

Pornography—1980s style

Schauer appointed to Justice Department panel reviewing obscenity issue

A widely respected constitutional theorist whose early legal career included defending clients involved in pornography litigation, Frederick Schauer has been appointed by Attorney General Edwin Meese III to an 11-member committee to study the ramifications of sexually explicit material. The panel, which began a monthly series of public hearings in June, was formed to gather information on pornography and, if appropriate, recommend new ways to control it.

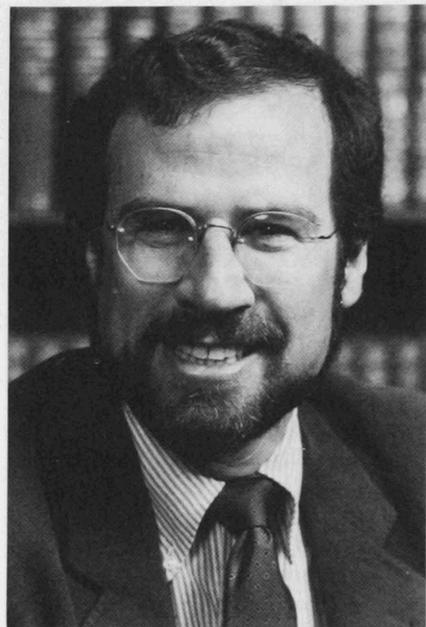
A similar commission, appointed by President Nixon in 1970, found little or no relationship between pornography and delinquent or criminal behavior. However, Meese told a press conference that "reexamination of the issue is long overdue." In the past fifteen years, he said, "the content of pornography has radically changed, with more emphasis upon extreme violence."

Schauer, a 1972 Harvard Law School graduate who has taught at Michigan since 1983, gained experience in the practical aspects of the issue as an attorney with Fine & Ambrogne of Boston. The experience sparked his interest in obscenity law, a field in which he specialized after joining the West Virginia Law School faculty in 1974. His writings have since broadened to include the full range of legal and philosophical problems related to freedom of speech and constitutional interpretation. His books, *The Law of Obscenity* and *Free Speech: A Philosophical Enquiry*, together with an extensive list of scholarly articles, have earned him a reputation as one of the nation's leading students of the First Amendment.

Though Schauer brings to the commission a philosophical skepticism about many of the traditional justifications for free speech, he describes himself as "someone who is open-minded, who wants to think about both sides, and who wants to consider all possible arguments." He explains, "In thinking about free speech—or speech in general—we must start with the assumption that speech, by and large, causes consequences—both good and bad. Now this does not necessarily mean that all speech causes all consequences, or that it automatically causes the ones that are being argued in this context. That's what I've got to find out."

Schauer was referring to some of the issues that are scheduled to be discussed at the various hearings, including behavioral, psychiatric and psychological evidence about the effects of pornography. These themes, as well as issues of law enforcement, free speech, the nature of the pornography industry, child pornography, and others will be covered as the hearings progress through the end of the year and move from Washington, D.C. on to Miami, Chicago, Houston, Los Angeles, and New York.

It is on the free speech issue that Schauer will bring his expertise to bear. "The First Amendment protects speech *despite* the consequences that speech may have," states Schauer. "It does not follow that just because speech has consequences, we can or should regulate it. But that's what makes it difficult to justify the free speech argument in the first place—trying to come up with some reason why, in spite of the consequences it has, we should treat it as partly



Frederick Schauer

or completely immune from government regulation. On the other hand, the Supreme Court has long said that hard core pornography is not speech in the First Amendment sense. I have written agreeing—that at least hard core pornography is outside the coverage of what the First Amendment is all about. That does not mean that it should be regulated—only that it would not be unconstitutional to do so."

Addressing the need to reexamine the relationship between pornography and social behavior, Schauer said, "Regardless of the outcome of the issue fifteen years ago, it never hurts to reexamine something in an open-minded, relatively academic sense. The issue is obviously a pressing one."

After the conclusion of public hearings, the panel will present a written report to the attorney general in June of 1986. The commission is headed by Henry Hudson, commonwealth's attorney for Arlington County, Virginia, a Washington suburb. ☒