

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: House Bill 1141

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Stenographic report of hearing held
in Majority Caucus Room, Main Capitol
Building, Harrisburg, Pennsylvania

Friday,
April 28, 1989
10:00 a.m.

HON. THOMAS CALTAGIRONE, CHAIRMAN

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Jerry Birmelin	Hon. Christopher K. McNally
Hon. Richard Hayden	Hon. Nicholas B. Moehlmann
Hon. David W. Heckler	Hon. Robert D. Reber
Hon. Gerard A. Kosinski	

Also Present:

David Krantz, Executive Director
Mary Woolley, Minority Counsel

Reported by:
Ann-Marie P. Sweeney, Reporter

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1 CHAIRMAN CALTAGIRONE: We'll start the
2 proceedings. Members will be coming in. We do have some
3 members of the Judiciary Committee present - Jerry
4 Birmelin, Bob Reber, Chris McNally, and the staff
5 Executive Director, Dave Krantz. There will be others
6 that will be coming in as the proceedings go on today.

7 I'd like to introduce myself. I'm State
8 Representative Tom Caltagirone, chairman of the House
9 Judiciary Committee. Today's hearing is on House Bill
10 1141. I'd like to welcome everybody that's in attendance
11 here today, and I'd like to call as our first witness
12 Frank Wagner, who is the Southeast Regional Director of
13 the Pennsylvanians vs. Pornography. Frank.

14 MR. WAGNER: Mr. Chairman and members of the
15 Judiciary Committee, I'm here today to testify on behalf
16 of Pennsylvanians vs. Pornography. PVP is a congress of
17 anti-pornography works located here in the Commonwealth
18 and includes some 43 county anti-pornography
19 organizations, the Pennsylvania Catholic Conference,
20 Pennsylvania Council of Churches, Pennsylvanians for
21 Biblical Morality, Concerned Women of America, the Eagle
22 Forum, and the Pennsylvania Knights of Columbus.

23 During our first three years of existence,
24 PVP has worked hard to educate the residents of the
25 Commonwealth as to the effects of the hard-core

1 pornography industry and to seek the enforcement of
2 existing obscenity and RICO laws in our home
3 jurisdictions. The pornography industry here in the
4 Commonwealth has literally exploded during the last
5 decade. If I wanted to purchase hard-core pornography in
6 my own home county of Berks in 1980, I would have had to
7 get it from one of four places - three adult book stores
8 in Reading and one in Muhlenberg Township. Today, due to
9 technological changes, the exact same material is now
10 available through some 32 outlets, an eight-fold increase.
11 The video cassette recorder has turned every home in
12 America into a potential adult movie theater.

13 Besides the adult book stores, theaters and
14 video dealers, we now also have family-oriented
15 businesses, such as Rite Aid Corporation, renting triple
16 X-rated videos. Not only are there an increasing number
17 of outlets for hard-core materials, but we also know that
18 these materials are getting into the hands of our children
19 and giving them a totally distorted view of their
20 sexuality. The research of Drs. Dorf Zillman, Jennings
21 Bryant and James Weaver at the Universities of Illinois,
22 Kentucky and Houston, have shown that about 43 percent of
23 junior high school children and 84 percent of high school
24 children have seen at least one hard-core video. In a
25 recent visit to Berks County by child abuse expert Dr. Ken

1 Wooden, he questioned the children in our schools and in
2 an informal survey, over 50 percent indicated to him that
3 they had easy access to hard-core videos. He duplicated
4 those results in other meetings that he had with children
5 throughout the country. They gave him the names of the
6 videos and told him the material that was contained in
7 them.

8 What type of videos are these kids getting
9 access to? I'd like to talk about two of them. First of
10 all, a video called "Barbara Broadcast." In this video,
11 most of the sex acts take place in a restaurant. If a
12 waitress drops a plate, she's forced to have oral sex with
13 the maitre d'. It depicts people masturbating into
14 salads. In one scene, a woman has oral sex with a man, he
15 ejaculates semen into her face and she turns to her
16 girlfriend and says, "His rod and his staff, they comfort
17 me." It depicts a woman urinating to entice a man. The
18 last 10 minutes depict a bound woman called a "Pure
19 Protestant Princess," who has every conceivable sexual act
20 performed on her. This video is available from your local
21 Rite Aid store.

22 Another video being rented by Commonwealth
23 video dealers is called "Taboo II." The theme of the
24 video is a middle-class neighborhood where a home is the
25 place where all the sexual acts take place. The video

1 with a brother and sister fondling each other. In another
2 scene, there is some incestuous type activity between the
3 brother and the sister where fellatio and intercourse are
4 performed. In a later scene, the son and the mother are
5 on a couch performing intercourse and fellatio. The movie
6 closes with the mother and father asleep in their bedroom,
7 at which time the daughter enters and sleeps next to her
8 father, where they perform incestuous acts of intercourse
9 and she performs fellatio on her father. Honorable
10 committee members, this is the type of material that is
11 going unchallenged out into the communities of the
12 Commonwealth, and much of it is finding its way into the
13 hands of children.

14 Is it any wonder that the National
15 Institutes of Health estimate that the incest rate in
16 American's homes has now reached 14 percent? I've
17 included copies of a portion of a Rite Aid adult video
18 guide and the adult portion of a video guide of a typical
19 video dealer, in this case Wall-to-Wall Video, and I've
20 identified them with this testimony as Appendix B.

21 Another problem with the hard-core
22 pornography industry is that it is heavily controlled by
23 and the third leading source of revenue for organized
24 crime in this country. This has been clearly stated in
25 the reports of the Attorney Generals of Ohio, New York and

1 California. I've enclosed information on the history of
2 organized crime's involvement in this industry as Appendix
3 A with my testimony.

4 Besides the problem of increasing number of
5 outlets for hard-core pornography in the Commonwealth, its
6 availability to our children, and organized crime's
7 control of the industry, we also have a developing book of
8 evidence of a causal relationship between the use of this
9 material and an increasing incidence of violence towards
10 women and children. The rape rate in this country has
11 increased 700 percent since 1933; 43 percent in the last
12 decade alone. According to recent FBI statistics, one in
13 four 12-year-old girls in this country will be sexually
14 assaulted in her lifetime. Children have fared no better.
15 Between 1981 to 1985, reported child sexual abuse rose 175
16 percent. The studies of researchers like Dr. William
17 Marshall of Queens University, Canada, on inmates at
18 Kingston Penitentiary who were convicted of rape indicated
19 that 86 percent used pornography, with 57 percent
20 admitting actual imitation of pornographic scenes in the
21 commission of their sexual offenses.

22 In a 20-year statistical study done by the
23 Sexual Crimes Unit of the Michigan State Police, they
24 found pornography present during or immediately preceding
25 41 percent of the 38,000 sexually violent crimes that took

1 place. Research by Ken Lanning of the FBI Behavioral
2 Sciences Unit on 36 serial killers found that 81 percent,
3 29 of the 36, reported pornography as one of their highest
4 sexual interests. Pornography was, in fact, the most
5 common profile characteristic among the serial killers.
6 Child abuse detectives regularly find pornography present
7 in cases of molestation they investigate. In a recent
8 study published by the National Center for Missing and
9 Exploited Children done in Louisville, pornography was
10 present in all 40 major cases completed. The report
11 states, and I'll quote, "Over four years, the Exploitation
12 and Missing Child Unit Team learned to expect to always
13 find 'adult' pornography, as such, was used by adult
14 offenders for their own sexual arousal, for self-
15 validation of their own sexual deviations, for extortion
16 of child victims or other adults, and for deliberate and
17 planned lowering of inhibitions of child victims." I've
18 also enclosed further evidence of the negative effects of
19 pornography as Appendix C with this testimony.

20 With all this in mind, I'm not about to tell
21 you that the passage of House Bill 1141 is the answer to
22 the obscenity problem here in the Commonwealth. The
23 answer to that problem rests with public education, which
24 Pennsylvanians vs. Pornography is actively involved in,
25 and in enforcement of the existing Pennsylvania obscenity

1 and RICO laws, of which obscenity is a predicate offense.
2 I believe it is fair to say that the State's attorneys of
3 this Commonwealth have either refused or neglected to
4 enforce these laws and have therefore left the good people
5 of this Commonwealth at the mercy of the pornographers.
6 They have not protected their communities and instead have
7 allowed the pornographers to establish our community
8 standards by default, a right which the Supreme Court has
9 given to the local communities of the Commonwealth to
10 establish through the jury process.

11 Since our district attorneys are elected
12 officials, getting them to enforce the law is our
13 responsibility. Giving them the best laws possible to
14 enforce is the responsibility of this good body. House
15 Bill 1141 seeks to do just that. It seeks to take our
16 present obscenity law and give it the up-to-date wording
17 which the Supreme Court has approved for use.

18 First of all, the legislature, in the
19 present wording of 5903, has not given children of the
20 Commonwealth the same protection against the distribution
21 of sexually explicit materials to them that has been given
22 to adults in prescribing the distribution of obscene
23 materials. The current third prong of the "harmful to
24 minors" test requires that materials distributed or
25 displayed to minors be "utterly without redeeming social

1 value." This creates an impossible proof for the
2 prosecutor. The third prong of the obscenity test uses
3 the current Miller wording of "no serious value."

4 House Bill 1141 would also prescribe obscene
5 performances. Under current law, the residents of the
6 Commonwealth have no protection, even though the Supreme
7 Court in its 1973 Kaplan v. California case stated that
8 obscenity could manifest itself in conduct. Thirdly, the
9 definition of prosecutable sexual conduct would be
10 extended to include sadomasochistic abuse and sexual
11 bestiality. The Supreme Court allowed its Miller
12 guidelines of hard-core sexual conduct to be extended to
13 S&M and bestiality in its 1977 Ward v. Illinois decision.

14 House Bill 1141 will give our prosecutors
15 one of the best obscenity laws in the country to work
16 with. If it is used, and that is a key question, along
17 with our RICO law, the illegal pornography industry in our
18 Commonwealth could be dismantled within a four-year
19 period. It's an important fact to remember that the
20 obscenity industry in this country is not like the drug
21 industry. It's not like the drug problem. Federal
22 studies of the industry, the obscenity industry, indicate
23 that it is run by about 60 to 70 key individuals. With
24 effective enforcement at a Federal, State, and local
25 level, this industry could be put out of business.

1 This is a winable war. One need only look
2 at the success of the North Carolina Federal/State/local
3 task force, which put about 90 percent of the industry out
4 of business in that State in only 24 months. Other areas
5 have implemented the task force approach, including
6 Cleveland, Boston, Tampa, Miami, Los Vegas, Los Angeles,
7 the States of Vermont and Utah, just to name a few. I
8 might mention that the whole State of Utah is entirely
9 free of hard-core pornography. This is our challenge.
10 House Bill 1141 is part of what needs to be accomplished.
11 It is the hope of the organizations we represent that this
12 committee and hopefully the full House will agree with us.
13 On behalf of Pennsylvanians vs. Pornography, I wish to
14 thank you, Mr. Chairman, and the honorable committee
15 members of this committee for the privilege of testifying
16 before you this morning. Thank you.

17 CHAIRMAN CALTAGIRONE: Thank you, Frank.

18 Let's start off with questions. We do have
19 two other Representatives, Hayden and Heckler, that have
20 joined us, and also legal counsel, Mary Woolley.

21 Are there questions?

22 BY REPRESENTATIVE HAYDEN: (Of Mr. Wagner)

23 Q. Thank you for your testimony, Mr. Wagner.

24 A. Yes, sir.

25 Q. I share your concerns about the

1 dissemination of pornography and pornographic materials to
2 minors and the access, the ready access, that now minors
3 have, apparently, to a lot of the material which is, I
4 think, correctly been labeled as pornographic materials.
5 What troubles me is that, and if I recall the California
6 vs. Miller case, you make reference also in your testimony
7 to the establishment of a community standard, determining
8 what is and what is not permissible, and in my memory of
9 that case and similar cases was that in some situations
10 the Supreme Court literally reconvened into another room
11 and actually viewed certain video tapes or certain
12 materials before they wrote their decisions in the areas
13 of obscenity and pornography, which it might have been
14 Justice Jackson said, if I recall, "I don't know if I can
15 label it, I don't know how I can describe it," -- Justice
16 Stewart who said, "but I certainly know what it is when I
17 see it." And I think that most of us here in this room
18 would share that same sort of assessment about our own
19 individual ability to identify what is certainly offensive
20 to ourselves and which is without any sort of redeeming
21 societal value.

22 But I think that the problem, and as I
23 follow some of the literature, it seems to have suggested
24 that with the introduction of VCRs, it seems that the
25 pornographic business and industry has taken on a new

1 trend and a new tact and the old pornographic movie
2 theaters and the abandoned out-of-the-way kind of stores
3 and places where people used to go to purchase
4 pornographic materials seems to have been on the wane and
5 in substitute for that has been in a sense almost a
6 mainstreaming of the pornographic industry through the use
7 of the VCR. And if you look at -- and in your testimony I
8 think you accurately recorded some of the material which
9 is available at Rite Aid, some of the material which is
10 available at other basic retail outlets.

11 Now, what that seems to suggest to me is
12 that what may be my particular standard or what I would
13 deem to be a community standard does not appear to be the
14 same community standard across the community. It suggests
15 to me that there is a greater market for this material out
16 there than I had ever had reason to believe and I'm sure
17 that you had ever had reason to believe. But what I think
18 it also suggests is the difficulty in trying to define
19 what a community standard is, particularly when you have
20 private individuals making in-private decisions as to what
21 they're going to view in their own home. And that's where
22 I think it's difficult, although, you know, your goals are
23 certainly laudable and I share many of your goals that you
24 have with this legislation, and I suggest that the same
25 difficulty that Justice Stewart had with trying to

1 identify what he thought was patently offensive I think is
2 what causes me to pause when I look at this legislation.

3 I notice there's a definition of what is
4 characterized or qualified as "nude" in the bill, and it
5 talks of about "a fully opaque covering, or showing the
6 female breast with less than a fully opaque covering of
7 any portion thereof below the top of the nipple." I think
8 the problem is what we get into is trying to decide, at
9 the governmental level, what in and of itself should --
10 either should not be depicted or should not be available
11 to the consuming public.

12 So I have some real difficulties with -- and
13 then the other characterizations of what is literary
14 versus what is art. It's just awful difficult, I think,
15 to try to regulate private conduct, and I'm certainly not
16 talking about minors, but private conduct that adults
17 apparently have found to be of some sort of value,
18 otherwise I would suggest that the market for this product
19 wouldn't be there. The role of, I think you accurately
20 pointed out the problems of the role of organized crime in
21 this kind of material, but it seems to me that the
22 channels for distribution are no longer the brown paper
23 bag through organized crime. It's walk right up into your
24 Rite Aid, go back to the rack and make your choice and go
25 home and view the video tape.

1 So I just wanted to let you know that those
2 are some of the problems, I think, in trying to formulate
3 legislation on this kind of issue.

4 A. You had quite a few questions there, as far
5 as my testimony is concerned, and I'll try to address some
6 of them.

7 First of all, I don't think anybody with our
8 organization or anybody who has studied this issue for any
9 amount of time denies that there is a market for this
10 material. There's a market for drugs out there also; a
11 far greater market, I would dare to say. To the best of
12 my knowledge, there were approximately 100 million
13 XXX-rated video cassettes rented as of last year. I would
14 also say that at the same time there were about 1.6
15 million Disney cassettes rented.

16 I would also state that people who normally
17 use this material, and later on you're going to have an
18 opportunity to see a video dealing, you know, many people
19 say this is a victimless situation as far as the use of
20 pornography. Well, I've put together a tape for you that
21 you'll have an opportunity to view which is strictly
22 victims and offenders talking to you personally about
23 their addictions and the use of pornography in the
24 commission of their offenses.

25 I would say that the material is addicting.

1 We will have plenty of psychologists in the tape who will
2 speak to that, and people who rent one XXX-rated video
3 cassette don't normally rent just one. They use them,
4 okay, and they use them regularly. Even if an individual
5 only rented 10 films a year, that would indicate that only
6 about 10 million of the American people are regular users
7 of the XXX-rated material. We all know that there are
8 millions of people in this country who practice addictive
9 behavior, whether it's alcohol abuse or drug abuse or any
10 other form of abuse, and I'm also not trying to say that
11 everyone who uses alcohol or drugs goes on to be addicted
12 to them and goes out and commits offenses, but some do.

13 There is a market, we admit that. However,
14 that's one issue. Okay. I don't think that the market is
15 as vast as everyone thinks that it is. I don't think that
16 everybody goes out and rents one of these. Maybe through
17 curiosity they look at one sometime in their lifetime, but
18 I don't think that many people use them regularly.

19 The other issue deals with the difference
20 between public morality and private morality. The Supreme
21 Court, in a key case called Stanley, established that we
22 don't have the right, nor should we, to go into people's
23 homes and tell them what they can view in the privacy of
24 their home. That is something between them and the people
25 who live within the home. However, the Supreme Court has

1 established that it is the crass commercialization of sex
2 that the community has a right to regulate, and this is
3 what our obscenity statutes seek to do. They seek to
4 regulate the public commerce in obscenity, which is really
5 an area where we all have a vested interest.

6 Q. If you regulate the trade, then aren't you
7 regulating the content?

8 A. To some extent. I will tell you that from
9 a legal standpoint, obscenity goes back to common law. It
10 has a well -- I'm not an attorney, and we have an attorney
11 here who wrote the amendment who will speak on a legal
12 basis with you, but from my background, we have a long
13 history out of common law in the development of obscenity.
14 There is no question that the court, during the '60's,
15 vacillated. In 1965 they moved to the Memoirs definition,
16 which is the third prong of the test they made "utterly
17 without redeeming social value." That created really an
18 intractable obscenity problem in this country, and the
19 court just had appeal after appeal dealing with obscenity,
20 and in 1973 the court formed its Miller tripartite test,
21 and it has stuck with that test ever since. They really
22 have not vacillated from that. And they have clearly
23 said, for instance, many of the pornographers say, well,
24 how do I know what is obscene? How do I police my stocks
25 to know what is obscene? And the court said that the

1 three-part Miller test is enough advance warning to people
2 who are going to be involved in this industry that their
3 activities may bring prosecution. And that is something
4 with someone who is going to get involved in the
5 commercial sex industry, that they have to take into
6 consideration in viewing the material that they're
7 distributing and making sure that it does not violate the
8 community standards.

9 As to community standards, that is something
10 -- in Pennsylvania, the community is defined as the
11 Commonwealth, and local juries have to apply what they
12 feel the average person in the Commonwealth would find
13 appeals to a prurient interest, a shameful, morbid or
14 unnatural interest in sex, and which is patently offensive
15 in the sexual representations that are shown. In other
16 words, it's not the sex that is shown, it is that it is
17 presented in a patently offensive way, and thirdly, they
18 have to see whether a reasonable man would find whether
19 the material has any reasonable value -- or serious value,
20 I'm sorry. But I can tell you that many juries across the
21 United States have absolutely no problem in coming to
22 those conclusions. You have communities like Atlanta,
23 Georgia; and Cincinnati; and Orlando, Florida;
24 Jacksonville; Fort Lauderdale; Buffalo, New York; and I
25 can go on and on, and I already said the whole State of

1 Utah, that have virtually freed themselves from hard-core
2 pornography.

3 Now, the court, the Supreme Court, has
4 clearly drawn a line upon which the community can go. It
5 has said that you can only regulate as it pertains to
6 adult's hard-core sexual conduct that is presented in a
7 patently offensive way and appeals to a prurient interest
8 and lacks serious value. By that they mean ultimate
9 sexual acts normally perverted, actual or simulated,
10 masturbation, excretory functions, or a lewd exhibition of
11 the genitals. You cannot regulate nudity per se to an
12 adult. However, they came out in a later decision called
13 the Ginsberg case which established a "harmful to minors"
14 test whereas sexually explicit material can be found to be
15 in violation of the law if it is judged to be harmful to
16 the minor that it was displayed or distributed to.

17 So I think that the case law that has been
18 developed here, we have excellent case law here in
19 Pennsylvania: Commonwealth vs. Stork, Commonwealth vs.
20 Kroll, Commonwealth vs. Hulehan, Commonwealth vs. Dole.
21 The Pennsylvania obscenity statute has been upheld by the
22 Superior Court many times and we have a good RICO statute.
23 We have also used prostitution, the prostitution statute,
24 successfully right here in Harrisburg against two adult
25 book stores where anonymous sexual acts were taking place

1 on the premises and where there was semen on the walls of
2 the peep booths. They brought a prostitution action
3 against them and closed them down for a year because they
4 were declared to be a house of ill-repute. But, you know,
5 these laws have a long tradition. If they are enforced,
6 they can be enforced successfully, and I personally
7 believe to the betterment of the public community, the
8 public morality.

9 Q. Thank you.

10 REPRESENTATIVE HAYDEN: Thank you, Mr.
11 Chairman.

12 CHAIRMAN CALTAGIRONE: Thank you.

13 Chris.

14 REPRESENTATIVE McNALLY: Yes, sir.

15 BY REPRESENTATIVE McNALLY: (Of Mr. Wagner)

16 Q. I think, and I've got a preview of Francis
17 Viglietta's testimony, that we can identify a particular
18 harm to the public welfare, morals, safety. The one thing
19 that I would like to ask you about is that your testimony,
20 and I think other testimony later on will establish or
21 attempt to establish that there is a connection between
22 pornography and sex abuse, rape, serial murders, et
23 cetera. And I guess my question is that if in fact we are
24 able to win the war against pornography and eliminate or
25 substantially cut back the dissemination of pornographic

1 material and performances, will we be able to at the same
2 time and will a result of that be a reduction in the
3 incidence of child molestation, rape, serial murder, and
4 other violent crimes?

5 And the reason I ask the question is that
6 clearly not every person who views obscene or pornographic
7 materials performs or engages in violent activity, and you
8 have described a circumstance in which people actually
9 become addicted to pornography or obscene material or
10 performances, and it seems to me that there must be some
11 trigger or some mechanism that draws an individual to
12 imitate the pornographic performance or materials, and
13 whatever that trigger is may not be -- we may not be able
14 to eliminate that trigger by eliminating the pornographic
15 materials and performances. And perhaps you can elaborate
16 on that connection or correlation between pornography and
17 violence.

18 A. Well, first of all, I'd like to
19 differentiate between that which is defined as
20 pornography, in other words sexually explicit materials
21 that has as its intent to arouse erotically, and that
22 which is obscene, obscenity being a legal term.
23 Governmental regulation has a place in the regulation of
24 obscenity or material that is harmful to minors being
25 distributed to minors. It does not have a place in trying

1 to regulate what I would classify as soft-core pornography
2 out in marketplace. That would be an inappropriate use of
3 governmental power. So that that is a responsibility of
4 the free exchange of ideas within the local community to
5 fight for the hearts and minds of men on whether they want
6 to sell or use that type of material. And we have been
7 extremely careful in trying to speak to either legislative
8 bodies or enforcement officials, prosecutors, in trying to
9 have them fully understand that we're not asking them to
10 regulate into the area of pornography, soft-core
11 pornographic material. That is better dealt with through
12 friendly complaint and boycott of those establishments
13 that sell it, and people are free to distribute that
14 product the same way as Bell of Pennsylvania made a free
15 choice to remove Dial-A-Porn from its 976 service, because
16 they are a private enterprise and that is not a
17 governmentally regulated portion of their business, where
18 Mountain Bell dropped it or Southern Bell dropped it.
19 That was an independent, private business decision.

20 As to the issue of victims, I think you get
21 into a real area of problem here in that how many years of
22 testimony have we heard from the standpoint of the social
23 scientists dealing with the issue of smoking? Okay? And
24 I would say we're probably no closer today to having all
25 social scientists say that smoking is harmful to our

1 health than we were. Maybe there's more evidence in that
2 area than there was, but the tobacco lobbyists still have
3 their social scientists that are willing to say that there
4 is no problem, and the other side who oppose smoking have
5 their lobbyists who are willing to say that there is. And
6 I think when you're dealing with a controversial issue,
7 and I'm willing to admit that any time you're trying to
8 regulate people's behavior, years ago people were saying
9 you have no right to tell me what drugs I can use, and you
10 hear the same arguments in our area. However, we're not
11 telling them they don't have a right to use it, we're just
12 saying we have a right to control the commercial
13 distribution of it if it violates community standards.

14 But what I'm saying is that it gets very
15 difficult to get social scientists to agree on an issue
16 like that, and this is why, for instance, in the Mease
17 Commission hearings they really wanted to hear more from
18 victims, offenders, prosecutors, vice officers, they
19 wanted to hear from the people who had first-hand contact
20 with it to try to make their own judgments as to its
21 harmful effects. So I don't think that we will ever find
22 agreement. I can just present testimony to you as to what
23 various victims have said concerning the material, what
24 some social scientists are saying concerning the material,
25 what some prosecutors are saying, what some vice officers

1 are saying in the investigation of their crimes. I mean,
2 with some people who have a presupposition on the issue,
3 for instance the ACLU, I will never convince as to the
4 harm of the material because they have a presupposition
5 that says that they don't believe in any governmental
6 regulation of expression, period. And I'm not saying, you
7 know, I've debated Barry Steinhardt. I fully understand
8 his position, he fully understands mine. He surely has a
9 right to advocate that position, but there are both sides
10 of the issue and we are asking people to make judgments.
11 You're making judgments as our Representatives on where
12 you stand on this issue, on whether you would support this
13 type of legislation or not. It's not an easy issue.

14 Q. Well, maybe I could elaborate on my
15 question a little bit more.

16 A. Sure.

17 Q. If you weigh the importance or the harm of
18 two different problems, one obscenity and the other sexual
19 violence, and clearly at least in my mind sexual violence
20 is a far more serious problem in the Commonwealth of
21 Pennsylvania than obscenity, the argument that I think
22 you've tried to make, and it's persuasive to a large
23 extent, is that obscenity causes sexual violence,
24 therefore eliminate obscenity and the result will be to
25 eliminate or cut back on the incidence of sexual violence.

1 Although I see a correlation and a connection between
2 obscenity and sexual violence, that does not mean that
3 obscenity causes sexual violence.

4 A. Sure.

5 Q. So therefore, even if we eliminate the
6 obscenity, or severely restrict it, the sexual violence
7 may still remain, and that problem will remain on the
8 agenda of this General Assembly. And it would be
9 irresponsible for us to represent that, you know, if we
10 support the prosecution of obscene performances and
11 materials that we are in some sense promising or pledging
12 that the result -- promising to the public, that is, that
13 the result will be a decrease in the level of sexual
14 violence.

15 And the other problem is that certainly in
16 the minds of the members of the General Assembly when they
17 hopefully pass this bill, they may forget about sexual
18 violence as a problem because they may have felt that they
19 have dealt with it accordingly. And so to that extent,
20 you know, I believe that regardless of what action is
21 taken on this particular piece of legislation, I suspect
22 that the level of sexual violence will not be
23 substantially affected and that that problem is still
24 going to remain.

25 A. Well, let me try to address it a little bit

1 maybe from another angle. You know, there is an old
2 adage, "An ounce of prevention is worth a pound of cure."
3 I'm not telling you that -- I do believe with my whole
4 heart that there is a cause and effect relationship
5 between this material and the increasing incidence in
6 violence towards women and children. I'm willing to let
7 the testimony of the individuals that you're going to
8 listen to later on deal with that directly.

9 You're back really to the whole issue of
10 does what we put into our brain eventually affect our
11 behavior? And, of course, this Commonwealth spends an
12 awful lot of money on education every year, and if we
13 can't make people any worse by showing them S&M and
14 bestiality and other forms of rape and violence, then we
15 can't make them any better by putting them through a
16 school system and spending a lot of money to try to make
17 them into better people. So really, my argument is that
18 of course this material, you know, I would just challenge
19 each of you to possibly look at a copy of a film, let's
20 say, like a dirty western or "The Story of O" and see
21 people have their genitalias pierced and hung up and just
22 draw your own conclusions on whether we feel that this is
23 the type of imagery that is to the benefit of our society.

24 Take, for instance, my testimony with Ken
25 Wooden coming into Berks County and speaking to the

1 children in our school system. How advantageous is it for
2 children to have material like the "Taboo" series of
3 films, which deals with incest starting with brothers and
4 sisters working up to incest in the extended family with
5 grandparents, how much good does that do for our children
6 to have that view of their sexuality? This has an effect
7 upon a marriage. Common sense tell us, I believe, it
8 does. I don't believe that you can -- I spoke to 150
9 women -- I spoke 90 times in the last year on this issue,
10 I spoke to 150 women over in Montgomery County the other
11 day and I had quite a few of those women come up to me
12 afterwards and tell me of their own personal experiences,
13 and this happens repeatedly as I speak, of where
14 pornography was brought into the home, where it affected
15 their sexual relationship and the overall marriage, many
16 of them end up in breaking the marriage up, where the
17 husband is trying to get the spouse to perform to the
18 level of the prostitutes that are depicted in these
19 magazines. In some cases, it causes the husband to go
20 outside the home. The husband then has the chance of
21 bringing certain diseases back into the home.

22 So I believe that social science evidence
23 speaks to its causal relationship. I think victim
24 testimony speaks to its causal relationship. I feel that
25 common sense speaks to its causal relationship.

1 As I look at myself, and I've been around
2 for 42 years, as I look at myself, I know that what I've
3 put in my brain through the years has had some effect upon
4 me. And I believe that pornography is highly addictive.
5 Highly addictive. Otherwise, well, when I first got
6 involved in this work, I was involved with a gentleman who
7 was addicted to pornography and was spending -- he took me
8 on my first tour of an adult book store, first time I had
9 ever been in one. I've been in a few since then to try to
10 find out exactly what's going on in them. I didn't feel I
11 could speak about them without understanding what's going
12 on in them. But this gentleman used to spend two, three
13 hours in the adult book stores every day cruising, picking
14 up people, having anonymous sexual acts taking place on
15 the premises. We did raids in Berks County in Cumru
16 Township. We did scrapings in the booths. There was
17 semen on the walls, by the State Police crime report that
18 came back. We have an AIDS epidemic in this country and
19 we can't even control what's going on in those peep
20 booths.

21 So I think there's many victims within
22 society and I believe that it will have an effect. I
23 believe that government has a certain role and
24 responsibility in this, but I'm not one who is advocating
25 that you assume responsibility for this problem. You can

1 assume responsibility for a certain segment of the
2 problem, but I am as strong an advocate for educational
3 work as anybody. I spend -- I was at 90 meetings last
4 year where I tried to explain to people the harmful
5 effects of this material and have them make their own
6 choices not to use the material. So I think there's a
7 place for both. But I do believe that eventually what you
8 put into your brain has an effect upon your behavior.

9 Q. Well, again, maybe the last comment, you
10 know, that I would like to make is, you know the
11 expression that where there's smoke there's fire. Okay,
12 smoke doesn't cause fire. Where there is sexual violence,
13 there's a likelihood that there's going to be obscene
14 materials or a connection with obscenity. Again, perhaps
15 the reason that -- perhaps people who engage in sexual
16 violence also are addicted to obscenity for some other
17 root cause. And I don't know -- you know, I believe, you
18 know, I don't dispute that there's a harm that results
19 from obscenity. I agree with you entirely. But again,
20 you know, I want to be sure that we're not making promises
21 that we can't keep, that if we strictly regulate and
22 reduce the level of obscenity in the Commonwealth of
23 Pennsylvania that we will also consequently reduce the
24 level of sexual violence.

25 A. I can tell you that there's been

1 international studies done on the availability of
2 pornography in various nations and I'll be glad -- I don't
3 have the study with me but I'd be glad to get a copy to
4 Dave to distribute to the committee, and those countries
5 that have the highest regulation of pornographic imagery
6 have the lowest corresponding rape rates. There was a
7 study done by the University of New Hampshire on the
8 availability of soft-core pornography and corresponding
9 State rape rates, and those States that had the least
10 control had the highest corresponding rape rates, the
11 highest being Alaska, that has no obscenity law on the
12 books.

13 So I'm trying to play both sides of the
14 issue in saying that I believe there's good evidence out
15 there, but at the same time, if you're looking for it to
16 be cast into concrete, then you're not dealing with
17 science any longer, you're dealing with axioms, and you're
18 also dealing with the individual's mind set, who you're
19 trying to present the evidence to in that with some people
20 who have presuppositions on the issue you will never
21 present any evidence that will be enough. That's my only
22 point.

23 CHAIRMAN CALTAGIRONE: Thank you, Chris.

24 Bob.

25 REPRESENTATIVE REBER: Thank you, Mr.

1 Chairman.

2 BY REPRESENTATIVE REBER: (Of Mr. Wagner)

3 Q. Just briefly, Mr. Wagner. On page 6 of
4 your testimony, starting on line 4, you made the
5 statement, "First of all the legislature has not given the
6 children of the Commonwealth the same protection against
7 the distribution of sexually explicit materials to them
8 that has been given to adults," et cetera, et cetera. I
9 find that very troubling if it is, in fact, in your mind a
10 true fact. I think the whole problem we have here and the
11 manner in which it has manifested itself to the point of,
12 as you say, ruining people's lives in various aspects
13 really has its genesis in my mind in children being
14 conditioned to grow up being used to this. And I guess my
15 concern is if we can cut this off at its root source in
16 the developing mind as opposed to trying to deal with it
17 in the adult mind, because from my personal feeling, I
18 find the Jimmy Swaggarts of the world obscene and what I
19 do when I see them on TV is I hit the button and I turn
20 off the set. And I think an adult can do that. I'm not
21 so sure that a developing mind of a child can do that.

22 So my thoughts to you today would be simply
23 to express to us in some additional detail your thoughts
24 on how we can go about keeping this from polluting the
25 minds of our children and hopefully over the course of a

1 generation or so we may wipe out the need for the product
2 in that type of form. Even if we don't, we're certainly
3 then keeping it from those developing minds from being
4 polluted. I'd be glad to hear any kind of suggestions you
5 can offer and what was the real root idea in your
6 statement that leads up to this question.

7 A. It may have just been an oversight that the
8 legislature in its last revision of 5903 retained the
9 third prong with the old Memoirs wording, which is the
10 "utterly without redeeming social value." I really -- I
11 was not involved with the issue at that time, nor was--

12 Q. When was that? When did we do that? Does
13 staff know?

14 A. I believe it would have been 1980, or
15 somewhere right around that time was the last time that
16 the statute was revised.

17 Q. '78 or '79, when there was a total
18 codification there?

19 MS. WOOLLEY: It looks like '78. '80.

20 REPRESENTATIVE REBER: 1980?

21 MR. WAGNER: Well, the Miller decision was
22 well before that, so you have the availability of the
23 easier test for a prosecutor, which is the "no serious
24 value," which comes out in Miller in--

25 BY REPRESENTATIVE REBER: (Of Mr. Wagner)

1 Q. That was my thought and the reason I asked.
2 I don't think there really was a change when the Crimes
3 Code was codified in '80. It was a carry-over of that.

4 A. Well, you would have had an opportunity at
5 that point where it could have been updated. Okay? It
6 was updated to the Miller wording for the obscenity tests
7 in prescribing obscenities, so they did, you know, it did
8 take the easier test on distribution of obscenity to
9 adults. In the area of that which is harmful to minors, I
10 don't know why it happened, and I'm not blaming anybody,
11 I'm just making a statement that why not give the
12 prosecutors the best wording? I can tell you, for
13 instance, that I know of some prosecutors that are not
14 enforcing the harmful to minors display portion of the
15 statute because they feel that the proof required by
16 "utterly without redeeming social value" is too difficult
17 in a court.

18 But back to the other issue as to the
19 development of children -- I believe it's Representative
20 Reber?

21 Q. Yes.

22 A. I agree with you, and the difficulty is that
23 children who get access to sexually explicit material mix
24 masturbation with fantasy, and in some cases get
25 themselves addicted to continuing to use the material on

1 into the later part of their life, many of them carrying
2 it into the marriage, if they eventually get married, or
3 into their sexual life in the future. That has been
4 proven at a London hospital where they've been able to
5 create fetish addictions through the mixing of
6 masturbation and sexual fantasy. So yeah, this is
7 material that I think needs to be kept from children
8 during their developing years. I am not at all advocating
9 not teaching children about the positive aspects of their
10 sexuality. When I spoke--

11 Q. That's a whole other day and a whole other
12 committee.

13 A. That's right. But I don't want you to
14 think that Pennsylvanians vs. Pornography is anti-sex.
15 Sex is the neatest thing since sliced bread, but it can
16 also be perverted to become a destructive thing rather
17 than a productive, positive--

18 Q. If I can just interrupt?

19 A. Sure.

20 Q. Getting back to the technical side of it,
21 because we have to be procedural technicians, in my mind,
22 if we are to appropriately craft the necessary legislation
23 which you feel is necessary for our prosecutors to rely
24 upon in the prosecution of such violations, and I'm just
25 concerned as to the language that is replacing the

1 "utterly without redeeming social importance for minors"
2 that is proposed in the legislation, and I guess to some
3 extent it's the political value of minors. What's the
4 logical relationship there as that would relate to
5 pornography? I'm trying to tie this definition so we can
6 use it appropriately to accomplish what you want to do,
7 but I would hate to see it break apart because of what I
8 fail to see as some ambiguities in the way it was drafted.

9 A. Well, you may want to address that question
10 directly to Attorney Peters, who construct it.

11 Q. Fine.

12 A. However, I would say that, you know, the
13 Supreme Court in the Ginsberg case, which is the case that
14 drives the "harmful to minors" test, the Supreme Court
15 established in that case what would be acceptable wording
16 for the "harmful to minors" three-pronged test, as well as
17 they did in Miller in 1973. And the court, let's face it,
18 this issue is driven by the Supreme Court, and if you move
19 away from their guidelines, you stand a very good chance
20 of having the statute declared unconstitutionally
21 overboard.

22 REPRESENTATIVE REBER: I think that's all I
23 have, other than to Representative Hayden. It was Justice
24 Potter Stewart in Jockobelous vs. Ohio, where the comment
25 was made.

1 REPRESENTATIVE HAYDEN: Thank you,
2 Counselor.

3 CHAIRMAN CALTAGIRONE: Dave.

4 REPRESENTATIVE HECKLER: Thank you, Mr.
5 Chairman. A couple of questions.

6 BY REPRESENTATIVE HECKLER: (Of Mr. Wagner)

7 Q. As somebody who's spent a number of years
8 in prosecutor's offices, I have some concerns about the
9 ability of prosecutors, really whatever the standard is,
10 to be effective in this area. I was interested by your
11 testimony that, and you listed quite a number of rather
12 substantial communities had freed themselves of
13 pornography by virtue of prosecutions in which presumably
14 juries returned, consistently returned, guilty verdicts.
15 Are you saying that, for instance, I think Jacksonville
16 was one city you mentioned, that you can't buy or rent,
17 say, any of the videos that you refer to in your
18 testimony? And I'm sorry, I missed the first part of it,
19 but I certainly caught up with the written testimony. You
20 just can't get those materials in those cities?

21 A. No, what I'm saying is that it is an
22 ongoing responsibility of the local prosecutor to continue
23 to work to control the distribution of the material within
24 the community. Take, for instance, Fort Lauderdale,
25 Florida. Fort Lauderdale, through the use of their

1 obscenity statute and the RICO statute, have been able to
2 stop the distribution. It just happens to be via -- it
3 was via adult book stores in that town. They've been able
4 to stop them, and through RICO the people have agreed that
5 they'd rather close up shop and move out of State rather
6 than lose their assets. They also have been successful in
7 controlling the video cassettes really by just making the
8 video dealers aware in town of what the State obscenity
9 statute is and that the prosecutor has asked them to
10 review their material and make sure it is in compliance
11 with the law and that in the future he will be enforcing
12 the law.

13 But all these cities are at various stages
14 of controlling hard-core pornography, and I'm not telling
15 you if it's controlled today that it could not be out of
16 control tomorrow. It is a vigilance that the community
17 has to undertake over a period of time. As to prosecutors
18 and their ability to fight the battle, I think first of
19 all you have to try, okay. And, you know, I've had many
20 prosecutors tell me, well, Frank, you know, we only have
21 so many resources. And I say to them, I understand that.
22 However, we'd like -- you know, it's been a decade since
23 an obscenity case was tried in the county, and are we
24 entitled to some resources over a decade? And quite
25 frankly, you can work -- it is -- and I'm not saying,

1 Representative, that it is the sole responsibility of the
2 prosecutor. Everyone has a role, okay?

3 First of all, the community has a role to
4 educate, and that has to start because how can you get the
5 convictions until the community standard will bring the
6 convictions? So education is the starting point. Next,
7 your prosecutor needs to bring some well-prepared cases,
8 and there are organizations like the National Obscenity
9 Enforcement Unit that can give them motions and briefs,
10 copies of briefs, that can be filed so that they don't
11 have to reinvent the wheel, so that they can even the
12 balance between their prosecutor and the out-of-town
13 prosecutor that has a tendency sometimes to come in on
14 these cases. I think that the local municipality has a
15 role by enacting constitutional zoning regulations. These
16 establishments cannot be prohibited via prior constraint
17 but they can be controlled in where they're going to be
18 placed within the community so that you don't have
19 property values plummeting or you don't have the crime
20 that is associated with where they're located hitting into
21 those parts of the community that are going to suffer the
22 most. We can be enacting other type of ordinances, such
23 as local obscenity ordinances, that can deal with the
24 problem on a summary offense with a potential for appeal
25 to the Court of Common Pleas. It is everything working

1 together, when it works together well, that starts to turn
2 the problem around.

3 Q. Well, I'm interested, and my recollection
4 had been that you had used the term that those communities
5 had "freed" themselves of this problem, and to--

6 A. I believe my testimony was that they're
7 working to free themselves. It is ongoing work. There's
8 no question.

9 Q. Okay. Well, then fine. Because my
10 experience leads me to believe that most of the
11 prosecutions I've seen in these matters are frankly much
12 more tokenism to respond to pressures to do something
13 about a problem that we all agree is something that's
14 distasteful to us and harmful in our society, but I've yet
15 to be aware of a prosecution anywhere in this State that
16 has made even the slightest impact on the general
17 availability of what I would consider to be pornographic
18 material in a community. Certainly book stores have been
19 closed down or chased out of one place, but in terms of
20 general availability, am I as someone who is going to want
21 to get my hands on this stuff going to have much trouble
22 finding it? Maybe I have to drive to the next town, and
23 the answers would go--

24 A. Well, if we do nothing else than send a
25 message to our children that Mom and Dad don't think that

1 this is okay, I think we've done something very important.

2 Number one.

3 Number two, I can tell you Butler County is
4 probably the first to really go at this problem in an
5 effective way, and they have been extremely successful in
6 cutting the amount of material available, and maybe Carl
7 Brown later on, because he's from that part of the State,
8 can speak to that specifically. I can tell you, for
9 instance, the difference in ideas about the whole problem.
10 If a prosecutor starts out with that mind set, he's not --
11 he doesn't have the proper mind set to begin with. The
12 prosecutors should be looking at this as a service to the
13 community that is called upon to serve, rather than just
14 succumbing to a pressure group. It is our responsibility
15 to win the support of the local citizenry to support him
16 in his efforts. However, I don't believe that it's right
17 for a prosecutor to establish a community standard by
18 default which is no standard at all and to permit the
19 pornographers to set our community standard.

20 Q. Okay. Let me ask you, and I'm very happy
21 to hear you talking about the role of the development
22 particularly in our children of a perception of their
23 parent's standards and a perception of what people in the
24 community believe is an appropriate view of sexuality.
25 Because a gentleman with a long experience as a prosecutor

1 who has stated that drugs are the number one problem in
2 this Commonwealth in terms of law enforcement sat, I
3 believe, in exactly the chair you're sitting in a few days
4 ago and said that he was, unfortunately, confident that he
5 would be back in a few years telling us that drugs were
6 still basically as available, perhaps in greater
7 quantities and cheaper costs, in a few years than they are
8 now despite what he envisioned as a very substantially
9 enhanced law enforcement effort to get at the drug
10 problem, and of course there we're talking about
11 situations where clearly you have the support of the
12 community and the court system and people who are arrested
13 for either possession of a large quantity of drugs or for
14 sale do have to go to jail for lengthy periods of time.

15 All those tools and all those resources
16 notwithstanding, the executive director of the Crime
17 Commission sat here and said we're still going to have
18 that problem, and the key effort has to be education, has
19 to be turning peoples' attitudes around about drug demand.
20 My perception would be, because I agree with the
21 sentiments that have been echoed here that the impact
22 particularly upon youth of their emerging concept of their
23 own sexuality and how they fit into the greater scheme of
24 things is a very critical time, is a time when the
25 materials you're talking about can do a lot of long-term

1 damage. I have to wonder what is happening, what you
2 folks are doing to reach out to the community as a whole
3 and develop those standards?

4 A. Well, let me give you an example. When I
5 started this work in Berks County in Tom's home area, and
6 Tom, Representative Caltagirone, will tell you that it's
7 been a long, hard road. But I will tell you that in
8 speaking to 90 groups over the last year, the one thing
9 I've heard from those groups were, Frank, we didn't know
10 it was as bad as it is and we didn't know there was
11 something we could do about it. So there's a lot of
12 ignorance on the part of the public out there and really
13 understanding what they can do, and it's our job to let
14 them know that. Secondly, it's also our job to try to win
15 their hearts and minds, and I couldn't agree with you more
16 that our primary responsibility is educational. And we
17 now have, as I said, when we started three years ago in
18 the eastern part of Pennsylvania, there was one
19 anti-pornography work, and that was in Lancaster County.
20 Today in the eastern district, the Federal district, we
21 have 9 anti-pornography chapters in the 11 counties of the
22 eastern district, and I would say that probably 90 percent
23 of our time is being spent educating the community, 10
24 percent of our time being spent trying to get our law
25 enforcement officers and prosecutors to enforce the law,

1 because both have a role.

2 But I'm not disagreeing with you that
3 education is a primary role, but both have a role. In
4 other words, let me explain. I don't think, no matter how
5 much I educate, I'm working on the market on this, and I'm
6 a marketing vice president, so I understand the market.
7 Okay? I'm working on the market on one end and trying to
8 do away with demand by educating people. However, there
9 are people who are pushing the market on the other end and
10 pandering to people's baser instincts, and they're called
11 the hard-core pornographers; the adult book stores. I
12 really don't think my going to the adult book stores and
13 trying to explain to them the harm they are going to do to
14 the community is going to have much of an effect on them,
15 because they're in it to make a buck. So what I'm saying
16 is that both have a role. The law needs to be brought to
17 bear on those who will continue to violate the law, and at
18 the same time we need to do as much educational work as we
19 can do.

20 Q. Okay. In looking at the bill, House Bill
21 1141 that we have before us, my impression is that while
22 there are, you know, perhaps some tune-ups, some
23 adjustments, that may be helpful to prosecutors, the most
24 -- really the one significant change in the law is the
25 provision regarding minors, and I wonder, again, it's been

1 mentioned by a number of my colleagues who have spoken
2 with you already that we plainly in the law and I think in
3 our own minds have a different standard for children and
4 adults. We're plainly concerned and feel we can set a
5 much more aggressive standard with regard to materials
6 which would be distributed to minors and are more
7 constrained with regard to materials that are going to be
8 distributed to adults. The law, as I understand it right
9 now, and we're not really proposing to change it with this
10 bill, provides enhanced penalties for sale or delivery or
11 distribution to minors. My perception, however, is, from
12 talking to the prosecutors at least that I talked to, that
13 the X-rated book stores in particular are fairly careful
14 about not selling to minors. That may be incorrect, and
15 I'd be interested to hear your response to that, but I'm
16 particularly interested in some of the comments in your
17 testimony indicating that a very substantial number of
18 junior high or high school children have been exposed to
19 what we can agree is really hard-core stuff, and I'm
20 wondering how that came about, because my guess would be
21 that most of it would have been in their household as a
22 result of the activity some of adult.

23 A. I'm sure that it's a little bit of both.
24 How many kids, for instance, in our society today are in
25 latch-key homes? The parents bring the adult video

1 cassettes, you're going to see testimony by Dr. Victor
2 Cline about children that he was -- some of the children
3 he's been treating who are 12- and 13-year-olds who the
4 parents left the video cassettes lay around in the house,
5 the kids watched them and the kids did what the video
6 cassettes showed, and one of the children became pregnant,
7 who was impregnated. Yeah, they get access to them. What
8 we're finding over and over again is parents think that
9 the kids aren't finding this stuff, and they are.

10 And yes, there's the other situation, if you
11 contact the district attorney in Lancaster he would tell
12 you that he prosecuted Maxims down there about a year ago
13 because they found 14- or 15-year-old kids, they were 14,
14 15, they were minors I know that, in the store, in the
15 adult bookstore down there. So I think it's both.

16 Q. Well, my impression has been that whatever
17 difficulties you may have in getting district attorneys to
18 prosecute, you know, pornography cases, is this particular
19 film or video or book obscene, that they'd have no
20 difficulty getting those prosecutions. I know there have
21 been some in Bucks County that where a minor is found with
22 materials that can be directly traced back to somebody
23 that pandered them to them or found it in one of those
24 settings.

25 A. I know of no district attorney in the

1 Commonwealth who is not prosecuting for the distribution
2 to minors. I know plenty of them who are not prosecuting
3 for the display to minors.

4 Q. And what do you mean by "display to
5 minors"?

6 A. Well, let me give you an example. You can
7 go into an establishment in our home district called
8 Berkshire News. Berkshire News has racks of magazines.
9 The Commonwealth statute, the display portion of 5903,
10 says that if minors have access to that thoroughfare along
11 with adults and if there's explicit sexual activity or
12 depictions on the covers of those magazines, that they
13 have to cover them up. And what I'm saying is that they
14 are not covered up and that the average DA isn't doing a
15 thing about it. And believe me, you don't have to look at
16 the magazines in many cases. The covers are clear. I was
17 down about a month ago and there was a depiction of a man
18 mounted on the back of a female. Now, it didn't show him
19 penetrating her, but, I mean, it still is a sexual
20 depiction of simulated sexual activity and any child could
21 walk past there the same way as I was walking past there.
22 That's the display portion of the statute.

23 Q. It's my understanding, you mentioned Berks
24 County, that's where you've done a good bit of your work,
25 that there was a prosecution involving the film "Debbie

1 Does Dallas," and I'm not familiar with the contents of
2 that film but I think I can probably make a pretty fair
3 guess, and that a jury found that film not to be obscene
4 by the standards of Berks County, is that correct?

5 A. That's correct. I'll explain the issue in
6 detail. It's going to take me some time.

7 First of all, the prosecutor in Berks County
8 was reluctant to enforce the law. We had an assistant
9 district attorney who had about six months in the
10 prosecutor's office right out of law school. He was up
11 against Howard Stark, who fought his first obscenity case
12 over a decade ago, and we had a situation where we, to my
13 own personal feeling, the case was lost in voir dire, and
14 we even talked with some members of the jury after the
15 case was tried and they did not even consider the
16 material. They decided the case based upon the fact that
17 charges had been dropped against the adult bookstores in
18 the Reading area and that they felt the video dealer who
19 was being tried in this case was being singled out when
20 the adult bookstore people had been left go. Now, a jury
21 had no business deciding the case that way. They are to
22 decide the case on the merits of the law, however, that's
23 what happened.

24 Now, at the same time, right up the road a
25 case was won in Schuylkill County against Howard Stark.

1 Howard Stark was beat in Commonwealth vs Kroll. Howard
2 Stark was beat in Butler County in a case out in Butler
3 County. And also you have the syndrome on the part of a
4 prosecutor, and many prosecutors have what I call a
5 one-case syndrome whereas, well, I'll try one and if that
6 goes okay, okay. And then they prosecute the case and the
7 media in some cases tar and feather them because many
8 members of the media have presuppositions as it deals to
9 any regulation of expression, they get discouraged and
10 then they want to back off.

11 However, there are other prosecutors who
12 will move forward and they don't take a one-case syndrome
13 approach. They prosecute. I thought Paul Mageadie's
14 comments from Morality In Media, the general counsel for
15 Morality In Media, when we met with the heads of the Major
16 Crimes Unit with the U.S. Attorney's in Philadelphia,
17 Glenn Broadson, to talk about enforcement in the eastern
18 district, they were talking about community standards and
19 Paul made the statement, "Well, I guess if you lose 50 or
20 100 cases in the eastern district then we can say that the
21 community standard won't tolerate it." And I think if a
22 prosecutor makes an attempt to try some cases and after
23 some cases though, not one case, after a period of time he
24 cannot get convictions, then I think he has to decide
25 where his resources are going to be used. But one case in

1 a decade is not exactly a great demonstration of trying to
2 establish a community standard.

3 Q. Isn't one of the problems, though, with the
4 narrow test which the Supreme Court has given to us to
5 work with on this the problem that if you get a conviction
6 for, you know, "Debbie Does Dallas" or one of these other
7 titles, that that is really applicable to that case alone?
8 That unless you are then going to have judges imposing
9 sentences that are sufficient deterrent to make it
10 economically unfeasible for the people you've been
11 prosecuting to pursue this, that if you're really going to
12 try to cut back on the availability of these materials,
13 you're going to have to try a case for "Debbie Does Dallas
14 III" and "Taboo VII" and each of these specific films, of
15 which there are quite a number of them.

16 A. Well, I think we have to differentiate
17 between the use of injunctive action in trying to regulate
18 the distribution of a specific film where, yeah, you bring
19 an action against that film and they have another hundred
20 or so to replace it. When you take that one off the shelf
21 as versus the use of a criminal prosecution where we're
22 talking about a misdemeanor conviction that can bring a
23 five-year prison term and a \$7,000 fine on a first
24 conviction and a third-class felony on a second
25 conviction, these are good penalties. And, yes, we need

1 to have court-watched programs the same as we have in any
2 area of the law to make sure that people are getting
3 punished. However, I believe that we've probably done
4 more in the last three years to work on the educational
5 aspect to prepare for working in conjunction with
6 effective prosecution and working with our legal officials
7 of the community than in many cases have been done with
8 the whole drug issue in the last umpteen years that we've
9 been trying to solve the problem, plus the fact that we
10 have an industry here that is not controlled the same way
11 that the drug industry is.

12 The Federal government, to the best of my
13 knowledge, has not lost an obscenity prosecution since
14 they created the National Obscenity Enforcement Unit that
15 they've brought and they've gotten RICO convictions, and
16 they are in the process of doing an excellent job in
17 attacking the organized criminal element of this industry,
18 and that's where their resources should be spent. The
19 local district attorneys should be attacking the local
20 book stores, the local video dealers who are violating the
21 law, and the community should be educating to the best of
22 their ability to try to work on the market within the
23 local community. When those all three work together -
24 Federal, State, local - that's where you start to see the
25 greatest impact. And the Federal authorities have done a

1 tremendous job since they started. Obscenity prosecutions
2 last year were up 800 percent over prior periods, and
3 their prosecutions, to the best of my knowledge, they have
4 not lost a case yet.

5 And I would say to the DA, any DA in this
6 Commonwealth who feels that he does not have the
7 expertise, and that's nothing to be ashamed of, okay.
8 These cases haven't been fought for decades. See, years
9 ago, it was you, Mr. District Attorney, up against a local
10 attorney in your town who was defending them. Nowadays
11 there are specialists who come in and you really don't
12 have the level of expertise, so admit that and try to get
13 help from people like the National Obscenity Enforcement
14 Unit or prosecutors with organizations like CDL who can be
15 assigned as special counsel, who have impeccable trial
16 records. People like Ben Bull, who worked in Norfolk,
17 Virginia, is a counsel with CDL and closed up 35 massage
18 parlors, all the live sex shows, 16 adult book stores. He
19 has never lost an obscenity case in his entire career.
20 This is the type of talent that is available to local
21 district attorneys if they want it.

22 Q. Well, are you aware, we went through that
23 syndrome in Bucks County back when I was in the DA's
24 office, and that goes back a long time, that dealt with
25 out-of-town counsel successfully. Are you aware of

1 whether -- to your knowledge, has there ever been a
2 sentence of incarceration, even for one day, given for a
3 conviction of our obscenity laws in the Commonwealth?

4 A. Yes. Just recently out in Butler County.
5 I'm not sure of the exact incarceration, it may have been
6 90 days to 120 days, but I know the individual was given a
7 prison term. Now, it's on appeal, but that's not unusual.
8 And I will say that obscenity cases have one of the
9 highest upheld on appeal types of cases that you're going
10 to find. I also might say that the prior prosecutor in
11 Bucks County, I believe it's now Judge Kane, moved out
12 very effectively to move against book stores. He was
13 using a local assistant district attorney by the name of
14 Goodwin who did an excellent job, and every one of his
15 cases were upheld by the Superior Court.

16 Q. Do you have any idea what the sentences
17 were in those cases?

18 A. I'm not aware at this point.

19 Q. Well, I'm pretty sure that there wasn't a
20 fine imposed in any of them over about \$300. And I'll
21 tell you, Mike and I shared an office for seven years
22 together. A bunch of book store clerks were convicted,
23 had relatively light fines imposed, and so far as I'm
24 aware, those book stores didn't miss a beat in terms of
25 continuing in business, in terms of continuing to sell

1 materials to people who were in a position to want to buy.
2 And that, among other experiences, is what makes me
3 somewhat doubtful that we are going to, through the use of
4 the criminal justice system, stop this activity so long as
5 -- I think we can certainly make a dent as to minors. To
6 the extent anybody's actively dealing with minors, but
7 that you're going to turn this around without turning
8 around the public understanding of this issue, whether or
9 not you get convictions.

10 A. That's my point entirely. Times are
11 a-changing, okay? When they brought those cases, there
12 weren't nine organizations in the eastern district of
13 Pennsylvania. There weren't grassroots organizations we
14 now have springing up throughout the Commonwealth who are
15 trying to raise this issue before the public. I am not
16 trying to say that this is the problem of governmental --
17 of the government. There's no problem you have that is a
18 problem of the government. We're already seeing that. If
19 lawlessness is out there within our society, you can't do
20 a thing about it. There aren't enough jails to build to
21 hold all the people. We're willing to work with you.
22 That's what we're saying. But at the same time, we need
23 your help, and that's what we're here for. We'll work
24 with you. We need your to help us in the governmental
25 area where the Supreme Court has given us the right to get

1 involved in governmental regulation, and we'll do our
2 work. We'll work and spend our time out there trying to
3 turn the community to understanding the effects of this
4 material.

5 Q. All right. In the spirit of help, I thank
6 you for your comments. Counsel Woolley has pointed out, I
7 believe, that there is, and I think really more of a
8 typographical error, on page 6 of the bill, the
9 incorporation of the Miller standard as to minors, and we
10 may want to take this up with Counsel when he testifies.
11 It would seem to me that the language should read,
12 "educational 'or' scientific value for minors," as opposed
13 to "and."

14 A. I'm going to let that up to an attorney, to
15 speak to an attorney on, and Attorney Peters is
16 well-versed and understands obscenity law very well that
17 he should be able to address that issue.

18 REPRESENTATIVE HECKLER: Thank you, Mr.
19 Chairman.

20 CHAIRMAN CALTAGIRONE: All right, thank you.
21 Frank, at this time, what I'd like to do is,
22 begging the indulgence of the members, you do have this
23 video that I think is important that we take the time to
24 view. If we could get that video on, I do want to
25 recognize Chairman Moehlmann and Representative Kosinski,

1 and at this time--

2 REPRESENTATIVE KOSINSKI: Is this the Bundy
3 video?

4 CHAIRMAN CALTAGIRONE: No. We will have the
5 Bundy video also, but at this time this is a video that
6 has--

7 MR. WAGNER: This is a video that has been
8 prepared for you here today dealing with victims and
9 offenders which speaks, I think you have to have a
10 prevailing governmental interest for wanting to do
11 anything, and this is designed to let you know that
12 there's a prevailing governmental interest.

13 CHAIRMAN CALTAGIRONE: All right. If we
14 could turn that on and if the members would care to just
15 come to the front of the meeting room.

16 (Whereupon, a video entitled, "Pornography:
17 You Are Its Victim," was shown.)

18 CHAIRMAN CALTAGIRONE: Frank, any closing
19 comments?

20 MR. WAGNER: No. I'd just like to thank
21 the committee and you, Mr. Chairman, for the opportunity
22 to testify before you this morning. I hope that this
23 committee in its attitude and concerning this issue will
24 remember the children that they saw today, and I think
25 that they also need to remember Annie's father, because

1 maybe Annie's father never wanted to be a perpetrator, but
2 he made a conscious decision to start down the road of
3 using material of which debased human sexuality, and
4 eventually that led him to abusing his own child and his
5 own children and children outside the home. Our hope, as
6 an organization, and I think as many of your constituents,
7 because over the last three years I've talked to many of
8 your constituents, I feel that they have a deep concern
9 over the continuing explosion of this problem, and they
10 feel helpless. They know that in taking care of the
11 problem within their local communities through friendly
12 complaint and boycott that they can get action, but from a
13 governmental standpoint, they seem frustrated.

14 We're just asking you to give us the laws.
15 We'll work with our enforcement people to try to enforce
16 the law, and we're committing to work with you to try to
17 address this issue within the Commonwealth and to make
18 Pennsylvania a model State in trying to reduce the
19 availability of obscenity and pornography, child
20 pornography, within the Commonwealth. Thank you.

21 CHAIRMAN CALTAGIRONE: Thank you very much,
22 Frank.

23 At this time, I'd like to call
24 court-appointed U.S. Attorney for the middle district,
25 James West. And I want to thank him personally for taking

1 time out of his extremely busy schedule to be here with us
2 today.

3 MR. WEST: Good afternoon, Mr. Chairman, and
4 thank you very much for having me here today. I'm very
5 glad to appear and make whatever slight contribution I can
6 make.

7 My background is basically as a prosecutor,
8 and I've been a prosecutor for 19 years in the Federal
9 system, as well as in the State system for 3 1/2 years.
10 And I guess I should start by just outlining what I have
11 seen in the area of pornography, both obscenity as well as
12 child pornography, and perhaps define some of the problems
13 and maybe be helpful to the committee in answering
14 whatever questions you might have.

15 About my fifth year as a prosecutor, I was
16 an assistant U.S. Attorney out in Pittsburgh, I got
17 involved as a co-counsel in a case involving obscenity.
18 It involved a gentleman named Reuben Sterman from Ohio who
19 had opened warehouses in the city of Pittsburgh and was
20 bringing what was then considered obscenity into the
21 Allegheny County area and selling it at rather large
22 profits. The case was a massive undertaking. In fact, I
23 think our former Governor was a U.S. attorney at that
24 point in time when the case was originally initiated in
25 1974, but after an extensive investigation, execution of

1 search warrants, we entangled ourselves with what I come
2 to call first amendment lawyers. Indictments were about
3 to be handed down, but before we even got to the
4 indictment stage we found ourselves going to the Third
5 Circuit Court of Appeals on three occasions on grand jury
6 motions. Substantial delays were incurred, and finally,
7 the case was indicted in 1979, but I had come here to the
8 middle district of Pennsylvania, had left the prosecution
9 team and become the Deputy Director of Criminal Law
10 Enforcement for the Commonwealth of Pennsylvania. And at
11 that point in time, I learned that the charges had been
12 dismissed against Mr. Sterman, after approximately a
13 four-year investigation, on the basis that Mr. Sterman
14 would remove his warehouses from Allegheny County and put
15 them somewhere else. And that was the end of the Reuben
16 Sterman case. And Reuben Sterman was just identified in
17 the Mease Report as now being the largest pornographer in
18 the United States of America. So the problem did not go
19 away. An opportunity was lost, and I certainly would not
20 assess blame for the loss of that opportunity.

21 The emphasis that I saw there was the fact
22 that when you undertake a case involving a major
23 pornographer and when you are seriously investigating,
24 using all the tools of Federal government - the FBI, the
25 Internal Revenue Service, and such - you have a long

1 uphill fight. It's much the nature of undertaking a
2 complex antitrust case, such as the AT&T antitrust case.
3 It far exceeds the resources that are available to your
4 average State prosecutor, and in many instances even to a
5 Federal prosecutor.

6 Pornography is there for one reason, because
7 there's a lot of money to be made in pornography, and that
8 money is used to protect those business interests through
9 the hiring of what I referred to, and I referred to it
10 respectfully. I believe in the law and I believe first
11 amendment lawyers should be around, that they know their
12 job and they know their job very well, and even as a
13 seasoned prosecutor at that point in time having four or
14 five years as assistant U.S. attorney, I knew I was in a
15 fight when I got involved in that case, and the other two
16 attorneys assigned to that particular matter also knew
17 they were involved in a fight.

18 When I came to the middle district of the
19 Pennsylvania, Harrisburg, in my position at the Attorney
20 General's Office, and naturally learning what happened to
21 the Sterman case in Pittsburgh, I made a lot of inquiries
22 to district attorneys throughout the Commonwealth in
23 Pennsylvania. Obscenity, pornography, was not within the
24 jurisdiction of the Attorney General's Office. We had
25 jurisdiction over the statewide investigative grand jury,

1 organized crime and public corruption, and only in the
2 case of a supercession of a district attorney would we get
3 involved in the pornography area or in the involvement of
4 organized crime. But I came to learn that there was a
5 perception that the pornography laws in Pennsylvania were
6 impossible to enforce either because of the difficulty and
7 lack of resources that the district attorneys rightfully
8 perceived that they suffered under or because of a belief
9 that the Pennsylvania statute was unconstitutional, and
10 this was almost universally acknowledged by the district
11 attorneys that I talked to, and I talked to many over the
12 years.

13 When I returned to the Federal system, I
14 discovered that we had been given some new tools since I
15 left, and that would be around 1983, and one was a statute
16 that was passed by the Congress and the Senate and was
17 sponsored by Senator Specter of Pennsylvania and dealt
18 with the use of the mails to transport child pornography.
19 We began to implement that statute in the middle district
20 of Pennsylvania, a district that really has a sort of --
21 the outside view being that there are a lot of Amish
22 people that live here with buggies and it's a rather
23 sedate, countrified and rural area. But for two years we
24 led the country insofar as prosecutions of child
25 pornography being transported through the mails, not

1 because there was a great volume of the problem here but
2 because we began enforcing the statute and really believed
3 that all you needed was four or five cases at that point
4 in time. The last time I looked, we were fifth in the
5 country because a lot of the U.S. Attorney's offices
6 throughout the country have begun to enforce that
7 particular statute.

8 I wouldn't want to mislead you. When we
9 began enforcing that statute, we did not find the Reuben
10 Sterman's of the world that were involved in the business.
11 The Reuben Sterman's of the world don't involve themselves
12 with child pornography because of the enforcement effort
13 that would be directed in that direction. It is something
14 that any prosecutor, I think, would undertake having been
15 exposed or having seen child pornography, and basically
16 the people that were prosecuted were pedophiles who have
17 really started a cottage industry insofar as child
18 pornography is concerned. They manufacture their own
19 child pornography. They send it back and forth from one
20 to another. They even have computer link setups where
21 they can dial in and through their modems order up various
22 types of child pornography. But it's not a commercial
23 operation, it is truly a cottage industry.

24 Recently, the attorney that handled those
25 matters for the United States Attorney's Office in the

1 middle district, Mary Spearing, was taken to Washington
2 where she is now with the National Obscenity Unit. That
3 was a great loss to the middle district of Pennsylvania,
4 but we have initiated several cases involving traditional
5 adult obscenity. We started by using the income tax laws
6 and went against a gentleman named Goodwyn Hecht, who was
7 down in the Lancaster area and I believe owned two or
8 three book stores in that area. He received a two-year
9 jail sentence, and the investigation is continuing, but
10 the jail sentence was under the tax laws, and we were one
11 of the districts that joined in what has been called
12 Operation Post Porn, which was an effort by the National
13 Obscenity Unit to indict particularly egregious
14 pornography in four or five districts throughout the
15 United States simultaneously and to bring prosecutions to
16 bear against that particular company in a simultaneous
17 fashion.

18 Again, I was surprised that when we brought
19 our Operation Post Porn indictments to find out that there
20 was an injunction action brought in Washington, D.C., that
21 delayed that case in fact until last week. There was
22 approximately a one-year delay, and again, we are faced
23 with the first amendment lawyer issue where even the
24 National Obscenity Unit, quite frankly, found out that
25 when they brought their simultaneous indictments, the

1 legal eagles, if you will, of the first amendment
2 community were capable of having prosecution and further
3 investigation enjoined for a period of one year. I point
4 that out simply to emphasize that what you're involved in
5 is a very sophisticated business that has unlimited
6 resources and that is prepared to expend those resources
7 in every way possible to protect the generation of income
8 from those particular businesses.

9 That would basically be my outline of what
10 I've learned in 19 years as a prosecutor. I listened with
11 great interest to many of the things that Mr. Wagner had
12 to say. I agree with almost all of what he had to say. I
13 don't think I could express it quite as articulately. As
14 a prosecutor who has a feeling of guilt for not enforcing
15 these particular laws, but there's also a balancing that
16 goes into it and a knowledge that there's a lot demanded
17 of the U.S. Attorney's Office and certainly of any
18 district attorney's office. The war on drugs has to be a
19 priority right now, and you dare not and should not take
20 resources from that effort. It is only with a lot of soul
21 searching and a lot of economizing that you can find the
22 resources available to use in prosecutions of obscenity
23 and pornography type crimes. I think the U.S. Attorney's
24 Offices across the country are endeavoring to find those
25 resources. I heard Mr. Wagner's figure of an 800-percent

1 increase in prosecutions. Numbers wise, that's probably
2 not that great. Percentage wise, it is great.

3 But there is an attitude now where the U.S.
4 Attorneys are attempting to set the community standards.
5 What the Supreme Court has done in the Miller case and in
6 other cases is quite frankly say that each community is to
7 determine their own standards of what is tolerated. What
8 is tolerated at Broadway and 42nd Street may well not be
9 tolerated in York, Pennsylvania. But unless prosecutors
10 will devote the resources to go forward and be armed with
11 good and constitutional laws, and that they will establish
12 those community standards and bring the necessary number
13 of cases to establish those community standards, we're
14 going to continue to see what has been occurring for the
15 last 20 years, which is a continuous downward spiral in
16 the community standards generally. And, in fact, through
17 the television media, through now cable television and the
18 greatly enhanced communications abilities that we have, we
19 have an almost homogenization of what the community
20 standards are. In other words, we become closer every day
21 to in York, Pennsylvania having the community standards of
22 Broadway and 42nd Street because we are being exposed to
23 more and more each day.

24 The tide has always gone the same way. It's
25 always been rising in the area of pornography. There's

1 never been a rolling back of it, and for the last 20
2 years, there has been a desensitizing. What we were
3 prosecuting Reuben Sterman for in 1973 is probably right
4 now available on cable television, and we were convinced
5 that the community standards were being violated then.
6 And I will say there was probably material that would
7 exceed also what was on cable television now, but some of
8 it, when you're talking the Midnight Blue cable network
9 and such, I am certain is comparable to what we were
10 prosecuting Reuben Sterman for in 1973. And at some point
11 there has to be a concerted effort to stop this. When I
12 see things like Pennsylvanians Against Pornography, it's a
13 clear, if you will, call it the duty or it's a clear
14 signal to me that the time really has come to establish
15 those community standards.

16 Those would be my observations. I would be
17 glad to answer any questions that I could as best I can.

18 CHAIRMAN CALTAGIRONE: Thank you, sir.

19 Questions from the committee?

20 Yes, Dave. Representative Heckler.

21 REPRESENTATIVE HECKLER: Thank you, Mr.

22 Chairman.

23 BY REPRESENTATIVE HECKLER: (Of Mr. West)

24 Q. Mr. West, and I confess that I speak with
25 some of the provincial attitudes of a local prosecutor who

1 over the years has seen U.S. Attorney's Offices be kind of
2 picky in deciding what they will or what they won't
3 prosecute in ways that the local prosecutors rarely are.
4 What do you, now that you have been summoned to duty by
5 all of this, what do you expect? What initiatives do you
6 expect to make in the middle district about this matter?

7 A. The FBI is devoting a number of resources
8 to this area. I indicated the Goodwyn Hecht case, I
9 indicated the child pornography prosecutions, and we are,
10 through our prosecutors, participating in the Operation
11 Post Porn prosecution, which will establish a community
12 standard. It is an adult obscenity prosecution. There
13 are other things that are coming, and I really can't talk
14 about them. I guess you've got to take it on faith that
15 there are active investigations, and some have borne
16 substantial fruit. Usually through the Internal Revenue
17 Code and through tax violations, although I was very
18 disappointed, in that case we gave a very vivid
19 description of the business that the individual was in
20 right down to the descriptions of the peep holes and such
21 that were present, and it is a very, very seedy business.
22 I think many average people don't realize what a
23 full-blown pornographic book store is, and it is sort of
24 an eye opener and almost incredible what goes on in those
25 particular places. We did try to get an enhanced penalty

1 and a district judge told us, and I think quite
2 rightfully, come back and bring an obscenity charge, and
3 of course, we're exploring that and that particular area.

4 I look to Operation Post Porn setting a
5 community standard, and I look for cases to follow after
6 that.

7 Q. Okay, so those will -- that will involve
8 actual obscenity prosecutions in--

9 A. In the middle district of Pennsylvania,
10 yes.

11 Q. Okay, thank you.

12 BY REPRESENTATIVE BIRMELIN: (Of Mr. West)

13 Q. Mr. West, have you had an opportunity to
14 look over House Bill 1141?

15 A. I have looked it over. I don't feel
16 capable of commenting on it. Of course, the child aspect
17 of that, the Supreme Court has held that children are not
18 part of the community but rather a separate community that
19 can be considered separately, different rules apply, and
20 the Ginsberg case, the Pinkus case that I heard Mr. Wagner
21 refer to, would be the benchmarks, but I would not be the
22 one to render a legal opinion on it. It really takes
23 study on one of these statutes. I saw that some of the
24 language was being parsed and Mr. Wagner was being asked
25 about it, and I frankly would have to go to the law

1 library and read Miller, read Pinkus, read Ginsberg, and
2 make sure that language was in there and was being used
3 appropriately, but I don't feel that I would be doing the
4 committee a service by trying to comment on the legality,
5 constitutionality of that statute.

6 Q. Let me ask you one other question then.
7 We've heard the term RICO statute--

8 A. Certainly.

9 Q. --used here. Is that accessible to you in
10 what you're doing currently?

11 A. Absolutely. The Racketeering Influence and
12 Corrupt Organization statute was amended, and pornography
13 can be brought under it. And I view that as the real,
14 real hope for what can be done. That plus another thing
15 that was done by the United States Congress, they put
16 forfeiture into the new pornography statute. In fact, it
17 came part in November of 1988 as part of the narcotics
18 legislation. They amended the pornography statute and
19 made forfeiture part of it. Now, I heard the comments
20 here about sentencing, and they're well taken. If we
21 would have convicted Reuben Sterman any time between 1974
22 and 1979, we were expecting a sentence of 1 year, 1 1/2
23 years, 2 years, would have probably been a harsh sentence.
24 But if you have a forfeiture provision in there and even
25 attack this matter civilly, and more so if you can put an

1 incentive into it where the forfeited proceeds, like the
2 Pennsylvania narcotics forfeiture statute, would go to the
3 district attorney for use for law enforcement purposes, it
4 could solve a lot of problems, and I think that if we
5 vigorously use the forfeiture provisions that have been
6 given to us in the Federal side, we'll do a lot more to
7 solving the problem by taking the book stores and the
8 property from the people that are involved in this
9 business than by advocating lengthy jail sentences. I
10 don't think we're going to get more than one or two years,
11 maybe three years, unless we can show particularly
12 egregious circumstances. But if we can take the property
13 off of them, if we can say this was used for an illegal
14 purpose and we're taking your book store and we're going
15 to convert it back into a gasoline station or we're going
16 to put it up for public sale and use the money that we
17 generate from it for law enforcement purposes in Carbon
18 County, or whatever, I think it provides an incentive to
19 prosecutors, almost a reward to prosecutors, plus it
20 eliminates the problem right at its source. It takes the
21 assets away from people who would pervade pornography. I
22 think that's something they would fight real hard because
23 it's a powerful tool.

24 Q. I have one other question for you. If the
25 State's Attorney General were to institute a sort of a

1 strike force of attorneys who were capable of going
2 anywhere in the State of Pennsylvania where you may have a
3 reluctant DA or whatever, would you in your capacity be in
4 a position to aid and assist what they're doing, or is it
5 a duplication of what you're doing or would you be able to
6 work hand-in-hand and accomplish more than you would
7 individually?

8 A. We work hand-in-hand now. A lot of the
9 competition that was in law enforcement has been put
10 aside. A year and a half ago we had a conference, the
11 United States Attorney's Office, and 150 local law
12 enforcement officials attended. It was put on by the
13 National Obscenities Center in Washington, D.C., and it
14 was sponsored by my office. Those officers were highly,
15 highly motivated. They received three good days of
16 training. They were very interested in getting out in the
17 field and implementing these laws. I think the district
18 attorneys are interested in implementing these laws, it's
19 just that they're constantly chasing resources through
20 their county commissioners and through their court system
21 and whatever. The type of strike force that you describe
22 there modeled after the Federal National Obscenity Unit I
23 think is a very desirable thing, and I think Attorney
24 General Preate, if he would support that, would be doing a
25 desirable thing. You need highly specialized attorneys to

1 go into this area and they've got to have a lot of
2 perseverance, they've got to be ready for a lot of
3 frustration. In criminal law, the one thing we like, we
4 like to get into court within our 70 days, get the case
5 tried, get our sentence and say we did our job, and it is
6 sort of a quick process. In the obscenity area, it's a
7 completely different process. You've got to be prepared
8 to dig in, to spend three or four years, to have them lay
9 every piece of paper they can possibly lay on you and to
10 have the perseverance to see it through, and I think the
11 centralization in the Attorney General's Office would be a
12 very good idea.

13 Q. Thank you very much.

14 A. Thank you for having me.

15 CHAIRMAN CALTAGIRONE: I think--

16 REPRESENTATIVE McNALLY: Mr. Chairman.

17 CHAIRMAN CALTAGIRONE: Excuse me.

18 MR. WEST: I'm sorry, sir.

19 BY REPRESENTATIVE McNALLY: (Of Mr. West)

20 Q. Mr. West, you had indicated that you felt
21 it would be appropriate at this time for the General
22 Assembly to establish community standards for the State.
23 And presumably we would be raising the community standards
24 with respect to obscenity. One thing that concerns me
25 really about this particular piece of legislation is that

1 perhaps at least for some communities we would actually be
2 lowering the standards. And one example that I would
3 point out is that sadomasochistic abuse is defined as in a
4 sexual context. Now, in my community at least, in the
5 district I represent, sadomasochistic abuse in any context
6 would violate the community standards of obscenity, and,
7 you know, typically many of our obscenity enforcement and
8 legislation has been in local ordinances. One concern I
9 would have, as I've indicated, is if we adopt a statewide
10 definition of the community standard, perhaps for some
11 areas that may raise the community standard, but perhaps
12 the statewide standard would be lower than it is in some
13 neighborhoods around our State. You know, that might be
14 an unintended result, might protect some people that folks
15 in my neighborhood wouldn't want to protect. Do you think
16 that's a fair argument? Using the example I just cited?

17 A. Well, it's an argument, but I sort of
18 misled you if I led you to believe that I was saying the
19 legislature should adopt the community standards. Under
20 the Miller Supreme Court case, the jury is supposed to
21 determine what the community standards are and whether
22 this violates the community's standards, and I view the
23 legislation as sort of generally saying, well, you know,
24 this is what we define as obscene, and eventually the jury
25 has to determine whether or not it is obscene under this

1 Miller test and this community standard test. And maybe I
2 can help in this way, that the community varies. In
3 Federal Court, the community would be the 32 counties that
4 comprise the middle district of Pennsylvania would be the
5 community that the jury would be instructed to consider.
6 And I've never done a State obscenity case, but I think
7 the community you'd consider there would be the county,
8 and they would say Susquehanna County, Carbon County. And
9 as long as you properly define obscenity, the jury is
10 still free and has to, under the Constitution in the
11 Miller case, decide whether or not the community standards
12 are offended, and it's probably best if the community is
13 the county, the small community, so that you're not
14 dealing with, you know, Philadelphia's standards trying to
15 be imposed on York, Pennsylvania, or on Scranton or
16 Wilkes-Barre. I think that happens through operation of
17 the Miller case and through the court's jury instructions
18 more so than by operation of this statute.

19 And otherwise I don't think I could shed any
20 more light on it. When you don't define sadomasochistic
21 activity in any way, yes, you probably put that outside of
22 this law, but I don't think it would be any reason to stop
23 this law. I think things can be fine tuned and technical
24 amendments could come in later. What's needed is to get
25 something out into the field, and frankly, let the

1 district attorneys know that the legislature is interested
2 in seeing this type of activity and seeing these laws
3 enforced. They want to see the public support, the
4 legislative support, for engaging in this kind of activity
5 because it's such a drain on their resources.

6 CHAIRMAN CALTAGIRONE: Again, thank you very
7 much.

8 MR. WEST: Thank you.

9 CHAIRMAN CALTAGIRONE: I'd like to have
10 Attorney Robert Peters, Legal Counsel for the National
11 Obscenity Law Center, come up, and if we could also have
12 Carl Brown, Southeast Coordinator for Pennsylvanians vs.
13 Pornography, if he would come up also, and Francis
14 Viglietta, Director of the Justice and Rights Department
15 of the Pennsylvania Catholic Conference. Would the three
16 of you sit down there so that we can try to expedite the
17 proceedings? I would appreciate it, and I'm sure the
18 members would.

19 If you would like to start with your
20 presentation.

21 MR. PETERS: My name is Robert Peters. I am
22 a staff attorney any with Morality In Media in New York
23 City. I have submitted a somewhat more detailed statement
24 in support of this bill, and I'm not going to attempt to
25 read that statement here.

1 House Bill 1141 would do four things. It
2 would expand the scope of the current obscenity law to
3 include obscene live performances. It would specify that
4 Section 5903 of the penal law encompasses video tapes. It
5 would clarify that the obscenity definition encompasses
6 sadomasochistic abuse and sexual bestiality, and it would
7 eliminate the "utterly without redeeming social
8 importance" requirement in the current definition of the
9 statute's "harmful to minors" law.

10 Getting into the specifics, regarding
11 encompassing live obscene performances, the Supreme Court
12 has clearly indicated that obscenity can manifest itself
13 in conduct, not just in pictures, and as I put it, I think
14 it's really somewhat ridiculous that we can have a law
15 that reaches obscene publications in the front part of a
16 book store but there might be men or women in the back
17 part performing the same acts and you do not have a law in
18 Pennsylvania which could reach that. I mention in my memo
19 that the language of the performance part of the amendment
20 comes directly from the New York State penal law. It also
21 happens to be found in the Texas and Kansas obscenity
22 laws.

23 The second part of the amendment regarding
24 sadomasochistic abuse and sexual bestiality. I think the
25 case is much better for stating that the current

1 definition would encompass sexual bestiality because it's
2 certainly not limited to humans, but I think since we're
3 amending the law or we're proposing an amendment, it would
4 be best to specify that the current definition encompasses
5 that.

6 Now, as I state in my memo on the subject of
7 sadomasochistic abuse, again, sadomasochistic abuse would
8 clearly be covered in the current law if the depiction
9 also included sexual conduct currently specified, but I
10 can assure you that a great deal of hard-core
11 sadomasochistic porn does not include intercourse or lewd
12 exhibition of genitals or masturbation. In many cases,
13 you might have a studded strap or the groin area of the
14 male or female so that the genitals would not show, and
15 yet the person would be otherwise nude and unimaginable
16 tortures being inflicted upon that person. Now, certainly
17 one could argue that, you know, when they passed this law
18 they weren't thinking of that and therefore it should be
19 included, but arguably, it would not. You'd have to have
20 some kind of hard-core sexual conduct in the sense of
21 masturbation or intercourse also. And I state, and I will
22 not go into the cases, but I personally believe that there
23 could be no question that our Supreme Court has and will
24 uphold the law which includes that type of material.

25 A third part is specifying video tapes, and

1 again, I think the current definition of material would
2 encompass that, but this is an issue that has arisen. As
3 I state in my memo, it most recently arose in the State of
4 Wisconsin, where they passed an obscenity amendment,
5 actually a new law, and did not specify video tapes, and
6 the argument was made since you did not specify it, it
7 won't be included. Now, I personally think they're going
8 to lose in that issue, but they've spent a lot of the
9 State's money trying to prove their point. And the last
10 part of the amendment pertains to "harmful to minors"
11 legislation, and I think it's been said, the "harmful to
12 minors" concept was upheld by the Supreme Court in the
13 Ginsberg case. The court indicated that what they were
14 doing was simply taking the definition of obscenity for
15 adults and modifying it for minors.

16 Now, in 1973, the court changed the
17 definition for obscene materials to replace the "utterly
18 without redeeming social value" component with a serious
19 value test, and I think it's safe to say from my
20 experience that the vast majority of States that do have
21 these laws incorporate the Miller standard per se. And I
22 would agree with one thing that a Representative said, the
23 "harmful to minors" law is not often enforced, but it is a
24 problem, and one thing that deters enforcement of the law
25 is the fact that the standard of proof is difficult. It's

1 difficult enough as it is, I might add, and there's no
2 reason for you to make it any more difficult.

3 In conclusion, I would say that this bill
4 does not attempt to set sail on unchartered constitutional
5 waters. Live performances, video tapes, and depictions of
6 sadomasochistic abuse and bestiality are all the proper
7 subject matter of a State obscenity law. The "utterly
8 without redeeming social important" test in the
9 Pennsylvania statutes definition of "harmful to minors"
10 was abandoned by the Supreme Court in 1973. Passage of
11 House Bill 1141 is a much needed and constitutional update
12 of the Pennsylvania obscenity statute.

13 If you have questions, I will answer.

14 CHAIRMAN CALTAGIRONE: Thank you.

15 Before we get into the questions, if we
16 could, I would like to go on to the next presenter, which
17 would be Carl Brown, and then we will take Francis
18 Viglietta. Then we'll open for questions.

19 MR. BROWN: Mr. Chairman and other members
20 of the committee, I'm the State Coordinator of
21 Pennsylvanians vs. Pornography, and I wish to thank you
22 all today for having us and for considering this bill
23 which is very dear to our hearts. We believe that it is
24 essential if certain things that are going on in this
25 State are going to be successful. A similar situation

1 existed in North Carolina where the obscenity code there
2 was updated this way and a couple other bills were also
3 presented. And as a result of that, a young U.S. Attorney
4 in North Carolina, and this was a Bible Belt State, but
5 what happened was when Atlanta was cleaned up, most of
6 what was in Atlanta went into North Carolina. And in
7 bringing in a Federal/State/county task force, this
8 assistant U.S. Attorney, who is Rob Showers, managed to in
9 less than two years put the forces together where over 500
10 adult book stores, massage parlors, X-rated video stores,
11 et cetera, et cetera, et cetera, were legally driven out
12 of the State, and they made a huge profit. I believe it
13 was something like \$500,000 over and above all the costs
14 of this from the entire State.

15 In western Pennsylvania, we already have a
16 Federal/State/county task force in place. I was hoping
17 that John Driscoll, who I anticipated being here but I
18 don't see him here today, who was one of the founders of
19 this would be here who at that time was president of the
20 District Attorneys Association of Pennsylvania. It has
21 been in operation, in fact it came into operation in
22 November of 1987 at an MIM, Morality In Media, regional
23 workshop. We have six regions in Pennsylvanians vs.
24 Pornography, and in case Frank Wagner didn't tell you who
25 we are, I'll get to that in a minute.

1 This was to educate key people from every
2 county, and there was something like nine district
3 attorneys, many police chiefs, citizens, chief leaders,
4 organization leaders, the U.S. Attorney Jerry Johnson,
5 some State Police, some investigative detectives from the
6 district attorney's offices, Paul Mageadie of the National
7 Obscenity Law Center was there giving part of the problem,
8 and we had a luncheon at which we sat at a table, and I
9 had just had meetings with Rob Showers at the Justice
10 Department in Washington immediately preceding this and
11 brought back a message that was so encouraging that they
12 decided on the spot that John Driscoll and the lawyer from
13 -- who was an assistant district attorney at one time in
14 Butler County on the Butler case, and Jerry Johnson would
15 take co-chairmanship of forming the 25 county western
16 district of Pennsylvania into a Federal/State/county task
17 force against obscenity.

18 As of March 4, 1988, they all met in Butler,
19 at the request of Dave Cook, the district attorney there,
20 and they've been investigating ever since and set their
21 goals, and we are led to believe that in the very, very
22 near future there will be some major indictments there.
23 This investigation that was alluded to by Jim West, I
24 think, I'm not sure because I sure don't have all the
25 facts and I don't have any facts on what's going on, but

1 we understand that the investigation from western
2 Pennsylvania has spilled over into the middle district and
3 also over into the eastern district. I know that we've
4 had meetings with Jim West, he's been most cooperative,
5 and that he is looking forward to forming the 32 counties
6 in the middle district into a Federal/State/county task
7 force. We've had meetings with the U.S. Attorney's Office
8 in Philadelphia for the eastern district, which has 10
9 counties of the 67 counties. If successful, we hope in
10 the near future that there will be a Federal/State/county
11 task force in all 67 counties across the State of
12 Pennsylvania and that some of the results that were
13 accrued in North Carolina will be here.

14 To just answer a couple of questions before
15 I go on with this, there was some question about can you
16 show relationship between crime and pornography? In
17 Cincinnati, when it was cleaned up, Jerry Kirk, Dr. Jerry
18 Kirk, who founded the National Coalition Against
19 Pornography as a result of his experiences in working with
20 the district attorney there and a very large civic
21 organization there to clean up downtown Cincinnati. When
22 they cleaned this up of all the adult book stores and the
23 X-rated video stores and the massage parlors and on and on
24 and on, they saw in the next year, and this has been
25 documented, that crime in that intercity fell 83 percent

1 in one year's time after the intercity was cleaned up.
2 This included rape, child molestation, auto thefts,
3 muggings, every form of crime. Once you take the crud out
4 of an area, the people that go for that crud, that hang
5 around to that crud, that are drawn to that crud, just
6 don't come anymore. And crime dropped 83 percent in one
7 year's time. A very similar but not quite as high number
8 in Oklahoma City when they cleaned up their intercity. We
9 understand that, at least the cities claim, there are 20
10 of them in this country that are clean at least of
11 hard-core pornography, at least in the intercities, but it
12 is a continuing thing.

13 Here in Pennsylvania, Cambria County, with
14 two district attorneys having fought through it, is clean.
15 Crawford County, with two district attorneys having
16 succeeded each other in keeping it clean, is clean, and
17 just this past week Warren County got rid of its last
18 X-rated video store and they don't have anything up there
19 that we know about. So there are three counties we know
20 of for certain in Pennsylvania that are clean. We
21 understand that Utah is clean, North Carolina is coming
22 very close to it, and Florida is sure trying hard to be a
23 clean State. It's got a way to go, but it's trying very
24 hard.

25 Now, just to backtrack a little bit in case

1 I wasn't here in the beginning of Frank's marvelous
2 testimony, and I'm from the eastern region and I wanted to
3 just make sure that you do know what Pennsylvanians vs.
4 Pornography is and who we are. We started -- we were born
5 a little over two years ago here in Harrisburg at the
6 Sheraton East at a Congress Against Pornography in which
7 the 28 then existing anti-pornography groups in the State
8 came together for the first time, about 100 people with
9 several organizations looking on, such as the Pennsylvania
10 Federation of Women's Clubs and many other organizations,
11 to see if something could be done in a joint effort,
12 because most of these organizations felt that they were
13 not very successful in what they were trying to do when
14 they were doing it alone. And this had been a dream of
15 one of the founders of Morality In Media in New York City,
16 that Pennsylvania might become the model State for the
17 entire nation because, number one, it had rather good
18 obscenity laws compared to what other States had.

19 Secondly, four years ago, for the first time
20 in this country, and it was only four years ago, something
21 like the heads of 50 denominations stood up, wrote a
22 proclamation against obscenity and for prosecution, and it
23 was the first State to have this happen in.

24 And third, there were these 28 separate
25 groups of all different backgrounds, American Family

1 Association groups, Citizens for Decency through the Law
2 groups, Morality In Media groups, National Coalition
3 Against Pornography groups, all the national organizations
4 had groups here. It was so overwhelmingly accepted that
5 the people there gave the name Pennsylvanians vs.
6 Pornography to this coalition, to this campaign, and the
7 goal simply was as we were discussing this morning, public
8 awareness, public information, and urging the law
9 enforcement officials to prosecute those who break the law
10 and to enforce the laws. Very, very simple goals and very
11 legal goals. In fact, even the "versus" in the
12 Pennsylvanians vs. Pornography is the small legal "V".

13 From there, we have grown to be more than
14 115 organized - local, State, national, regional. We
15 represent or we work with the Concerned Women for America,
16 with 26,000 members in this State; with the Knights of
17 Columbus, with 93,000 members in the State. We now have
18 78 anti-obscenity groups in the State in most of the
19 counties. I call your attention to that stack of papers
20 over there. That is just about half. They just keep
21 coming in. Last fall, for the White Ribbon Campaign, we
22 asked people to have their relatives, their friends, their
23 citizens, their church members, sign petitions simply
24 urging the district attorneys and the police chiefs to
25 enforce the laws and to prosecute those who break them. I

1 believe there's something like 150,000 names on those.
2 There's 49 pounds of them right there, and we have an
3 equal number that haven't been sorted out yet back in my
4 office in Pittsburgh in the headquarters.

5 This is just one of the indications of
6 community standards in the State. We have grown, as I
7 say, to all these organizations, the Pennsylvania Catholic
8 Conference, the Pennsylvanians for Biblical Morality, the
9 Pennsylvania Council of Churches, the Eagle Forum, the
10 Church Women United have just come in. In fact, I'm
11 flying from here to Philadelphia to meet with them this
12 afternoon, later this afternoon. I just can't even begin
13 to tell you. I think I said the Concerned Women for
14 America. The eight Catholic diocese, the Pittsburgh
15 Presbytery with 182 churches has just come into it with
16 our White Ribbon Campaign.

17 Last fall, as a way of very easily
18 demonstrating and very visually demonstrating community
19 standards, we are not proving them but we're demonstrating
20 them, and the district attorneys I've talked to, which are
21 many of them, are very grateful for this campaign. We had
22 over 500,000 cars in Pennsylvania during National
23 Pornography Awareness Week with white ribbons flying from
24 their antennae as a statement of wanting to stand for
25 decency and against pornography. We had thousands of

1 bows. We don't even know how many bows, we don't know how
2 many lapel bows, but we did distribute - there were many,
3 many more of these on cars, but we distributed and sent
4 out for the orders from churches and organizations all
5 over the State. I believe 55 of the 67 counties
6 participated in this.

7 It was born here in Butler, and we took it
8 as a State. Morality In Media got all the other national
9 organizations to take it on, and all the 50 States last
10 year and 220 cities celebrated White Ribbon. The largest
11 event was in Miami where over 3,000 people were in the
12 Motorcade For Decency there, and the Governor and the
13 Attorney General were both in the motorcade. We had six
14 rallies here and very large motorcades, and the one in
15 Pittsburgh would have been bigger than this but we had a
16 typhoon right in the center of the day, so we didn't quite
17 match the Miami one, but we came close, despite the
18 weather.

19 The district attorneys tell us that we are
20 giving them, through these petitions and through the white
21 ribbons, that we are giving them some real visible
22 evidence that they can use in their cases to help improve
23 community standards. They are even more grateful for the
24 education we're doing because they're starting to get much
25 better educated jurors on these cases. When we started a

1 little over two years ago, there was one case, the Butler
2 case, that we knew about in all of Pennsylvania. One
3 obscenity case. I believe there have been at least 12
4 since then, and there are several in progress right now
5 and several pending, plus the Federal/State/county task
6 force.

7 We believe that this law is essential, this
8 1141 is essential, as a cornerstone for the
9 Federal/State/county task force. We believe there are a
10 couple other areas that will have to be looked into
11 legislatively, and we hope that you will give us an ear
12 when we are able to talk to you about those, but that's in
13 the future.

14 Excuse me while I just check and make sure
15 where I am on this little agenda. I have given for you,
16 and I'm not going to go into it because I'm not an expert
17 in it, but I have given you two summaries of where
18 obscenity, the research, even professionals, I just heard
19 one recently, the clinical psychologist was on with two
20 researchers on this subject, and the researchers were not
21 public relations people, they were researchers, and they
22 had obviously done some very honest research in this, and
23 while they were there to try to talk about their research,
24 this psychologist was saying, "But there's no body of
25 evidence to support any of this." Well, just for your

1 information, I've given you Dr. Victor Cline, who was in
2 that tape, I've given you his summary of the research in
3 this country, just a brief summary of the research that's
4 going on and the results of that research, and I've also
5 given you Dr. Doug Reed's summary of this, which is a
6 little more complete but less information about it, just
7 sort of the conclusions, so that you can have both of
8 these for your file so that you will know that there is a
9 body of research out there that does really give quite a
10 significant causal effect to pornography and crime, and
11 particularly crime against women and children and the
12 family. Much of what you heard on the TV will be covered
13 in that.

14 There are also two other things, and one of
15 them is in the report, and that is that there is a study,
16 it's actually a 20-year study in Michigan by the State
17 Police and some researchers through all of their sex crime
18 backgrounds in their files and they found a stunning, and
19 I think very low and very conservative, 41 percent of
20 these files showed that there was an absolute direct
21 connection between pornography and the sex crime that was
22 committed - the rapes, the child molestations, whatever.
23 In a Chicago area, in a more recent study, just a two-year
24 study, it was 69 percent. I don't think it was quite as
25 conservative an estimate, but it was 69 percent.

1 Just a moment until I see what I'm doing
2 here. Okay, there is a very, very big problem which some
3 day may have to be addressed here. We are trying to raise
4 the funds to bring together Dr. Victor Cline and many
5 other national experts with the National Obscenity Law
6 Center in New York City. You heard some reference to the
7 fact that there are all these victims out there. Well,
8 now we're told by the profession that it is the fastest
9 growing field of counseling and therapy in the country is
10 for sex addiction and sex abuse victims and those who have
11 done it. These are very, very, very sick people.

12 We're in a position right now, as marriage
13 counseling was a few years ago, where there is not one
14 certification anywhere in this country, particularly in
15 this State, but anywhere in this country for anyone
16 claiming to be a sex therapist. They are dealing with
17 women and children who are going to need long-term help to
18 overcome what has happened to them so that they themselves
19 don't do this to others. We are told by the FBI and many,
20 many other sex studies that two-thirds of the children who
21 are sexually abused on average will become sex abusers to
22 children when they grow up. We are also told by the FBI
23 and others in this research that on average before a child
24 molester is caught, he will have molested 60 children, and
25 it's usually a "he," on the first offense. Before he

1 dies, he will on average have molested 360 children. If
2 the first 60 children, if 40 of those become child
3 molesters and they're not caught until they've molested 60
4 children, that's 2,460 children this one man has just in
5 one generation gotten into child molestation. This is
6 from statistics from the FBI, from the Federal Customs,
7 from the research that's in those reports I've given you
8 there.

9 It is very important that we get some kind
10 of certification. This is way down the road, but we have
11 to do it. I get calls anywhere from three to seven times
12 a day every day of the week. Any time I'm in the media
13 people will stop cars and go to the phones to tell me
14 right on the air that they have been molested. When I
15 hold meetings, right over here in Camp Hill two weeks ago
16 one woman stood up in a leadership conference and said, "I
17 can't go on without speaking," and told of the
18 three-generation abuse - her grandfather, her father, and
19 her husband all abused her in one way or another and were
20 all addicted to pornography. It is everywhere. Anywhere
21 I go, any time I lift up a phone it is there, and I don't
22 know where to send these people. I have worked with
23 professional organizations and I know of three people in
24 this State that I might be able to send people to. I don't
25 believe any of them are even accepting a new client for

1 the next six months, they are so swamped, and many of
2 these clinics don't know what they're doing. It is a
3 very, very big problem, and it's not helping the victims
4 at all, including the abusers who are addicted to
5 pornography.

6 There is something else I want to talk
7 about. I briefly discussed the White Ribbon Campaign to
8 you. To give you a little idea of where it went, this is
9 the new kit, national kit, for this year. It gives all
10 kinds of information and help. This is the Pennsylvania
11 vs. Pornography kit that we sent out last year to 25,000
12 churches, organizations, and individuals. The result of
13 this was the 500,000 white ribbons, more than that,
14 actually. Something in the neighborhood of 5,000-plus
15 church services, several hundred community efforts to have
16 films and expert speakers to let their citizens know what
17 this is all about, educating them. And it has been most
18 successful here and across the country.

19 We also, as a part of that, were able to
20 raise funds for the Westinghouse Electric Corporation
21 Foundation and from the PPG industry's foundation and from
22 individual citizens groups, and we were able to spend
23 \$20,000 last year to see that every prosecutor's office,
24 every district attorney's office, received three books
25 that the Justice Department says cuts prosecution by 95

1 percent in research time and costs by 95 percent. John
2 Driscoll, then the president of the District Attorneys
3 Association, said that you can't win a case without these
4 three books. It's the two-volume obscenity law recorders
5 which details every case and every law in this country in
6 obscenity from 1808 to 1985 and is being updated, and the
7 updates will be sent to all the district attorneys. And
8 also Weaver's handbook, prosecutor's handbook, which
9 details the handling of these cases. We are trying in
10 every way we can to work with every district attorney and
11 help them and to give all kinds of aid to them.

12 A final thing on what is happening across
13 the country and here is, again, the white ribbon, and this
14 has brought all of the major organizations in the country
15 together. This is the CDL, Citizens for Decency through
16 the Law, Victory Agenda. All of the leaders met with Dick
17 Thornburgh, the Attorney General, in Washington recently
18 and he seemed to accept this whole thing very much. There
19 are three major points federally. There are points here.
20 I'll be glad to see that you get a copy of that for your
21 committee, if you would like to have that.

22 Finally, what else could be done? We are
23 hoping that one of the things that was done in Butler was
24 when this book store was closed legally, and if you know
25 anything about the case, they bought the store. Two

1 churches put up their property as collateral, borrowed
2 \$150,000, the citizens' group went out at the Sheriff's
3 sale and bought 110 acres on Route 8 outside of Butler
4 where this adult book store was and then took 2 1/2 years,
5 they were able to sell off most of the property at a
6 profit because it took \$60,000 to get them evicted. It
7 took 2 1/2 years. They have no lease, they paid no rent,
8 and they finally took, and all the continuances and
9 everything else that went on with this.

10 In the meantime, Dave Cook, the district
11 attorney, took them into court and, yes, the clerk there,
12 the manager of the store who was a grandmother, unless her
13 appeal works, is going to go to jail for six months. They
14 would have liked to have done it to the owners, but this
15 is where a Federal/State/county task force is so
16 essential. After two years of investigations and five
17 phony addresses and three phony names and all sorts of
18 things, it finally got into Delaware, and they could go no
19 further with their investigation. They believe Reuben
20 Sterman owned the inventory in this store but they could
21 never prove it, so all they could do was just go after the
22 clerks. And they were unfortunate to stay around long
23 enough to get the second felony conviction.

24 What they did in Butler is because this
25 store said, okay, if you get us out of this spot, we're

1 going to go put it somewhere else in Butler County, so
2 they went around to every municipality and got them to
3 pass constitutional zoning codes, health codes, and
4 nuisance ordinances that when the store was finally -- and
5 this had all the peep holes and live girls and everything
6 in it -- when it finally was closed, they had nowhere to
7 go except to adjoining counties which were warned but they
8 didn't take them to heed and they didn't have the zoning
9 codes, they didn't have a nuisance ordinance, they didn't
10 have the health codes, so there it was.

11 Anyway, we had a marvelous thing last year
12 on March 7th with Senator Gibson Armstrong who called an
13 Obscenity Conference for Lancaster County, 340 leaders of
14 the county, 37 police chiefs, 54 pastors, heads of every
15 organization, all the school boards, everything were
16 there. He had people from the White House, from the FBI,
17 from Federal Customs, from the children's county services,
18 from the women's county services, a county detective, whom
19 I had to follow. After he said there's no way to clean
20 this up, he just told them that he was up to here in
21 incest and all sorts of things in Lancaster County and
22 said there's no way to clean this up, and I had to go on
23 after this man. At any rate, I was able to convince them
24 that we could do some things.

25 We're asking legislators to go back to their

1 counties, we'll be very happy to work with them on
2 county-wide conferences on obscenity to educate their
3 constituents about what this is all about, and we're also
4 asking them to work with the county people like the
5 commissioners and the district attorney to call
6 conferences on municipal law so that the Solicitors all in
7 one shot can hear someone like Bob Peters or a John
8 Driscoll who can give them in one setting everything that
9 they need to have in municipal laws to help them keep this
10 out of their counties or help get rid of them, and I thank
11 you for listening.

12 CHAIRMAN CALTAGIRONE: Thank you very much.

13 I do have a previous commitment that I have
14 to attend to. At this time, I would like Chairman
15 Moehlmann to come up and continue the committee hearing.

16 And I do want to mention that we do have
17 this bill on the calendar for consideration, May 8
18 committee meeting, and I hope with the help from the
19 committee that we may be able to consider it positively to
20 vote it out to the full House for consideration. And with
21 that, I want to thank you all and I'll be leaving and
22 Chairman Moehlmann will run the rest of the hearing.

23 MR. BROWN: Mr. Chairman, I forgot one
24 thing. Dorn Checkly, who is our Southwest Regional
25 Coordinator, I'd like to have it in the record I guess

1 sent all of you -- I just received it myself -- his
2 testimony on this.

3 CHAIRMAN CALTAGIRONE: Certainly.

4 (Whereupon, Representative Moehlmann assumed
5 the Chair and conducted the rest of the hearing.)

6 ACTING CHAIRMAN MOEHLMANN: Thank you, Mr.
7 Brown.

8 Would you like to proceed, Mr. Viglietta?

9 MR. VIGLIETTA: Yes. Thank you, Mr.
10 Chairman.

11 My name is Francis Viglietta. I'm the
12 Director of the Justice and Rights Department for the
13 Pennsylvania Catholic Conference. My testimony today is
14 being submitted on behalf of the Pennsylvania Conference
15 on Interchurch Cooperation, a statewide ecumenical
16 organization comprised of representatives from 10 Catholic
17 dioceses and 46 Protestant church bodies in Pennsylvania.
18 In all, PCIC member churches serve the spiritual and
19 pastoral needs of over six and a half million people in
20 our Commonwealth. Since others testifying today have
21 addressed the extent, the nature, and the legal aspects of
22 the pornography problem, my brief remarks will focus on
23 the moral and social implications of the problem.

24 I ask you to forgive me if I'm a little bit
25 repetitive of some of the things that have been said

1 before, but previous speakers have stolen my thunder,
2 whatever thunder was there to start. But I want to speak
3 from a Christian perspective. And from this perspective,
4 pornography in any form must be clearly and forcefully
5 condemned because it represents a philosophy that is
6 directly contrary to God's high purpose for human love and
7 sexuality.

8 Proper expressions of sexuality are
9 extensions of God's love for each of us, a love that calls
10 all people to mutual respect and concern. Pornography,
11 however, distorts the goodness and beauty of human love
12 and instead preaches a doctrine of lovelessness and
13 self-gratification. Religion and morality are
14 indispensable supports of our democratic form of
15 government, but pornography undermines those beliefs and
16 values which are essential to the stability of any
17 society.

18 Our testimony goes on to refute the claims
19 that pornography is victimless and harmless, and I leave
20 that to your own reading, since you all have a copy of the
21 text. Let me highlight some of the main points. Our
22 conclusion is that everybody in society is a victim of
23 pornography to a greater or lesser extent because
24 pornography corrupts the entire society by violating
25 society's greatest asset, and that's the integrity and

1 dignity of every human being. Our testimony proceeds to
2 talk about the availability and leaders of the church
3 about the availability of pornography. In effect,
4 pornography has become a mainstream commodity. Previous
5 speakers have attested to that.

6 Our particular concern is with the use or,
7 if you will, the abuse of modern technology where lie the
8 X-rated video cassettes, the suggestive rock music videos
9 and songs, some cable television programming that is not
10 intended for children. These are invading our homes
11 today. What is the problem with this? If you believe
12 that the media has the capacity to teach and to moralize,
13 you must be concerned about some of the messages invading
14 our homes and communities because our children and adults
15 are being taught, and being taught a system of values
16 through the modern communications media network.

17 We want to state quite simply our support
18 for House Bill 1141. Realistically, it's not going to
19 solve the pornography problem but it does constitute an
20 appropriate step in the right direction. We urge the
21 members of this committee to act on it and send it to the
22 full floor as soon as possible.

23 And finally, Mr. Chairman, the Pennsylvania
24 Conference on Interchurch Cooperation is grateful to you
25 and to the members of this committee for holding these

1 hearings today and for allowing so many people to express
2 their views. Pornography is a serious problem and must be
3 treated as such, and with this in mind, we ask you to
4 remain attentive to the problem, and within the context of
5 protecting legitimate first amendment rights, to act upon
6 House Bill 1141 and any other anti-pornography bills that
7 will come before you in the future.

8 Thank you, Mr. Chairman.

9 ACTING CHAIRMAN MOEHLMANN: Thank you.

10 I seem to be hearing that with regard to
11 adult book stores and magazines that are patently obscene
12 that under the present Supreme Court standard for
13 determining what is obscene, we can deal with that, under
14 present law. But that doesn't appear to be true of the
15 video, and I'm really talking about cable TV, I guess. Is
16 that true with what we have coming into our homes now with
17 cable TV? Do we need, in addition to State reaction, also
18 a reaction by the Federal court to tighten up the
19 standards? I would ask that of Mr. Peters.

20 MR. PETERS: Well, we think the indecency
21 standard should apply to cable, but currently there is no
22 Federal law that does that, but there is a Federal
23 obscenity law that prohibits obscene cable transmissions,
24 certainly in the interstate. I think it's all cable
25 because the Cable Act applies to, I believe, both intra

1 and interstate. We recommend obscene or indecent on cable
2 porn, but it's a question that the Supreme Court has not
3 finally decided and it could decide the other way. But
4 this bill does not pertain to indecent matter. This is an
5 obscenity bill and I wouldn't want to in any way infer
6 that we're going beyond that.

7 ACTING CHAIRMAN MOEILMANN: Yeah, well, the
8 primary purpose of this hearing deals with this House
9 Bill, but may not be the entire purpose. Are there cases
10 before the Supreme Court now that are in the process of
11 decision having to do with cable TV?

12 A. No. There was a Utah law that we did not
13 like. It was an indecency cable law which was struck down
14 by the 10th circuit and the Supreme Court affirmed that
15 summarily without giving reasons, and I think it's an
16 honest analysis to say that therefore, the final question
17 on indecent cable porn is yet to remain open. It may be
18 that there will be a middle road on indecent cable, that
19 basic cable would be covered by indecent, but where people
20 subscribe to a Playboy, perhaps in those cases an
21 obscenity standard will be all that the court will permit.
22 The Utah law did not address those issues and the court
23 did not explain its averments. The district court
24 indicated that it found the law vague and overbroad and by
25 summarily affirming the court didn't explain what it

1 didn't like about the law. So I think it's still open. I
2 would say that their decision on the Dial-A-Porn issue may
3 give us a real indication of what the final answer will be
4 on the indecent cable porn.

5 ACTING CHAIRMAN MOEHLMANN: Did you wish to
6 respond, Mr. Viglietta?

7 MR. VIGLIETTA: Just to add to what Attorney
8 Peters has mentioned, Mr. Chairman. As you recall, a few
9 sessions ago there was a bill introduced in Pennsylvania
10 that would regulate cable programming and it did include
11 an indecency factor. That bill got through the Senate by
12 an overwhelming margin but it died in this committee, in
13 the House Judiciary Committee, at that time. So there was
14 an attempt a few years ago to regulate cable programming
15 being broadcast in our Commonwealth, and I suspect that as
16 time goes by we may take up that issue again.

17 ACTING CHAIRMAN MOEHLMANN: I wouldn't be
18 surprised. Some of the names and faces have changed.

19 Representative McNally.

20 REPRESENTATIVE McNALLY: Yes.

21 BY REPRESENTATIVE McNALLY: (Of Mr. Brown)

22 Q. Thanks very much for your testimony. I
23 would like to ask -- is it Mr. Brown?

24 A. Yes.

25 Q. You indicated in your testimony that in

1 intercity Cincinnati after there was a clean up of a
2 variety of places engaging in obscenity and the
3 commercialization of pornography that there was an 83
4 percent, I think it was the figure you cited?

5 A. Yes, this is the figures that have been
6 published on that, yes.

7 Q. And so, you know, I have always admitted
8 that there was a relationship between obscenity and
9 violence. I have not been able to determine, including
10 your own statistics doesn't show any evidence of a causal
11 relationship, and so my question is, of the people who
12 were engaged in violence in intercity Cincinnati prior to
13 the clean-up, how many discontinued their violence after
14 the clean-up?

15 A. I have no idea. I can't answer that for
16 you.

17 Q. I figured that you wouldn't, and so, I
18 mean, that really doesn't answer the question as to
19 whether these people were compelled and were caused to be
20 violent by virtue of the fact that they were also drawn
21 towards obscenity.

22 A. Well, I think an 83-percent drop says
23 something.

24 Q. Well, it says that people who are violent
25 are also drawn towards obscenity. It doesn't say that the

1 obscenity causes the violence.

2 A. Well, in the two surveys of research done
3 in this country, there is a very direct causal link to
4 pornography use and crime. Also the FBI, in a recent
5 study, I suppose brought on by the Bundy case,
6 investigated 39 recent serial killers and they found that
7 definitely 28 percent of them were, and they themselves
8 said that it was the prime cause of their getting into
9 this whole area, that it forced them to do this. They
10 were addicted to pornography, and I believe all 39 used
11 pornography, but 28 percent admitted addiction. And it
12 was a prime cause of their crimes.

13 MR. PETERS: If I may respond just two quick
14 points. There are other governmental justifications for
15 obscenity laws.

16 REPRESENTATIVE McNALLY: I agree.

17 MR. PETERS: There's a second thing, at
18 least from a legal perspective, the Supreme Court dealt
19 with the question of whether there needs to be scientific
20 proof of a causal relationship in the Paris Adult Theater
21 case, and they said that that was not constitutionally
22 required. So I think what they said is that you as
23 legislators can come to a reasonable conclusion that there
24 is a connection between obscene materials and anti-social
25 behavior, so at least from a constitutional standard it's

1 not an issue that has to be addressed, although certainly
2 it's one that socially would concern us.

3 REPRESENTATIVE McNALLY: Well, I agree with
4 the points that you have made, but to repeat a point that
5 I have made earlier, you know, I would be concerned that
6 with this legislation we don't promise more than we can
7 deliver, that we don't make promises that we can't keep.
8 And that, you know, one of the promises that appears to be
9 made with this legislation is that we will reduce sexual
10 violence if we reduce obscenity. And I'm simply saying
11 that notwithstanding the fact that I am a cosponsor of
12 this legislation and I'm going to vote for it and I think
13 it will pass and it ought to pass for some of the reasons
14 that have been stated, I don't believe that we can promise
15 to the people of this Commonwealth that if we reduce
16 obscenity we're going to reduce sexual violence. I see
17 violence of whatever nature as a result of people who are
18 frustrated, who are angry, or who have other needs that
19 are not being met and the outlet is violence. And
20 reducing obscenity does not address those needs. It
21 doesn't, you know, it doesn't solve the problem that those
22 individuals have and, you know, so that notwithstanding
23 the fact that we have to do something about obscenity, we
24 also -- I think there is another problem which will remain
25 and which needs further investigation. And I just hope

1 that you'll keep that in mind that there is still an
2 agenda to be fulfilled after we pass this bill.

3 MR. BROWN: We're going to be working for
4 years, I'm afraid.

5 ACTING CHAIRMAN MOEHLMANN: Representative
6 Birmelin.

7 BY REPRESENTATIVE BIRMELIN: (Of Mr. Peters)

8 Q. Attorney Peters?

9 A. Yes.

10 Q. I understand that you're the man who really
11 drafted this piece of legislation?

12 A. I drafted the -- I prepared a draft. There
13 were what I consider minor changes made subsequent to
14 that, but I prepared the basic draft of the bill, which is
15 reflected in the one you have, and I don't personally
16 think that any changes that were made would have any
17 constitutional significance. It's more how your mind
18 thinks, you know, in terms of what words you would use or
19 what your position is.

20 Q. When Attorney West spoke to us he mentioned
21 to the committee the possibility of seizure laws where you
22 take the assets of those who are guilty of violating this
23 statute, and this is not included in this bill and I was
24 wondering if when you drafted it you had considered
25 including that?

1 A. I did not personally. We had a conference
2 and there was a bill that had been prepared that included
3 everything including the kitchen sink, so to speak, and
4 yet when we sat down and talked, there were about four or
5 five problems that came up, and ridiculous as it may be,
6 and Frank Wagner would be the one, I believe, who could
7 verify this, there have been prosecutors who have refused
8 to prosecuted I think either S&M or bestiality because it
9 wasn't specified, and then the problem of obscene
10 performances and "harmful to minors" materials. So it was
11 my suggestion that instead of preparing a bill that would
12 include everything but the kitchen sink, why don't we
13 prepare a bill that addresses the problems that you people
14 are facing in the field? So I did that this is pretty
15 much, you know, it's a reflection of that decision that a
16 group of people made.

17 So the forfeiture question to me didn't even
18 come up, and I would say this, that that's an issue that's
19 probably going to be addressed by the Supreme Court very
20 shortly because there are a number of Federal RICO cases
21 where property has been seized and I suspect they will be
22 back up to the court because those issues weren't
23 addressed in the first RICO case that was just decided.
24 I'd say within a year or so, if not sooner, those cases
25 will be back up to the courts. And if they uphold

1 forfeiture, then that's a decision that you as legislators
2 can make in the future. I mean, you can do it now. Many
3 States permit it, but it's still, I think, an area where
4 what you can seize is open to the question and when.

5 MR. BROWN: Excuse me. May I make ask a
6 question there on this? Wouldn't it be more practical
7 with the State RICO that we have to have a forfeiture in
8 that?

9 MR. PETERS: I don't think your State RICO
10 includes real strong forfeiture.

11 MR. BROWN: No, it doesn't at all. I'm
12 wondering if there shouldn't be something added to that,
13 rather than this.

14 ACTING CHAIRMAN MOEHLMANN: It might be a
15 place to start.

16 Representative Heckler.

17 REPRESENTATIVE HECKLER: Thank you, Mr.
18 Chairman.

19 I had one minor point which I had mentioned
20 earlier, looking on page 6 of the bill, what I believe is
21 intended to be the incorporation of the Miller standard
22 with regard to the definition of what materials are
23 harmful to minors. It would appear to me that those
24 various criteria: "lacks serious literary, artistic,
25 political, educational," and it should be "or scientific

1 value for minors" shouldn't it with that? Would that be
2 correct?

3 MR. PETERS: The bill that we prepared
4 contains the word "or." We did that because your adult
5 obscenity standard includes the word "or" and Miller used
6 the word "or." We are of the opinion that the word "and"
7 may be more accurate, and when you addressed the question,
8 I tried to think of an analogy, and it may be a little bit
9 ridiculous of sorts, but most of us had mothers that made
10 very good potato soup, but let's assume we had a mother
11 that made the worst potato soup, and the way to determine
12 that would be, the test would be that if the potato soup
13 lacks sufficient potatoes, salt, flour, and eggs it's
14 Mom's because that's the bottom. Now, if you put the word
15 "or" in there, it might indicate that if it just lacked
16 salt it would be the worst potato soup. But it must lack
17 all four. So to us the word "and" makes it clear that in
18 order to be obscene, it must lack all four qualities -
19 political, artistic, literary and scientific. But the
20 Miller court used the word "or" and we did use the word
21 "or" in the bill that we prepared, and I certainly
22 wouldn't object to going back to that. But I think the
23 word "and" is permissible. I mean, it's a mental
24 gymnastics to me, you know, but the idea is that it must
25 lack all of them, and if you have the "or," it's arguable

1 that if it lacked just one could it be found obscene.

2 Q. Well--

3 A. So I would not -- we certainly wouldn't
4 object, and the bill we prepared used the word "or," but
5 we're not opposed to the word "and" either, for the reason
6 that I gave. We think it actually reflects better what
7 the court intended because it expresses the view that it
8 must lack all of these things in order to be obscene.

9 Q. You're right. I see what you mean about
10 mental gymnastics. I think I was one back handspring
11 behind you and I think I'm now with you and I agree. I
12 was concerned that by not tracking the Miller language we
13 were going to go through this exercise and have something
14 that would not ultimately pass muster, but I see what
15 you're saying that really you're creating a slightly --
16 arguably a slightly heavier burden on the prosecutor, but
17 as a practical matter, what we're all understanding is if
18 this material has any of these criteria, presumably it
19 would be deemed to have some merit as opposed to be
20 utterly without. Okay, thank you.

21 REPRESENTATIVE HECKLER: That's all I have.

22 ACTING CHAIRMAN MOEHLMANN: Are any other
23 questions?

24 (No response.)

25 ACTING CHAIRMAN MOEHLMANN: Mr. Peters, Mr.

1 Brown, Mr. Viglietta, thank you very much for giving us
2 your time and the benefit of your expertise.

3 MR. BROWN: Thank you for having us, Mr.
4 Chairman.

5 MR. PETERS: Thank you.

6 MR. VIGLIETTA: Thank you.

7 ACTING CHAIRMAN MOEHLMANN: We have now, I
8 understand, a copy of the Bundy tape. We will show you
9 that and you are certainly all welcome to remain for that.
10 And after that we'll adjourn.

11 (Whereupon, the Bundy tape was shown.)

12 ACTING CHAIRMAN MOEHLMANN: Thank you very
13 much, ladies and gentlemen. This hearing will now be
14 adjourned.

15 (Whereupon, the proceedings were concluded
16 at 2:05 p.m.)

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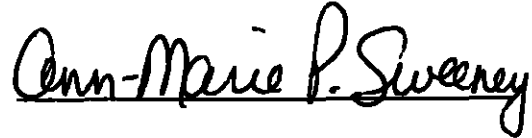
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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the notes
3 taken by me during the hearing of the within cause, and
4 that this is a true and correct transcript of the same.

5 

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