

seeks to make illegal and the committee amendments do a very adequate job of that. Now let me describe what Senator Higgins' amendment right now would do. Senator Higgins' amendment would blur the distinction that the committee attempted to draw between what we call mere possession, that is possessing one photograph or one film in your own home perhaps or elsewhere, and the distinction between manufacturing, selling, enticing a child of 8 or 9 years old to engage in this kind of film-making, or possessing sufficient numbers of films or photographs in your own possession so that there can be an inference that you intend to sell or distribute those films. Now Senator Higgins' amendment, by putting into the felony provisions purchasing a photograph from somebody else, from a distributor, purchasing a film from somebody else, from a distributor, blurs that distinction by once again making mere possession in effect, provided the purchase itself is observed, a felony offense. Now the reason it is not particularly important is because Senator Higgins does not attempt to make simple possession per se an offense. She only makes that simple possession an offense when the individual is caught in the actual act of purchasing a film or a photograph, and that is not going to happen. That is going to happen very, very rarely. So once again by adopting this amendment we are not changing the way the bill is going to be applied, we are not going to change the number of cases that it is going to involve, but we are going to blur this important distinction, and we are going to threaten the constitutionality of the act. Now let me explain why. Under cases like Stanley v. Georgia, decided in 1969 by the United States Supreme Court, and other pornography cases, it is of questionable constitutionality as to whether we can prohibit mere possession of a single photograph or of a single film, a single video tape. By changing the statute, as I indicated, and make purchase of a single item unconstitutional...I'm sorry, illegal under this provision, we are raising the question of the constitutionality of the entire act. I don't believe Senator Higgins' amendment includes a severability clause. If this amendment to the committee amendment is adopted, I think we should put that on because there will certainly be a good constitutional argument against this entire bill which does much, much more than simply prohibit the purchase of a single photograph, which is what this amendment deals with. Now, secondly, we run into the danger not only of unconstitutionality, but of overbreadth, of making the statute apply to many, many more