

PORNO

2/11/70

R E T U R N

I certify that on February ____, 1970 I served the attached
subpoena on Major M. E. Dankworth, at _____, Alaska,
by delivering a copy of it to him.

Dated: February ____, 1970
_____, Alaska _____

1/1/70

S U B P O E N A

TO: Major M. E. Dankworth, Commander
Southcentral Region
Alaska State Troopers
702 East 30th Avenue
Spennard, Alaska

Under authority of AS 24.25, you are (or your designee is) commanded to appear before the Judiciary Committee of the Alaska House of Representatives and produce one copy of each of the motion picture films "Love Camp 7" and "The Pleasure Machine" (presently in your possession in connection with the case of State v. Handby), for viewing by the committee, at the committee room in the Masonic Hall at Fourth and Seward Streets in Juneau, Alaska, on February ____, 1970, at ____ p.m.

Dated: February ____, 1970
Juneau, Alaska

Jalmar M. Kerttula, Speaker
Alaska House of Representatives

Barry W. Jackson, Chairman
Judiciary Committee
Alaska House of Representatives

Stan

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
vs.) Criminal No. A-61-69)
)
JAMES FAYE VINSON,)
) Defendant.)

*Covered
9/20/69 A-61-69*

MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS

The Defendant's first contact with police officers in this case was on January 26, 1969, when his baggage was searched under a lawful warrant alleging the Defendant was carrying a quantity of marijuana. A careful search was made and no marijuana was found. However, eight (8) photographs and four (4) reels of 8 mm film, subsequently alleged to be obscene, were found. The photographs and film were not seized at that time.

On January 29, 1969, a search warrant was issued covering the Defendant's residence to search for obscene pictures and motion picture films. The warrant was based solely on the affidavit of Donald Watson, Customs Agent. (A copy of the Search Warrant and Affidavit are attached.) The affidavit does not even assert that the conclusion of obscenity was based on the affiant's personal observation of the photographs or films.

Under the warrant, a search of Defendant's residence was made. In addition to the four reels of film and eight photographs mentioned in the affidavit, thirteen other films were seized along with numerous photographs. Also, a careful search for marijuana was carried on in the residence under the warrant for obscene films.

Subsequently, after viewing one or more of the films and photographs seized, the Grand Jury indicted the Defendant charging violation of Title 18 USC (Rev. 1956) and 2485.

To this point, several fatal errors have appeared in the Government's case.

*Defendant
because of
affidavit of
probable cause*

The affidavit of the Customs Agent was insufficient to show probable cause as there was no allegation that his statements were based on personal knowledge. After all, that is the purpose of an affidavit.

Conceding for purposes of argument that the Customs Agent had viewed the films, his affidavit stating so and reaching the personal conclusion that the films were obscene, the warrant is still invalid. In Lee Art Theatre v. Virginia, 392 U.S. 636 (1968), the U. S. Supreme Court reversed a State Court conviction of possessing and exhibiting lewd and obscene motion pictures. The fatal defect was the use of evidence seized under a search warrant based on the affidavit of a police officer

Here the affidavit stated personal observations of the police officer & his conclusion of obscenity.

"which stated only the titles of the motion pictures and that the officer had determined from personal observation of them and of the billboard in front of the theatre that the films were obscene." Lee Art Theatre, supra, P. 636.

"However, we need not decide in this case whether the Justice of the Peace should have viewed the motion picture before issuing the warrant. The procedure under which the warrant was issued solely upon the conclusory assertions of the police officer without any inquiry by the Justice of the Peace into the factual basis for the officer's conclusions was not a procedure 'designed to focus searchingly on the question of obscenity', id., at 732, 6 T. Ed. 2d at 1136, and therefore fell short of constitutional requirements demanding necessary sensitivity to freedom of expression." id., at 637.

In other cases, Courts have required a prior judicial determination of obscenity before a warrant can issue, and even declared invalid warrant issued after the Judge had viewed the film. The defect in that case was the lack of an adversary hearing on the question of obscenity before the warrant issued. See Cambist Films v. Illinois, 292 F. Supp. 185 (1969).

Presented

In U. S. v. Brown, 274 F. Supp. 561 (1967), the Defendant was charged, as in the present case, of transporting obscene material in interstate commerce. The materials were plus a quantity of copies, as in the present case, were seized under a search warrant based on the affidavit of an FBI officer who observed the material.

None of the contents were submitted, as in the present case, to the Commissioner for his persual. The Court held the seizure unlawful and ordered the evidence suppressed and returned to the Defendant.

The Court stated that

"the common thread running through recent Supreme Court decisions on the seizure of allegedly obscene matter is that because the line between protected and unprotected speech is so difficult to draw, dissemination of a particular work should be completely undisturbed, at least until an independent determination of obscenity is made by a judicial officer. Complete restraint on any work must await a final judicial determination of obscenity." U. S. v. Brown, supra, p. 563.

The Court in Brown relied heavily on Marcus v. Search Warrant, 367 U.S. 717 (1961), and A Quantity of Copies of Books v. Kansas, 378 U.S. 205 (1964). Conceding that the Supreme Court in Marcus and A Quantity of Books was expressing its view in the context of civil forfeiture cases, the Court in Brown as did the U.S. Supreme Court in Lee Art Theatre, supra, applied similar procedures to criminal obscenity prosecutions.

"A search and seizure for the purpose of gathering evidence for a criminal obscenity prosecution imparts at least the same potential restraint on the dissemination of material protected by the First Amendment as one made solely for the purpose of commencing forfeiture proceedings." U. S. v. Brown, supra, p. 563.

Another interesting question and probably of first impression in this Court has arisen as the result of the recent U. S. Supreme Court case, Stanley v. Georgia, 37 Law Week 4315 (1969). In that case, the Court held Stanley had a right to possess obscene films in his own home. It should logically follow that a warrant designed to deprive a person of possession in his own home of obscene matter is invalid. If he has the right to possess the matter in his own home, no one should have the right to take it from him while in his home.

If he has the right to possess it in his own home, logically he should have the right to bring it there, unless he had stolen it somewhere.

*You can possess it if you can
legally get it there. Is that right?*

It could be argued that the seizure was not to deprive the Defendant of possession in his own home, but to use that seized as evidence of violation of another statute. That contention is confronted by at least two problems in the present case. First, are we to discriminate against those who must purchase the material out of State? That is, those who purchase the material in Alaska and take it to their own homes in Alaska have violated no law. Those who purchase the material outside Alaska are subject to prosecution for violation of a number of laws, if the material is held obscene. One of the stated purposes of Title 18, Sect. 1462, the statute the Defendant is accused of violating, was to supplement State legislation. If there is no legislation prohibiting possession in one's home, or if such legislation exists and is unconstitutional as a result of Stanley, that purpose is no longer existent.

most important

Secondly, is the manner in which the officers initially discovered the material alleged to be obscene. During a valid search for marijuana, the officers found the photographs and films, and went to great pains to view the contents, especially of the films, by unrolling the film and looking through the individual frames in the light. This type procedure occurred in the Stanley case while the officers were searching the Defendant's home for gambling devices under a lawful warrant for that purpose. Mr. Justice Stewart, with whom Mr. Justice Brennan and Mr. Justice White joined, in a concurring opinion, stated:

"This is not a case where agents in the course of a lawful search came upon contraband, criminal activity, or criminal evidence in plain view. For the record makes clear that the contents of the films could not be determined by mere inspection. And this is not a case that presents questions as to the permissible scope of a search made incident to a lawful arrest. For the appellant had not been arrested when the agents found the films. After finding them, the agents spent some 50 minutes exhibiting them by means of the appellant's projector in another upstairs room. Only then did the agents return downstairs and arrest the appellant.... It is not the government's duty to invite a criminal to exhibit his evidence. It is not the government's duty to invite a criminal to exhibit his evidence by procuring a projector and a screen and to get into a man's home and look inside, to

launch forth upon unconfined searches and indiscriminate seizures as if armed with all the unbridled and illegal power of a general warrant.

Because the films were seized in violation of the Fourth and Fourteenth Amendments, they were inadmissible in trial." Stanley v. Georgia, supra, p. 4319.

True, the films in the present case were not seized immediately after such a search described in Stanley, but the later seizure was certainly a fruit of the unconstitutional procedures of January 26, 1969.

CONCLUSION

The evidence seized should be suppressed and returned to the Defendant for one or more of the following reasons:

1. It is the belief of the Defendant, that the January 29, 1969 search warrant was not issued to the F.B.I., but to a Customs Agent and transferred to F.B.I. without approval of the Commissioner, therefore, the F.B.I. had no authority to make the search;
2. The affidavit on which the January 29, 1969 warrant was based did not allege personal observations and conclusions of the affiant, and, therefore failed to show probable cause. Nor does the affidavit state as the warrant asserts that the affiant believes the films to be on the premises to be searched;
3. The January 29, 1969 search warrant was invalid because prior safeguards to protect the Defendant's First Amendment rights were not taken before the warrant was issued;
4. Under the January 29, 1969 search warrant, the material seized was in the possession of the Defendant in his own home and a warrant to deprive the Defendant of that possession is invalid; and
5. The January 29, 1969 search warrant was the fruit of an illegal search undertaken under the auspices of the January 26, 1969 search warrant.

Respectfully submitted,

ROBISON, McCASKEY, SPRACHAN & HOGG

By: _____
Stanley P. Cornelius

Supreme Court has ruled unconstitutional searches for obscene materials based on the affidavit of an enforcement officer stating his personal observations. It should surely follow that a search warrant for alleged obscene materials based on an affidavit of an enforcement officer that does not state the conclusion of obscenity was based on his personal observations, is invalid.

Much of the MEMORANDUM IN SUPPORT was devoted to illustrating that the Defendant's First Amendment rights have been violated. The MEMORANDUM IN OPPOSITION does not even discuss this question though faced with U. S. Supreme Court cases and lower Court cases that indicate the proper procedures to protect the Defendant's First Amendment rights were not followed.

Much of the law cited in the MEMORANDUM IN OPPOSITION does not go to the real questions in issue. The Plaintiff cites Rule 41 (c) as allowing the Commissioner to issue a search warrant based on affidavit if the Commissioner believes there is probable cause. But the Commissioner must require certain procedures before he can determine probable cause. As pointed out earlier, the affiant must state he believes the objects of the search are on the premises to be searched, and, in the case of obscene materials, an independent determination of obscenity must be made by someone other than the police officer, most cases requiring a judicial determination (see Pages 2 and 3 of MEMORANDUM IN SUPPORT), before a search warrant can be issued and the material seized.

Referring to the matter at the bottom of Page 1 of the MEMORANDUM IN OPPOSITION, the Defendant does not quarrel with the Plaintiff's position that a warrant may be based on hearsay, but again, with respect to a search for alleged obscene materials, even warrants based on personal observations have been held invalid (see Pages 2 and 3 of MEMORANDUM IN SUPPORT).

Referring to the matter at the top of Page 2 of the MEMORANDUM IN OPPOSITION, the Defendant agrees with a policy of not imposing stringent over-technical standards upon a Commissioner in determining probable cause; however, the requirement that the affiant

state he believes the objects of the search are on the premises to be searched is a basic requirement certainly not over-technical. The cases have shown that a prior independent determination of obscenity is also basic.

The Defendant also agrees, referring to the last paragraph on Page 2 of the MEMORANDUM IN OPPOSITION, that enforcement officers may search and seize fruits of an alleged crime, but again the basic issue has been avoided. That is, the search warrant used for that search must be valid.

Referring to Page 3 of the MEMORANDUM IN OPPOSITION, the Plaintiff seems to argue that a presumption contained in 18 U.S.C. 1465 takes precedence over the recent U. S. Supreme Court case of Stanley v. Georgia, 37 Law Week 4315. Then in the last sentence, the Plaintiff admits that the presumption does not go to the issue of suppression of evidence or dismissal of indictment. The Defendant quite agrees and cannot understand why the presumption was referred to if it has no relevance to the issue of suppression of evidence.

Finally, not only does the Plaintiff avoid completely the issues of protection of the Defendant's First Amendment rights and failure of the affiant to state he believes the objects of the search are on the premises to be searched, but no reply has been made to the Defendant's allegations contained in the last paragraph on Page 4 and the first paragraph on Page 5 of the MEMORANDUM OF SUPPORT. That is, the procedures in the January 20, 1969 search were illegal and that the January 29, 1969 search warrant was based on the fruits of the illegal procedure during the first search. The quoted portion from the Stanley opinion is certainly right on point.

DATED: July 7, 1969

Respectfully submitted,

ROBISON, McCASKEY, STRACHAN & HOCH

By _____
Stanley P. Cornelius

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
JAMES FAYE VINSON,)
)
Defendant.)

FILED

AUG 1 1969

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By..... U Deputy.

No. A-61-69 Cr.

MEMORANDUM AND ORDER

This matter is before the Court on defendant's motion to suppress evidence, return seized property, and dismiss the indictment, based on an allegedly unlawful search and seizure.

On January 26, 1969, defendant's baggage was searched for marijuana at Anchorage International Airport, pursuant to a valid search warrant. No marijuana was found, but four reels of motion picture film and eight still photographs, believed by the Customs Agent to be obscene, were observed.

Three days later Customs Agent Watson executed an affidavit before the United States Commissioner alleging the above facts and no more. On the basis of that affidavit a search warrant was issued to search defendant's home for "obscene pictures, motion picture film" concealed in violation of 18 U.S.C. §§1462(a), 1465(1964). The warrant was executed and the evidence seized which defendant now moves to suppress.

Agent Watson's affidavit, the sole support for the warrant on the record, is fatally defective in two respects.

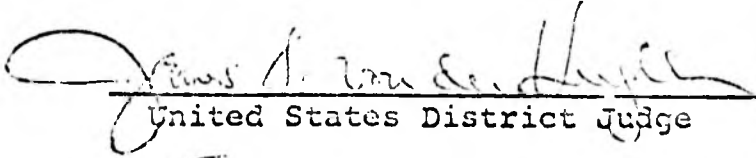
First, in obscenity cases a magistrate issuing a search warrant is required to make an independent finding of probable cause not only as to the presence of the offending matter, but also as to its obscenity. The "conclusory assertions of a single police officer" are not sufficient. Lee Art Theatre, Inc. v. Virginia, 392 U.S. 636 (1968); Marcus v. Search Warrant, 367 U.S. 717, 731-32 (1961). Here the affidavit states only that the materials in question "were observed to be obscene." Agent Watson's grounds for this conclusion are not given, nor does the record show that any such grounds were laid before the Commissioner.

Second, there is nothing in the record to connect the allegedly obscene matter with defendant's home. The affidavit states that on January 26, obscene matter was observed in defendant's suitcase at International Airport. On this basis a search warrant was issued three days later for defendant's home. There is no indication that any law enforcement officer had probable cause to believe, from personal observation, hearsay or otherwise, that the material seen in the suitcase three days previously was then in defendant's home.

It is therefore ORDERED:

1. THAT defendant's motion to suppress is GRANTED;
2. THAT the motion picture film and photographs seized be returned to defendant's possession;
3. THAT the indictment herein is DISMISSED.

DATED at Anchorage, Alaska, this first day of August, 1969.


United States District Judge

cc: Stanley P. Cornelius
Marvin S. Frankel, United States Attorney ←

UH

he said. "The shadow of the swastika is on every courthouse, on universities, on Government buildings."

Ugly Mood. After the speech, a crowd of 500 gathered in a park to listen to student radicals. Many of the wholesome-looking youths, clenched fists raised, appeared to be out for a lark. But the mood suddenly turned ugly, and when police patrol cars appeared a block away, the crowd began hurling rocks.

With 1,000 students and street people shouting "Burn, baby, burn!" youths set fire to piles of debris and shoved them through the Bank of America doorway. Some of the students argued that the attack was senseless. The burners, unable to articulate their reasons, answered that the bank was a "symbol of corporate corruption."

Though outnumbered, state patrolmen and sheriff's deputies took the offensive. But after a ten-minute rock barrage, they retreated, leaving a patrol car behind. The students set it afire. Meanwhile, the bank burned to the ground—a \$275,000 loss.

Tear Gas. The third night, despite a curfew and the arrival of some 300 additional state law-enforcement officers, the students continued their rock hurling. Police attempted unsuccessfully to break up unruly crowds, and from a hovering helicopter equipped with a loud-speaker ordered them to disperse. With only one known exception, the police kept their firearms holstered, sometimes throwing rocks themselves when they ran out of tear gas. One cop was even photographed using a slingshot.

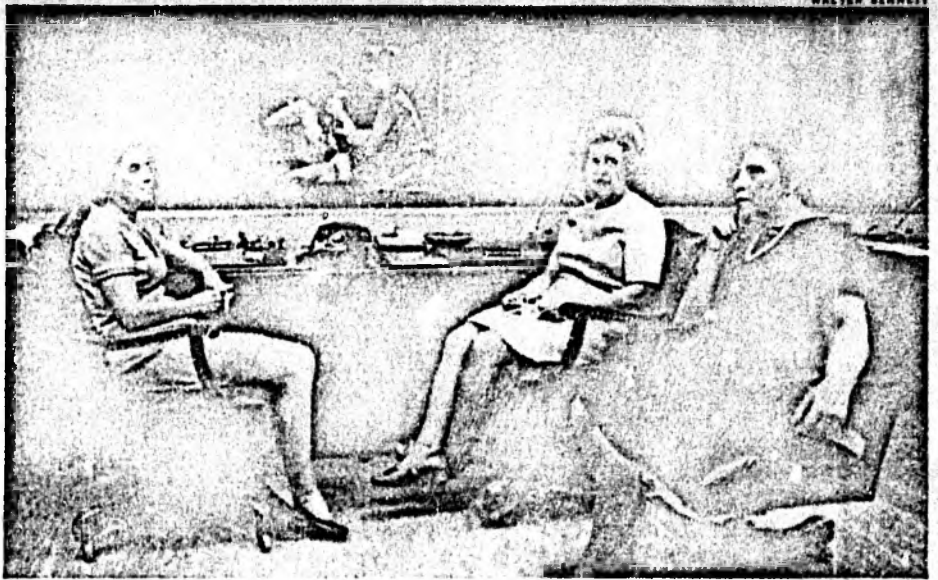
The authorities' restraint kept casualties down: 32 lawmen and two civilians were injured. There were 135 arrests. Finally, Governor Ronald Reagan, who described the rioters as "cowardly little bums," ordered a force of 400 National Guardsmen into Isla Vista and peace was restored. The destructive rampage, like other riots for little or no justification, did more than destroy property and endanger lives. It hurt the cause of rational dissenters while strengthening the hand of those who would quash dissent of any kind.

MORALS

Defense Against Dirt

"They call us the dirty-movie ladies," says Mrs. Margery Shriver. "They don't realize," adds Mrs. Mary Avara, "the headaches we get from watching this stuff." "Can you imagine," asks Mrs. Rosalyn Shecter, "kids at drive-ins getting to see stuff like this? They do elsewhere, you know."

The "stuff" is flesh flicks, and the three middle-aged, middle-class mothers constitute Maryland's defense against them. The last state to censor motion pictures in advance of distribution, Maryland pays the members of its Board of Motion Picture Censors between \$4,000 and \$4,500 a year each. In fiscal 1969, the trio previewed 687 movies, censored objectionable portions from 14, and re-



CENSORS SHRIVER, SHECTER & AVARA AT WORK
You wouldn't believe the headaches they get.

jected 59 outright. Half of those rejected were 8-mm. porno productions made on a shoestring, which is more than most of the performers wore. None of the disapproved films was produced by members of the Motion Picture Association of America, which voluntarily rate their movies for their suitability for different audiences. To look at the issue through the censors' eyes, TIME Correspondent Art White spent a day with the ladies in the Baltimore State Office Building theater. His report:

Electrodes. "O.K., let's go," says Mrs. Shriver, 44. The first film of the day is a Japanese import, *The Daydream*, a collage of sensual sounds and sadomasochistic fury. On the screen, a man hangs a girl from the ceiling by ropes, then cuts off her clothing with a knife. "I'm either out of touch with Oriental culture," says Mrs. Shriver, wife of an oil-company executive, "or there's something here that escapes me." In another scene, the man strokes the girl's private parts. Both are naked except for masks. "I can't tell what they're doing," says Mrs. Shriver. "Don't ask," replies Mrs. Avara, 60, a widow who has been on the board since 1960.

Electrodes are placed on the girl's breasts. "This is going to be shocking," cracks Mrs. Shriver. The film grinds to a finale in which the hero stabs the nude girl. "We're turning the whole picture down," says Mrs. Avara. "They insult us by submitting stuff like this." Among the films banned last year was *I Am Curious (Yellow)*, the Swedish import found by federal district courts to possess sufficient "redeeming social value" to qualify for constitutional protection.*

Italian Shoes. The projector again whirrs, and the women settle back behind their desks to watch *Decameron 69*. They see two figures squirming on

a bed; he removes her sweater, she fondles his fly. "Mark that," Mrs. Shriver shouts to the technician; the scene will be deleted. "Look at his testicles showing there," she calls later. "Mark that." As the film grinds on, the women exchange comments. "I can't tell which country this is because there's no dialogue," complains Mrs. Shriver. "They look like Italian shoes," says Mrs. Shecter, 55, wife of a Baltimore advertising executive.

Watching as a girl is stripped by a male partner (he wearing gloves), Mrs. Shecter observes: "Some of the girls have wonderful undergarments, wonderful bras." Adds Mrs. Shriver: "When I first started seeing these films, they looked like they were made by underwear salesmen."

Susan Saved. At this point, the soundtrack voice interrupts: "As a prostitute, Samantha Jane makes 20 times as much as she'd make as a secretary." The scene shows a young man and a big-bosomed brunette in what appears to be a motel room. Says the brunette: "I need it all the time now." Says Mrs. Shriver: "You make a film like this for a couple of thousand dollars and gross ten or twenty times as much. All you need is a bed, a photographer, and a man and a woman."

As lunchtime approaches and the ladies watch a man mutilate another man with a knife, the board's pretty administrative assistant enters the screening room. "Don't look, Susan," Mrs. Shriver warns, and Susan rushes out. The women send out for sandwiches and coffee, then sit grimly munching in the dark, eyes on the screen.

By now, the cinematic activities have begun to exhibit a staggering sameness, and the joking becomes more strained. Two lesbians perform for the camera, and Mrs. Avara wonders aloud "what's going through their minds." Whatever it is, there is little likelihood that other Marylanders will get a chance to guess. The dirty-movie ladies rejected the film.

* The film's American distributor is challenging Maryland's ban in the U.S. Supreme Court, which has also been asked to rule on the constitutionality of the Maryland board.

February 6, 1970

Mr. Herb Shaindlin
Chief of News Operations
KHAR - TV
Pouch 7-016
Anchorage, Alaska 99501

Dear Mr. Shaindlin:

The House Judiciary Committee is looking at the overall problem of pornography, and we are informed that you have conducted an investigation on how the distributors of pornography are operating.

If you have any plans to be in Juneau in the near future, we would request that you testify before our committee.

Sincerely,

Barry W. Jackson, Chairman

BWJ/mm

HERB SHAINDLIN

CHIEF OF NEWS OPERATIONS

RHAR - TV

POUCH 7-016

ANCHORAGE ALASKA 99501

January 19, 1970

The Honorable Judge
Edward V. Davis
Superior Court
941 West Fourth Avenue
Anchorage, Alaska 99501

Dear Judge Davis:

This date the House Judiciary Committee has voted to take up the general question of laws or the like thereof relating to pornography.

In conjunction therewith, it was the feeling of the committee that we would like to review the films that were confiscated from the Billikin Drive In in Anchorage.

The showing of these films will be held here in Juneau in an executive session, that is, only members of the committee and staff will be present.

By this letter we are seeking your permission for such a showing and await your reply to make further arrangements.

Very truly yours,

Barry W. Jackson
Chairman Judiciary Committee

BWJ/SC/mm

bcc: Harold W. Tobey
District Attorney

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF STATE TROOPERS

P. O. Box 6188-Annex
Anchorage, Alaska 99502
Southcentral Region

January 21, 1970

Rep. Jess Harris
Alaska State Legislature
Pouch V
Juneau, Alaska

Dear Jess:

Please find attached the material you requested. Unfortunately, much of the material brought to my attention during the year had no evidentiary value and as a result was either given to interested legislators or destroyed.

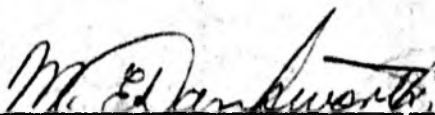
I would propose that you consider asking Mr. Herb Shaindlin, News Director for Station KHAR, to appear before your committee. I have determined that he has conducted probably the most extensive investigation into pornography that has been done so far. He devoted fourteen months to collecting material in Alaska and throughout the United States, and is very knowledgeable of how the distributors of pornography are operating. I asked Mr. Shaindlin if he would be willing to testify and bring his collection of material before the committee and he assured me he would be more than glad to do so. In the event you would be interested in his appearing, I would be happy to assist you in making the necessary arrangements.

Mr. Hal Tobey of the State Attorney's office is not in Anchorage today but upon his return I will discuss with him the questions concerning the Billiken film.

I hope this will be of some assistance to you.

Sincerely,

Mel J. Personett, Commissioner
Department of Public Safety

by 

Major M. E. Dankworth
Region Commander
Alaska State Troopers

MED:cs
Enclosure

THE ORIGINAL FILE CONTAINS EXAMPLES OF PORNOGRAPHIC
MATERIAL.

REFER TO STATE ARCHIVES.