

MF1

109133

U.S. Department of Justice
National Institute of Justice

109133

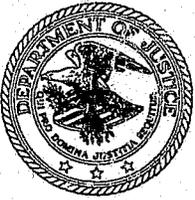
U.S. Department of Justice
National Institute of Justice
109133

Deputy Attorney General United States
Department of Justice

109133

109133

109133



Department of Justice

REMARKS

OF

ARNOLD I. BURNS
DEPUTY ATTORNEY GENERAL

BEFORE THE

FLORIDA LAW ENFORCEMENT COORDINATING COMMITTEE

ON OBSCENITY, ORGANIZED CRIME
AND CHILD PORNOGRAPHY

NCJRS

FEB 12 1988

THURSDAY, DECEMBER 3, 1987
ORLANDO, FLORIDA

ACQUISITIONS

I am pleased to be with you today and to talk to you about two of the Department's top prosecutorial priorities: the international and interstate trafficking of obscenity by major distributors and the mass production and distribution of child pornography. In response to the July 1986 Report of the Attorney General's Commission on Pornography, the Attorney General announced a seven-point program to employ the full panoply of federal investigative, prosecutorial and legal powers to bust the major obscenity-mongers in an effort to eradicate from our society the mass distribution and production of child pornography.

I want to take this opportunity to outline the significant progress we have made in the past year, the work that remains to be done, and what each of you can do to help us accomplish our goal.

In order to do this, however, we must also be clear about a couple of things. First, we must keep in focus what it is that we are fighting, and what it is that we are not fighting; second, we must learn to choose which fights to enter, and which we must decline. Allow me to explain.

First, we need to understand the nature of the beast some call pornography, some call obscenity, and still others-- perhaps most-- refer to interchangeably. As a lawyer, it is natural for me to demand precision in words. As Deputy to the Attorney General, the top law enforcement officer in the land, it is more than an academic question to me; in order to get at this problem, in order to enlist others to join us, and in order to earn the

public's support in this effort, we must define it and we must confine it. We need not, nor should we redefine it.

Happily, the Supreme Court has done this for us, muddling through in a number of cases over the years. And we are now well beyond Justice Stewart's infamous statement that although he couldn't define obscenity, he knew it when he saw it. Obscenity as a legal term denotes the more violent and offensive forms of pornography which have been declared by the Supreme Court to be outside the scope of the First Amendment protection; that is, under the Miller standard, now nearly fifteen years old, the government may prohibit the description or depiction of sexual conduct only if defined by the applicable state or federal law, as written or authoritatively construed, and only if the material, "taken as a whole, appeal[s] to the prurient interest in sex, which portray[s] sexual conduct in a patently offensive way, and which, taken as a whole, do[es] not have serious literary, artistic, political, or scientific value."

All obscenity is pornography, but yet not all pornography is obscenity. Obscenity is the depraved material that is so far beyond any bounds of normal reading or viewing material that the Supreme Court has declared it beyond constitutional protection. Obscene material includes sado-masochistic scenes, rape scenes, depictions of bestiality or excretory functions, and violent and degrading images of explicit sexual conduct. Quite simply, obscenity is the memorialization of prostitution, of actual or simulated assault, rape, and sometimes worse. Most of the things

you see in convenience stores, or on newsstands, while I or you or others may find them offensive, and while some store owners may choose not to carry this material because of its content, are not the kinds of things we will be prosecuting. The defendants we intend to prosecute won't have available to them the shield of the First Amendment. This is important to stress. As often as the Attorney General has said it in the past, I will repeat it here: the Justice Department is not out to prosecute the Playboy's and Penthouse's in this country, however offensive we may find some of their contents.

The centralization in Washington of the National Obscenity Enforcement Unit will help to ensure that the constitutional protections of freedom of speech and of the press are liberally respected. The prosecutions the Unit has helped to bring about since its creation are well-thought out and properly focussed. I merely echo the Attorney General when I state to you in categorical terms that there will be no censorship and no interference with First Amendment freedoms.

Nor do we intend to redefine obscenity, to expand its definition, and thus to detract from what constitutional protection of pornography there is at the moment. The Attorney General has stated before that the existing definition of obscenity is adequate for our prosecutorial purposes. The standards we follow are the Supreme Court's. And the Court, in turn, takes its cue from the community, as the community's will is expressed in legislative and executive judgments. The only

standards you'll see promulgated by the Justice Department are investigative and prosecutorial guidelines, designed to ensure that our lawyers and investigators operate within the Constitution.

Last month the President announced our legislative package, which is an important part of the Attorney General's seven-point program. But our bill does not tinker with the definition of obscenity. It is designed instead to close loopholes and to provide us with the same range of enforcement tools now available to us in the prosecution of narcotics cases. We hope to see our bill introduced any day now.

Child pornography often is obscenity, though it need not be. Unlike some other forms of pornography, child pornography does not enjoy protection under the First Amendment. There are many types of offensive things which, directed at adults, nonetheless are protected by the First Amendment. But in the Ferber case in 1982, the Supreme Court unanimously rejected constitutional challenges to New York's child pornography statute. The Court found the interest in protecting children against this form of exploitation "compelling" and "surpassing."

Today, under federal law, it is a criminal act to produce, promote, sell, exhibit, receive or distribute photographs, films or magazines of children engaged in any sexual activity, regardless of whether the material is legally obscene. To understand why the community interest in restricting child pornography is so compelling, just listen to these findings:

Research shows a disturbing correlation between child pornography and child molestation. Of course, all child pornography involves the molestation of a child. Through the nationwide, sometimes international distribution of this material, this violence is magnified and given an ugly permanence. But, child pornography also may have a ripple effect by playing a role in the sexual exploitation of additional children. We know that 87% of convicted child molesters interviewed in a recent study admitted regular use of hardcore pornography. In Louisville, Kentucky, a review of 1400 child molestation cases revealed that all 1400 child molestation cases involved adult pornography while half also involved child pornography. Of the 100 child pornography indictments returned to date as a result of a recent nationwide sting operation, investigators found evidence of child molestation by the consumers of the child porn in 35 cases. As the Attorney General said in announcing the October indictments, "child pornography exists primarily for pedophiles."

Second, which fights are our fights? It is not the job of the Justice Department, its National Obscenity Enforcement Unit or the U.S. Attorneys, to bust the street corner distributor, who sells obscenity on the rack below the Wall Street Journal and Cosmopolitan, or to go after every local adult book or video store proprietor who may be selling or renting obscene materials. The Justice Department does not have the resources, the money, the personnel, or the time, to fight all these battles. And they

are not the kinds of cases that led Congress to give us these potent weapons against obscenity and child pornography in the first place. These are battles better fought by those of you who are state and local law enforcement officials, with assistance from the feds, to be sure.

A fitting parallel is in the area of illicit narcotics. DEA and the U.S. Attorneys do not, cannot and should not expend their limited resources in an effort to collar junkies selling dope on the street corner or every yuppie who pushes coke to his office mates. This is serious stuff, all right; it eats away at our society; but by the time the drugs have reached this level of retail, it is too late for the feds to operate effectively on the supply side. Instead we focus our resources on major traffickers, international interdiction, and cutting off the drug supply at its source.

To do so, we depend heavily upon cooperation from and intelligence sharing with state and local law enforcement in order to move up the ladder from the consumer and small time dealers to the major traffickers. We need your help to build major national cases. As with our battle against drug abuse, we cannot spend our time and money merely going after the local retailer of obscenity, at the end of the distribution chain. We are not going to win our battle against the obscenity trade this way. We've got to go to the source of the scourge: the manufacturer, the importer, the mass distributor, and put them out of business. We are going after the cartels, the mass

producers and the distribution chains. What this boils down to is organized crime. With your help, we aim to shut it down.

Nearly ten years ago, in 1978 the FBI drew the following conclusion:

[O]rganized crime involvement in pornography . . . is indeed significant, and there is an obvious national control directly and indirectly by organized crime figures of that industry in the United States. Few pornographers can operate in the United States independently without some involvement with organized crime. . . . More importantly, the huge profits gathered by organized crime in this area and redirected to other lucrative forms of crime, such as narcotics and investment in legitimate business enterprises, are certainly cause for national concern, even if there is community apathy toward pornography.

Today, we know even more about the involvement of traditional and non-traditional organized crime in the obscenity trade.

According to Los Angeles Police Chief Daryl Gates, when he testified in 1986 before the Pornography Commission,

Organized Crime infiltrated the pornography industry in 1969 through the Gambino, De Calvalcante, Luchese, Bonano, and Columbo

organized crime families due to its lucrative financial benefits. By 1975, organized crime controlled 80% of the obscenity industry and it is estimated that this figure is between 85% and 90% today.

For example, the 1986 Report of the Attorney General of California on Organized Crime found that organized crime had virtually taken over the adult videotape production industry in Southern California and its distribution nationwide.

Here in Florida, the Miami Strike Force through the work of Marcella Cohen, who is now with the National Obscenity Enforcement Unit, demonstrated the extent of organized criminal involvement in the distribution of obscene materials. Evidence discovered during the investigation-- code named MIPORN-- and the prosecution of individuals such as Robert DiBernardo, Reuben Sturman, Michael Zaffarano, Harry Mohny, and Louis and Joseph Peraino linked them to the organized, nationwide distribution of obscenity. While some of these individuals may not be considered members of traditional organized crime families, evidence shows that they control or are associated with organized criminal enterprises that control a major national and international distribution network for obscene materials.

In other words, this is organized crime-- OC-- an organized group of people who combine together for the purpose of breaking the laws. Whether the trafficking of obscene material is controlled directly by La Cosa Nostra may be a matter for debate.

Whether it is controlled by national and international criminal enterprises is not. As studies indicate, and as our investigations have confirmed, obscenity and child pornography are now regular features of the OC profile in this country. The huge profits are there. The violence is there. The variety of criminal activity is there. And just because the major obscenity trafficker may bear no blood relation to a Gambino or a Bonano, does not mean the trafficker is small time: Earnings in the hardcore porn trade run in the billions of dollars. According to an estimate in the 1986 California Attorney General's Report on Organized Crime, the obscenity trade industry takes in between seven and ten billion dollars annually.

Let's look at Michael and Myron Wisotsky, major pornographers in the South Florida area, who reported to the federal penitentiary on October 31, 1985, thanks in large part to Marcella Cohen. Their federal criminal indictment serves as today's organized crime profile for the obscenity trade. They were charged with racketeering, mail fraud, bribery, tax evasion, and obstruction of justice, among other crimes. They amassed wealth in the millions of dollars in cash and assets, some located near where you may live and work. The Wisotskys owned or had interests in approximately 33 companies and corporations; numerous cars including several Mercedes Benz and Lincolns; yachts; well over thirty bank accounts, 9 located in Pompano Beach; 2 in Tamarac; 17 in Delray Beach alone; Certificates of Deposit; a condominium in Deerfield Beach and two homes in Boca

Raton; peep machines at Delray Book and Video; Pompano Book and Video; Video Plaza and Video Xtron in West Palm Beach, Florida; and \$170,800 in currency that was seized at Myron Wisotsky's home. They also owned interests in a multitude of bookstores in Dade, Broward, and Palm Beach Counties.

And don't think for a moment that the organized obscenity mongers possess any less of a will to violence than traditional OC. One of the most significant distributors of obscenity in the 1970s was Michael Thevis. Thevis was convicted under RICO of several crimes including murder, arson and extortion. Other individuals whom the MIPORN investigation implicated in the distribution of obscene material were found also to be engaged in selling machine guns, illegal gambling, narcotics, prostitution, money laundering, tax evasion, public corruption and murder.

The mass distribution of child pornography is also a major enforcement target for us. The child pornographer is often no less a criminal than the hard core obscenity monger. Often he is far worse, for he preys on the vulnerable, the impressionable, and the innocent in our society. Facing stiffer penalties and the broader legislative prohibitions on conduct, many of these individuals have either abandoned their enterprises or have crept further back into the woodwork. The distribution of child pornography is now mostly done through an underground network of individuals and companies primarily using the postal or UPS type system. We have made significant strides in law enforcement

techniques and continue to enjoy success in the prosecution of these individuals.

In just the last year, we have undertaken a major effort on the federal level to bring more effective obscenity and child pornography prosecutions. The Attorney General's comprehensive seven-point program, announced in October 1986, has already paid handsome dividends. But there is much to be done.

As you recall, at the centerpiece of the Department's unprecedented initiative is the National Obscenity Enforcement Unit, under the direction of Rob Showers. The Unit's two main components are the Federal Obscenity Task Force and the Obscenity Law Center. The Task Force is comprised of prosecutors from all over the country who have an expertise in obscenity prosecutions. The Task Force assists and coordinates federal obscenity and child pornography prosecutions, and is there also to assist state and local prosecutors in obscenity and child pornography cases.

The Obscenity Law Center is a clearinghouse for legal pleadings and intelligence, and public information concerning these areas. Its resource center contains sample pleadings, briefs, indictments, search warrants, motions, responses, trial memos, which are available to local and state prosecutors.

Other points in the Attorney General's program include a redoubled effort by each U.S. Attorney's office and by the Organized Crime and Racketeering Strike Forces. Each U.S. Attorney is designating a specialist for obscenity and child pornography cases.

Also, we have improved coordination with the National Center of Missing and Exploited Children, better to combat the exploitation of children in the production of pornography.

We are working with state and local law enforcement officials across the country in training programs on the investigation and prosecution of obscenity and child pornography cases. LECC meetings like this one are taking place all over the country. In many districts, following the initial training program, the LECC has formed obscenity and child pornography enforcement task forces not only to facilitate intelligence sharing and to carry out joint operations, but also to help educate the public about these crimes. Law enforcement officials who understand the links between kiddie porn and child sexual abuse can play a critical role in educating the public about the victims and societal costs of these crimes.

LECC cooperative operational activities in other districts have contributed to the terrific record of accomplishment already compiled by the United States Attorneys working with the National Obscenity Enforcement Unit in just its first year of operation.

Last month the U.S. Attorney for the Eastern District of Virginia obtained the first conviction under the federal RICO statute for trafficking in obscenity. As you know, in addition to incarceration, RICO provides for the forfeiture of all assets of the criminal enterprise that have been used in or obtained as a result of illegal activities. Dennis and Barbara Pryba, and Jennifer Williams, all of Virginia, were convicted of operating a

large obscenity operation in the greater Washington area, through several videotape and magazine outlets. Their lead company, Educational Books, is a fifteen-time recidivist of violations of Virginia obscenity laws, alone. The defendants are to be sentenced December 18. The Prybas face up to 95 years in prison and huge fines.

Following conviction, there was a major legal battle over the scope of the forfeiture provision. The Assistant United States Attorney argued that the RICO statute authorizes the government to seize property which either affords a source of influence or control over the racketeering activity, is derived from the proceeds of illegal activity, or is acquired or maintained from racketeering profits. The defense counsel said that forcing the Prybas to surrender anything more than the proceeds from the videotapes and magazines specifically found to be obscene by the jury would run afoul of the First Amendment. On the legal question, the judge, with slight modification, ruled in our favor. On the facts, the jury also gave us a victory, allowing the Prybas to keep only their home and a car. Now the inevitable appellate rounds begin. But if the jury's decision stands, the Prybas' operation will be shut down: Closed will be three adult book stores, eight video shops, a warehouse; five cars will be forfeited.

RICO was used for the second time in October. Reuben Sturman, the man who is widely believed to be the largest distributor of pornography in the world, was indicted in Las

Vegas. The indictment charges Sturman and four associates with operating a RICO enterprise since 1973. Sturman runs about 700-- yes, seven hundred-- adult book stores and movie theatres, and owns or controls more than 200 corporations around the world, and is already under indictment in Cleveland for tax evasion. Sturman faces 55 years imprisonment, \$2 million in fines, and multimillion dollar forfeitures if convicted on these charges.

The federal government has recently accomplished much also in the area of child pornography prosecutions. In September, Attorney General Meese announced over 100 indictments for federal child pornography violations in a nationwide sting operation conducted by the U.S. Customs and Postal Inspection Services. This joint operation, called Operation Borderline by Customs and Project Looking Glass by Postal, was the first nationwide cooperative effort ever in child pornography and the largest national operation to date against child pornographers. This joint operation should net over 200 child pornography indictments before it concludes.

In New Jersey, we recently turned a convicted child pornographer in an undercover FBI operation to expose nine other major child pornographers through his videotaped face-to-face meetings with the suspects. Indictments of seven individuals in Camden, and criminal information of two others in Philadelphia and Tampa, were also announced in September. The Bureau was assisted by the Customs and Postal Services, and by state and local police.

In April, the Unit announced, along with United States Attorney Brent Ward of Utah, that two companies engaged in the national distribution of Dial-a-Porn pleaded guilty to charges of distributing sexually explicit matters by telephone, were fined the maximum \$100,000, and were ordered permanently to get out of the business altogether. As a result, 38 telephone lines are dead, which at one point delivered millions of messages to children between 10 and 16. This was the first conviction under the Dial-a-Porn statute enacted in 1983.

I would like to close by restating the commitment of the Department of Justice in the prosecution of obscenity and child pornography cases. The short term effects of the policy are already being felt and I am sure the long term goals of responsible prosecution of this illegal material are on the horizon. I am pleased to be a part of this effort and I am pleased that you have joined us in this task.

I make every effort I can to participate in LECC meetings and conferences such as today's program because law enforcement coordination represents one of the Department of Justice's highest priorities and most important goals. The Attorney General has made it clear: institutionalizing meaningful, result-oriented cooperation among federal, state, and local law enforcement agencies in every district across the country is critically important.

Law enforcement is tough business. It requires concerted effort and constant vigilance. That effort and vigilance must be

buttressed by cooperation. Obscenity and child pornography, like so many crime problems today, transcend political boundaries and severely tax our criminal justice resources. In my view, only when all levels of government and the private sector join forces in a commitment to both combat and prevent criminal activity will law enforcement be able to make real inroads against crime.

I have no doubt that we can together make enormous progress in ridding our communities of the influence of the organized obscenity and child pornography industry on society and especially on our children.