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# THE MEESE COMMISSION AND FIGHTING PORNOGRAPHY IN THE DIGITAL AGE

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## HIGHLIGHTS:

- The 1986 Attorney General's Commission on Pornography addressed "the serious national problem of pornography"[1] in the context of long-established federal policy and changing legal standards.
- Its final report took a holistic view of the harm pornography can cause and the evidence sufficient to establish that connection, applied that view to various types of pornography, and made recommendations in light of then-current legal constraints.
- By emphasizing the changes in the content and accessibility of pornography since the 1970 Commission on Obscenity and Pornography, the 1986 Commission provided a solid foundation for the ongoing effort to limit the harm from pornography.

## INTRODUCTION:

When he signed the Child Protection Act into law on May 21, 1984, President Ronald Reagan announced that "the Attorney General is setting up a new national commission to study the effects of pornography on our society. The commission will study the dimensions of the problem and what we can do about it."[2] Attorney General William French Smith established the Attorney General's Commission on Pornography on February 22, 1985, under the terms of the Federal Advisory Committee Act.[3] Edwin Meese III became Attorney General three days later and it soon became known as the Meese Commission.[4] He notified Congress of its creation, publicly announcing the commission and its members on May 20, 1985.[5]

Reagan emphasized that the new commission would be different than the controversial Commission on Obscenity and Pornography, created by Congress in 1967, that issued its report in 1970.[6] "Back in 1970," Reagan said, "a Presidential commission…[concluded that] pornography has no significant effect on behavior."[7] Without explicitly rejecting or criticizing the 1970 Commission's

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[1] 50 Fed. Reg. 8684 (March 4, 1985). This *Legal Report* will use the term "pornography" to refer to the broad range of sexually explicit material, much of which is protected by the First Amendment, and "obscenity" to refer to the subset of pornography that, under existing legal standards, lacks First Amendment protection.
[2] Remarks on Signing the Child Protection Act of 1984, May 21, 1984, https://www.reaganlibrary.gov/archives/speech/remarks-signing-child-protection-act-1984?.
[3] 5 U.S.C. App. 1, Supp. II. *See also* Attorney General's Commission on Pornography Final Report 215 (July 1986) ((hereinafter *1986 Commission Report*), https://www.ojp.gov/pdffiles1/Digitization/102046Part1.pdf.
[4] This *Legal Report* will refer to this body as the 1986 Commission and to the Commission on Obscenity and Pornography as the 1970 Commission.
[5] *1986 Commission Report* at 3-21.
[6] *See* The Report of the Commission on Obscenity and Pornography (Sept. 1970) (hereinafter *1970 Commission Report*) https://archive.org/details/reportofcommissi0000unse_h0e1/page/n7/mode/2up.
[7] *Remarks*, *supra* note 2.

work, Reagan said the new commission would focus on the pornography problem as it existed in 1986. "I think the evidence that has come out since that time," he explained, "plus the tendency of pornography to become increasingly more extreme, shows that it is time to take a new look at this conclusion."[8] French's official notice of the 1986 Commission's creation stated that it would study the changing content of pornography, "its volume, the impact of new technology, and pornography that relates to children."[9] The Commission would also review evidence "on the relationship between exposure to pornographic materials and antisocial behavior" and recommend "possible roles and initiatives that…local, State, and Federal government could pursue in controlling, consistent with constitutional guarantees, the production and distribution of pornography."[10] This *Legal Report* will assess the 1986 Commission's contribution to limiting the negative impact of pornography by examining its work in its legal and policy context and how it provides a foundation for further efforts.

## The Legal Context

### Federal Statutes

- Statutes authorized customs officials to seize "indecent and obscene" materials,[11] subsequent statutes broadening the prohibition's coverage of both content and media.[12]
- Other statutes restricted pornography distribution.[13] The Comstock Act of 1873 prohibited using the mail to deliver materials related to abortion and contraception,[14] amending it three years later to reach any written material "of an indecent character."[15]
- Congress revised the federal criminal code in 1948, prohibiting the importation or interstate transportation,[16] broadcast,[17] and possession with intent to sell obscene matter[18] which, the Supreme Court has held since 1956, is not protected by the First Amendment.[19]
- Congress has criminalized production, transportation, receipt, and distribution[20] of child pornography, which the Supreme Court has also held lacks First Amendment protection.[21]

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[8] 50 Fed. Reg. 8684 (March 4, 1985).
[9] *Id*.
[10] *Id*. *See also 1986 Commission Report* at 215.
[11] Tariff Act of 1842, 5 Stat. 566.
[12] *See, e.g.*, Tariff Act of 1857, 11 Stat. 192 (coverage expanded to "books, pamphlets, papers, drawings, and other representations, figures, or images"); Tarriff Act of 1883, 22 Stat. 503 (coverage expanded to include advertisements and circulars); Tariff Act of 1922, 42 Stat. 858 (coverage expanded to include imported films); Tariff Act of 1930, 19 U.S.C. §1305, 46 Stat. 688 (coverage expanded to reach anything indecent or obscene produced using any material).
[13] *See, e.g.,* Post Office Act, §16, 13 Stat. 504, 507 (1865) (prohibited using the "mails of the United States" to deliver an "obscene book, pamphlet, picture, print, or other publication of a vulgar and indecent character.").
[14] *See* Margaret A. Blanchard, The American Urge to Censor: Freedom of Expression Versus the Desire to Sanitize Society – From Anthony Comstock to 2 Live Crew, 33 WM. & MARY L. REV. 741, 749 (1992).
[15] *Id*. Today, the Comstock Act is codified at 18 U.S.C. §§1461, 1462 and covers any "matter" that is "obscene, lewd, lascivious…filthy…[or] indecent." The statute further defines "indecent" to include "matter of a character tending to incite arson, murder, or assassination." *Id*. The Supreme Court held that "obscene, lewd, or lascivious" describes the same offense as "obscene" standing alone. Swearingen v. United States, 161 U.S. 446, 450 (1896). It later described "filthy," a category Congress added in 1909, as "course, vulgar, disgusting, indecent, and unquestionably filthy within the popular meaning of that term. United States v. Limehouse, 285 U.S. 424, 425 (1932).
[16] 18 U.S.C. §1462. *See also* 18 U.S.C. §1465 (interstate transportation for sale or distribution of obscene matter).
[17] 18 U.S.C. §1464.
[18] 18 U.S.C. §1460.
[19] Roth v. United States, 354 U.S. 476, 484-85 (1957); Miller v. California, 413 U.S. 15, 23 (1973) ("This much has been categorically settled by the Court, that obscene material is unprotected by the First Amendment.").
[20] 19 U.S.C. §§2251, 2252,
[21] New York v. Ferber, 458 U.S. 747 (1982).

## Court Decisions

### 1. The common law

"By the 18th century, English Common law recognized publishing obscenity as an indictable offense."[22] *Regina v. Hicklin* established the "test of obscenity" as "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."[23] In the United States, some state[24] and federal[25] courts used the *Hicklin* standard,[26] while others found it deficient. In 1934, for example, the U.S. Court of Appeals for the Second Circuit questioned whether the *Hicklin* test might "involve an impracticability that cannot be imputed to Congress"[27] and attempted to fashion a more objective test.[28] Those questions continued, with the D.C. Circuit holding in 1940 that the *Hicklin* test "has been repudiated, and for it has been substituted the test a book must be considered as a whole, in its effect, not upon any particular class, but upon all those whom it is likely to reach."[29]

### 2. Constitutional law

*Roth v. United States*[30] consolidated a federal and a state case in which individuals were convicted for violating, respectively, the Comstock Act and a California statute prohibiting mailing material that is "obscene or indecent." The Supreme Court first drew a constitutional line between pornography and "obscenity," holding that obscenity lacks "redeeming social importance" and, therefore, "is not within the area of constitutionally protected speech or press."[31] Second, the Court established a test for obscenity that was based on content rather than, as in *Hicklin*, on effect: "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest."[32]

The Supreme Court, however, did not identify the relevant "community" from which standards for identifying obscenity would be drawn; define the "prurient" interest or explain how to determine what appeals to it; or explain how to measure "redeeming social importance." These uncertainties soon produced deep divisions within the Court[33] and inconsistent guidance for lower courts.

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[22] Free Speech Coalition v. Paxton, 606 U.S. 461, 472 (2025).
[23] L.R. 3 Q.B. 360, 371 (1868) (per Cockburn, C.J.).
[24] *See, e.g.*, People v. Muller, 96 N.Y. 408 (1884) (*Hicklin* applied to affirm conviction under statute prohibiting sale of "any obscene, lewd, lascivious, filthy, indecent or disgusting book, pamphlet, picture, paper, [or] print."); Commonwealth v. Addison, 227 Mass. 57 (1917) (*Hicklin* applied to affirm conviction for distributing material containing "obscene, indecent and impure language, manifestly tending to corrupt the morals of youth").
[25] *See, e.g.*, United States v. Bennett, 24 F.Cas. 1093 (S.D. New York 1879); Rosen v. United states, 161 U.S. 29 (1896).
[26] As late as 1951, a federal district court used *Hicklin* to define "obscenity" within the meaning of the Tariff Act of 1930 Tariff Act. *United States v. Two Obscene Books*, 99 F. Supp. 760, 762 (N.D. Cal. 1951).
[27] U.S. v. One Book Entitled Ulysses by James Joyce, 72 F.2d 705, 708 (2d Cir. 1934).
[28] *Id*.
[28] Parmelee v. United States, 113 F.2d 729, 731 (D.C. Cir. 1940) (citing United States v. Levine, 83 F.2d 156, 157 (2d Cir. 1936; United States v. One Book Entitled Ulysses, 72 F.2d 705 (2d Cir. 1934); United States v. Dennett, 39 F.2d 564 (2d Cir. 1930).
[29] Parmelee v. United States, 113 F.2d 729, 731 (D.C. Cir. 1940).
[30] 354 U.S. 476 (1957).
[31] *Id*. at 484-85.
[32] *Id*. at 489.
[33] *See, e.g.*, Jacobellis v. Ohio, 378 U.S. 184 (1964) (overturned a theater manager's conviction but no majority rationale; Justice Potter Stewart wrote of obscenity that "I know it when I see it"). *Id*. at 197 (Stewart, J., concurring); A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of the Commonwealth of

Two Supreme Court decisions that did command a majority during this period added elements to the legal landscape. In *Ginsberg v. New York*, the Supreme Court upheld a law restricting the sale to minors of sexual materials that were not obscene for adults, permitting the definition of obscenity to be adjusted to the intended audience.[34] One year later, in *Stanley v. Georgia*, the Court held that a state could not criminalize the mere private possession of obscene material in the home.[35] These decisions, however, did not answer *Roth*'s central question, namely, how courts were to determine whether material distributed to adults was obscene.

The next significant development came in *Miller v. California*[36] when the Supreme Court reconsidered the *Roth* framework.[37] The Court retained *Roth*'s prurient-interest inquiry, limited patent offensiveness to sexual conduct specifically defined by the applicable law, and added an inquiry into whether the work lacked serious literary, artistic, political, or scientific value. The resulting *Miller* test asks whether:

- the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;
- the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law;
- the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.[38]

Finally, the Court answered an important question left open in *Roth* by holding that "community standards" meant just that, the standards of a particular community rather than society at large.[39] It was not "a national standard."[40] The First Amendment, the Court said in *Miller*, does not require "the people of Maine or Mississippi [to] accept…conduct found tolerable in Las Vegas."[41]

## The Policy Context

Critics tried to dismiss the 1986 Commission as little more than "a small sop to Reagan's New Right constituency,"[42] a less-than-serious exercise meant only "to appease conservative and

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Massachusetts, 383 U.S. 413 (1966) (reversed a conviction for selling a novel but no majority rationale); Redrup v. New York, 386 U.S. 767 (1967) (reversed convictions but agreed only that the materials involved were constitutionally protected).

[34] 390 U.S. 629 (1968).

[35] 394 U.S. 557 (1969).

[36] 413 U.S. 15 (1973).

[37] Justice William Brennan, who wrote the majority opinion in *Roth*, had since concluded that no approach to defining obscenity could avoid "jeopardizing First Amendment values" and that "that the time has come to make a significant departure from that approach." Paris Adult Theatre I v. Slaton, 413 U.S. 49, 73-74 (1973) (Brennan, J., dissenting). His "significant departure" would abandon altogether the effort "distinguish clearly between protected and unprotected speech." *Id*. at 84.

[38] *Id*. at 24 (citations omitted).

[39] Justice Brennan had argued for this national standard. Jacobellis v. Ohio, 378 U.S. 184, 193 1964) (internal quotations omitted).

[40] *Id*. at 200 (Warren, C.J., dissenting).

[41] *Miller*, 413 U.S. 15, 32. Three years after *Miller*, the Supreme Court clarified that the third "serious value" prong of the test was not controlled by local community standards, but did not squarely articulate the standard that should be used instead.

[42] Richard Stengel, Sex Busters: A Meese Commission and the Supreme Court Echo a New Moral Militancy, TIME, July 21, 1986, https://time.com/archive/6706609/sex-busters/?

fundamentalist supporters."[43] That accusation may have had political utility, but it seriously mischaracterized both what the 1986 Commission did and how it fit into, and improved upon, existing efforts to address the pornography problem. Pre-1986 efforts generally followed two different models. The *suppression* model presumed that pornography is a problem and assessed that problem to inform recommendations for restricting it. The *advisory* model sought to determine whether pornography is a problem at all and, therefore, whether to recommend any restrictions.

**The Suppression Model.** Most pre-1986 proposals followed the suppression model. Legislation or resolutions often included negative language that lacked definition but identified pornography as a problem. Some proposals acknowledged the need to learn more about the pornography industry, as well as some aspects of pornography's impact on individuals and society, for the purpose of justifying and formulating suppression strategies.

### 1. House Committees

Rep. Ezekiel Gathings (D-AR) was the driving force behind efforts during the 1950s to examine the content of radio and television shows as well as printed material. His proposals called for suppression based exclusively on content. He introduced resolutions directing existing House committees, or creating new ones, to determine "the extent to which the radio and television programs currently available to the people of the United States contain immoral or otherwise offensive matter, or place improper emphasis upon crime, violence, and corruption" and to make recommendations "to eliminate offensive and undesirable radio and television programs."[44] Another Gathings resolution created a Select Committee on Current Pornographic Materials to conduct a "full and complete investigation and study" to determine "the extent to which current literature – books, magazine, and comic books – containing immoral, obscene, or otherwise offensive matter…are being made available to the people of the United States."[45]

These resolutions, which preceded the Supreme Court's decision in *Roth*, used terms such as immoral, offensive, undesirable, and obscene without defining them. The select committee's report acknowledged the "difficulty of establishing a precise interpretation of the word 'obscene' and its synonyms and near-synonyms" as one of the "greatest impediments to the prompt and effective enforcement of existing laws intended to control pornographic material."[46]

### 2. Senate Judiciary Committee

In June 1953, the Senate passed S.Res. 89 authorizing the Judiciary Committee to conduct "a full and complete study of juvenile delinquency in the United States."[47] A Special Subcommittee on Juvenile Delinquency, chaired by Senator Estes Kefauver (R-TN), held hearings that focused

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[43] American Social History Project, Who Built America?, vol. 2, ch. 13, Economic Adversity Transforms the Nation, 1973-1989, https://whobuiltamerica.org/book/wba/part-iii-cold-war-america-and-after-1946-1989/1973-economic-adversity-transforms-the-nation-1973-1989/?

[44] Congressional Record, May 12, 1952, at 5058 (H.Res. 278, introduced June 25, 1951). *See also* Congressional Record, March 31, 1952, at 3144 (H.Res. 520, introduced Feb. 7, 1952). Rep. Oren Harris (D-AR) chaired a seven-member Interstate and Foreign Commerce subcommittee which issued a report on December 30, 12952. Investigation of Radio and Television Programs, H. Rept. 2509 (December 30, 1952).

[45] Congressional Record, May 12, 1952, at 5061 (H.Res. 596, introduced April 3, 1952).

[46] *Id*. *See also* Investigation of Radio and Television Programs, *supra* note 44, at 5 (the "elasticity of expression" makes difficult "all-embracing decisions" by the courts).

[47] *See* Congressional Record, July 20, 1956, at 13653.

specifically on obscene and pornographic materials[48] and made two important contributions. First, while Gathings' resolutions focused solely on undesirable content, it added the effects of obscene and pornographic literature on juveniles as an additional basis for suppression.[49] Second, it described the need to better inform the public about the pornography problem. The subcommittee found that "pornography was most often thought of as having only adult appeal and that it was considered mostly a nuisance."[50] The subcommittee's recommendations reflected both its general view that pornography could negatively affect young people and its emphasis on educating the public about the problem. The report called on religious, civic, and service groups to provide "aggressive leadership" to shape public opinion and inspire the public to fight pornography.[51]

### 3. 1960 Commission Proposals

On March 29, 1960, Rep. James Oliver (D-ME) introduced H.R.11454 to create a Commission on Noxious Printed and Pictured Material.[52] It included elements of both the Gathings resolutions and the Kefauver special subcommittee approach. It referred to "noxious printed and pictured material dealing with acts or suggestive acts of sexuality and sexual deviations and perversions."[53] At the same time, it went a step beyond the 1956 select subcommittee report regarding consideration of effects. This refinement had three elements: a "scientific" evaluation of the "causal" relationship between the "traffic" in pornography and certain behavior.[54]

In June 1960, Senator Karl Mundt (R-SD) introduced S.3736[55] to create a Commission on Noxious and Obscene Matters and Materials, which the Senate unanimously passed four days later.[56] Changing the name from "Noxious Printed and Pictured Material" to "Noxious and Obscene Matters and Materials" signaled, at the same time, a narrower focus on the more specific category of obscenity and a broader focus on different kinds of media, potentially including film, radio, or television.

### 4. 1965 Commission Proposal

Rep. Dominick Daniels (D-NJ) introduced H.R.7465 to create a Commission on Noxious and Obscene Matter and Materials, which he described as a "Presidential commission to find ways to combat smut."[57] The bill was referred to the House Committee on Education and Labor, and a

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[48] *See* Juvenile Delinquency (Obscene and Pornographic Materials), Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the S. Comm. On the Judiciary (1955).

[49] *See* Theodore W. Stredrick, Obscene and Pornographic Literature and Juvenile Delinquenc: A Digest of Senate Report No. 2381, Library of Congress Legislative Reference Service, April 13, 1959, at 7; Obscene and Pornographic Literature and Juvenile Delinquency, Interim Report of the Subcommittee to Investigate Juvenile Delinquency of the S. Comm. On the Judiciary, S.Rpt. 84-2381 (June 28, 1956).

[50] *Id*.

[51] *Id*. at 15.

[52] *See* Congressional Record, March 29, 1960, at 7188. Less than week later, Senator Karl Mundt (R-SD) introduced S.3325, companion legislation to create a commission with the same name.

[53] Commission on Noxious Printed and Pictured Materials, Hearings before the Subcomm. On Special Education of the H. Comm. On Education and Labor, 86th Cong. 2 (1960). *See also id*. at 4 ("filth and smut," "vile" literature and pictures, and "unfit" materials).

[54] *See, e.g., id*. at 1-2 (need for "scientific investigation").

[55] Mundt had introduced S.3325 on April 4, 1960, a bill very similar to Oliver's H.R.11454. He offered the text of S.3736 as an amendment to that bill. *See* Congressional Record, June 21, 1960, at 13513. Rep. Oliver, in turn, introduced H.R.12931 on July 1, 1960, with language similar to S.3736.

[56] *See* 106 Cong. Rec. 14141, 14402 (1960).

[57] To Create a Commission on Noxious and Obscene Matters and Materials, Hearings Before the Select Subcomm. On Educ. of the H. Comm. On Educ. & Labor, 89th Cong. (Sept. 1, 1965), at 2.

subcommittee, which Daniels chaired, held an extensive hearing in September 1965. In addition to the familiar references to "smut,"[58] "rotten wares,"[59] and "filth,"[60] bill supporters emphasized the need to collect data, study distribution networks, evaluate effects on minors, and identify policy options that are consistent with the First Amendment.[61]

**The Advisory Model: The 1970 Commission.** The suppression model presumes that pornography is a problem and should be restricted. Judgments about content, concepts of harm and evidence, and discussion of pornography's impact generally serve that purpose. The advisory model turns this on its head, with investigation and assessment designed not to inform efforts to suppress pornography, but to determine whether pornography is a problem at all and, therefore, whether it should be restricted. Leaving that foundational question open makes the advisory model an attractive vehicle for interest groups opposed to any effort to restrict pornography to engineer a negative answer. The legislation that created the 1970 Commission on Obscenity and Pornography, as well as the commission's operation, show how this works.

### 1. Senate passes a suppression commission bill

Senator Mundt introduced a bill, S.188, in January 1967 to create a suppression commission with a familiar name and mandate. Declaring that "traffic in obscene matters and materials is a matter of grave national concern,"[62] the legislation would create a Commission on Noxious and Obscene Matters and Materials to protect the public from "the morally corrosive effects of such matters and materials."[63] Its purpose was "to bring about a coordinated effort at the various governmental levels, and by public and private groups, to combat by all constitutional means this pernicious traffic."[64]

On May 10, 1967, the Senate Government Operations Committee favorably reported S.188 substantially as Mundt introduced it, and the Senate passed it by a voice vote the next day.[65] Mundt's proposal was consistent with public opinion during this period. A June 1969 TIME-Louis Harris poll, for example, found that 76 percent "want pornography outlawed."[66] A 1969 Gallup poll showed that 85 percent favored stricter obscenity laws.[67]

### 2. House passes an advisory commission bill

Two groups, the American Civil Liberties Union (ACLU) and American Library Association (ALA), opposed H.R.7465, Daniels' original suppression commission bill, because it assumed a "causal relationship" between pornography and criminal or antisocial behavior without "clearly

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[58] *See, e.g., id.* at 7, 12, 22, 44, 58, 66, 71, 131.
[59] *Id.* at 2. *See also id.* at 138 ("rotten traffic").
[60] *See, e.g., id*. at 5, 9, 53, 65. *See also id. at 2* ("filth and perversion").
[61] Senator Mundt testified in this House hearing, emphasizing the need to stay "on the correct side of censorship." *Hearings*, *supra* note 57, at 9. *See also id.* at 10 (subcommittee chairman Rep. John Dent (D-PA) that "there is a difference between censorship and the stopping of traffic of pornographic materials.").
[62] Creating a Commission on Obscenity and Pornography, Hearing Before the Select Subcomm. On Education of the H. Comm. On Educ. And Labor, 90th Cong., (1967), at 8.
[63] *Id*.
[64] *Id*.
[65] Congressional Record, May 11, 1967, at 12405.
[66] Changing Morality: The Two Americas A TIME-Louis Harris Poll, June 6, 1969, https://content.time.com/time/subscriber/article/0%2C33009%2C941659-4%2C00.html?.
[67] *See* Congressional Record, December 17, 1969, at 39633.

demonstrable proof."[68] Instead, they favored language in H.R.11454, Rep. Oliver's 1960 proposal, because it would require a "*scientific evaluation* of the existence and extent of the *causal relationship* between the traffic in such material and criminal, delinquent, or other undesirable or antisocial behavior."[69]

Bowing to their pressure, Daniels changed course, introducing H.R.2525 to create an advisory commission. Lawrence Speiser, director of the ACLU's Washington office, testified in the April 1967 hearing on this bill, noting that it reflected specific changes the ACLU had advocated:

- "the incurably vague word, 'noxious,' has been eliminated from the title"[70]
- it "restored a provision for a study of the causation question"[71]
- "the bill no longer refers to the desirability of involving the public and private groups in the suppression of printed material."[72]

The ACLU, however, wanted more. First, Speiser said, a commission should be limited only to conducting "a scientific investigation of the causation question"[73] and have no authority to recommend measures for more effectively limiting the traffic in pornography. Second, the scientific study should be "carried out by contracting with a foundation or with a major university having a particular expertise in this field, to conduct the actual investigation and evaluation."[74] Finally, Speiser pushed for restricting the proposed commission's membership to those with "the detachment and specialized skill of the social scientist."[75] The ALA even demanded that any evidence of causation must be "acceptable by legal or medical standards."[76] The ALA also opposed H.R.2525 because it allowed suggestions from and consultations "with governmental organizations and private groups."[77]

### 3. The president signs the revolutionized bill into law

Daniels had already made the foundational concession of changing the very nature and direction of the commission he proposed. After the April 1967 hearing, he went further by introducing a new advisory commission bill, H.R.10347, that incorporated even more ACLU/ALA recommendations. The House took up S.188 as passed by the Senate, amended it with H.R.10347's language, and passed it; the Senate passed it without a recorded vote; and President Lyndon Johnson signed the newly configured S.188 into law on October 3, 1967, as Public Law 90-100.[78]

### 4. The 1970 Commission implements the ACLU/ALA directions

The ACLU and ALA helped turn S.188 into something intended to stop all suppression commission efforts for good. The 1970 Commission then did exactly what it was designed to do, making conceptual choices that virtually guaranteed conclusions the ACLU and ALA favored.

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[68] *Id*. at 73; 1967 hearing, *supra* note 62, at 78. In a statement submitted for the hearing on H.R.7465, ALA President Robert Vosper quoted from a 1953 statement the ALA had issued jointly with the American Book Publishers Council opposing "attempts at suppression." 1965 hearing, *supra* note 57, at 140
[69] *See supra* note 54.
[70] 1967 hearing, *supra* note 62, at 78
[71] *Id*.
[72] *Id*.
[73] *Id*. at 80
[74] *Id*. at 79.
[75] *Id*.
[76] *Id*. at 141.
[77] *Id*.
[78] Public Law 90-100, 81 Stat. 253 (Oct. 3, 1967).

- **Content.** While the commission used a few categories for descriptive purposes,[79] it investigated, and made conclusions and recommendations about, the general universe of all "explicit sexual materials,"[80] "sexually oriented materials,"[81] or "erotic materials."[82]
- **Harm.** The 1970 Commission's concept of harm was limited to particular behaviors, or observable behavioral consequences, such as "crime, delinquency, [or] sexual or nonsexual deviance."[83] Conversely, it rejected as harms such things as corrupting public morals, undermining traditional sexual norms, or weakening marriage and family values.
- **Evidence.** The 1970 Commission adopted the ACLU/ALA recommendation that evidence must show a "causal relationship" between exposure to pornography and specific behaviors.[84] The Commission further insisted that a lack of direct evidence of causation meant that no evidence of any relationship existed at all.
- **Public Hearings.** Finally, these conceptual choices, and its heavy emphasis on "expert" opinion meant that the 1970 Commission found little, if any, value in public hearings as part of its investigative and evaluation efforts. In fact, the Commission held only two public hearings, with a total of 31 witnesses, in its three years of work.

**Conclusions.** These conceptual choices were made to facilitate the conclusion that pornography does not affect behavior. True to its design, the 1970 Commission found "no evidence to date that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal behavior among youth or adults."[85] This conclusion incorporated the Commission's concepts of content (all "explicit sexual materials"), harm ("delinquent or criminal behavior"), and evidence ("significant role in the causation"). Not surprisingly, the ACLU and ALA echoed the conclusions they helped engineer: "scientific studies provide *no evidence* that obscene books or motions pictures *incite* adults to criminal *conduct*, sexual deviancy or emotional disturbances."[86]

**Recommendations.** Consistent with these conclusions, the 1970 Commission recommended that "federal, state and local legislation prohibiting the sale, exhibition or distribution of sexual materials to consenting adults should be repealed."[87] It did not, however, recommend repealing restrictions on access to pornography by minors.[88]

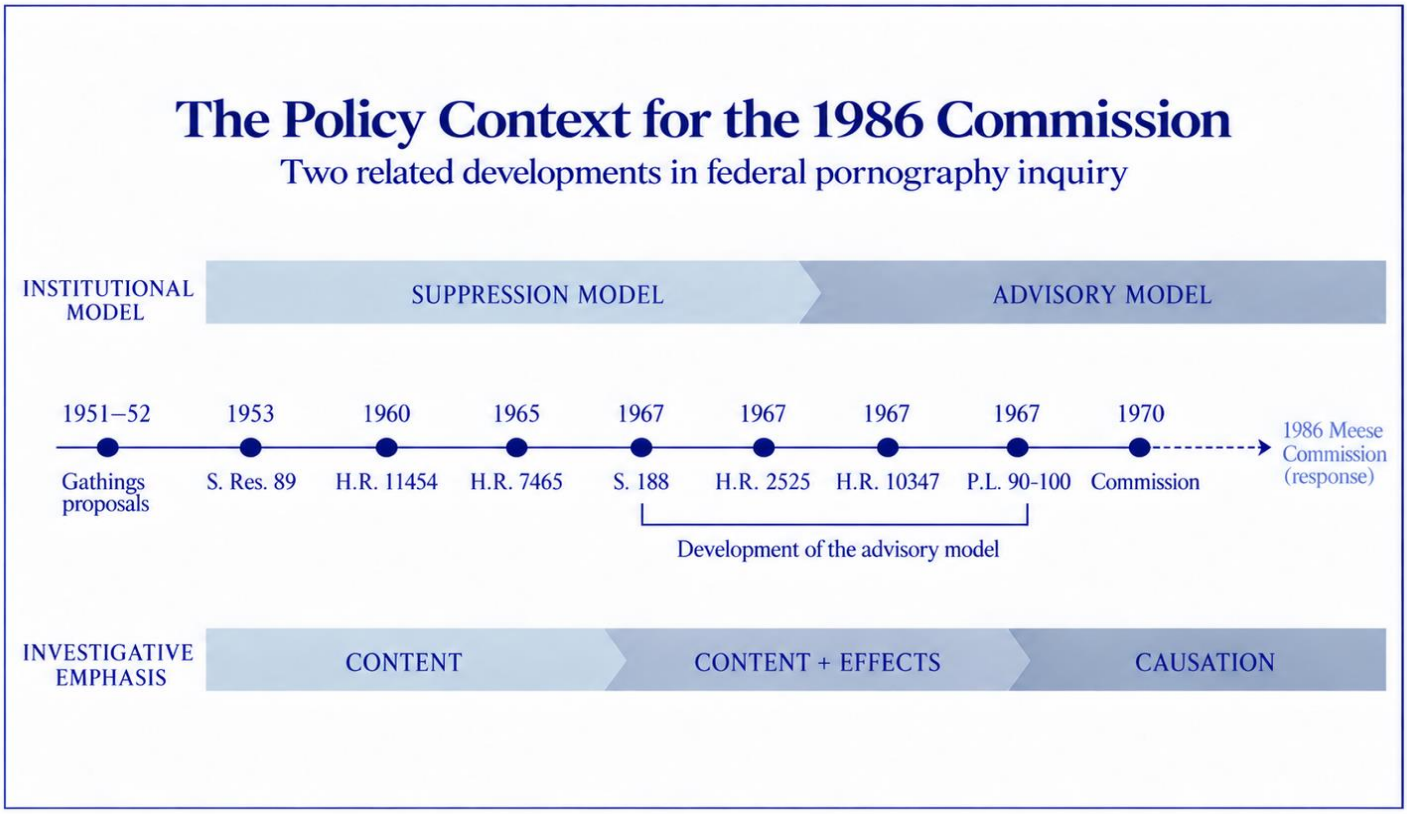
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[79] Ironically, the 1970 Commission criticized the Supreme Court's definition of obscenity in *Roth* and *Memoirs* as subjective and uncertain but utilized "hard-core pornography" as a category while admitting that it was not a legally defined category and conceding that, because it was itself unstable and confusing, "[i]t can be argued that…it would be well to avoid the use of the term altogether." 1970 Commission report at 18.
[80] *Id*. at 3, 19, 26, 41, 54.
[81] *Id*. at 3, 7, 11, 17, 74.
[82] *Id*. at 23.
[83] *Id.*at 139.
[84] *Id*. at 1, 27, 57, 76.
[85] *Id*. at 27 (emphasis added).
[86] The ACLU and ALA led a coalition statement on the 1970 Commission report, joined by more than two dozen national organizations. *See* Congressional Record, April 20, 1971, at 10928 (emphasis added).
[87] *Id*. at 57.
[88] *Id*. at 62. Two considerations appear to have led to this conclusion. First, "a large majority of Americans believe that children should not be exposed to certain sexual materials." Advice and Dissent, *Scientific American* (Nov. 1970), at 42. Second, the Commission took "the view that parents should be free to make their own conclusions regarding the suitability of explicit sexual materials for their children."

**Reaction.** The 1970 Commission's conclusions and recommendations received wide criticism.

- The Commission's report contained 256 single-spaced pages of statements by individual commissioners. Nearly one-third of those statements were from commissioners who wholly rejected its design and implementation.
- On October 3, 1970, the Senate voted 60-5[89] for S.Res. 477, introduced by Senator John McClellan (D-AR), rejecting the Commission's findings and conclusions.[90]
- After receiving the Commission's final report, President Richard Nixon issued a statement "categorically reject[ing] its morally bankrupt conclusions and major recommendations."[91]
- In a 1973 NORC/GSS survey, for example, fewer than 10 percent of Americans favored unrestricted distribution of pornography, 42 percent would make distribution to anyone illegal, and another 47 percent said it should be accessible only to adults.

## The 1986 Commission




[89] A significant number of Senators missed other roll call votes during this period, possibly due to the looming November 3 midterm election. A week before the vote on S.Res. 477, for example, 36 Senators missed the vote on H.R. 17654 and 41 missed the vote on H.R. 17825.
[90] Congressional Record, October 13, 1970, at 36459-60. *See also* Congressional Record, April 20, 1971, at 10927-29 (statement of Sen. McClellan). The resolution had 26 Democrat and 24 Republican co-sponsors.
[91] https://www.presidency.ucsb.edu/documents/statement-about-the-report-the-commission-obscenity-and-pornography

**Conceptual Choices.** The 1970 Commission's conceptual choices regarding content, harm, and evidence closely paralleled the ACLU/ALA recommendations, designed to effectively make possible only one conclusion: that pornography is not harmful and, therefore, that laws restricting it from adults should be repealed. The 1986 Commission's conceptual choices were more holistic, informed by the reality of pornography at the time as well as by scientific evidence and experience.

- **Content.** The 1970 Commission focused broadly on the broad universe of "sexually oriented materials."[92] The 1986 Commission "unanimously agreed that looking at all sexually explicit materials, or even all pornographic materials, as one undifferentiated whole is unjustified by common sense, unwarranted on the evidence, and an altogether oversimplifying way of looking at a complex phenomenon. In many respects we consider this one of our most important conclusions."[93] Pornographic content was diversifying and the fact that scientists were increasingly willing "to subdivide [is] an important methodological advance over the efforts of earlier eras."[94] The Commission divided pornography depicting adults into four categories: sexually violent; nonviolent materials depicting degradation, domination, subordination, or humiliation; non-violent and non-degrading material; and nudity.
- **Harm.** The 1970 Commission defined harm narrowly in terms of criminal or antisocial behavior. The 1986 Commission rejected an "unduly narrow conception of harm"[95] limited to "that with which government can or should deal"[96] or that can "easily be observed and measured."[97] Its more holistic concept of harm included harm to communities or groups as well as to individuals and included "attitudinal changes."[98] The Commission, however, maintained two important lines: between "harm and offense"[99] and "primary and secondary harms."[100]
- **Evidence.** The 1986 Commission rejected each element of its predecessor's evidentiary standard.[101] Instead, it acknowledged that some of what is legitimately counted as a harm might not lend itself to scientific measurement. Intuition, common sense, and experience, the Commission said, were also relevant sources of evidence. And, in another holistic choice, the Commission took account of the fact that harms or effects rarely have a single cause.[102]
- **Public Hearings.** The 1970 Commission intentionally excluded public engagement or education from its findings, conclusions, or recommendation. The 1986 Commission did the opposite, holding six public hearings across the country with more than 200 witnesses and dozens more submitting statements and materials.[103]

**Conclusions.** The 1970 Commission's narrow concepts of content, harm, and evidence were divorced from how the real world works. Setting a standard that there must be scientific evidence that generalized pornography, by itself, causes criminal or antisocial behavior produced the outcome that commission desired. The 1986 Commission's concepts of content, harm, and

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[92] *Id*. at 3, 7, 11, 17, 74.
[93] *Id*. at 320-21.
[94] *Id*.
[95] *Id*. at 302.
[96] *Id*. at 303.
[97] *Id*.
[98] *Id*. at 326-27.
[99] *Id.*
[100] *Id*. at 304.
[101] *Id*. at 306-07.
[102] *Id*. at 309.
[103] *Id*. at 1845-71.

evidence, and its acknowledgement of multiple rather than singular causation, were much more consonant with the realities of existing pornography, its content, and how it actually affects individuals and society. The Commission's report discussed conclusions related to each of the four content categories it utilized, noting both the strength or weakness of the evidence and, where appropriate, differing views of commission members. This holistic approach not only took into account the actual content of pornography as it existed at the time, but it allowed for a more nuanced discussion of the evidence and a more refined presentation of its conclusions.

- **Sexually Violent Material.** "Increasingly, the most prevalent forms of pornography…fit this genre."[104] It is "with respect to material of this variety that the scientific findings and ultimate conclusions of the 1970 Commission are least reliable for today, precisely because material of this variety was largely absent from that Commission's inquiries."[105] Conclusions from clinical and experimental research focusing on this material "have been virtually unanimous," showing "a causal relationship between exposure to material of this type and aggressive behavior towards women."[106] Further, considering certain "highly justifiable assumptions" and "common sense" supports the conclusion that "an increase in aggressive behavior directed at women will cause an increase in the level of sexual violence directed at women."[107] In addition, "[t]he evidence is also strongly supportive of significant attitudinal changes on the part of those with substantial exposure to violent pornography."[108]
- **Non-Violent Material Depicting Degradation, Domination, Subordination, or Humiliation.** The Commission subdivided non-violent pornography for the same reason that it subdivided the universe of all pornography. In both cases, it was the additional element, violence or degradation/domination/subordination/humiliation, that made the difference and had the most effect.[109] The Commission noted that relatively little research has made this subdivision, but the research that has suggested that "effects similar to although not as extensive as that involved with violent material can be identified with respect to such degrading material."[110]
- **Non-Violent/Non-Degrading Material.** This is the Commission's "most controversial category"[111] and, constitutes "only a small amount of the currently available highly sexually explicit material."[112] Commissioners "disagreed substantially" about its effects.[113] "Although the social science evidence is far from conclusive, we are on the current state of the evidence persuaded that material of this type does not bear a causal relationship to rape and other acts of sexual violence."[114] Still, this material may "bear a causal link to consequences other than sexual violence but still taken to be harmful."[115] These may include

[104] *1986 Report* at 323.
[105] *Id*. at 324.
[106] *Id*.
[107] *Id*. at 325.
[108] *Id*. at 326-27.
[109] *Id*. at 329-30. *See also id.* at 332 ("With respect to material of this variety, our conclusions are substantially similar to those with respect to violent material, although we make them with somewhat less confidence and our making of them requires more in the way of assumption than was the case with respect to violent material.").
[110] *Id*. at 330.
[111] *Id*. at 335.
[112] *Id*. at 336.
[113] *Id*.
[114] *Id*. at 337.
[115] *Id*. at 338.

legitimating sexual practices "frequently condemned in this and other societies"[116] or encouraging promiscuity or sex "outside of the context of marriage, love, commitment, or even affection."[117] Finally, the Commission agreed that material in this category, "regardless of whether it is harmful when used by adults only, is harmful when it falls into the hands of children."[118]

- **Nudity.** "There are legitimate questions about when and how children should be exposed to nudity, about…public portrayals of nudity, and…about when 'mere' nudity…has such clear connotations of sexual activity that it ought at least to be analyzed according to the same factors that we discuss with respect to sexually explicit materials containing neither violence nor degradation."[119]

**Child Pornography.** Federal law defines child pornography as "any visual depiction" of "a minor engaging in sexually explicit conduct"[120] and provides robust prison sentences for those convicted of producing,[121] distributing,[122] or possessing[123] it. While the 1970 Commission said nothing about child pornography, the 1986 Commission devoted an entire chapter to this "special horror,"[124] explaining how "the 'industry' of child pornography is largely distinct from any aspect of the industry of producing and making available sexually explicit materials involving only adults."[125] As a result, "tools designed to deal with the latter are largely ineffective in dealing with the former."[126]

**Recommendations.** The 1986 Commission report offered recommendations for changes to both federal[127] and state law,[128] the U.S. Department of Justice[129] and federal law enforcement agencies,[130] state and local prosecutors[131] and law enforcement agencies,[132] and the judiciary.[133] It also provided separate recommendations related to child pornography.

The 1970 Commission's conceptual choices, and its intended design, suggested that government can act only with respect to material that lacks any First Amendment protection, and then only by outright prohibition. This may have fit the ACLU/ALA agenda, but it is far too narrow to address the pornography problem. Another benefit of the 1986 Commission's more holistic perspective regarding content, harm, and evidence is that it makes possible recommendations responsive to various aspects of the pornography problem. To that end, in addition to recommendations for the

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[116] *Id*.
[117] *Id*. at 339.
[118] *Id*. at 343.
[119] *Id*. at 347.
[120] 18 U.S.C. § 2256(8). See U.S. Dep't of Justice, Citizen's Guide to U.S. Federal Law on Child Pornography (updated August 11, 2023), https://www.justice.gov/criminal/criminal-ceos/citizens-guide-us-federal-law-child-pornography.
[121] *See* 18 U.S.C. § 2251.
[122] *See* 18 U.S.C. § 2251(a).
[123] *See* 18 U.S.C. § 2252(a)(2).
[124] *1986 Report* at 405.
[125] *Id*. at 406.
[126] *Id*. at 410.
[127] *Id*. at 433-34.
[128] *Id*. at 434-35.
[129] *Id*. at 435-37.
[130] *Id*. at 439-40.
[131] *Id*. at 437-39.
[132] *Id*. at 440-41.
[133] *Id*. at 441.

justice system and law enforcement agencies and legislatures, the 1986 Commission's report included a section on "the role of private action."[134]

At the urging of the ACLU and ALA, Congress removed from the legislation that created the 1970 Commission any mention of public education or engagement. The 1986 Commission rejected that narrow approach. "We are a government commission, and thus most of what we have to say is addressed to government. Yet it is simply mistaken to assume that citizen concerns need be exclusively or even largely channeled into government action."[135] This section of the report discussed the right of citizens to protest or condemn pornography. The First Amendment, after all, protects their right to speak out against pornography as it does much of that pornography itself.

"To the extent that citizens have concerns about the kinds of sexually explicit material that are available in contemporary America," the report explained, "they should not only recognize that the First Amendment protects and encourages their right to express these concerns loudly and often, but should as well appreciate the fact that in many aspects of our lives to keep quiet is to approve."[136] The report also emphasized that citizens have the freedom not only to direct their voices against "materials that [they] find harmful, immoral, or objectionable" but also "if citizens are dissatisfied with the work of their law enforcement officials, their prosecutors, their administrators and executives, their legislators and their judges."[137] The report discussed different methods of public protest including participation in organizations that advance their point of view, pickets or marches, and boycotts.[138]

Finally, in this citizen-focused category, the Commission also noted that, "with respect to values and awareness as well as to facts, education is the real solution to the problem of pornography."[139] Recall that the Senate special subcommittee had suggested in 1953 that the American people needed to better understand the pornography problem and to change its view that pornography is "mostly a nuisance" that has only adult appeal.[140] The subcommittee recommended that religious, civic, and service groups help to shape public opinion and engage the public to fight pornography.[141] As introduced in 1967, S.188's stated purpose was to "bring about a coordinated effort at the various governmental levels, and by public and private groups, to combat by all constitutional means this pernicious traffic."[142]

**Implementation.** A number of the 1986 Commission's recommendations were implemented after its final report was released. For example:

- It recommended[143] stronger mechanisms to ensure that children are not used in pornography production, including requiring producers to verify and document performers'

[134] *Id*. at 419.
[135] *Id*.
[136] *Id*. at 420.
[137] Id. at 420-21.
[138] *Id*. at 421-23.
[139] *Id*. at 426.
[140] *Id*.
[141] *Id*. at 15.
[142] *Id*.
[143] *Id*. at 1447.

age. Congress responded by enacting the Child Protection and Obscenity Enforcement Act of 1988,[144] which included that specific requirement.[145]

- It recommended[146] greater resources, coordination among prosecutors, and systematic federal enforcement of both obscenity and child pornography laws. In 1987, the U.S. Department of Justice created the Child Exploitation and Obscenity Section within its Criminal Division to give higher profile and priority to these enforcement efforts.
- It recommended[147] wider use of nuisance actions against businesses involved in the distribution of obscene materials. As this tactic expanded, the Supreme Court held that adult establishments could be subject to nuisance remedies directed at unlawful conduct.[148]
- It recommended[149] using zoning restrictions to contain adult businesses. The Supreme Court upheld zoning regulations aimed at the "secondary effects" of adult businesses, allowing local governments to separate them from homes, schools, churches, or parks.[150]

## A Commission on Pornography in the Digital Age

At his announcement of the 1986 Commission, President Reagan emphasized that much had changed in the 16 years since the 1970 Commission did its work.[151] The transformation during that period from print to video, for example, changed how pornography is consumed. The digital revolution since then is much more profound, radically changing production, distribution, accessibility, monetization, and even the nature of pornography itself. Production is far cheaper, faster, and can be done anywhere without sacrificing visual quality. Not long ago, pornography production and distribution were controlled by a limited number of companies; today, they are completely decentralized.

Digital technology also enables entirely new forms of pornography such as live streaming, webcam performances, subscription-based direct distribution, interactive content, AI-generated images and video, and even the "sexting" phenomenon. Moving from print to video privatized pornography and brought it into the home; moving from video to digital democratized its production, universalized its distribution, and made the home a production studio. Wholesale changes like these would alone be enough to justify a "second look" and it does not take a social scientist to know that these same changes will not only magnify pornography's harmful effects, but even introduce new ones. Anyone can easily, anonymously, and without cost access virtually any pornographic content he or she seeks and consume that content entirely in private.

Attorney General French's regulatory description of the 1986 Commission said it would focus on "the impact of new technology, and pornography that relates to children."[152] These can be the two broad themes for organizing a new commission's agenda. Following the 1986 Commission's example, a new commission should be based on the suppression model, created and managed within the executive branch, and should build on the Commission's important contributions. These

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[144] Public Law 100-690.
[145] *See* 18 U.S.C. 2257. In 2006, Congress expanded this reporting requirement to include "visual depictions of simulated sexually explicit conduct." 18 U.S.C. §2257A.
[146] *1986 Report* at 1381.
[147] *Id*. at 1477
[148] *See, e.g.*, Arcara v. Cloud Books, Inc., 478 U.S. 697 (1986).
[149] *1986 Report* at 1483.
[150] *See, e.g.*, City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002).
[151] 50 Fed. Reg. 8684 (March 4, 1985).
[152] *Id*.

include subdividing pornography into content-based categories, considering multiple rather than singular causation, and utilizing holistic concepts regarding content, harm, and evidence drawn from the real world of what the commission is studying. The 1986 Commission also offered suggestions about topics that deserved more attention from researchers.

> "The research that has led to further subdivision of the large category of sexually explicit materials has perhaps been the most important development in recent years, and we strongly encourage research that will deal more precisely with different varieties of materials. We also believe that many other specific questions are in need of further research. There needs to be more research, for example, about the effect of pornography on the marriage relationship, about the nature of appetites for pornographic material and how those appetites are developed, about the effect of depiction of particular sexual practices on the sexual preferences of those who view them, and about the effects of exposure to pornographic material on children. This list could be much longer.[153]

**Child Pornography.** The U.S. Sentencing Commission first outlined ways that technology can be used to promote the distribution of child pornography three decades ago.[154] Today, more than two-thirds of the global population is connected to the Internet and sexually explicit websites number in the millions. The ease and anonymity of obtaining and distributing all forms of pornography have vastly expanded the trafficking in images of child sexual abuse, fueling the demand for production of those images and magnifying the unique harm caused by these non-contact crimes.[155] Researchers found more than a decade ago that "[t]he child pornography market is one of the fastest growing businesses on the Internet."[156]

A new commission can make significant contributions to more fully understanding and tackling the child pornography crisis. As noted above, the 1986 Commission began addressing child pornography at a time when it took the form of physical photographs of actual children engaged in sexual activity. "The distinguishing characteristic of child pornography," the Commission explained, "is that actual children are photographed while engaged in some form of sexual activity."[157] This makes most obvious the fact that "child pornography *is* child abuse."[158] Since then, technology has made possible "virtual" child pornography created without involving real children but that appears nearly indistinguishable from the real thing. Technology thus facilitates child pornography production (whether real or virtual), distribution, and possession far beyond what was happening in 1986. A new commission can address the way the child pornography crisis has developed into what it is today.

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[153] *1986 Report* at 349-50.
[154] U.S. Sentencing Commission, Sex Offenses Against Children: Findings and Recommendations Regarding Federal Penalties 25–30 (June 1996).
[155] U.S. Sentencing Commission, *supra* note 151, at 312–13 ("These technological changes have resulted in exponential increases in the volume and ready accessibility of child pornography."). In a 2015 hearing on restitution for child pornography victims, the National Center for Missing and Exploited Children explained that "the demand for and trade of child sexual abuse material has been increasingly facilitated by technological advances." House hearing, supra note 27, at 23 (Statement of Linda Krieg).
[156] Binford et al., *supra* note 152, at 124.
[157] *Id*. at 405.
[158] *Id*. at 406 (emphasis in original).

In *New York v. Ferber*,[159] the Supreme Court held that child pornography is not protected by the First Amendment because the state has a "compelling" interest in protecting the well-being of children.[160] The "prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance."[161] In *Ashcroft v. Free Speech Coalition*,[162] the Supreme Court applied *Ferber*, holding that provisions of the Child Pornography Prevention Act of 1996 banning virtual child pornography violated the First Amendment because real children were not being directly abused. A new commission can help the public and the courts understand that this view is too narrow and that virtual child pornography makes its own contribution to child sexual exploitation.

A new commission can also help establish how child pornography distribution and possession, separate from production, are integral parts of the broader child sexual exploitation enterprise. The U.S. Sentencing Commission explains that "[n]on-production child pornography offenses normalize and validate the sexual exploitation of children, which contributes to the sexual abuse of new victims."[163] One sentencing judge put it this way: "[E]very time one of these web sites is opened and every time one of these images is viewed, additional harm is visited upon the victim" that is "separate from the harm of production."[164]

Child pornography distribution and possession not only fuel the demand for the production of child pornography, but inflict on victims harm that the U.S. Sentencing Commission has described as "recurrent victimization through existence of images."[165] The knowledge that images of a victim's abuse are forever circulating, and that most individuals who obtain and traffic in those images will never be identified or prosecuted, can devastate a victim's entire life. Prosecution of a child pornography producer brings his specific actions to an end. Ongoing trafficking in the result of that production, however, will never bring such closure. As a result, child pornography distribution and possession help fuel the overall child sexual exploitation crisis and, at the same time, cause their own unique kind of harm.

Congress enacted the PROTECT Our Children Act[166] in 2008, requiring the Attorney General to "create and implement a National Strategy for Child Exploitation Prevention and Interdiction"[167] and specifying subjects that the report must address, including "[a]n analysis of future trends and challenges, including new technologies, that will impact the efforts to combat child exploitation."[168] The act required the Attorney General to submit the initial strategy to Congress no later than

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[159] 458 U.S. 747 (1982).
[160] *Id*. at 756.
[161] *Id*. at 757.
[162] 535 U.S. 234 (2002).
[163] u.S. Sentencing Commission, Federal Child Pornography Offenses 107 (2012), https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony and-reports/sex-offense-topics/201212-federal-child-pornography-offenses/Full_Report_to_Congress.pdf.
[164] United States v. Blankenship, 606 F.3d 1110, 1117 (9th Cir. 2010).
[165] U.S. Sentencing Commission, supra note 151, at 112. *See generally* Thomas Jipping and James R. Marsh, Taking Child Pornography Seriously by Improving Restitution for victims, Heritage Found. Legal Mem. No3790, Aug. 4, 2025. Child Pornography Prevention Act § 121, Public Law 104-208, 110 Stat. 2009 (1996). *See also* Osborne v. Ohio, 495 U.S. 103, 111 (1990); U.S. Sentencing Commission, *supra* note 20, at 311 ("the perpetual nature of the distribution of images on the Internet causes a significant, separate, and continuing harm to victims."); Warren Binford et al., Beyond Paroline: Ensuring Meaningful Remedies for Child Pornography Victims at Home and Abroad, 35 CHILDREN'S LEGAL RIGHTS JOURNAL, 117, 127 (2015) (describing the impact of "continual victimization").
[166] Public Law 110-401, 122 Stat. 4229 (Oct. 13, 2008).
[167] Originally codified at 42 U.S.C. § 17611(a), reclassified as 34 U.S.C. § 21111(a).
[168] 34 U.S.C. §21111(c)(2).

October 13, 2009, and an updated strategy every two years thereafter. Attorneys General of both parties have failed to do what Congress required. In a 2022 report, the Government Accountability Office documented the Justice Department's poor performance, specifically noting that "the strategy is not up-to-date on key technology advances that are making it more difficult to catch perpetrators."[169] A new commission can address what the Justice Department has failed to do.

## CONCLUSION:

The Attorney General's Commission on Pornography was part of a tradition of federal efforts to address pornography through investigative committees or commissions. It rejected the 1970 Commission's strategy of choosing concepts, definitions, and approaches designed to produce a pre-determined outcome. Instead, the 1986 Commission improved upon earlier attempts to address pornography as a problem through a more balanced and holistic approach. Its report includes a nuanced application of concepts regarding content, harm, and evidence and a candid acknowledgement of differing levels of support for its conclusions. And it identified issues that would need further research and attention. The 1986 Commission, therefore, provides a good example for a new commission that should address pressing issues presented by pornography in the digital age.

[169] U.S. Gov't Accountability Office, Online Exploitation of Children (Dec. 2022), https://www.gao.gov/assets/gao-23-105260.pdf at 2 (emphasis added).