

STATEMENT
OF
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BEFORE THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
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Mr. Chairman:

I welcome the opportunity to appear before your Subcommittee this morning to discuss the mounting wave of bombings and acts of terrorism in the United States, and the postal laws and regulations that have a bearing on the efforts of the nation's law enforcement officials to bring this grave problem under control.

The bulk of these laws are to be found in Title 18, United States Code, indicating a recognition by Congress that criminal sanctions are the most effective means of policing the mails. Section 1461 of that title, although having its origin in a statute enacted in 1865 to prohibit the mailing of obscene and indecent matter, was amended in 1911 to define "indecent" as including "matter of a character tending to incite arson, murder or assassination." This statute provides a penalty of up to a \$10,000 fine and imprisonment for up to ten years for repeated offenders using the mails in violation of its prohibitions. It further declares such matter to be nonmailable and states that it "shall not be conveyed in the mails or delivered from any post office or by any letter carrier." It may be worthy of note that in Manual

Enterprises, Inc., v. Day, 370 U.S. 478 (1962), the one recent Supreme Court decision involving this quoted language, three of the seven Justices participating interpreted this language, in the light of constitutional considerations, as not conferring on the Postmaster General the authority to refuse delivery of matter in the mails as a result of his administrative determination that it is not "mailable."

Section 1751 prohibits the mailing of firearms which can be concealed on the person except to military officers, police officers, and certain other categories of persons having a legitimate need for such weapons. Section 1716 prohibits the mailing of a variety of injurious articles specifically including explosives and inflammable materials. Violations of these sections are punishable by fines of up to \$1,000 and imprisonment for up to a maximum of 2 years. However, if injurious matter is mailed in violation of section 1716 with the intent to kill or injure a person or to damage property the maximum punishment is \$10,000 fine and ten years imprisonment.

Section 1717, in language somewhat similar to section 1461, prohibits the mailing of written or printed matter "advocating or urging treason, insurrection, or forcible resistance to any law of the United States", as well as matter in violation of certain other criminal statutes. The maximum punishment for violation of this statute is \$5,000 fine and 10 years imprisonment.

Section 2101 makes punishable the use of any facility of interstate commerce, specifically including the mails, by a person if used with intent to incite a riot or to commit certain other acts related to the encouragement of, or participation in, riots if the person also does some other overt act in furtherance of these purposes. A violation of this act is made punishable by fines of up to \$10,000 and imprisonment for up to 5 years.

Of further possible relevance, although it does not specifically refer to the mails, is section 231 of Title 18 which prohibits the act of any person who "teaches or demonstrates to any other person the use, application, or making of any firearm or explosive or incendiary device, or technique capable of causing injury or death to persons" if the person charged has reason to know or intends that it will be used in a civil disorder which may adversely affect interstate commerce or the performance of a federally protected function. A "civil disorder" is defined as a "public disturbance involving acts of violence by assemblages of three or more persons which causes an immediate danger of or results in damage or injury to the property or person" of another individual. Violations of this section are punishable by fines of not more than \$10,000 and up to 5 years imprisonment. There seems to be no reason why use of the mails to teach or demonstrate in the prohibited manner would not come within the statute.

In Title 39, United States Code, which relates to the Postal Service, section 4001 declares to be nonmailable any matter the deposit of which is punishable under various sections of Title 18 including, of the ones which I have mentioned, sections 1461, 1715, 1716 and 1717.

The postal regulations implementing the statutes on mailability matters are found in Part 124 and Part 953 of Title 39, Code of Federal Regulations. They make provision for an adversary administrative proceeding before the Post Office Department Judicial Officer or a hearing examiner to determine questions involving written or printed matter of doubtful mailability. These regulations were employed in the proceedings that led to the Supreme Court's decision in the case of Manual Enterprises v. Day, in which, as I mentioned earlier, three Justices concluded that Congress had given the Postmaster General no authority to withhold the delivery of mail on the basis of an administrative finding of nonmailability.

Although this conclusion was stated in terms of statutory construction, those Justices left little doubt that they regarded that interpretation as constitutionally required. In the years since the Manual Enterprises decision, the courts have continued to develop a substantial body of law tending to shield from administrative, as distinguished from judicial limitation, private activity which is at least arguably protected by the First Amendment. The most recent decisions involving the administrative authority of the Postmaster General have dealt with

the civil obscenity statute, 39 U. S. Code §4006. This statute gives the Postmaster General authority to return to the sender mail addressed to a person whom the Postmaster General has found, after an administrative hearing, to be using the mails to obtain remittances for obscene material. Three-judge United States District Courts sitting in Los Angeles and Atlanta held §4006 unconstitutional because of its failure to provide constitutionally required safeguards for expression protected by the First Amendment. Rizzi v. Blount, 305 F. Supp. 634 (C. D. Cal. 1969); United States v. The Book Bin, 306 F. Supp. 1023 (N.D. Ga. 1969).

Also involved in one of these decisions is the validity of section 4007 of Title 39, United States Code. This statute authorizes the Postmaster General to seek, and the United States District Courts to issue, orders directing the detaining of mail during administrative proceedings for the enforcement of both the civil obscenity and false representation statutes. Section 4007 may have particular significance in this context because of its legislative history. Congress in enacting the bill that became section 4007 rejected a proposal which would have given the Postmaster General authority to issue such orders for limited periods and instead gave this responsibility entirely to the courts to be exercised upon a showing of probable cause. Notwithstanding this reliance upon judicial rather than administrative action, the District

Court held that this statute failed to provide adequate safeguards for expression protected by the First Amendment.

These decisions have been appealed by the Government directly to the Supreme Court and will in all probability be decided by the Court during the coming year. While the issues raised by these cases are distinguishable from the questions involved in attempting to restrict the mailing of matter allegedly inciting acts of violence, the claim of constitutional protection for expression is common to both. It seems likely that the decision of the Court in these cases will shed additional light on the ability of the Postmaster General to determine administratively the mailability of materials alleged to incite violence.

Wholly apart from the legal questions which I have suggested, however, there are serious practical limitations upon our ability to prevent the actual transmission of harmful material through the mail. The sheer volume of mail poses a staggering limitation. The Post Office is now handling mail at a rate of 85 billion pieces a year. It would not be physically possible to subject any substantial portion of this torrent of mail to scrutiny for relation to political terrorism, even if we were willing to accept the increased delays which such scrutiny would involve.

Compounding the difficulty of detecting nonmailable matter is the ease with which its objectionable character can be hidden. An

Army technical manual on explosives when mailed by parcel post in a plain brown wrapper looks no different from any other book of similar size and weight. An "underground" newsletter urging violence, when sealed in an envelope, will not be distinguishable from a garden club newsletter.

First-class mail, of course, is sealed against official inspection and cannot be opened except on the authority of a search warrant. Even if we should suspect that mail sent at first-class rates contained nonmailable matter, we would not be able to confirm our suspicions, let alone take any action to prevent delivery of that piece of mail, unless we could satisfy the requirements for the issuance of a search warrant. Written or printed matter that can be mailed as first-class mail may thus be almost impossible to detect.

Further complicating the difficulty of attempting to intercept unlawful written or printed matter in the mail stream is the fact that the line is not clearly drawn between matter that is protected by the First Amendment freedoms of speech and press and matter that transcends the bounds of protected expression. This, of course, would be as true of criminal prosecutions as of mailability proceedings but it would add to the practical difficulty of attempting to determine the lawfulness of particular items in a great volume of mail which must be delivered with the least possible delay.

Our experience indicates that if persons wish to use the mails to transmit written or printed matter, regardless of its content, and are willing to accept the risk of prosecution after it has been transmitted, it is not possible as a practical matter to prevent them from using the mails. Mail boxes are found on almost every corner. A sealed envelope effectively conceals the nature of its contents and is almost at once hidden among the thousands upon thousands of apparently similar envelopes passing through the mails. This is not to say that the mails may be used with impunity for unlawful purposes. It does suggest that attempts to intercept, and so prevent the delivery of, items unlawfully sent through the mails, as contrasted to efforts to prosecute those who have used the mails unlawfully, may not as a practical matter have much effect.

It may, moreover, be fair to say that the problem of terrorist literature is not one which involves considerations peculiar to the Post Office Department. There seems no room for doubt that written and printed matter boldly calling for acts of violence does pass through the mails, but the use of the mails seems incidental rather than central to the activities of the terrorists. Although precise, or even approximate, figures are lacking, our experience does not suggest that the underground press relies on the mails for most of its circulation. Nor does any information available to us indicate that the dissemination of literature advocating terrorism or advising

in the techniques of guerilla warfare would be more amendable to successful prosecution under statues prohibiting the use of the mails for such a purpose than would be true under statutes having more general application.

The soundest approach to the problem of political terrorism would seem to be that taken by the Administration in proposing legislation directly relating to the manufacture, distribution and transportation of explosive materials. One such proposal, for the revision of the criminal laws relating to the use of explosives and incendiary devices, which has been introduced in the Senate as S.3650 by Senator Hruska, was described in some detail by Assistant Attorney General Wilson in his testimony before this Subcommittee on July 17. The other major Administration proposal calls for thorough Federal regulation and control of the explosives industry. This measure, which was introduced in the Senate last week as S.4107, also by Senator Hruska, is the product of an intensive study by a high-level inter-departmental task force. By striking directly and comprehensively at the root problem of the availability of explosive materials rather than in piecemeal fashion at more remote elements, these proposals seem likely to provide the most effective means for the suppression of this sordid activity.