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inflict any physical or serious psychological damage. The real problem now becomes: By spending so much time telling our children about the dangers that surround every strange man, do we perhaps do more harm than good?

My present associates at the Institute for Sex Research—John Gagnon, the sociologist, and Cornelia Christenson, our curator—and I are firmly convinced that lurid warnings are harmful; we feel that they tend to encourage a sort of paranoid fear of all strangers and all men and even of life's situations in general, without really preventing any significant number of these incidents. We are confirmed in this belief by another fact shown by our new report: The man who molests a child is usually not a stranger anyway. Like other crimes, these happen most frequently in the poorer neighborhoods, and the offender is often a man who lives in the same boarding house, or a neighbor or friend of the family, sometimes even a relative—someone whom the child knows and trusts. *The "lurking stranger" is largely a myth.*

If young girls are *over*warned, perhaps older girls are not warned *enough.* Many of the older victims of rape, our studies indicated, had actually invited the attack—not knowingly, but through ignorance of social custom, particularly of the customs of young men of a different social class. For example, a 19-year-old girl went to an amusement park, missed her bus home and accepted a ride from five young men who were riding away from the park in an automobile. By the young men's standards, any girl who got into the car with them was openly offering herself for sexual experience; so the minute she stepped in, rape was inevitable. The young men did not even *think* of the incident as rape, even though she resisted; they believed that her resistance was just part of the game! Another girl of 19 was raped when she foolishly let four boys give her a ride home from a party; a girl of 14 was raped by a group of boys who picked her up in an automobile and got her drunk.

In some neighborhoods and small communities, there happens to exist a sort of unwritten law that accepting a ride, particularly from more than one young man, implies acceptance of sexual relations. A girl who does not know this—say, a college girl who herself comes from a well-behaved suburban community but goes to another town to visit one of her classmates—can quickly get into trouble.

There is a whole range of questions which make the problem of rape a difficult one indeed. For years—perhaps centuries—people have been arguing whether a full-grown woman can be raped at all if she really wants to resist. Among the skeptics, we found in the institute study, are many policemen and prosecuting authorities. A woman who complains of rape is likely to meet with a certain amount of suspicion, especially if, as so often nowadays, she turns out to be taller than the man she accuses.

But our interviews leave no doubt about the answer to the old question. One of the prisoners denied rather convincingly that he had used force; however, when we checked his story, we found that it had required five stitches to close the cut in the young woman's lip. Another who denied using force turned out to have been armed with a kitchen knife; another with a pistol. Certainly any woman who values her life can be raped, no matter how desperately she would like to resist.

There can also be no doubt, on the other hand, that many men who have gone to prison for rape did *not* use force; they were more or less innocent victims of circumstance. Sometimes the young woman submitted willingly, and later, conscience-stricken, changed her mind. Sometimes, when the incident was discovered, the woman claimed rape rather than admit that she had taken part willingly. This seems to happen especially often in the case of a girl living at home, whose parents find out that she has been engaging in sexual activity.

There is also much room for difference of opinion inherent in all the social customs of dating and courtship. According to the rules, the man is supposed to be the aggressor, the woman is supposed to resist—or pretend to resist. At what point are the woman's protestations, which she has been making all along, supposed to be taken seriously? And how is the man to know? It is a game fraught with difficulties and danger. Sometimes a man who ignores the protestations finds himself charged with rape or attempted rape. Sometimes the man who listens too politely is, in fact, alienating a young lady who might have been the perfect wife for him. This is one of the many ironies of our sexual customs and laws—a subject that will be considered in next month's *Journal.*

The true rapist—the man with the knife or the pistol, the California man who went on the prowl in his automobile— is a dangerous, unfeeling man. He regards women as mere objects, and pays little attention to their physical appearance or even age. Sometimes he is a sadist, for whom inflicting physical harm is an important part of his pleasure. Yet, strangely, although he is among the most unlovable of men, he often exhibits a peculiar masculine vanity that leads to his undoing. Some rapists we interviewed were in prison for making this kind of mistake. In their unthinking way they assumed that the woman enjoyed the experience. Sometimes such a man even suggested another meeting. When the woman had the presence of mind to agree—and the rapist showed up for the "date"—the police were waiting. Otherwise he probably would never have been caught.

In many ways the rapist represents an extreme example of the difference between the masculine and feminine attitudes toward sex—a difference that became apparent in our earlier reports, and that also proves to play an important part in understanding sexual offenders. One of the basic problems of our society is the fact that the average man does not understand the psychology and the feelings of the average woman, and the average woman does not understand the sexual drives and psychology of the average man. In a sense, most sexual offenders are men who have the usual masculine misconceptions about the sexual attitudes of women—but in an extreme, exaggerated and distorted form. In next month's concluding installment of this summary of our new report, I shall explain this in detail.

FOR RELEASE
WEDNESDAY, A.M.
MARCH 10, 1965

UNIFORM CRIME REPORTING
1964 Preliminary Annual Release

Preliminary figures for the calendar year 1964 revealed a nationwide rise of 13 percent in the Crime Index over 1963. In actual numbers, this was an increase of more than 250,000 serious crimes for the reporting agencies included in this release. For the country as a whole, all crime classifications were up in volume. The crimes of violence recorded a 9 percent rise in murder, 18 percent in aggravated assault, 19 percent in forcible rape and 12 percent in robbery. The property crimes continued the upswing led by auto theft up 16 percent, larceny $50 and over 13 percent, and burglary 12 percent. Total crime increases were reported by all areas, with cities over 100,000 population as a group up 11 percent, suburban communities 18 percent and rural areas 9 percent.

Table 1

CRIME INDEX TRENDS
(Percent change 1964 over 1963, offenses known to the police)

Population Group and Area	Number of Agencies	Population	Total	Murder	Forcible rape	Robbery	Aggravated assault	Burglary	Larceny $50 and over	Auto theft
Total all agencies	4,742	135,433,000	+13	+ 9	+19	+12	+18	+12	+ 13	+ 16
Total cities over 25,000	734	78,470,000	+12	+13	+16	+12	+16	+11	+ 11	+ 15
Suburban area	1,728	37,352,000	+18	+ 6	+19	+17	+21	+15	+ 22	+ 20
Rural Area	1,094	20,397,000	+ 9	-13	+33	- 2	+16	+ 9	+ 11	+ 2
Over 1,000,000	6	18,634,000	+ 5	+13	+ 9	+ 6	+ 8	+ 3	+ 1	+15
500,000 to 1,000,000	18	11,542,000	+13	+15	+18	+15	+16	+11	+12	+14
250,000 to 500,000	24	8,338,000	+13	+17	+14	+17	+14	+12	+13	+16
100,000 to 250,000	83	12,017,000	+19	+ 8	+32	+20	+33	+19	+18	+15
50,000 to 100,000	201	13,883,000	+16	+19	+28	+19	+24	+13	+17	+19
25,000 to 50,000	402	14,056,000	+18	+ 5	+20	+23	+34	+16	+22	+16
10,000 to 25,000	961	14,938,000	+20	+10	+12	+12	+28	+19	+23	+19
Under 10,000	1759	9,786,000	+19	+ 7	+26	+14	+19	+19	+20	+16

Geographically, the trend in the volume of crime reported was consistent in all regions. All crime categories were up in each section of the country.

Table 2

States by Region	Total	Murder	Forcible rape	Robbery	Aggravated assault	Burglary	Larceny $50 and over	Auto theft
Northeast	+ 13	+ 19	+18	+ 15	+13	+12	+ 9	+18
North Central	+ 10	+ 6	+16	+ 5	+18	+ 9	+ 9	+13
South	+ 17	+ 8	+25	+ 22	+19	+15	+18	+19
West	+ 13	+ 4	+16	+ 12	+11	+11	+17	+13

Arrests for all criminal acts not limited to the offenses above and excluding traffic were 4 percent higher nationally in 1964. While adult arrests were up 2 percent, arrests of persons under 18 years of age rose 13 percent. Nationally, the 10 to 17-year-age group had a 4 percent population growth 1964 over 1963. Increased police activity was disclosed by a 7 percent rise in total arrests in rural areas, suburban 6 percent and cities over 100,000 population 2 percent. Arrests of young offenders were up 10 percent in rural areas and cities over 100,000 population while the suburban communities reported an 18 percent increase in arrests of persons under 18 years of age. Arrest trends when averaged by region disclosed a 7 percent increase in the North Central States, 4 percent in the Northeastern and Southern States and 1 percent in the Western States.

Final crime figures for the year 1964 will be published in the detailed annual Uniform Crime Reports scheduled for release in July, 1965.

Issued by John Edgar Hoover, Director, Federal Bureau of Investigation
United States Department of Justice, Washington, D. C. 20535
Advisory: Committee on Uniform Crime Records, International Association of Chiefs of Police

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Table 3

Offenses Known to the Police, 1963 and 1964
Cities over 100,000 in Population

City	State	Year	Murder, non-negligent man-slaughter	Forcible rape	Robbery	Aggravated assault	Burglary - breaking or entering	Larceny $50 and over	Auto theft
Akron	Ohio	1963	11	16	307	85	2,056	1,406	1,616
		1964	12	25	270	136	1,942	1,594	1,779
Albany	N Y	1963	1	7	33	55	716	278	582
		1964	5	1	45	68	758	248	582
Albuquerque	N Mex	1963	10	27	134	178	2,575	1,145	1,071
		1964	11	31	163	181	2,710	904	970
Alexandria	Va	1963	6	10	98	275	615	482	141
		1964	7	7	111	351	850	546	240
Allentown	Pa	1963			20	6	342	276	140
		1964	1	3	30	15	469	415	136
Amarillo	Texas	1963	19	14	50	172	1,063	841	320
		1964	8	16	88	159	1,577	966	436
Anaheim	Calif	1963	2	27	62	77	1,494	1,068	358
		1964	3	25	76	75	1,836	1,127	457
Arlington	Va	1963	7	26	69	121	941	1,175	386
		1964	6	25	48	156	980	1,268	391
Atlanta	Ga	1963	87	90	563	839	4,082	3,821	3,417
		1964	106	105	591	1,066	5,506	4,010	4,210
Austin	Texas	1963	9	18	71	292	1,519	843	330
		1964	17	38	89	453	1,904	943	450
Baltimore	Md	1963	142	122	1,257	1,893	4,833	4,948	3,793
		1964	144	147	1,385	2,595	4,793	5,007	4,174
Baton Rouge	La	1963	7	20	95	207	1,172	939	333
		1964	9	17	65	149	1,700	1,230	417
Beaumont	Texas	1963	11	8	38	114	774	295	191
		1964	12	15	39	241	748	227	165
Berkeley	Calif	1963	6	19	128	63	1,070	439	294
		1964	6	20	182	91	1,348	516	370
Birmingham	Ala	1963	49	32	196	955	2,873	1,951	922
		1964	58	38	317	1,068	3,448	2,780	1,088
Boston	Mass	1963	44	85	745	780	4,050	2,498	7,921
		1964	52	84	858	884	4,582	2,349	10,202
Bridgeport	Conn	1963	6	5	25	69	1,016	583	668
		1964	7	10	51	45	1,373	687	676
Buffalo	N Y	1963	24	26	291	311	4,166	2,172	2,315
		1964	21	42	379	347	4,096	2,208	2,705
Cambridge	Mass	1963	3	2	43	33	615	576	1,020
		1964	2	3	77	38	826	797	1,379
Camden	N J	1963	8	45	1892	198	1,145	626	825
		1964	5	14	211	166	1,314	563	580
Canton	Ohio	1963	5	9	70	35	517	426	241
		1964	4	1	55	63	508	511	272
Charlotte	N C	1963	25	21	146	504	1,931	1,076	450
		1964	30	36	221	738	2,842	1,417	540
Chattanooga	Tenn	1963	24	11	114	99	1,855	354	329
		1964	21	18	95	121	1,713	346	312
Chicago	Ill	1963	364	1,134	17,042	9,915	32,931	29,430	30,166
		1964	398	1,188	16,832	11,841	31,709	23,426	31,878
Cincinnati	Ohio	1963	33	96	291	661	2,358	1,469	1,025
		1964	38	113	457	702	2,764	1,709	1,088
Cleveland (1)	Ohio	1963							
		1964	116	106	1,691	1,088	8,739	1,042	4,472
Columbia	S C	1963	8	16	47	132	919	691	314
		1964	17	12	54	149	1,315	750	467
Columbus	Ga	1963	15	2	47	36	721	389	640
		1964	15	13	50	42	760	420	587
Columbus	Ohio	1963	17	65	456	630	4,389	2,458	1,364
		1964	25	66	470	593	4,688	2,576	2,088
Corpus Christi	Texas	1963	14	10	83	441	2,028	1,408	337
		1964	12	21	95	382	1,880	1,571	393
Dallas	Texas	1963	113	58	488	921	5,151	1,219	3,103
		1964	149	114	664	930	5,634	1,573	3,788
Dayton	Ohio	1963	16	41	243	369	2,161	733	707
		1964	31	31	264	366	2,331	971	1,058
Dearborn	Mich	1963	1	6	52	18	561	655	376
		1964	2	7	78	28	785	729	449
Denver	Colo	1963	57	163	1,013	493	6,895	3,587	4,143
		1964	33	163	986	537	6,088	3,358	3,450
Des Moines	Iowa	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Memphis (1)	Tenn	1963							
		1964	45	45	352	365	5,837	3,283	1,609
Miami (1)	Fla	1963							
		1964	31	73	1,151	1,489	6,658	2,843	1,365
Milwaukee	Wis	1963	24	41	235	422	2,233	3,353	2,488
		1964	29	51	245	442	2,324	3,938	2,936
Minneapolis	Minn	1963	10	22	723	282	5,082	2,954	2,174
		1964	17	58	806	499	6,877	3,260	2,703
Mobile	Ala	1963	21	8	141	215	1,972	700	537
		1964	17	33	158	318	3,039	961	588
Nashville (1)	Tenn	1963							
		1964	59	73	329	311	4,960	1,995	2,118
Newark	N J	1963	51	201	1,493	2,107	7,602	4,303	4,296
		1964	57	157	1,654	2,119	8,004	4,415	4,649
New Bedford	Mass	1963	1	9	37	87	864	414	457
		1964	1	8	51	145	1,183	500	822
New Haven	Conn	1963	3	7	25	72	844	399	686
		1964	3	7	39	150	932	464	833
New Orleans	La	1963	61	45	948	778	5,535	2,967	4,650
		1964	82	152	1,289	1,074	6,970	4,455	5,604
Newport News	Va	1963	14	37	50	118	916	429	250
		1964	19	29	98	312	911	532	279
New York	N Y	1963	548	823	6,823	13,025	42,775	67,931	27,174
		1964	636	1,054	7,988	14,831	45,693	70,348	32,856
Niagara Falls	N Y	1963	1	3	23	58	586	595	201
		1964	3	7	62	51	642	614	243
Norfolk	Va	1963	33	17	219	680	2,171	1,348	762
		1964	32	42	268	850	2,388	1,867	833
Oakland	Calif	1963	22	73	596	377	4,129	1,782	1,720
		1964	37	66	771	505	4,552	2,109	1,929
Oklahoma City	Okla	1963	22	61	489	630	4,336	564	1,944
		1964	21	80	518	506	4,387	707	1,899
Omaha	Nebr	1963	17	32	157	36	1,384	933	1,162
		1964	22	34	220	33	1,924	985	1,342
Pasadena	Calif	1963	6	17	84	153	1,322	804	296
		1964	3	46	108	230	1,538	913	477
Paterson	N J	1963	8	10	225	182	1,334	253	715
		1964	9	9	172	140	1,266	183	772
Peoria	Ill	1963	4	4	142	66	1,012	656	371
		1964		10	179	180	947	631	620
Philadelphia	Pa	1963	125	460	2,429	4,172	12,189	4,449	5,603
		1964	188	461	2,753	4,404	12,869	4,443	6,996
Phoenix	Ariz	1963	41	112	516	667	6,352	4,020	2,912
		1964	40	113	558	873	6,764	5,269	2,788
Pittsburgh	Pa	1963	23	75	1,011	540	4,996	3,359	4,721
		1964	41	139	1,132	759	5,777	3,427	5,281
Portland	Oreg	1963	14	39	384	233	3,237	3,032	1,523
		1964	9	44	474	245	3,715	3,425	1,852
Portsmouth	Va	1963	10	14	86	267	918	518	325
		1964	10	21	91	258	1,341	632	399
Providence	R I	1963	8	6	70	217	1,908	912	1,420
		1964	5	6	93	219	2,289	1,126	1,741
Raleigh	N C	1963	16	7	39	382	676	499	292
		1964	6	9	40	416	892	645	279
Reading	Pa	1963	3		15	8	426	197	195
		1964	5	2	19	31	399	162	216
Richmond	Va	1963	36	44	205	476	2,240	1,182	1,071
		1964	34	46	241	527	3,057	1,319	1,310
Riverside	Calif	1963	1	12	62	107	1,209	811	338
		1964	3	15	80	120	1,637	1,042	407
Roanoke	Va	1963	4	9	38	153	732	336	186
		1964	5	13	77	137	868	479	287
Rochester	N Y	1963	12	28	106	83	2,181	1,107	711
		1964	22	26	119	136	2,581	1,135	885
Rockford	Ill	1963	1		55	53	605	319	205
		1964	3	1	85	37	673	444	200
Sacramento	Calif	1963	17	44	389	155	2,511	1,859	1,327
		1964	17	67	369	172	2,916	2,165	1,437
Saginaw	Mich	1963	5	7	49	150	462	212	260

City	State	Year							
		1964	3	26	89	46	1,286	1,040	492
Detroit	Mich	1963	125	393	4,608	4,496	16,963	5,724	8,418
		1964	125	475	4,739	3,792	15,839	6,169	9,610
Duluth	Minn	1963		1	8	14	507	393	186
		1964		4	17	15	644	449	234
Elizabeth	N J	1963	7	12	130	151	1,028	459	434
		1964	4	8	151	212	1,201	421	563
El Paso	Texas	1963	10	22	97	251	2,220	683	882
		1964	5	26	132	261	2,544	786	1,098
Erie	Pa	1963	2	2	44	39	436	215	360
		1964	1	4	73	63	551	294	358
Evansville	Ind	1963	5	18	80	92	1,377	861	282
		1964	4	28	98	168	1,826	1,098	467
Fall River	Mass	1963	2	3	47	36	890	324	524
		1964		7	38	56	1,044	318	630
Flint	Mich	1963	12	32	269	891	1,653	1,564	746
		1964	10	56	418	1,271	2,267	2,446	1,062
Fort Lauderdale	Fla	1963	5	7	81	196	1,126	897	341
		1964	16	11	135	298	1,824	1,117	381
Fort Wayne	Ind	1963	5	15	112	37	923	1,009	510
		1964	2	25	122	133	811	1,214	432
Fort Worth	Texas	1963	50	37	332	290	3,719	1,279	1,305
		1964	68	45	364	418	3,598	1,135	1,396
Fresno	Calif	1963	10	3	157	126	1,478	1,143	655
		1964	8	15	159	128	1,646	1,536	978
Garden Grove	Calif	1963	3	26	41	47	963	641	217
		1964		18	33	78	1,172	930	370
Gary	Ind	1963	14	27	400	547	1,470	1,204	1,177
		1964	19	64	473	683	1,476	1,414	1,236
Glendale	Calif	1963	2	1	38	33	805	777	393
		1964	3	9	54	35	957	726	401
Grand Rapids	Mich	1963	5	13	90	37	1,085	718	371
		1964	4	20	143	105	1,273	798	466
Greensboro	N C	1963	9	17	21	626	547	502	241
		1964	10	23	27	803	592	647	295
Hammond	Ind	1963	7	8	83	71	552	655	337
		1964	6	4	125	118	614	718	409
Hampton	Va	1963	4	13	36	112	636	397	213
		1964	5	12	35	92	660	469	123
Hartford	Conn	1963	8	7	98	189	1,353	624	577
		1964	16	5	73	217	1,533	672	676
Honolulu	Hawaii	1963	7	12	58	68	3,334	1,765	1,301
		1964	9	7	71	252	4,121	1,898	1,399
Houston	Texas	1963	101	264	1,115	2,515	12,602	4,127	3,423
		1964	137	236	1,437	2,499	13,995	4,973	4,510
Indianapolis	Ind	1963	40	91	864	392	5,035	2,384	2,910
		1964	45	94	1,142	502	5,280	2,493	3,259
Jackson	Miss	1963	20	2	9	213	763	276	150
		1964	19	9	22	145	788	259	178
Jacksonville	Fla	1963	28	11	511	564	2,336	1,590	498
		1964	36	36	629	493	3,115	1,795	730
Jersey City	N J	1963	13	25	142	168	1,027	141	1,655
		1964	17	15	125	177	846	127	1,837
Kansas City	Kans	1963	10	13	237	115	1,072	185	513
		1964	17	31	181	384	1,183	426	518
Kansas City	Mo	1963	60	197	1,164	935	5,600	2,841	2,911
		1964	48	205	1,180	1,126	6,484	3,337	2,701
Knoxville	Tenn	1963	11	14	41	148	1,106	431	456
		1964	12	25	50	225	1,367	460	555
Lansing	Mich	1963	4	10	26	33	478	560	241
		1964	5	19	32	68	484	778	396
Lincoln	Nebr	1963	2	13	13	50	396	414	119
		1964	3	20	17	82	459	529	151
Little Rock	Ark	1963	14	14	87	55	1,022	844	312
		1964	9	17	156	241	1,350	1,242	522
Long Beach	Calif	1963	13	96	611	379	4,179	2,260	1,975
		1964	17	115	807	437	4,676	2,553	2,430
Los Angeles	Calif	1963	200	952	6,325	8,655	41,011	23,700	16,855
		1964	177	987	6,740	8,900	43,362	26,453	19,532
Louisville	Ky	1963	46	33	565	362	3,798	3,135	1,436
		1964	44	46	553	399	3,983	3,708	1,841
Lubbock	Texas	1963	11	32	42	213	1,237	863	280
		1964	25	27	64	239	1,328	1,008	288
Macon	Ga	1963	18	14	75	29	1,121	568	322
		1964	20	22	75	447	1,609	658	342
Madison	Wis	1963	2	7	22	2	364	531	202
		1964		1	28	7	372	604	180
		1964	7	17	57	226	647	242	246
St. Louis	Mo	1963	100	249	2,098	2,087	11,865	3,407	4,986
		1964	120	249	2,202	2,054	13,463	2,767	5,837
St. Paul	Minn	1963	9	31	333	172	2,574	1,961	1,281
		1964	9	32	335	296	4,411	2,128	1,651
St. Petersburg	Fla	1963	11	14	142	77	1,894	732	283
		1964	16	17	172	219	2,205	1,050	291
Salt Lake City	Utah	1963	5	16	153	134	2,021	1,749	721
		1964	6	19	175	132	2,206	1,898	802
San Antonio	Texas	1963	44	70	303	896	6,270	3,536	1,666
		1964	57	78	339	1,036	6,843	4,320	2,024
San Diego	Calif	1963	15	56	299	310	3,009	3,447	1,249
		1964	17	52	419	447	3,073	4,089	1,762
San Francisco	Calif	1963	42	120	1,554	1,569	8,461	3,087	7,122
		1964	51	93	1,708	1,653	9,974	3,663	7,161
San Jose	Calif	1963	5	19	125	60	2,130	769	1,090
		1964	11	22	126	81	2,600	754	1,422
Santa Ana	Calif	1963	1	26	68	120	1,315	390	369
		1964	2	29	84	153	1,387	469	475
Savannah	Ga	1963	8	18	198	260	1,387	670	387
		1964	17	32	195	368	1,755	767	474
Scranton	Pa	1963		5	15	8	629	102	328
		1964	2	7	12	26	444	146	291
Seattle	Wash	1963	21	66	502	269	5,228	3,147	1,973
		1964	23	72	491	328	4,932	3,983	1,889
Shreveport	La	1963	12	5	78	455	1,022	671	541
		1964	17	17	112	548	1,547	639	629
Somerville	Mass	1963	1	7	34	20	432	325	460
		1964	2	6	26	33	692	389	563
South Bend	Ind	1963	3	6	64	55	772	514	319
		1964	7	1	53	66	778	556	326
Spokane	Wash	1963	5	4	31	33	648	402	383
		1964	7	9	35	40	676	423	436
Springfield	Mass	1963	4	2	20	17	596	335	863
		1964	2	1	17	34	583	497	893
Syracuse (1)	N Y	1963							
		1964	4	31	151	289	1,626	1,725	702
Tacoma	Wash	1963	5	23	68	46	948	552	429
		1964	5	11	65	70	1,143	628	485
Tampa	Fla	1963	38	16	373	518	4,177	1,630	775
		1964	23	38	560	812	4,901	2,165	1,031
Toledo	Ohio	1963	11	34	339	230	2,041	1,841	682
		1964	9	53	405	310	2,543	2,021	884
Topeka	Kans	1963	5	3	64	37	685	347	119
		1964	10	14	46	143	682	335	196
Torrance	Calif	1963	3	21	81	71	1,384	785	364
		1964		22	107	76	1,982	1,076	572
Trenton	N J	1963	2	10	164	119	1,183	494	827
		1964	8	19	222	159	1,346	444	923
Tucson	Ariz	1963	7	19	144	286	1,943	1,095	1,329
		1964	9	34	144	174	1,820	1,080	951
Tulsa	Okla	1963	18	25	161	158	1,910	1,718	968
		1964	14	29	173	327	2,543	2,002	1,059
Utica	N Y	1963	3	2	9	14	349	202	164
		1964	2	3	17	14	329	174	122
Virginia Beach	Va	1963	4	8	18	54	451	398	134
		1964	7	9	51	173	622	668	185
Warren	Mich	1963	2	8	51	62	827	623	258
		1964	4	16	44	80	928	738	263
Washington	D C	1963	95	87	1,707	2,851	6,984	3,140	3,465
		1964	132	96	2,279	2,605	8,910	3,518	5,392
Waterbury	Conn	1963	1	7	22	11	615	368	584
		1964	3	5	27	67	727	424	621
Wichita	Kans	1963	9	16	95	265	1,234	837	602
		1964	16	41	145	283	1,933	1,057	899
Wichita Falls	Texas	1963	6	2	42	92	612	289	178
		1964	5	3	40	152	484	308	177
Wilmington	Del	1963	6	4	110	28	1,113	504	511
		1964	3	3	137	26	1,197	596	633
Winston-Salem	N C	1963	28	20	39	388	830	279	238
		1964	21	13	74	746	1,003	372	258
Worcester	Mass	1963	1	7	45	31	973	349	530
		1964	3	3	47	44	1,089	294	783
Yonkers	N Y	1963	2	5	50	77	1,127	499	693
		1964	3	6	78	148	1,269	899	705
Youngstown	Ohio	1963	12	2	104	87	1,010	514	442
		1964	6	4	71	154	821	522	364

(1) 1963 figures not comparable with 1964.
All 1964 crime figures from reporting units are preliminary. Final figures are published in annual report.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

Tolson
Belmont
Mohr
DeLoach
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

TO : Mr. DeLoach

DATE: 5-27-65

FROM : M. A. Jones

SUBJECT: THE 1965 KINSEY REPORT
BY DR. PAUL GEBHARD, INDIANA UNIVERSITY
LADIES' HOME JOURNAL
JUNE, 1965

The second and last installment of a summary of Gebhard's book which will appear in July, 1965, appears in the current issue of the above magazine.

In the first installment, May, 1965, Gebhard stated that he and his associates feel that warnings to children concerning sex offenders "tend to encourage a sort of paranoid fear of all strangers and all men." He said that no significant number of offenses are prevented and that the child molester is usually not a stranger but someone who knows the child.

In the current installment, Gebhard attempts to indicate the misconceptions between the sexes and inconsistencies in the law have caused the unjust confinement of men accused of alleged sex crimes. He points out that although there should be no sympathy for the sex offender, who is oblivious to the brutality he imposes on his victim, it is not difficult to muster sympathy for men convicted of sex offenses which are crimes only by definition. He said that the "age of legal consent" has different interpretations in the various states and prisoners have been convicted of sexual assaults on females even though they may have participated willingly.

He states that society makes a serious mistake in adopting laws and attitudes that set teenagers apart from the adult world while, in fact, they are capable of acting like adults. He feels that sex laws should be rewritten so that any act between two mature people voluntarily, would be legal. He cannot understand the attitudes expressed in the law which restricts homosexuals from relationships in private. He also condones adultery in some instances.

1 - Mr. DeLoach

REC- 16 62-105761-11

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(5)

(Continued on next page)

ENCLOSURE

CRIME RESEARCH

M. A. Jones to DeLoach Memo
RE: THE 1965 KINSEY REPORT

In summarizing, he said sex criminals can be divided into two groups: (1) Child molesters, exhibitionists and obscene phone callers who must be restrained by society. (2) Men who have been indiscreet but not vicious and conducted their activities in private with a willing partner.

Bufiles reflect, as indicated in the memo regarding the first of these articles, Gebhard refused in July, 1957, to furnish the names of persons who furnished the obscene material he was using in his research at Indiana University on the ground he had promised his sources not to reveal their identities.

RECOMMENDATION:

For information.

b7c

THE 1965 KINSEY REPORT

PART II: THE IMMORALITY OF OUR SEX LAWS

By DR. PAUL GEBHARD

Many of the sex offenders whom we interviewed had arrived in prison, in the last analysis, chiefly because of a gross error of judgment: They had no concept of the vast gulf between their own feelings and the workings of the female mind.

Some of the men guilty of rape were convinced that their victims must have enjoyed the experience. They were "trapped" because this fantasy led them to believe that the women would be happy to go out with them again.

Some of the Peeping Toms were caught because they deliberately made a noise to announce their presence—in the mistaken belief that the women must have enjoyed being peeped at as much as they enjoyed peeping.

In milder forms, this kind of misunderstanding often occurs in our society. As the previous reports of the Institute for Sex Research have shown, the average man is poised as delicately as a seismograph, ready to respond turbulently to the faintest kind of sexual stimulus; he is quickly aroused by a whiff of perfume, the sight of a neat ankle, a photograph of a movie starlet in a bikini, or just by his own thoughts. He frequently assumes that women are poised in the same way; he expects them to be as constantly concerned about sex as he is. But he is badly mistaken. Only about one woman in three shares this masculine attitude toward sex. The others—the great majority, the typical women—seldom think about sex except at such times as they are actually engaging in it, and for many of them this is an experience that they can pretty much take or leave alone.

These psychological differences account for a great deal of trouble between the sexes. Wives cannot understand why their husbands should stare at girls on the street or in chorus lines, or why men get the notion of making love at times that, by any sensible standards, are inconvenient. Husbands are upset by what they consider their wives' "unresponsiveness"—in other words, their failure to be preoccupied with sex at all times.

Even the most normal and circumspect of people are often troubled by these psychological misunderstandings. The sexual offender is often a man in whom the misunderstanding has gone past the usual limits. This is why a rapist, driven by his urge for sexual experience, oblivious to what kind of women he will have it with, callous about any brutality he may have to show, is surprised that his victim should find the experience distasteful; and the man who makes obscene phone calls believes that his victim secretly enjoys them. In their own minds, these men are not criminals at all.

It is difficult to muster sympathy for these prisoners, but as it happens there is another large group of men in prison as sexual offenders who are not really criminals, except by the definition of laws we believe to be unrealistic, often archaic and full of ironies and inconsistencies. In almost every state of the union, for example, a husband and wife, legally and happily married, solid citizens of the community, faithful churchgoers and fine parents, can be sent to prison for engaging in forms of sex play that are approved in *The Catholic Marriage Manual.* On the other hand, many states recognize common-law marriages as legally valid, though from a religious point of view nothing would seem to be a more flagrant example of living in sin or more of an affront to community morality.

One of the thorniest of all the problems with which the laws and law-enforcement officials must deal is the age at which a girl or young woman becomes responsible for her own sexual behavior—in other words, the "age of legal consent." Most states set it at 16 or 18. To have relations with a young woman who has not reached this age constitutes the crime of statutory rape, and many of the men we interviewed were in prison for this offense, even though the young women in question participated willingly. Other prisoners had been convicted for "contributing to delinquency" because they had relations with a girl who was over the age of consent but still considered a juvenile; according to various state laws, girls up to the age of 21 are juveniles, legally if not sexually.

The laws are based on the assumption that girls should be protected from men who might be tempted (*continued on page 44*)

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62-105761-11

to take advantage of their intellectual and emotional immaturity. Frequently the laws do achieve this purpose. But at other times they result in some strange situations. For example, if a 21-year-old man has an affair with a 30-year-old divorcée who works as a waitress in a tavern, society remains indifferent; if he does so with a high-school girl of 16 or 17, he is considered a corrupter of youth and in most states a statutory rapist. But the 30-year-old waitress may have the mentality of a 12-year-old and no more sense of social responsibility than a 10-year-old, while the 17-year-old girl may be a mature, all-A student.

It is difficult to draw an arbitrary line to establish sexual maturity at any point; but if a line must be drawn, we believe that there are many reasons for thinking it should be set at 16. The average 16-year-old girl is biologically an adult; she is sexually mature, has developed all the physical strength and coordination required for living in our society, and has at least a basic knowledge of the kind of behavior that society expects. Until this century, in which childhood has been prolonged by the vast expansion of high-school and college education, 16-year-olds were accepted as members of adult society, and many girls married at 16. (One of the prisoners who aroused the most sympathy among the institute staff was a Mexican boy who had been convicted of statutory rape with a 16-year-old girl; he pointed out almost tearfully that his own mother was 16 when he was born.)

Our feeling at the institute is that society makes a serious mistake in adopting laws and attitudes that set teenagers apart from the adult world; when we treat teen-agers like children, we encourage them to behave like children, while in fact they are capable of acting like adults—if we could only let them.

My personal opinion is that the sex laws should be rewritten so that any act between two *mature* people—as long as it is engaged in voluntarily and in private—would be legal. (This is also the recommendation of the Anglican Church, the American Law Institute and Britain's Wolfenden Committee, and is the gist of the new sexual statutes quietly adopted by the state of Illinois in 1961.) Such a law would be far more suited to our modern world—and would result in far fewer injustices—than the old-fashioned statutes now on the books.

One of the great problems now is that society's *attitude* toward sex and its sex *laws* are in open conflict. We live in a highly charged sexual atmosphere; the ever-present message of our literature, our movies and our advertisements is "Be sexual; find romance; get a mate." But our laws say that all sexual behavior outside marriage is a crime.

If early marriage were possible and desirable for everyone, perhaps the conflict would be less acute. But the demands of our complex civilization delay the age of marriage, especially for the most intelligent and most sensitive of our young people, the ones who go to college. And we have never squarely faced the fact that some people do not really wish to get married; others, because of personality quirks, really *should* never marry—they are foredoomed to be bad husbands or wives, and would be even worse parents. Society makes no provision for the people unsuited for marriage, nor does it exempt them from the sexual propaganda that surrounds us. They are constantly urged from all sides to lead a rich, full sex life—yet prohibited by law from doing so.

Under laws such as I have suggested, and the state of Illinois has adopted, many of the men we interviewed would never have been in prison at all—including the substantial number who had been convicted on charges of statutory rape or "contributing to delinquency" involving girls over 16; of adultery with older women and of homosexual offenses involving no use of force.

We realize that many Americans may be shocked by this recommendation, yet all these acts, in the opinion of the institute staff, are crimes in name only. We feel that it is one thing to deplore the sexual behavior of adults on moral grounds or even grounds of good taste—but quite another to send them to prison and keep them there at an expense that is equal, in most cases, to the cost of providing a young man with the same number of years of a college education.

We are aware that many people, especially parents, believe that our present sex laws (and the convictions obtained in their enforcement) are a powerful deterrent against more sex crimes. Our research, however, does not bear out this view. It seems to be a rule that laws cannot be expected to change sexual behavior very much; the laws can punish, but not correct or cure, nor even prevent to any great extent.

By the time of adolescence, or certainly by the time of adulthood, every person's sexual habits and preferences seem to be quite rigidly established—partly by innate physical and glandular factors, partly by social conditioning, partly by the rather mysterious forces that the psychoanalysts find at work in our childhoods. The homosexual, for example, is not a homosexual by choice but by force of circumstance. He cannot help being a homosexual and cannot change, except possibly through psychiatric treatment. To us, these circumstances are grounds enough to ask: If he conducts his homosexual activity in private and only with other homosexuals, why should society be concerned?

Adultery is another problem of our society that is more complex than most of us think. Even aside from religious or moral considerations, society certainly has a stake in preventing adultery, for the family is the whole basis of our social structure; and one apparently obvious way to insure that marriages will last is to discourage sexual gratification with anyone except the legal husband or the legal wife. But a closer look shows that this ideal may not always fit the biological truth. A man and wife can be mismated sexually; or they can become sexually unattractive; or years of intimacy can produce the urge for novelty.

Undoubtedly many marriages are broken up by a husband or a wife who has become sexually dissatisfied. If the law, social custom and moral considerations permitted gratification outside the marriage, doubtless many of these marriages would survive, as they do in the Latin American and Southern European countries, where affairs with a mistress or a lover are condoned. On the other hand, there is a great deal to be said against extramarital dalliances even on the simplest practical grounds. They usually involve jealousy and friction, and can lead to emotional involvement that ultimately breaks up the marriage anyway, or makes it a mockery. The entire matter is fraught with nuances of practicality, morality, religious attitudes and the complicated structure of human emotions. It is far too delicate a question to be solved by a law that simply states that the man or woman who commits adultery must go to prison and be supported there by society.

Even under the kind of law I have suggested, many problems of enforcement and justice would remain. What should society do, for example, about men who commit statutory rape with girls under 16, and about the girls who get involved? If these men were "sex fiends" who deliberately set out to seduce the girls, then the message of our report would be that society should be alert to the danger of a large group of vicious Don Juans preying on the innocent and immature. But in 110 cases where we had both the prisoner's story and the official record for verification, it turned out that in 99 of them there was agreement that the girl had done absolutely nothing to discourage the man.

Some of the men we found in prison could not possibly have known that the girl was under 16—she looked, dressed and acted more mature. The men were, in a sense, victims of a deception—and so, in a pathetic way, were the girls themselves. Many girls in their early teens hate the idea of being so young. Some of them will do anything in their power to seem old and wise beyond their years. They have older friends who are going out with mature young men, and they try their best to keep up. Usually they merely seek companionship; they want to make friends and have a good time. They do not necessarily want sexual experience, and may even fear it, yet come to consider it the price they must pay. Or they may become trapped by their own masquerade; they are not experienced enough to have learned the fine art of escaping unwanted sexual relations, and after so carefully contriving the pretense of sophistication, they find it unbearable to back out at the last minute and reveal themselves as childish frauds. Are these girls really "bad" or just unfortunate? And are their boyfriends sex criminals or just ordinary young men who have made a mistake?

One way of summarizing the institute's report would be this: When the world talks about "sex criminals," it is talking about many kinds of men. These can be roughly divided into two groups.

About Group I there can be no doubt; these men, the callous rapists, the child molesters, the exhibitionists and obscene phone callers, are indeed guilty of antisocial conduct; society must somehow try to restrain them. Fortunately they are far less common than all the recent discussion of sex crimes has led most people to believe; the danger the average woman and her children face from them has been greatly exaggerated.

Group II is made up of men who may have been indiscreet, may have been immoral, but were in no sense vicious; they did what they did in private, and with a willing partner: Such are many of the men convicted of statutory rape, adultery or fornication, and most of the homosexuals. They help inflate the statistics and add to our fears about sex crime. Actually they merely prove that sexual adjustment is difficult and complicated in our modern civilization. ■

THIS ARTICLE, BY THE LATE DR. ALFRED C. KINSEY'S SUCCESSOR AS DIRECTOR OF THE INSTITUTE FOR SEX RESEARCH, IS DRAWN FROM THE FOURTH AND LATEST OF THE FAMOUS "KINSEY REPORTS," TO BE PUBLISHED IN JULY. IT CONTAINS THE INSTITUTE'S OPINIONS ON HOW AMERICAN SEX LAWS SHOULD BE CHANGED. THESE CONCLUSIONS ARE HIGHLY CONTROVERSIAL AND WILL BE OBJECTIONABLE TO MANY PEOPLE. THE *JOURNAL* BELIEVES, HOWEVER, THAT THEY DESERVE A CAREFUL HEARING, BECAUSE THEY ARE BASED ON AN EXHAUSTIVE SCIENTIFIC STUDY OF 2,721 MEN OVER A PERIOD OF 25 YEARS. OF THESE MEN, 1,356 WERE SERVING PRISON SENTENCES FOR SEX CRIMES. THE NEW REPORT IS CALLED *SEX OFFENDERS: AN ANALYSIS OF TYPES* (HARPER & ROW). THE BOOK WAS WRITTEN BY DR. GEBHARD IN COLLABORATION WITH HIS ASSOCIATES JOHN GAGNON, WARDELL POMEROY AND CORNELIA CHRISTENSON. THE SUMMARY ON THESE PAGES WAS PREPARED EXCLUSIVELY FOR *LADIES' HOME JOURNAL* WITH THE ASSISTANCE OF ERNEST HAVEMANN.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI

DATE: 1-20-58

FROM : SAC, NEW YORK (145-313)

SUBJECT: INDIANA UNIVERSITY INSTITUTE FOR SEX RESEARCH, INC., (KINSEY INSTITUTE); ITOM

ReBulet 1-8-58 -264.

Enclosed herewith is one photostat of the opinion rendered by HONORABLE EDMUND L. PALMIERI, USDJ, NY on 10-31-57, concerning instant case, as requested by the Bureau in referenced letter.

The photostat that is being furnished to the Bureau was furnished to SA on 1-17-58, by AUSA BENJAMIN T. RICHARDS, JR., Civil Division, SDNY.

The photostat that is being sent to the Indianapolis Office, for information purposes, was made by the NYC from the photostat obtained from AUSA RICHARDS.

No copy of this opinion is being maintained in the NYO.

1 autostat made 11-30-59

ENCLOSURE

2 - Bureau (Encl. 1) (RM)
1 - Indianapolis (Encl. 1) (RM)
1 - New York (145-313)

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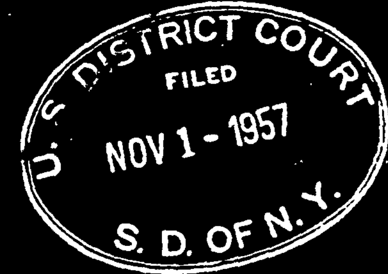
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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UNITED STATES OF AMERICA, :

Libellant, :

\- against - :

31 PHOTOGRAPHS 4 3/4" x 7" in size, : Admiralty 189-50
and various pictures, books and
other articles :

____________ :

INSTITUTE FOR SEX RESEARCH, INC. :
at INDIANA UNIVERSITY,
:
Claimant.

\- x

A P P E A R A N C E S :

Hon. Paul W. Williams
United States Attorney for the Southern
District of New York
Proctor for Libellant
Benjamin T. Richards, Jr., Assistant
United States Attorney, of Counsel

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Daniel James, Esq.
63 Wall Street
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and
Hubert Hickam and Jerry P. Belknap, Esqs.
1313 Merchants Bank Building
Indianapolis 4, Indiana
Attorneys for the Trustees of Indiana University,
Amicus Curiae, in support of Claimant's motion
for summary judgment
Barnes, Hickam, Pantzer & Boyd, Esqs.
1313 Merchants Bank Building
Indianapolis 4, Indiana, of Counsel

The United States Attorney has filed a libel, under the provisions of §305(a) of the Tariff Act of 1930,[1] seeking the forfeiture, confiscation, and destruction of certain photographs, books, and other articles which the claimant, Institute for Sex Research, Inc. at Indiana University, seeks to import into the United States. The libel is based upon the allegation that the libelled material is "obscene and immoral"[2] within the meaning of §305(a). The claimant seeks the release of the material to it, maintaining that the attempted importation is not

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[1] 46 Stat. 688 (1930), 19 U.S.C. §1305(a) (1952). This section provides, in pertinent part, as follows: "All persons are prohibited from importing into the United States from any foreign country ... any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral .... No such articles ... shall be admitted to entry; and all such articles ... shall be subject to seizure and forfeiture as hereinafter provided ...." The section further provides for the admission of certain classics or books in the discretion of the Secretary of the Treasury. See note 9, *infra*. The Secretary has refused to exercise his discretion to admit in this case. See note 10, *infra*.

[2] My discussion is framed in terms of whether the libelled material is "obscene." I do not believe that the word "immoral" adds to the class of material excluded from importation by the word "obscene," and the Government has not contended that it does. See 71 Cong. Rec. 4457 (1929). *Cf. Commercial Pictures Corp. v. Regents*, 346 U.S. 587 (1954).

in violation of §305(a) and that, if §305(a) is interpreted so as to prohibit the importation of the libelled material, the section violates the provisions of certain articles of the Constitution of the United States. Since I believe that §305(a) does not permit the exclusion of the material, I do not reach the latter contention. Thus, the question of "academic freedom," much bruited in the oral argument by claimant, does not arise in this case.

Both the Government and the claimant have moved for summary judgment. The Government's motion is supported by the photographs, books, and articles themselves. For the purposes of this decision, I assume that the libelled material is of such a nature that, "to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest."[3] The claimant's motion is supported by affidavits sworn to by the President of the Institute, the Institute's Director of Field Research, the

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3 Roth v. United States, 354 U.S. 476, 489 (1957).

President of Indiana University, and various physicians, psychologists, psychiatrists, penologists, and academicians. Among these is an affidavit sworn to by the Hon. James V. Bennett, Director of the Bureau of Prisons, United States Department of Justice. Mr. Bennett states in his affidavit that the Institute has made substantial contributions to the study of problems of sexual adjustment encountered among prison inmates. He also states that understanding of pathological sexuality and sexual offenders has been enhanced by the study of the erotic productions of these deviated persons. An affidavit has also been filed by claimant's attorney, setting forth certain prior proceedings in this matter. Finally, the Trustees of Indiana University have submitted a brief, amicus curiae, in support of claimant's position. The President of the University, in his affidavit, has described the Institute as "[i]n essence ... for all practical purposes ... a special research department of the University." The Government has neither served affidavits setting forth any facts in opposition to those contained in the affidavits served by the claimant,[4] nor has it served an affidavit from which it would appear that it cannot "present by affidavit facts essential to justify

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[4] Fed. R. Civ. P. 56(e).

[its opposition."[5]

There is, therefore, no genuine issue as to the following facts, which are the only ones I find relevant to a decision of the issues before me:

1. That the claimant seeks to import the libelled material "for the sole purpose of furthering its study of human sexual behavior as manifested in varying forms of expression and activity and in different national cultures and historical periods."[6]

2. That the libelled material will not be available to members of the general public, but "will be held under security conditions ... for the sole use of the Institute staff members or of qualified scholars engaged in bona fide research...;"[7] and

3. That, as to those who will have access to the material sought to be imported, there is no reasonable probability that it will appeal to their prurient interest.[8]

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5 Fed. R. Civ. P. 56(f). The Government's position on oral argument and subsequently has been that while it does not wish to submit affidavits, it does not concede the truth of the facts set forth in claimant's affidavits. Of course, a motion for summary judgment cannot be defeated by a simple declaration that the opponent does not concede the facts which are clearly established by the movant's affidavits. "But where the moving party properly shoulders his burden, the opposing party must either come forward with some proof that raises a genuine factual issue or, in accordance with Rule 56(f), show reasons satisfactory to the court why it is presently not forthcoming." 6 Moore's Federal Practice, par. 56.15[5] (2d ed. 1953). Cf. Engl v. Aetna Life Ins. Co., 139 F.2d 469 (2d Cir. 1943).

I am aware, of course, of my discretion to refuse summary judgment even though the Government has stood mute, see 6 Moore's Federal Practice, par. 56.15[6] (2d ed. 1953); but I see no reason to do so in this case.

6 Affidavit of Paul H. Gebhard, President of the Institute, page 10.

7 Id. at page 13.

In limine, it is well to set forth the posture of this case as I have it before me for decision. Claimant applied, in 1952, to the Secretary of the Treasury for permission to import the material under the second proviso of §305(a).[9] The Secretary declined to exercise his discretion for this purpose. In a letter advising claimant's attorneys of this decision, the Acting Secretary of the Treasury stated that a limited exception to the prohibition of §305(a) had been established by certain cases, but that the exception was "limited to a narrow category of articles and ... applicable to only a specialized practice of medicine." The Acting Secretary stated that he did not feel that administrative extension of this exception would be justified and that the Department of Justice would be requested to bring forfeiture proceedings "in order

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8 Affidavit of Walter C. Alvarez, M.D., page 5. See also, the affidavit of Karl M. Bowman, M.D., page 7.

9 Affidavit of Harriet F. Pilpel, member of the firm which is acting as claimant's attorney, page 3. The proviso reads: "Provided further, That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes." 46 Stat. 688 (1930), 19 U.S.C. §1305(a) (1952). I discuss the contention that this provision exhausts the possibilities of allowing the importation of the libelled material infra at page 21.

to resolve the pertinent questions of law and furnish judicial guidance for our future actions."[10] The claimant has not, however, sought review of the Secretary's action, and my decision on the Government's libel implies nothing as to the correctness of his action.

The question which is before me for decision, therefore, is whether §305(a) of the Tariff Act of 1930, in prohibiting the importation of "obscene" material prohibits the importation of material which may be assumed to appeal to the prurient interest of the "average person," if the only persons who will have access to the material will study it for the purposes of scientific research, and if, as to those who alone will have access to the material, there is no reasonable probability that it will appeal to their prurient interest. In short, the question presented for decision is the meaning of the word "obscene" in §305(a) of the Tariff Act of 1930.[11]

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[10] Pilpel affidavit, supra, note 9, page 4, and Exhibit A. It appears, from the reference of the Secretary to United States v. One Package, 86 F.2d 737 (2d Cir. 1936), that the articles to which the Secretary referred were contraceptives. But the second proviso of §305(a) allows the Secretary to "admit the so-called classics or books of recognized and established literary or scientific merit." See note 9, supra.

[11] In arriving at my conclusion on this aspect of the case I have relied upon a number of cases arising under what is now 18 U.S.C. §1461 (Supp. IV) prohibiting use of the mails for the transportation of, inter alia, obscene matter. The

Material is obscene if it makes a certain appeal to the viewer. It is not sufficient that the material be "merely coarse, vulgar, or indecent in the popular sense of those terms." United States v. Males, 51 Fed. 41, 43 (D. Ind. 1892).[12] Its

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Note 11 - cont'd

provisions now found in 19 U.S.C. §1305(a) (1952) and 18 U.S.C. §1461 (Supp. IV) "were part of a continuous scheme to suppress immoral articles and obscene literature and should so far as possible be construed together and consistently." United States v. One Package, 86 F.2d 737, 739 (2d Cir. 1936). The Government urges, however, that the audience to which the material is directed is relevant in a criminal prosecution under 18 U.S.C. §1461 (Supp. IV) since it bears on the question of criminal intent, but not in a libel under 19 U.S.C. §1305(a) (1952) since intent is not there a factor. To the extent, if any, that the One Package decision does not answer this contention, it is answered by the requirement of Roth that obscenity statutes be construed as narrowly as is possible to effectuate their purpose without impinging on other interests. "The fundamental freedoms of speech and press have contributed greatly to the development and well-being of our free society and are indispensable to its continued growth. Ceaseless vigilance is the watchword to prevent their erosion by Congress or by the States. The door barring federal and state intrusion into this area cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests." Roth v. United States, 354 U.S. 476, 488 (1957). (footnotes omitted). And see footnote 40, infra, and text at footnote 26, infra.

[12] See also Swearingen v. United States, 161 U.S. 446, 450-1 (1896); Duncan v. United States, 48 F. 2d 128 (9th Cir.), cert. denied, 283 U.S. 863 (1931); United States v. Wroblenski, 118 Fed. 495 (E.D. Wis. 1902); cf. United States v. Limehouse, 285 U.S. 424 (1932).

appeal must be to "prurient interest." "Obscene material is material which deals with sex in a manner appealing to prurient interest." Roth v. United States, 354 U.S. 476, 487 (1957) (footnote omitted).

But the search for a definition does not end there.[13] To whose prurient interest must the work appeal? While the rule is often stated in terms of the appeal of the material to the "average person," Roth v. United States, 354 U.S. 476, 489 (1957),[14] it must be borne in mind that the cases applying the standard in this manner do so in regard to material which is to be distributed to the public at large. I believe, however, that the more inclusive statement of the definition is that which judges the material

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13 See Judge Frank's discussion of the appropriateness of judicial definitions of obscenity, prior to the Supreme Court's decision in the Roth case. United States v. Roth, 237 F.2d 796, 801 et seq. (concurring opinion) (2d Cir. 1956), aff'd, 354 U.S. 476 (1957).

14 See also United States v. One Book Entitled Ulysses, etc., 72 F.2d 705, 708 (2d Cir. 1934); Walker v. Popenoe, 149 F.2d 511, 512 (D.C. Cir. 1945) ("ordinary reader"). I understand the statement in Ulysses that permission to import does not depend upon "the character of those to whom [the materials] are sold," 72 F.2d 705, 708 (2d Cir. 1934) to mean that in a case of material distributed to the general public, the claimant may not show that there are some members of the public as to whom the material will not have a prurient appeal.

by its appeal to "all those whom it is likely to reach." *United States v. Levine*, 83 F.2d 156, 157 (2d Cir. 1936).[15] Viewed in this light, the "average man" test is but a particular application of the rule, often found in the cases only because the cases often deal with material which is distributed to the public at large.

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[15] The Chief Justice, concurring in *Roth*, said that "Present [obscenity] laws depend largely upon the effect that the material may have upon those who receive them. It is manifest that the same object may have a different impact, varying according to the part of the community it reached." *Roth v. United States*, 354 U.S. 476, 495 (1957). And the *charge of the trial judge in Roth*, approved by the Court, stated the test in terms of "all those whom [the material] is likely to reach." *Id.* at 490 (1957). And see *United States v. Dennett*, 39 F. 2d 564, 568 (2d Cir. 1930) ("those into whose hands the publication might fall"); *One, Inc. v. Olesen*, 241 F.2d 772, 775 (9th Cir. 1957), *petition for cert. filed*, 26 U.S. L. Week 3046 (U.S., July 18, 1957) ("effect ... upon the reader"); *Parmelee v. United States*, 113 F.2d 729, 731 (D.C. Cir. 1940) ("all those whom it is likely to reach"); *United States v. Two Obscene Books*, 99 F. Supp. 760, 762 (N.D. Calif. 1951), *aff'd sub nom. Besig v. United States*, 208 F.2d 142 (9th Cir. 1953) ("those whose minds are open to such influences and into whose hands [the material] may fall ...."); *United States v. Goldstein*, 73 F. Supp. 875, 877 (D. N.J. 1947) ("those into whose hands the publication might fall"); *United States v. Males*, 51 Fed. 41, 43 (D. Ind. 1892) ("those into whose hands it may fall"); *United States v. Clarke*, 38 Fed. 500, 502 (E.D. Mo. 1889) (same). *Cf. United States v. 4200 Copies International Journal, etc.*, 134 F. Supp. 490, 494 (E.D. Wash. 1955), *aff'd sub nom. Mounce v. United States*, 247 F.2d 148 (9th Cir. 1957), *petition for cert. filed*, 26 U.S.L. week 3130 (U.S., October 11, 1957).

Of course, this rule cuts both ways. Material distributed to the public at large may not be judged by its appeal to the most sophisticated,[16] nor by its appeal to the most susceptible.[17] And I believe that the cases establish that material whose use will be restricted to those in whose hands it will not have a prurient appeal is not to be judged by its appeal to the populace at large.

In Commonwealth v. Landis, 8 Phila. 453 (Q.S. 1870) defendant had been convicted of publishing an obscene libel.[18] The court approved a charge to the jury in which it was stated that the publication would be justified if "made for a legitimate and useful purpose, and .. not made from any motive of mere gain or with a corrupt desire to debauch society." 8 Phila. 453, 454 (Q.S. 1870). While scientific and medical publications "in proper hands for useful purposes" may contain

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16 See the charge to the jury quoted in Roth v. United States, 354 U.S. 476, 490 (1957).

17 Butler v. Michigan, 352 U.S. 380 (1957); Volanski v. United States, 246 F.2d 842 (6th Cir. 1957).

18 The book was entitled "Secrets of Generation." Commonwealth v. Gordon, 66 D. & C. 101, 121 (Phila. Q.S. 1949).

illustrations exhibiting the human form, the court held that such publications would be obscene libels "if wantonly exposed in the open markets, with a wanton and wicked desire to create a demand for them." Id. at 454-5. Finally, the court held that the human body might be exhibited before a medical class for purposes of instruction, "but that if the same human body were exposed in front of one of our medical colleges to the public indiscriminately, even for the purpose of operation, such an exhibition would be held to be indecent and obscene." Id. at 455.[19]

In United States v. Chesman, 19 Fed. 497 (E.D. Mo. 1881), the court found offensive, matter which was taken from books upon medicine and surgery. The court held that such matter "would be proper enough for the general use of members and students of the profession." But, the court continued, "[t]here are many things contained in the standard works upon these subjects which, if printed in pamphlet form and spread broadcast among the community being sent through the mail to

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[19] The history of the early ban upon the use of the human body for the purposes of anatomical study and the eventual removal of the restriction so long as the books and treatises exhibiting the human body were restricted to practitioners and students is recounted in Parmelee v. United States, 113 F.2d 729, 734-5 (D.C. Cir. 1940).

persons of all classes, including boys and girls, would be highly indecent and obscene." 19 Fed. 497-8 (E.D. Mo. 1881).[20]

And in United States v. Clarke, 38 Fed. 500 (E.D. Mo. 1889) it is said that "[E]ven an obscene book, or one that, in view of its subject-matter, would ordinarily be classed as such, may be sent through the mail, or published, to certain persons, for certain purposes." 38 Fed. 500, 502 (E.D. Mo. 1889).[21]

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[20] I understand the statement in Chesman, 19 Fed. 497, 498 (E.D. Mo. 1881) that "[T]he law is violated, without regard to the character of the person to whom [the publications] are directed" to apply to cases of widespread distribution, such as was present in Chesman, and in the sense set forth in note 14, supra.

It is interesting to note that the court in Parmelee v. United States, 113 F.2d 729 (D.C. Cir. 1940) said that "No reasonable person at the present time would suggest even that limitation [that texts containing representations of the human body be restricted to use among practitioners and students] upon the circulation and use of medical texts, treatises and journals. In many homes such books can be found today; in fact, standard dictionaries, generally, contain anatomical illustrations. It is apparent, therefore, that civilization has advanced far enough, at last, to permit picturization of the human body for scientific and educational purposes." 113 F.2d 729, 735 (D.C. Cir. 1940).

[21] And see the charge to the jury in the same case, United States v. Clarke, 38 Fed. 732 (E.D. Mo. 1889).

"It is settled, at least so far as this court is concerned, that works of physiology, medicine, science, and sex instruction are not within the statute, though to some extent and among some persons they may tend to promote lustful thoughts." United States v. One Book Entitled Ulysses, etc., 72 F.2d 705, 707 (2d Cir. 1934).

In United States v. Smith, 45 Fed. 476 (E.D. Wis. 1891) the court stated that a determination of obscenity depended upon circumstance. "The public exposure of the person is most obscene, yet the necessary exhibition of the person to a physician is not only innocent, but is a proper act, dictated by positive duty. Instruction touching the organs of the body, under proper circumstances, is not reprehensible; but such instruction to a mixed assemblage of the youth of both sexes might be most demoralizing." 45 Fed. 476, 478 (E.D. Wis. 1891).

In upholding the exclusion from evidence of testimony tending to show that the book in issue was intended for doctors and married couples, the Court of Appeals for the Eighth Circuit has said: "The book itself was in evidence. It was not a communication from a doctor to his patient, nor a work designed for the use of medical practitioners only." Burton v. United States, 142 Fed. 57, 63 (8th Cir. 1906).

The Court of Appeals for this Circuit, in holding that proof of those to whom the pamphlet was sold is part of the Government's case, said: "In other words, a publication might be distributed among doctors or nurses or adults in cases where the distribution among small children could not be justified. The fact that the latter might obtain it accidently or surreptitiously, as they might see some medical books

which would not be desirable for them to read, would hardly be sufficient to bar a publication otherwise proper.... Even the court in Regina v. Hicklin, L.R. 3 Q.B. at p. 367 ... said that 'the circumstances of the publication' may determine whether the statute has been violated." United States v. Dennett, 39 F.2d 564, 568 (2d Cir. 1930).

Finally, a situation very similar to the one at bar was decided in United States v. One Unbound Volume, etc., 128 F. Supp. 280 (D. Md. 1955). Claimant had attempted to import a collection of prints which depicted statues, vases, lamps, and other antique artifacts which were decorated with or displayed erotic activities, features, or symbols, and which portrayed acts of sodomy and other forms of perverted sexual practice. While finding that the study of erotica in ancient times was a recognized field of archeology, the court, after referring to the fact that the claimant was a microchemist and, at best, an amateur archeologist, significantly added: "I do not believe the present state of the taste and morals of the community would approve the public exhibition of a collection of objects similar to those shown on the prints, nor the public exhibition or sale of the prints themselves, although in my opinion most normal men and women in this country would approve the ownership of such a publication by a museum, library, college or other educational institution,

where its use could be controlled." 128 F. Supp. 280, 282 (D. Md. 1955).[22]

The cases upholding importation of contraceptives and books dealing with contraception when sought to be brought into the country for purposes of scientific and medical research[23] are further indications that the statute is to be interpreted as excluding or permitting material depending on the conditions of its use.[24] It is true that these cases held, on analogy to

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22 See also Burstein v. United States, 178 F.2d 665 (9th Cir. 1949). Cf. Klaw v. Schaffer, 151 F. Supp. 534, 539 n. 6 (S.D.N.Y. 1957), appeal pending.

23 United States v. One Package, 86 F.2d 737 (2d Cir. 1936); United States v. Nicholas, 97 F.2d 510 (2d Cir. 1938); Davis v. United States, 62 F.2d 473 (6th Cir. 1933); Consumers Union of United States, Inc. v. Walker, 145 F. 2d 33 (D.C. Cir. 1944); see also, Youngs Rubber Corp. v. C. I. Lee & Co., 45 F.2d 103, 108 (2d Cir. 1930); cf. Bours v. United States, 229 Fed. 960 (7th Cir. 1915).

24 "[W]e are satisfied that this statute [19 U.S.C. §1305(a) 1952] ... embraced only such articles as Congress would have denounced as immoral if it had understood all the conditions under which they were to be used." United States v. One Package, 86 F.2d 737, 739 (2d Cir. 1936). In the Roth case, the Supreme Court stated: "We perceive no significant difference between the meaning of obscenity developed in the case law and the definition of the A.L.I., Model Penal Code, §207.10(2) (Tent. Draft No. 6, 1957) ...." Roth v. United States, 354 U.S. 476, 487, n. 20 (1957). Section 207.10(4)(c) of the Draft provides that non-criminal dissemination of obscenity includes: "Dissemination to institutions or individuals having scientific or other special justification for possessing such material."

what is now 18 U.S.C. §1461 (Supp. IV) that only contraceptives intended for "unlawful" use were banned.[25] The circumstances of the use were thus held relevant. But "contraception" is a word describing a physical act, devoid of normative connotations until modified by an adjective such as "unlawful." "Obscene," on the other hand, describes that quality of an article which causes it to have a certain appeal to the interests of the beholder.

The intent of the importer, therefore, relevant to the contraceptive cases only because "unlawful" use alone was proscribed, is relevant in an obscenity case[26] because of the very nature of the determination (as to the appeal of the material to the viewer) which must be made before the article may be deemed "obscene."

The customs barrier which is sought to be imposed by this suit must be viewed in the light of the great variety of goods permitted to enter our ports. For instance, despite

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[25] United States v. One Package, 86 F.2d 737 (2d Cir. 1936).

[26] At least in a case such as this, where the importer and those who will have access to the material are the same or of the same class and proven to have the same reaction to the material.

the legitimate concern of the community with the distribution and sale of narcotic drugs, their importation is not completely prevented.[27] It is carefully regulated so as to insure their confinement to appropriate channels.[28] Viruses, serums, and toxins are another example. Their potential harm would be incalculable if they were placed in unknowing or mischievous hands. But proposed importations of bacilli of dangerous and highly contagious diseases do not lead us to shut our ports in panic. Rather, we place our faith in the competence of those who are entrusted with their proper use.[29] So, here, while the material would not be importable for general circulation, its closely regulated use by an unimpugned institution of learning and research removes it from the ban of the statute. The successive judicial interpretations of the statute here involved point as clearly to this result as does the express Congressional permission for the importation of potentially harmful biologic products. The work of serious scholars need find no impediment in this law.

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[27] 35 Stat. 614 (1909), as amended, 21 U.S.C. §173 (1952).

[28] 21 C.F.R., Part 302 (1955).

[29] The importation of such products for animal use is regulated by 37 Stat. 832 (1913), 21 U.S.C. §151 et seq. (1952). Their importation for human use is regulated by 58 Stat. 702 (1944), 42 U.S.C. §262 (1952). The former is more strictly regulated. See 9 C.F.R., Part 102 (1949); and compare 19 C.F.R. §12.17 (1953), with 19 C.F.R. §12.21 (1953).

The Government, in certain portions of its Memorandum of Law, talks of, and I find two cases[30] which have described material as being "obscene per se." But I cannot understand this to mean that the material was held to have a prurient appeal without reference to any beholder. I take it to mean that in the cases under decision there was not shown

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[30] United States v. Rebhuhn, 109 F.2d 512 (2d Cir.), cert. denied, 310 U.S. 629 (1940); United States v. Newman, 143 F.2d 389 (2d Cir. 1944). But the court in Rebhuhn also said:"Most of the books could lawfully have passed through the mails, if directed to those who would be likely to use them for the purposes for which they were written, though that was not true of one or two; for example, of that entitled, 'Sex Life in England', which was a collection of short and condensed erotic bits, culled from various sources, and plainly put together as pornography .... [W]e will assume ... that the works themselves had a place, though a limited one, in anthropology and in psychotherapy. They might also have been lawfully sold to laymen who wished seriously to study the sexual practices of savage or barbarous peoples, or sexual aberrations; in other words, most of them were not obscene per se. In several decisions we have held that the statute does not in all circumstances forbid the dissemination of such publications, and that in the trial of an indictment the prosecution must prove that the accused has abused a conditional privilege, which the law gives him. [Citing Dennett, Ulysses, and Levine.] However, in the case at bar, the prosecution succeeded upon that issue, when it showed that the defendants had indiscriminately flooded the mails with advertisements, plainly designed merely to catch the prurient, though under the guise of distributing works of scientific or literary merit. We do not mean that the distributor of such works is charged with a duty to insure that they shall reach only proper hands, nor need we say what care he must use, for these defendants exceeded any possible limits; the circulars were no more than appeals to the salaciously disposed, and no sensible jury could have failed to pierce the fragile screen, set up to cover that purpose." 109 F.2d 512, 514-5 (2d Cir. 1940).

to be anyone to whom the appeal would be other than prurient, or that in a case of widespread distribution the material was of such a nature that its appeal to the average person must be held, as a matter of law, to be prurient.[31] It should be obvious that obscenity must be judged by the material's appeal to somebody. For what is obscenity to one person is but a subject of scientific inquiry to another. And, of course, the substitution, required by Roth,[32] of the "average person" test (in cases of widespread distribution) for the test according to the effect upon one of particular susceptibility, is a matter of determining the person according to whom the appeal of the material is to be judged. Once it is admitted that the material's appeal to some person, or group of persons, must be used as the standard by which to gauge obscenity, I believe that the cases teach that, in a case such as this, the appeal to be probed is that to the people for whom, and for whom alone, the material will be available.

It is possible, instead of holding that the material is not obscene in the hands of the persons who will have access to it, to speak of a conditional privilege in favor of scientists and scholars, to import material which would be obscene in the hands of the average person.[33] I find it unnecessary

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31 See footnotes 14, 20, supra.

32 Roth v. United States, 354 U.S. 476, 488-9 (1957).

33 See note 30, supra.

to choose between these theories. In the first place, under either theory the material may not be excluded in this case. Moreover, I believe that the two theories are but opposite sides of one coin. For it is the importer's scientific interest in the material which leads to the conditional privilege, and it is this same interest which requires the holding that the appeal of the material to the scientist is not to his prurient interest and that, therefore, the material is not obscene as to him.[34]

There remain to be mentioned two objections which the Government raises to the course of decision I follow today. The first is that the second proviso of §305(a) of the Tariff

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[34] It may be that the drafters of Tentative Draft No. 6 of the A.L.I. Model Penal Code have adopted both theories. §207.10(4)(c) of the Draft, quoted in note 24, supra, creates a limited exception to the prohibition of dissemination of obscenity in favor of "institutions or individuals having scientific or other special justification for possessing such material." And §207.10(2) of the Draft sets forth the class as to which the material's appeal shall be judged as follows: "Obscenity shall be judged with reference to ordinary adults, except that it shall be judged with reference to children or other specially susceptible audience if it appears from the character of the material or the circumstances of its dissemination to be specially designed for or directed to such an audience." It is possible to understand the term "specially susceptible" to include not only those who are specially more susceptible, but also those who are specially less susceptible. See Comment 9 to the Draft and page 38, n. 59.

Act of 1930[35] provides the sole means by which this material may be imported. Of course, under the theory that the nature of the material is to be judged by its appeal to those who will see it, the libelled material is simply not obscene and the second proviso has no application, providing, as it does, for a method by which certain obscene matter may be imported.[36] And if the correct theory be that there is a conditional privilege in favor of scientists and scholars to import material, for their study alone, which would be obscene in the hands of the general public, I am not convinced that Congress, by enacting the second proviso to §305(a) in 1930[37] intended to establish the Secretary's discretion as the sole means by which scientists

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35 Quoted in note 9, <u>supra</u>.

36 I do not believe that my decision leaves the second proviso without function, for it appears to provide the only means by which classics, and works of scientific and literary merit, although obscene in the hands of the general public, may be distributed to the general public.

37 The Congressional debates on §305(a), 72 Cong. Rec. 5414-33, 5487-5520 (1930), 71 Cong. Rec. 4432-4439, 4445-4472 (1929) are largely illustrative of the views of the members who spoke on literature which may contain salacious passages. While bits may be culled from these debates which appear to deal with the problem at issue here, I believe that a fair reading of the debates as a whole indicates that Congress was concerned with the widespread distribution of obscene matter, and with the manner in which the ban on such distribution was to be enforced.

could import such materials. Indeed, the cases decided since 1930 have not so held.[38]

The Government also raises a concursus horribilium, maintaining that there are no workable criteria by which the section may be administered if it is interpreted as I do today. It is probably sufficient unto this case to point out that there is no dispute in this proceeding as to the fact that there is no reasonable likelihood that the material will appeal to the prurient interest of those who will see it. But I will add that I fail to see why it should be more difficult to determine the appeal of libelled matter to a known group of persons than it is to determine its appeal to an hypothetical "average man."[39] The question is not whether the materials are necessary, or merely desirable for a particular research project. The question

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[38] See note 30, supra. And see Parmelee v. United States, 113 F.2d 729, 737 (D.C. Cir. 1940): "It cannot reasonably be contended that the purpose of the pertinent statute is to prevent scientific research and education .... So to interpret it would be to abandon the field, in large measure, to the charlatan and the fakir." (footnote omitted) And see the excerpt from Ulysses quoted in note 21, supra.

[39] Cf. Roth v. Goldman, 172 F.2d 788, 792 (2d Cir.) (concurring opinion by Judge Frank), cert. denied, 337 U.S. 938 (1949).

is not whether the fruits of the research will be valuable to society.[40] The Tariff Act of 1930 provides no warrant for either customs officials or this court to sit in review of the decisions of scholars as to the bypaths of learning upon which they shall tread. The question is solely whether, as to those persons who will see the libelled material, there is a reasonable probability that it will appeal to their

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[40] "All ideas having even the slightest redeeming social importance -- unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion -- have the full protection of the [Constitutional] guaranties, unless excludable because they encroach upon the limited area of more important interests. But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance.

"... Sex, a great and mysterious motive force in human life, has indisputably been a subject of absorbing interest to mankind through the ages; it is one of the vital problems of human interest and public concern." Roth v. United States, 354 U.S. 476, 484, 487 (1957) (footnote omitted). I believe that the statement above quoted concerning the rejection of obscenity must be interpreted in the light of the widespread distribution of the material in Roth. While I do not reach the Constitutional issues posed by claimant in this case I may note that, since it is taken as proved in this case that the libelled material will not, in all probability, appeal to the prurient interest of those into whose hands it will come, I cannot conceive of any interest which Congress might have intended to protect by prohibiting the importation of the material by the claimant.

prurient interest.[41]

For those who would seek to pander materials such as those libelled in this case, I need hardly express my contempt. Nor need I add that the theory of this decision, rightly interpreted, affords no comfort to those who would import materials such as these for public sale or private indulgence. The cry against the circulation of obscenity raised by the law-abiding community is a legitimate one; and one with which Congress, the State legislatures, and the courts have been seriously concerned.[42] When that case arises in which the Government determines that it should go to trial upon the facts, a showing that multiple copies of a particular piece of matter are sought to be imported by the same person

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[41] The Government also maintains that the holding in United States v. One Obscene Book Entitled "Married Love," 48 F.2d 821 (S.D.N.Y. 1931) that a decision that a book is importable under §305(a) is res judicata in a subsequent libel, precludes my holding that material is to be judged by its appeal to those who will see it. But the successive importations in that case were both for the purpose of distributing the book to the public at large. I see no reason for extending the rationale of the cited case beyond the situation in which the successive importations are for the purpose of distributing the material to the same person or class of persons.

[42] See Roth v. United States, 354 U.S. 476, 485 (1957).

should raise an extremely strong inference against any claim that the material is sought for allegedly scientific purposes. And, while I express no definitive opinion on this point, since it is unnecessary to the decision before me, it would seem that any individual, not connected with an institution recognized to be conducting bona fide research into these matters, will not easily establish that he seeks importation for a reason other than gratification of his prurient interest. See United States v. One Unbound Volume, etc., 128 F. Supp. 280 (D. Md. 1955).

Nor do I envision the establishment of myriad and spurious "Institutes for Sex Research" as screens for the importation of pornographic material for public sale. In addition to what has already been said, it should be pointed out that the bona fides of any such Institute and of the research or study to which it claims to be dedicated will be a threshold inquiry in each case. The accumulation of an inventory, as I mentioned above, will tend to negate the assertion of a legitimate interest. And those whose business it is to pander such material will be unlikely to convince anyone that they are serious candidates for the mantle of scientific researcher.

There being no dispute in this case as to the fact that there is no reasonable probability that the libelled

material will appeal to the prurient interest of those who will see it, it is proper that the motion of the libellant for an order that the libelled material be forfeited, confiscated and destroyed, be denied; and that the motion of the claimant for summary judgment dismissing the libel and releasing the libelled material to it, be granted.

Settle order on notice.

Dated: October 31, 1957

EDMUND L. PALMIERI
U. S. D. J.