release of the Report) to May 1975 (the end of the second year following the Supreme Court decisions). Based on a review of the literature it was felt that conflicts would arise over of the feelings of the citizens action groups and their need in to protect their community. It was hypothesized that (1) there would be ten per cent more unsuccessful

Indefinite
"it"

attempts than successful attempts to suppress sexually explicit materials following the release of the pornography report and before the announcement of the Supreme Court decisions. (2) There would be a twenty-five per cent increase in the number of attempts by citizens action groups to suppress sexually oriented materials following the Supreme Court decisions. And (3) there would be ten per cent more successful attempts than unsuccessful attempts at the suppression of sexually oriented materials following the release of the Supreme Court decisions.

In order to focus on the problem directly, The Newsletter on Intellectual Freedom was selected to be analyzed from November 1970 to May 1975, the time period covering both events. The Newsletter was selected because it reflects the current trends in censorship problems throughout the United States. From November 1970 to May 1975 there were a total of sixty-nine cases that met the selection criteria. Forty-three cases occurred in the thirty-two month period between the release of the Report and the announcement of the Supreme Court obscenity hearings. Twenty-six cases occurred between the decision announcement and May 1975.

After analyzing the cases and the time periods, the first hypotheses was accepted, the second hypotheses was rejected, and the third hypotheses was tentatively rejected. The number of unsuccessful cases reported following the release of the Report did fall within the ten per cent guidelines of the first hypotheses. It was shown that the total number did not change sufficiently during the last five years to accept the second hypotheses. Reasons for this were given as (1) citizens action groups no longer felt threatened and felt that law could now handle the cases. (2) The legal troubles of a large national citizens action group may have limited their ability to respond and (3) local actions may not depend on national events. The third

hypotheses was tentatively rejected based on the decline in the number of successful cases following the Supreme Court hearings. The number of successful cases may have changed, but the data was not available during the time this paper was written.

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