The Heritage Foundation

BACKGROUNDER

No. 3967 | JUNE 24, 2026

B. KENNETH SIMON CENTER FOR AMERICAN STUDIES

Is General Obscenity Still Illegal? A Postmortem on the Bush Obscenity Prosecution Task Force

Scott Yenor and Caleb Pirc

KEY TAKEAWAYS

The 2011 end of the Obscenity Prosecution Task Force (OPTF) seemed to indicate the end of federal general obscenity regulation and prosecution.

The more that is known about the personal and societal harms of pornography, the stronger the case for regulation—now is a good time for a revived OPTF.

A new OPTF should be combined with legal action against larger hosting platforms, and it should prosecute violators aggressively.

Created in 2005, the Bush Administration's Obscenity Prosecution Task Force (OPTF) marked the last national effort to prosecute obscenity cases. The OPTF successfully prosecuted dozens of cases starting in 2006. President Barack Obama disbanded the task force in 2011, which seemed to end prosecution of general obscenity at the national level. States have followed suit, confining obscenity investigations and prosecutions to pornography involving children.

An internal memorandum from OPTF Director Brent Ward to Attorney General Michael Mukasey provides a postmortem on why the OPTF failed. (See the appendix.) While Ward describes institutional obstacles to scaling the OPTF, he concludes that the OPTF fizzled due to a failure of nerve and a lack of political will. Federal prosecutors and even Department of Justice leadership did not want to be seen as

The Heritage Foundation | 214 Massachusetts Avenue, NE | Washington, DC 20002 | (202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

modern-day Comstocks. As Ward concludes, the OPTF was "calibrated so as to render obscenity enforcement only minimally effective."

The end of the OPTF caused many to believe that the era of governmental obscenity regulation was over.[1] Pornographers got the message, and internet pornography spread as if it were impossible to regulate. As then-Senator Orrin Hatch (R–UT) wrote, citing congressional testimony by Officer Steve Takeshita of the Los Angeles Police Department, "a hiatus in federal prosecution of obscenity has brought forth the courage in the adult industry to produce…extreme sexually explicit product[s]."[2] Federal obscenity laws and regulations remained on the books and viable, but without people willing to conduct obscenity prosecutions, general obscenity was de facto deregulated.

In retrospect, the OPTF arose at a most inauspicious time to undertake a national fight against obscenity. Community standards were roiled. The law seemed most hostile to prosecutions. Faith in internet technology was at a high. Americans knew little about internet pornography, much less pornography conveyed through smartphones.

If the OPTF operated under inauspicious conditions, a revival of prosecutions could, in some ways, be more easily conducted today. The laws remain on the books. Critics of social media are gaining momentum. The terrible consequences of internet pornography are much more widely understood. Nearly every state has task forces for obscenity related to children. The legal environment as seen in judicial opinions, such as *Free Speech Coalition v. Paxton* (2025), suggests a new openness to obscenity regulation at the highest level. Perhaps the time is ripe for a rebirth of obscenity enforcement and regulations.

A postmortem on the OPTF is necessary to understand how to stem the tide of pornography in contemporary America.

The Legal Foundations for Federal Obscenity Law

Federal obscenity law still rests on statutes enacted in 1948. The law criminalizes the production, distribution, mailing, importation, and sale of obscene material.[3] (The *Miller* test defines "obscene" as a work that, taken as a whole, and applying contemporary community standards, appeals to a prurient interest, depicts sexual conduct in a manner that is patently offensive under state law, and lacks serious literary, artistic, or scientific value.) Other statutes require record-keeping and labeling for producers of sexually explicit material.[4] All such statutes apply both to physical and digital distribution of obscene materials by mail or interstate commerce. All are felonies. Penalties include enhancements for financial gain, computer

use, or sadomasochistic content. As Jennifer Kinsley shows in her article, "The Myth of Obsolete Obscenity,"[5] prosecutors can still bring cases and juries convict under these statutes.

Before 1993, Attorneys General prosecuted hundreds of obscenity cases within the National Obscenity Enforcement Unit (renamed Child Exploitation and Obscenity Section) of the Department of Justice.[6] After 1993, federal enforcement of general obscenity statutes declined to the point of vanishing for several reasons.

Federal Enforcement Declines. First, the Supreme Court's *Miller v. California* (1973) made identifying obscenity reliant on "community standards," among other things. Community standards are moving targets.[7] As communities tolerate more pornography, standards devolve, lowering the standards yet further. In such an environment, discovering community standards proves both difficult and risky for prosecutors. Obscenity prosecutions fell off gradually after *Miller*, partly because of this uncertain legal environment. Periodic efforts to maintain standards arose under Attorneys General Edwin Meese, Richard Thornburgh, and William Barr during the 1980s and early 1990s. From 1994 to 2002, however, U.S. Attorneys and the Justice Department prosecuted fewer than 20 individuals for obscenity (and almost none after that).[8] Reviving prosecutions after such a hiatus would be difficult.

Second, the availability of internet pornography, beginning in the late 1990s, raised thorny legal questions about enforcement. Identifying which community's standards would govern on the internet proved elusive. Some circuits held that there is only a national community when it comes to the internet;[9] others have applied local community standards.[10] Without prosecutions for violating the law, prosecutors would be unable to show that internet pornography violated *any* community standards. Further, the internet reduced the cost of making and distributing pornography while complicating efforts to identify who was legally responsible for violating obscenity law. Mail-order pornographers could be prosecuted for sending pornography through the mail. Porn shop operators could be prosecuted for selling porn videos, and customers could be prosecuted for buying. How would people be prosecuted on the internet? Would those who made it or posted it be prosecuted? Or those who hosted it? Or those who consumed it? And what happened when the pornography was, essentially, free?

Third, the Supreme Court of the United States seemed to signal a full-scale retreat from obscenity prosecutions. Congress passed laws to protect children from internet pornography. The Communications Decency Act of 1996 made it illegal to distribute indecent or patently offensive material

online to children, as did the Child Online Protection Act of 1998. In *Reno v. ACLU* (1997), the Court struck provisions of the Communications Decency Act that criminalized the knowing transmission of "indecent" or "patently offensive" materials to minors over the internet as overbroad and vague.[11] When Congress expanded the definition of child pornography to include not only images of actual minors but also virtual or computer-generated images that "appear to be" minors engaged in sexually explicit conduct, the Court struck that law as overbroad in *Ashcroft v. Free Speech Coalition* (2002).[12] In 2004, the Supreme Court yet again intervened and struck a modest congressional effort to require age verification for children on obscene websites in *Ashcroft v. ACLU*.[13] If basic measures to protect children and defend childhood innocence violated the First Amendment, few efforts to regulate obscenity on the internet would pass muster with the Court. Or so it seemed. The Bush Administration organized the OPTF just after the Supreme Court signaled hesitation toward laws designed to protect children from internet pornography, which prompted prosecutorial energy to shift elsewhere.

Fourth, efforts to "regulate" the internet were bound to raise the ire of techno-optimists, who were riding high in the late 1990s and throughout the 2000s. Taxing the internet was a non-starter. Many techno-optimists worried that efforts to police internet content—even the hardest of the hardcore pornography—would unduly stifle the internet's creativity and promise. Techno-optimism informed the Supreme Court's reasoning in the 2004 *Ashcroft* decision. When Congress required age verification, the Court struck it down in favor of what it considered flexible, market-driven technological solutions on the user's side. Producers were free to circulate. Platforms were free to host. Filters would allow parents to block harmful content, according to the Court, while adult freedom would remain unaffected. Federal courts also interpreted Section 230 of the Communications Decency Act to allow large platforms, such as Pornhub, OnlyFans, or Google, to host obscene material without being held liable for the content.[14]

As a result of these developments, the OPTF had few real legal options. The "harmful to minors" standard, enshrined in the 1997 Child Online Protection Act (COPA) and in previous Supreme Court decisions, stood on shaky ground after the hostile Supreme Court decisions of the late 1990s and early 2000s. Only hardcore pornography would be easy to prosecute under the *Miller* test, which itself stood on increasingly shaky ground under the pressure of changing community standards. The task force marked a creative, intelligent adaptation to this challenging environment.

The Promise and Pitfalls of the OPTF

The OPTF was designed to combat obscenity "by bringing prosecutions against high value targets to achieve maximum deterrent effect." It became fully operational in January 2006, led by Ward with two experienced trial attorneys transferred from the Child Exploitation and Obscenity Section in the Department of Justice. The FBI's Adult Obscenity Squad in Falls Church, Virginia, would conduct most investigations with occasional help from inspectors temporarily on loan from the U.S. Postal Inspection Service. At its peak, in 2006 and 2007, it had at most five investigators and four total attorneys, including Ward.

The OPTF would coordinate and support national prosecutions, first developing cases and then referring them to willing U.S. Attorneys' offices for prosecution. This structure spread the enforcement burden across multiple districts and allowed some forum shopping to find localities with stricter community standards. Attorney General Alberto Gonzales supported the structure. At a training conference for Assistant U.S. Attorneys in late summer 2006, Gonzales declared that he intended to "take names and kick butt" on obscenity enforcement, signaling a renewed priority at the highest levels of the department.[15] He would spend much political capital convincing U.S. Attorneys to cooperate.

As Ward reported to Attorney General Mukasey, the task force's trial attorneys "secured convictions in every case that has reached a disposition thus far." Between 2006 and 2008, OPTF attorneys secured guilty verdicts or pleas in several federal districts, including successful jury trials in the Northern District of Texas and Arizona.

First Bucket of Cases. The first bucket of cases that the OPTF pursued consisted of traditional obscenity cases involving especially hardcore pornography being transferred through the mail and over the internet. The task force targeted producers. In *United States v. Extreme Associates* (2005), the OPTF prosecuted Robert Zicari (a.k.a. Rob Black) and Janet Romano (aka Lizzy Borden) for distributing extremely violent and degrading fetish films under 18 U.S. Code § 1461 (mailing obscene matter); § 1462 (importation or transportation of obscene matters); § 1465 (production and transportation of obscene matters for sale or distribution); and § 1466 (engaging in the business of selling or transferring obscene matter). The district court initially dismissed the charges relying on the court-determined right to privacy then recently expanded under *Lawrence v. Texas* (2003).[16] The Third Circuit reversed a district court dismissal. The defendants pled guilty to nine counts of obscenity.

With this success in hand, the OPTF could prosecute more traditional cases with some confidence. It did so under the same core statutes. In *U.S. v. Ragsdale* (2005) a short jury trial led to the convictions of mail-order distributors of two exceptionally violent foreign rape films titled *Brutally Raped 5* and *Real Rape 1*. West Virginia District Court case *U.S. v. Loren Jay Adams* (2008) brought jury convictions for mail-order films depicting bestiality, fisting, and extreme fetish sex acts, as did the 2008 case *U.S. v. Paul Little* (Little was known as Max Hardcore), which involved both digital downloads and mail-order DVDs.[17]

Defendants pled guilty in *U.S. v. Harb* (2008) and *U.S. v. Right Ascension* (2010) to mail-order distribution of extreme content.[18] *U.S. v. Kilbride* (2007) led to a jury conviction for a large-scale e-mail spam operation that sent violent pornography to e-mail addresses. Karen Fletcher (who called herself Red Rose) pled guilty to violating § 1465 for written stories describing sexual molestation, rape, and murder of children distributed on a members-only website in *United States v. Fletcher* (2008).[19]

Second Bucket of Cases. The second bucket of cases involved strategic enforcement of the record-keeping and labeling requirements under 18 U.S. Code § 2257. The OPTF's investigation of Girls Gone Wild, a California company, produced four indictments in 2006—the first significant prosecutions of adult pornography producers under the statute.[20] Three of the cases resulted in guilty pleas and $2.1 million in fines, while the fourth led to a deferred prosecution agreement requiring a court-appointed monitor to oversee compliance for three years.

Ward believed that this enforcement action affected the adult pornography industry more than any prior federal obscenity prosecution. Within months, commercial producers hired lawyers and compliance officers, purchased software, reorganized production and distribution activities, and otherwise brought themselves into compliance. The threat of enforcement dramatically reduced the risk that underage performers would appear in sexually explicit materials.

Results of the OPTF. It is remarkable how much such a small OPTF achieved. None of these cases really took on the principal expressions of internet pornography. The first bucket involved people buying pornographic materials, either through the mail or from the internet. Investigators could simply order obscene materials through the mail in a jurisdiction with higher community standards and file charges. In this sense, the OPTF was targeting the vestiges of the old pornography industry rather than the novel free internet pornography common today. The second bucket concerned working conditions for pornographic video production. Such prosecutions

raised costs on pornographers and distributors of all stripes but did not shut them down.

Despite early successes and a nearly flawless execution of the task, the OPTF never achieved the scale or the deterrence required to complete the mission. When Ward retired at the end of 2007, his memorandum to Attorney General Michael Mukasey exposed the OPTF's shortcomings. The FBI's content guidelines limited investigations to the worst of the worst—pornographic depictions of rape, incest, bondage, bestiality, urination, and sadomasochism. As a result, most pornography available in most communities enjoyed what Ward called a "safe harbor."

Impediments to Success. The task force suffered from severe organizational shortcomings, too. Its success depended on voluntary participation of U.S. Attorneys. But most U.S. Attorneys had other priorities. They often declined to take on cases, slow-walked investigations, or refused to participate, citing how "community standards" in their area would not support prosecutions. U.S. Attorneys have limited time and bandwidth, and few wanted to expend resources on cases less likely to secure convictions.

In addition, the OPTF was chronically undermanned and under-resourced. The postal inspector, according to Ward's memo, assigned to assist the task force "quickly gravitated to the investigation of child exploitation cases" in another division and he never initiated any searches for the OPTF. Investigators and prosecutors were officed in separate locations too, undermining their ability to coordinate action. The task force lacked real authority to execute its own mission. As Ward concluded in a 2026 interview, the OPTF was "calibrated so as to render obscenity enforcement only minimally effective."[21]

Hostile Context. Such structural issues masked the deeper problem related to the hostile context. The poor resourcing was an effect, not a cause, of the OPTF's broader failure. Few people believed in the cause of regulating obscenity. The original district court opinion in the *Extreme Associates* case (one that protected obscenity under the right of privacy) may have expressed a spirit of the times. If *Lawrence* stood for freeing people to do what they want in their own bedrooms, it seemed logical to conclude that what people did with pornography was their own business, too. Obscenity prosecutions seemed to be on the wrong side of history.

U.S. Attorneys feared being labeled joyless scolds or wearers of a "scarlet A for anti-free speech," as Ward said in a 2026 interview with the authors. U.S. Attorneys would win little honor among other attorneys for fighting obscenity and, perhaps, much shame for undertaking the task with any

enthusiasm. Especially crucial in this respect was the techno-optimism of the early 2000s, which hypothesized that technological improvements would solve the problem of obscenity without the need for law, perhaps through the invention of filtering software. No one wanted to stifle the promise of the internet with regulations.

As Ward argued, the very act of fighting pornography can corrupt the sensibilities of attorneys. "The material is just so offensive that people do not want to deal with it," Ward said in the interview. "They don't want to look at it, which they have to do if they're going to prosecute it. They don't want to have to show it to a jury." Like leaving pornography unpunished, punishing pornography comes at a cost.

Attorney General Gonzales's leadership helped launch the OPTF, and his attempt to get U.S. Attorneys to prosecute obscenity cases had something to do with his resignation. According to a later Senate report,[22] U.S. Attorneys in Nevada and Arizona declined to bring obscenity charges in their districts, despite repeated requests from the OPTF and directives from the Justice Department. Gonzales eventually fired these two attorneys along with seven others for failing to carry out department priorities. Democrats accused Gonzales of politicizing the Department of Justice and, after a series of related Senate hearings, he resigned.[23]

Prosecutorial defiance against obscenity prosecutions was thus, in a sense, rewarded when Gonzales resigned in September 2007. Ward resigned shortly thereafter. Gonzales's successor, Michael Mukasey, never responded to Ward's memorandum. The OPTF's efforts fizzled but did not immediately vanish. Most of the new cases involved child pornography or exploitation. President Obama's Attorney General Eric Holder quietly dissolved the OPTF in spring 2011.

Even the OPTF had not really tried to touch internet pornography. No one has—no doubt because of cultural, technical, and legal obstacles:

1. The volume of internet pornography (with millions of pages of user-generated content and international hosting) is likely orders of magnitude larger than pornography in the mail-order era;

2. Community standards are hard to enforce with a global medium;

3. Prosecutors would face the ultimate whack-a-mole problem, as new pornographers pop up immediately to replace prosecuted pornographers;

4. Younger generations are increasingly tolerant of and even blasé about pornography, viewing it as a harmless private activity;

5. Protection for online platforms like Pornhub or even Google is so entrenched in law as to negate any attempt to regulate; and

Given such impediments, prosecutors spent their time on other priorities that did not invite accusations of viewpoint discrimination.

Prospects for Reviving the Obscenity Prosecution Task Force

The OPTF may have been the last sustained public effort to regulate general obscenity, but it was a more desultory effort than those undertaken from 1986 to 1988 under Attorney General Meese. Since 2011, almost all federal and state regulation attempts have centered on child pornography and child sex trafficking. Every state has a task force to combat internet crimes against children—that is, to stop the production and distribution of online child pornography. Nearly every state has a designated task force for child sex trafficking to stop people from recruiting children to participate in porn productions.[24] Federal crimes in these areas are also routinely prosecuted.

In the early 2000s, the Supreme Court hampered Congress's attempt to regulate pornography involving minors at the national level. This seemed to presage the end of general obscenity regulation. The death of the OPTF did little to dispel the drift of opinion.

In 2025, the legal winds changed direction. In *Free Speech Coalition v. Paxton,* the Supreme Court blessed new state regulations for internet pornography. With *Paxton,* the Court opened the way for states to pass and implement age verification for websites containing obscene material.

This, of course, presumes an enforceable definition of obscene material *that involves minors*. The Texas law at issue in *Paxton* pursued the "important interest in shielding children from sexual content."[25] Perhaps Congress can expand childhood protections. A bipartisan group of Senators is interested in applying childhood protections for use of artificial intelligence.[26]

As a result, America has developed a modified two-track system of pornography regulation. States and the federal government prosecute some pornography featuring trafficking in children. States can regulate access to other pornography with age-verification systems. Within those limits,

anything goes for adults; and there are few prosecutions of adults under general obscenity regulations.[27]

A Changed Context. The renewed effort to protect children from internet pornography shows that today's context differs, at least somewhat, from the context within which the Bush-era OPTF operated. *Paxton* points to a more favorable legal environment than the *Ashcroft* decision of 2004. When *Ashcroft* was decided, internet pornography research was in its infancy. *Paxton* reflects an environment that is more open to obscenity regulation and, therefore, more concerned about the harms of pornography on children, at least.

Thirty years of internet pornography have also moved the needle against techno-optimism on the promise of porn and filters. Before the internet, the social science on pornography use was mixed. And, as one of the authors (Scott Yenor) has documented,[28] the arguments from opponents of pornography have not always been realized in practice. Simply put, the pornography of *Playboy* magazine and difficult-to-get films had a smaller viewership and a lesser impact on the minds of people, especially children. Shame was still attached to the purchase of pornographic materials in a very overt way.

Proven Negative Effects of Pornography. The internet era has brought change. Many more people watch porn without shame. Porn is often free and can be acquired and watched entirely in private. Social science studies of the problems of internet pornography—both for children and for adults—have increased since Ward left the OPTF in 2007, the year the first iPhone was released and ever more pornography was consumed. Viewing pornography:

1. Fuels brain changes similar to addiction;[29]
2. Compromises marriages and romantic relationships;[30]
3. Desensitizes men to sexual violence and lowers their general ambition;[31]
4. May contribute to sexual violence against women;[32] and
5. May serve as a gateway to ever more extreme types of pornography, including choking and child pornography.[33]

The more that is known about the personal and societal harms of pornography, the stronger the case for regulation. The presence of so much easily

accessible pornography has made the scientific case against pornography much stronger today than it was 30 years ago.

Yet, post-*Miller* enforcement against general obscenity has virtually disappeared since the OPTF speed bump. What is not prosecuted, over time, tends to become the community standard. Community standards have, in all likelihood, sunk farther. But standards have not disappeared. Television and streaming services refuse to show certain sex scenes. Apple and Android do not allow porn apps on their app stores. Billboards do not have sexually explicit material on them. Sexual acts in movies can still go too far. Clearly, some pornography violates some standards.

Techno-optimism has changed silos, but it has not disappeared. Today, people put faith in large language model AI the same way they put confidence in "the internet" in the early 2000s. It is much more socially respectable today, however, to be critical of the tech giants and social media. People worry more about how internet technologies undermine personal relationships, decrease social skills, and cause loneliness and anomie. Internet porn critics will likely not encounter the same buzzsaw they encountered in the early 2000s.

Lessons Learned and the Path Forward

An assault on obscenity is now much more promising. Today's porn critics should learn several lessons from the Bush-era OPTF.

Prioritize Enforcement. An Attorney General can make general obscenity enforcement an institutional priority.

Consolidate OPTF Power. A dedicated task force, properly staffed and resourced with investigators, can and should consolidate power within itself, instead of relying on U.S. Attorneys to conduct trials. Obscenity prosecutions will run risks. Prosecutors, worried about losing cases and wasting resources, may not want to take them on. Focusing power in a task force that knows the best way to prosecute such cases would pay the greatest dividends, though help from sympathetic U.S. Attorneys could be sought. A new task force might also cooperate with sympathetic county prosecutors or state task forces.

Apply Existing Law to the Internet. Applying existing law to the internet should be the centerpiece of a revived OPTF.

Work to Remove Immunity from Civil Liability for Platforms. The OPTF should, with attorneys in the Justice Department, tackle the issue of Section 230, which, as currently interpreted, immunized ostensibly "neutral" platforms from civil liability for third-party content they host. Against

this view, the department should show that many, if not all, platforms are anything but neutral. They are all curated by algorithms, which actively promote content. Section 230(c) (1) was only meant to shield platforms from liability for passively hosting third-party content. It did not grant platforms a sweeping immunity for algorithmic promotion, active curation of content, and deliberate amplification of ever-more obscene content.[34]

Align State Attorneys General to Jointly Prosecute Pornographers. A new OPTF could work with aligned state Attorneys General to identify and jointly prosecute pornographers who violate both state and federal obscenity law. Combining federal and state resources would increase deterrence measures and greatly expand prosecutorial capacity.

Conclusion

Of course, no task force in a free society can police every dark corner of that society. A new OPTF should be focused and concentrated. It should mostly go after the worst of the worst of internet pornography. It should show how patently offensive adult content leads to the consumption of child pornography, too. It should be combined with legal action on larger hosting platforms. And it should prosecute cases aggressively. With renewed commitment, American officials can once again wield existing law to protect society from the spread of porn to the young and old alike.

Scott Yenor is Chair of the American Citizenship Initiative at The Heritage Foundation.
Caleb Pirc is General Counsel and Director of the Idaho Family Policy Center's Legal Center.

Appendix: Memo to Mukasey

U.S. Department of Justice

Criminal Division

Office of the Obscenity Prosecution Task Force

1301 New York Avenue, NW, Suite 500
Washington, D.C. 20530

MEMORANDUM

To: Michael B. Mukasey, Attorney General
From: Brent D. Ward, Director, Obscenity Prosecution Task Force
Date: December 19, 2007
Re: Current Status of Federal Obscenity Prosecutions

Brief History of the Obscenity Prosecution Task Force

The Obscenity Prosecution Task Force ("OPTF") became fully operational in January 2006, staffed by a director and two trial attorneys transferred from the Child Exploitation and Obscenity Section. A prosecutor on a detail from a U.S. Attorney's Office was added in late 2006. Most Task Force investigations are initiated and conducted by agents from the FBI's Adult Obscenity Squad in Falls Church, VA and inspectors from the U.S. Postal Inspection Service. See Appendix A for a list of federal obscenity related offenses.

The Task Force's Mission Statement is as follows:

> "The proliferation of illegal obscenity in America harms our citizens and corrupts our families. The Obscenity Prosecution Task Force combats illegal obscenity[1] by bringing prosecutions against high value targets to achieve maximum deterrent effect and through successful enforcement helps to ensure that obscenity prosecution will remain an ongoing priority of the Department of Justice."

This Mission Statement is supported by an Execution Plan that was presented by the Task Force Director to the Attorney General in January 2007. The Execution Plan is in turn supported by Milestones established in a February 16, 2007 Memorandum to the Staff of the Task Force.

1 In this memorandum the terms "illegal obscenity" and "obscenity" mean hardcore sexually explicit materials that exceed, or are believed to exceed, the *Miller-Smith-Pope* test. "Pornography" means the broader category of sexually oriented materials that include illegal obscenity, indecent materials that would not meet the *Miller-Smith-Pope* standard but would violate harmful to minors laws, and other so-called "soft core" pornography that would also be beyond the reach of the *Miller-Smith-Pope* test. Of course only the first category, *i.e.* illegal obscenity, is within the province of the Department of Justice and the Obscenity Prosecution Task Force.

The Task Force has secured convictions in every case that has reached a disposition thus far (trials in N/TX and AZ and guilty pleas in W/MI, N/FL (2), M/FL, and C/CA). Trials will take place in 2008 in UT and C/CA and indictments are expected 1Q08 in three additional cases. Altogether, sixteen Task Force cases are either currently pending in court or under investigation. In addition to the Task Force's cases, two pending obscenity cases were initiated (and indicted) by the U.S. Attorney in W/PA and are being handled solely by that office and one case pre-dating the formation of the Task Force was indicted earlier this year by the Child Exploitation and Obscenity Section ("CEOS") and is awaiting trial in M/FL.

One of the Task Force's initiatives has had a significant impact on the adult pornography industry. In 2005 the FBI and OPTF began an investigation leading to four indictments[2] in 2006 charging individuals and companies associated with the Girls Gone Wild organization ("GGW") with record-keeping and labeling violations under 18 U.S.C. § 2257. This statute, commonly known as the Child Protection and Obscenity Enforcement Act of 1988, requires producers of materials depicting sexually explicit conduct to (1) create and maintain age and identification records for all performers, and (2) label their products with a statement identifying the custodian and the location of the records.

These four cases were the first prosecutions of producers of adult pornography under Section 2257 of which we are aware. Three of the four cases resulted in guilty pleas that brought $2.1 million in fines. In the fourth case one of the GGW companies entered into a deferred prosecution agreement requiring a court-appointed monitor to oversee GGW's compliance activities for a period of three years at GGW's expense.[3] Each quarter the monitor prepares a report that is reviewed by the government and furnished to the court.

It may be argued that the GGW cases have had a greater impact on the multi-billion dollar U.S. adult pornography industry than any federal obscenity prosecution in history. During the eighteen years when Section 2257 was not enforced the industry came to believe that the statute would never be enforced and compliance was the exception rather than the rule. It was not uncommon for underage performers to appear in adult films during that period. Based on this single enforcement action the vast majority of commercial producers of sexually explicit adult materials in the U.S. have hired lawyers and compliance officers (GGW now has four of them), purchased expensive software, set aside space for records storage, reorganized production and distribution activities and more in an effort to come into compliance with Section 2257 and its accompanying regulations. As a result, today there is much less likelihood than ever before that underage performers will be used in the production of sexually explicit materials in this country.

---

2 *U.S. v. Mantra Films, Inc.*, No. 5:06CR78/RS (N/FL)
U.S. v. MRA Holdings, L.L.C., No. 5:06CR79/RS (N/FL)
U.S. v. Francis, No. 06-696-MMM (C/CA)
U.S. v. Schmitz, No. 5:06CR81/RS (N/FL)
3 *U.S. v. MRA Holdings, L.L.C., supra.*

Two more Section 2257 cases were under investigation when the Court of Appeals for the Sixth Circuit decided *Connection Distributing Co. v. Mukasey*, No. 06-3822 (6th Cir.) on October 23, 2007 and held Section 2257 to be unconstitutionally overbroad on its face. Since then the Department has held all pending Section 2257 investigations in abeyance. The Civil Division is preparing to recommend to the Solicitor General that the government seek a rehearing *en banc*. The Task Force agrees and has also urged the Department to propose an amendment of Section 2257 to preemptively resolve the problem raised by the Sixth Circuit's decision.

Key Statistics for the Obscenity Prosecution Task Force

During 2006-2007 ten defendants were convicted in seven Task Force cases. During the same period three defendants were indicted in two cases awaiting trial in 2008.[4] Fourteen cases are under investigation – eleven before grand juries and three in the pre-grand jury stage. U.S. Attorneys in fourteen additional districts have agreed to consider prosecuting an obscenity case, but currently there are no cases under investigation for them to consider. On August 13, 2007 the FBI notified the Task Force that it was withdrawing support for six investigations and reducing the size of the Adult Obscenity Squad from an authorized level of ten special agents to two special agents. The FBI will not open new investigations for the fourteen U.S. Attorney's Offices that are willing to consider cases.

The Need for Federal Obscenity Enforcement

Brief Statement of Harms

We must not assume that today's pornography is harmless, or is confined to the dark corners of our communities, or is merely the province of consenting adults. The volume of sexually explicit material available to the public today is far greater and the content far worse than it was a generation ago. This is no accident. Fifteen years of weak enforcement has permitted an explosion of sexually oriented content on the Internet, much of it graphic, violent and extreme beyond what many Americans would imagine. It requires seeing to believe.[5] According to one estimate, in 2006 U.S. based websites hosted two hundred forty-four million pornographic web pages.[6] This phenomenal growth is fueled by the anonymity, accessibility, and affordability of pornography on the Internet.[7] These factors make it certain that most young people ages ten through seventeen will be exposed to obscenity and pornography on the Internet, want it or not.[8]

---

4 *U.S. v. Isaacs,* No. CR-07-732-GHK (C/CA); *U.S. v. Harb*, No. 2:07-cr-00426-TS (UT).
5 The Task Force has prepared a 2-minute video collage on DVD of the kinds of materials that are the subject of recent Rask Force investigations. We suggest OAG review this material in order to gain a greater awareness of the content of today's pornography.
6 *See 'GenXXX' Findings Surprising,* The Deseret News, December 13, 2007 (quoting from TopTenReviews.com).
7 PAUL, PORNIFIED: HOW PORNOGRAPHY IS TRANSFORMING OUR LIVES, OUR RELATIONSHIPS, AND OUR FAMILIES, 55, 60 (2005).
8 In 2006 alone forty-two percent of youth Internet users were exposed to online pornography. Of those sixty-six percent reported only unwanted exposure. *See* Wolak, Mitchell & Finkelhor, *Unwanted and*

It is no wonder this is happening. More than ninety percent of American young people in this age range use the Internet.[9] Children are only a few mouse clicks away from extreme depictions of hardcore obscenity. Some of this is in the form of free, downloadable, streaming-video movie trailers – enough of it to watch nonstop twenty-four hours a day. No age verification or credit card information is required to access these trailers, or the free porn that is increasingly available on websites such as YouPorn.com, PornoTube.com, and PornTube.com. Much of this material is obscene by most community standards. Too many young people are psychologically and developmentally unprepared for these encounters and suffer from a variety of negative attitudes and life events that frequently accompany pornography use among the young.[10]

For all the damage that is caused by the increasing pervasiveness of these materials, today's commercial producers of illegal obscenity are vexed less by the risk of prosecution than by the growth of free pornography on websites such as those mentioned above, both because free porn is eating into their profits and because their own materials frequently find their way onto free sites. Formerly, litigation over such piracy was uncommon. However, conditions in society have deteriorated to the point that today commercial producers, emboldened by the lack of obscenity law enforcement, freely litigate their claims of copyright violation against those pirating their wares.

Obscenity also fuels sex crimes against children. Once caught and incarcerated, some child predators disclose that their propensity to victimize children began with early exposure to adult obscenity. Their experience with adult obscenity ultimately evolved into an attraction to, then a preoccupation with, child pornography. Both adult and child pornography in turn contributed to their sexual exploitation of children.[11] For such people these materials act as behavioral disinhibitors, awakening latent tendencies, feeding fantasies and promoting aggressive attitudes and behaviors that play a role in the commission of crimes against children. Finally, once they are fixed in their purpose, child predators often use adult obscenity to "groom" and condition children to be sexually abused.

An unfortunate feature of the Department's current obscenity enforcement strategy is the separation of adult obscenity (the responsibility of OPTF) from child pornography and child exploitation (the responsibility of CEOS), when it is increasingly apparent that these are all part of the same problem. A current OJJDP-funded study at Boston College is expected to shed further light on the connection between the use of adult pornography and the

---

Wanted Exposure to Online Pornography in a National Sample of Youth Internet Users, PEDIATRICS, Vol. 119, Number 2, 247 (February 2007).

9 Ybarra & Mitchell, *Exposure to Internet Pornography among Children and Adolescents: A National Survey,* CYBERPSYCHOLOGY & BEHAVIOR 474 (2005).

10 *See, e.g.,* Cline, *Pornography's Effects on Adults and Children* (Morality in Media, 2001); Wolak, Mitchell & Finkelhor, *supra* at 248; Ybarra and Mitchell, *supra* at 474, 477-483. Such negative life events include clinical features of major depression, delinquent behavior, early sexual experiences, negative attitudes about women, and a perception that unprotected sexual activity is acceptable.

11 *See, e.g.,* Russell and Purcell, *Exposure to Pornography as a Cause of Child Sexual Victimization,* DOWD, SINGER & WILSON (EDS.), HANDBOOK OF CHILDREN, CULTURE, AND VIOLENCE 67-68 (2005).

victimization of children. The completion of this study depends upon access to incarcerated sex offenders for the purpose of conducting a survey. A request for such access at Butner Federal Correctional Complex has been pending, without action, before a BOP institutional review board since December 2006. The Task Force believes this survey is important to a better understanding of the dynamics of pornography addiction and child victimization and requests the help of OAG in securing approval of this request.

Although the harm caused by obscenity in the lives of children is perhaps the most troubling of all its effects, obscenity causes a multitude of harms. For example, it is beyond peradventure that both violent and non-violent pornography play a role in aggression against women.[12] The Obscenity Prosecution Task Force has recently prepared a twenty-minute PowerPoint presentation on the harms of obscenity and pornography and seeks an opportunity to make this presentation to OAG.

Federal Enforcement Required

Indications are that obscenity enforcement by local authorities has declined in inverse proportion to the growth of Internet pornography. The retail adult outlets of yesterday are being replaced by website pornographers with video download and streaming capability and large, out-of-state warehouse operations from which DVDs are shipped throughout the country. Local authorities often lack the tools and resources to prosecute these operations, suggesting the need for a greater role for the Department of Justice in any successful obscenity enforcement strategy.

Challenges in Federal Obscenity Enforcement

Even considering the Task Force's early successes, progress in federal obscenity enforcement has been disappointing. From the inception of the Task Force its policies and resources have been calibrated so as to render obscenity enforcement only minimally effective in combating the systematic and pervasive violation of federal obscenity laws nationwide. These policies permit producers and distributors to continue flooding the country with hardcore obscenity with impunity. They include the following:

1. Neither FBI Divisions nor U.S. Attorney's Offices typically initiate obscenity cases or volunteer to work on them.[13] Instead, cases are initiated by the FBI's Adult Obscenity Squad, which is part of the Bureau's Washington, D.C. field office. For the first a year and a half of the Task Force's existence investigations were initiated with the intent that

---

12 *See, e.g.,* Lyons, Anderson and Larson, *A Systematic Review of the Effects of Aggressive and Nonaggressive Pornography*, ZILLMAN, BRYANT & HUSTON (EDS.), MEDIA, CHILDREN, AND THE FAMILY: SOCIAL, SCIENTIFIC, PSYCHODYNAMIC, AND CLINICAL PERSPECTIVES (1994). *See also* RUSSELL, AGAINST PORNOGRAPHY: THE EVIDENCES OF HARM (1994).

13 During the past two years (and perhaps a good deal longer) the only U.S. Attorney's Offices to initiate adult obscenity prosecutions (as compared with child pornography or child exploitation cases in which an obscenity charge is added) are W/PA and N/WV.

they would be referred to U.S. Attorney's Offices to be prosecuted either by AUSAs with Task Force support or jointly by AUSAs and Task Force trial attorneys. It was anticipated that numerous prosecutions would be brought by multiple U.S. Attorney's Offices (no more than one prosecution per target). In addition to increasing the number of cases that can be brought, U.S. Attorney participation makes sense in cases geared to the application of local community standards.

The Task Force has met with only limited success in securing active participation by U.S. Attorney's Offices. So far only twenty U.S. Attorney's Offices have been involved in obscenity investigations and prosecutions. As mentioned above, another fourteen offices have expressed a willingness to consider a prosecution, but there are no cases for them to consider.

Even in U.S. Attorney's Offices where obscenity cases have been brought, or where investigations are pending, as a rule the cases have been given a very low priority and have moved very slowly. In most instances the Task Force has not been successful in expediting them.

Some U.S. Attorney's offices have refused to participate in investigations, saying the materials in question do not violate community standards in their districts, a conclusion that is difficult to support in the absence of obscenity prosecutions over such a long period of time. When a prosecutor substitutes his or her judgment about what is obscene for the judgment of a grand jury and a trial jury in an obscenity case in this way, citizens in the community are deprived of their lawful right to decide for themselves whether the material in question violates their standard of obscenity.

When an investigation stagnates in a U.S. Attorney's Office, a Task Force attorney seeks to expedite the investigation by exercising greater control over the subpoena-search-indictment process. So far this approach has proved to be only minimally effective. When a district is unwilling to participate in an investigation, the Task Force (1) indicts the case in the district and conducts the prosecution on its own, (2) transfers the case to a more receptive venue, or (3) closes the investigation.

The lack of commitment to the prosecution of obscenity cases in most U.S. Attorney's Offices may be attributed to the following:

(a) The Department has not established concrete priorities and expectations for obscenity enforcement and communicated them to U.S. Attorney's Offices,[14]

(b) Obscenity enforcement loses out in the competition with other areas of enforcement where concrete expectations and priorities have been established and

14 The U.S. ATTORNEY'S MANUAL is of little help, stating only, "Prosecution of large scale distributors of obscene material who realize a substantial income from their multi-state operations . . . is encouraged." *See* U.S.A.M. 9-75.020.

communicated,[15] and

(c) U.S. Attorney's Offices simply do not like to prosecute obscenity cases and often find an excuse to avoid them, usually citing scarce resources as the reason.

The limited commitment of resources to the Obscenity Prosecution Task Force has also signaled to U.S. Attorneys that obscenity enforcement is not very important, while at the same time leaving the Task Force without the means to mount a serious enforcement campaign of its own.

2. From the outset the Task Force was to be supported by one full-time, in-house postal inspector[16] and an FBI Adult Obscenity Squad of ten special agents. Since this was to be a national initiative, these FBI agents were to have authority and resources to pursue cases anywhere in the country. Neither the FBI's divisions, nor USPIS' regional offices, were asked to initiate obscenity investigations. Instead, initiation of obscenity investigations was reserved for the Adult Obscenity Squad and the postal inspector assigned to work with the Task Force.

3. In reality the postal inspector assigned to work in-house with the Task Force quickly gravitated to the investigation of child exploitation cases at CEOS, where he is now located, and to other tasks unrelated to obscenity enforcement. None of the obscenity investigations he initiated for the Task Force reached the search stage, let alone the indictment stage, even though they were pending for more than one year.

4. Although the FBI's Adult Obscenity Squad was originally authorized to hire ten full-time agents (including one supervisory special agent), the Squad has rarely had a full complement of agents. Until mid-2007 the average was four or five agents. On August 13, 2007 the FBI pulled the plug on six investigations (four of them at the grand jury stage) and reduced staffing on the Squad to two special agents.[17] The average tenure of an agent on the Squad is less than one year. Rapid turnover has assured that no Task Force case has ever been staffed by an agent with prior experience in obscenity investigations. Some agents assigned to the Squad have had little or no prior experience investigating criminal cases.

5. As a consequence of these difficulties, the Task Force expects that (1) in the future fewer obscenity investigations will be initiated, and (2) most new cases will be prosecuted by Task Force trial attorneys with little or no assistance from U.S. Attorney's Offices.

---

15 A corollary of this factor is the tendency of U.S. Attorneys to believe that obscenity cases are unusually complicated and difficult. The contrary is true. The law of obscenity has remained essentially unchanged for over thirty years. Often a trial consists of stipulated facts concerning the interstate character of the purchase transactions, a few witnesses, and viewing of the sexually explicit matter by the jury.

16 This assignment was the result of a personal request by Attorney General Gonzales to the Chief Postal Inspector.

17 The reason given was that due to the stagnation of cases in U.S. Attorney's Offices there were not enough indictments and convictions. The two remaining agents are good agents.

6. Even if circumstances permitted the pursuit of more cases, the Task Force has little prospect of achieving any appreciable deterrent effect against the production and distribution of obscenity in the United States. The reason: content guidelines adopted by the FBI and agreed to by the Department prior to formation of the Task Force restrict the use of the FBI's investigative resources to cases involving only the most extreme types of hardcore obscenity. These content categories are: rape, "snuff", bestiality, bondage, urination, scat, and sadistic and masochistic conduct.

The FBI will not investigate any case involving content less extreme than its guidelines permit. The FBI will not assist the Task Force in any case that includes even one film that does not meet the guidelines, even if the case were to include other films that meet the guidelines. This policy assures that no federal jury in America will have the opportunity to determine where the standard for obscenity really lies in any community (because the materials viewed by the jury will be well beyond the community standard in the community).

The FBI's guidelines provide a "safe harbor" for a staggering volume of harmful materials that the Task Force believes would be found obscene in most communities in America. They leave the public unprotected and the multibillion dollar U.S. obscenity industry unaccountable before the law. This failure to hold producers accountable for a broader range of materials has consequences that are redefining American culture.

7. The Obscenity Prosecution Task Force has never been a task force in the true sense, because it is a task force of attorneys only. Rather than melding its agents with the Department's attorneys to form a true task force, the FBI established a separate Adult Obscenity Squad and insisted that it operate independently of the Task Force. The Task Force, its Director and the Criminal Division have had very little influence on the operations of the Adult Obscenity Squad. The Squad has largely determined its own priorities, chosen its own targets, opened and closed its own cases, picked its own content and proceeded at its own pace without regard to input from the Task Force.

This problem is exacerbated by the fact that the Task Force is located at 1301 New York Avenue in Washington, D.C., while the Adult Obscenity Squad is located thirteen miles away in Tyson's Corner, VA. This separation prevents the teamwork and better results that could be achieved if agents and prosecutors were located closer to one another. In February 2008 the Adult Obscenity Squad is scheduled to move to the FBI's new building in Manassas, VA. This will place the Squad thirty-two miles and about one hour's drive from the Task Force. Access to evidentiary materials, undercover computers, and agents for face-to-face meetings requires that Task Force attorneys travel to the Squad's location in order to keep their cases moving. The relocation of the Adult Obscenity Squad will therefore add significantly to existing inefficiencies in the handling of Task Force cases.

8. The difficulty of generating cases through federal law enforcement agencies led to an effort to initiate cases through the forty-eight Internet Crimes against Children

(ICAC) task forces nationwide. The Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP), which funds the ICAC task forces, surveyed these task forces for obscenity cases arising out of their investigations of child exploitation offenses (adult pornography is almost invariably found in the possession of child predators at the time of their arrest). Unfortunately, this effort did not yield any prosecutions. At present the Task Force is assisting in the prosecution of one obscenity case where a local prosecutor requested help.[18]

The Role of Leadership and Priorities

The history of the Child Exploitation and Obscenity Section illustrates the key to a successful obscenity enforcement program.

The origin of CEOS lies in the National Obscenity Enforcement Unit formed in 1987 by Attorney General Edwin Meese III. Formation of the NOEU (essentially a strike force) was a principal recommendation of the Attorney General's Commission on Pornography in its *Final Report* published in 1986.

The NOEU was operated out of the OAG and its sole focus was the prosecution of obscenity crimes. Even after the Unit was converted into a permanent component of the Criminal Division and became the Child Exploitation and Obscenity Section, this strong emphasis on obscenity enforcement continued. Hundreds of cases were prosecuted with great success.[19]

A precipitous drop in federal obscenity prosecutions occurred during the change in administrations from 1992, when forty-four were prosecuted, to 1993, when twenty-five were prosecuted. By 2000 the number of "true" [20] obscenity prosecutions was hovering at an average of perhaps fifteen per year.[21] The number has fallen further since then.

These fluctuations in prosecution rates reflect changes in leadership at the Department of Justice. Leadership from the Attorney General is of course crucial in defeating crimes of all kinds. It follows that leadership has been the primary reason for success in combating obscenity. Attorney General Meese and his two successors, Richard L. Thornburgh and William P. Barr, took a strong hand in assuring that U.S. Attorneys and federal investigative agencies alike vigorously pursued obscenity cases. Declines since then reflect the policies established by their successors.

18 *Commonwealth of Virginia v. Krial* (Circuit Court of Staunton, Virginia).
19 It is interesting to note that the successes of the NOEU and CEOS were preceded by a long hiatus in obscenity enforcement similar to the one leading up to formation of OPTF in 2005.
20 "True" in this context denotes cases in which the primary charges are obscenity charges, rather than cases which are primarily child exploitation or child pornography cases to which obscenity charges are appended.
21 REVIEW OF CHILD PORNOGRAPHY AND OBSCENITY CRIMES, Report No. I-2001-07 (Report of the Department of Justice's Inspector General to Congressman Frank R. Wolf dated July 19, 2001)

During the period 1993-2005, as obscenity enforcement received little emphasis among Department priorities, federal obscenity enforcement virtually disappeared. In 2005, as pressure from the public to revive obscenity enforcement increased, the Department adopted a strategy, including formation of the Task Force, that gave obscenity enforcement a higher public profile, if not a higher priority, at the same time allowing CEOS the luxury of pursuing child exploitation crimes without being encumbered by responsibility for obscenity enforcement. Raising expectations for obscenity enforcement without providing the policies and resources required to fulfill those expectations has led to disappointment.

Role of Accountability

It should go without saying that a fundamental component of effective leadership is the use of authority to require accountability. In the absence of enthusiasm for the accomplishment of a difficult task, a requirement of accountability may be the only means of achieving success. When both accountability and enthusiasm are lacking, an enterprise is likely to fail.

Without accountability required by one with authority, a postal inspector assigned full-time to the Obscenity Prosecution Task Force may open two cases in two years and do almost nothing on either of them. Without accountability a U.S. Attorney may with no good reason freely decline to participate in an obscenity case. An Assistant U.S. Attorney may delay action on subpoenas month after month until a case fades into oblivion. An FBI agent may stretch the time spent on simple tasks from weeks into months.

The Obscenity Prosecution Task Force suffers from failings that hamper its success. However, two years' experience has shown that the Task Force also lacks authority to require accountability from the people whose efforts are needed to initiate obscenity cases and move them toward indictment at a reasonable pace. A commitment to duty, if not enthusiasm, on the part of a few has led to some successes. It now appears that further successes will mostly depend upon what Task Force attorneys can do on their own with such willing help from investigators as they can find. Such limited action seems destined to have little appreciable impact in deterring the wholesale commission of obscenity crimes.

Recommendations for Improvements in Federal Obscenity Enforcement

There appears to be strong public support for obscenity enforcement. In 2004 the polling firm Wirthlin Worldwide found that eighty-two percent of American adults surveyed said federal obscenity laws should be vigorously enforced. A 2005 Harris Interactive poll similarly found that seventy-seven percent of American adults surveyed supported the Department's effort to enforce obscenity laws. During the period 2002-2007 sixty-eight thousand five hundred complaints were lodged at www.obscenitycrimes.org, a website

affording citizens an opportunity to file a complaint about obscenity and pornography they have encountered.

If the Obscenity Prosecution Task Force is to have significantly greater impact, however, changes in policy will be required. Among the changes that might be made the Task Force recommends the following.

1. A comprehensive review should be conducted of federal obscenity enforcement policies, procedures, strategies and priorities.

2. The Department should incorporate obscenity enforcement into its overall strategic plan and list of priorities and communicate the priority and expectations of the Department for obscenity enforcement to the appropriate components of the Department.

3. A new strategic plan for obscenity enforcement should be prepared.

4. As part of the new strategic plan guidelines should be adopted governing the investigation and prosecution of obscenity cases, including a provision for coordination of all obscenity cases by the Task Force, together with necessary and sufficient oversight by the Task Force of matters such as target identification, content identification, venue, searches and indictments.

5. The new guidelines should expand the content investigated by federal law enforcement agencies in obscenity cases along the lines of the "Proposed Content Guidelines for Federal Obscenity Prosecutions" attached as Appendix B and should encourage the prosecution of web sites making illegal obscenity available to minors.

6 Each U.S. Attorney's Office should prosecute at least one obscenity case at a time, either alone or in conjunction with the Task Force, and should appoint an Assistant U.S. Attorney as obscenity prosecutor for that purpose. The obscenity prosecutor should be someone other than the PSC Prosecutor.

7. Task Force staffing should be increased from four to five attorneys to cover the enhanced demands of (1) prosecuting more Task Force cases, (2) co-prosecuting cases with USAOs, (3) assisting state and local prosecutors, and (4) coordinating and overseeing all federal obscenity cases.

8. Staffing of the FBI's Adult Obscenity Squad should be increased to five special agents, including one supervisory special agent, and the Squad and the Task Force should be located near one another. The Squad should conduct its own investigations, as well as oversee investigations conducted by other FBI divisions.

9. Agents on the FBI's Adult Obscenity Squad should be volunteers who are willing to commit to a minimum tour of eighteen months with only very narrow exceptions.

10. In coordination with the Adult Obscenity Squad each FBI division should be required to initiate and conduct a minimum of one obscenity investigation at a time and should appoint an obscenity investigator for that purpose.

11. USPIS should be requested to assign one full-time postal inspector to the Task Force. This postal inspector should be located with the Task Force and should initiate obscenity investigations. Approval should be sought for USPIS regional offices to conduct investigations initiated by the Task Force's postal inspector.

12. The Task Force should continue to conduct obscenity investigation and prosecution training programs in conjunction with the National Advocacy Center.

13. The Department should consider adopting a policy that promotes the use of pornography-free lodging by Department representatives traveling on government business.

14. OAG should express support to the Bureau of Prisons for the request of Boston College researchers for access to inmates at Butner Federal Correctional Complex for the purpose of surveying convicted sex offenders.

15. The Department should propose an amendment to the Child Protection and Obscenity Enforcement Act of 1988, 18 U.S.C. § 2257 obviating the problem raised by *Connection Distribution Co. v. Mukasey*, No. 06-3822 (6th Cir., October 23, 2007).

16. The Department should facilitate a public education campaign to inform the public of the harms of obscenity.

Endnotes

1. See, for example, Amy Adler, "All Porn All the Time," *N.Y.U. Review of Law & Social Change*, Vol. 31 (2007), p. 695; Brian L. Frye, "The Dialectic of Obscenity," *Hamline Law Review*, Vol. 35, No. 1 (Winter 2012), pp. 229–278; Bret Boyce, "Obscenity and Community Standards," *Yale Journal of International Law*, Vol. 33 (2008), p. 299; and Andrew Koppelman, "Does Obscenity Cause Moral Harm?" *Columbia Law Review*, Vol. 105 (2005).
2. Orrin G. Hatch, "Fighting the Pornification of America by Enforcing Obscenity Laws," *Stanford Law & Policy Review*, Vol. 23, No. 1 (2012), p. 131.
3. 18 U.S. Code Chapter 71. §§ 1460–1470. Major statutes concerning child pornography include 18 U.S. Code § 2251, § 2252, § 2252A, § 2253, § 2254, § 2256, § 2257, § 2257A, § 2258, § 2260, and § 1466A.
4. 18 U.S. Code § 2257.
5. Jennifer M. Kinsley, "The Myth of Obsolete Obscenity," *Cardozo Arts & Entertainment Law Journal*, Vol. 33, No. 3 (2016), pp. 607–671.
6. Brent D. Ward, "Current Status of Federal Obscenity Prosecutions," memorandum to Attorney General Michael B. Mukasey, December 19, 2007. ("Hundreds of cases were prosecuted with great success.")
7. *Miller v. California*, 413 U.S. 15 (1973).
8. Kinsley, "The Myth of Obsolete Obscenity," p. 671.
9. *United States v. Kilbride*, 584 F.3d 1240, 1254 (9th Cir. 2009), citing *Ashcroft v. ACLU*, 535 U.S. 564, 590 (Breyer, J., concurring in part and concurring in the judgment).
10. *United States v. Little*, 365 F. App'x 159, 162 (11th Cir. 2010), and Neil A. Lewis, "A Prosecution Tests the Definition of Obscenity," *The New York Times*, September 28, 2007, https://www.nytimes.com/2007/09/28/us/28obscene.html (accessed June 17, 2026).
11. *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997).
12. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).
13. *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656 (2004).
14. Adam Candeub and Eugene Volokh, "Interpreting 47 U.S.C. § 230(c)(2)," *Journal of Free Speech Law*, Vol. 1 (2021), pp. 175–200, and Adam Candeub, "Reading Section 230 as Written," *Journal of Free Speech Law*, Vol. 1 (2021), pp. 139–178.
15. Ward, "Current Status of Federal Obscenity Prosecutions," and U.S. Department of Justice, Office of the Inspector General, "An Investigation into the Removal of Nine U.S. Attorneys in 2006," *Special Report*, September 2008, https://oig.justice.gov/sites/default/files/archive/special/s0809a/index.htm (accessed June 17, 2026). (Noting Gonzales's remarks at the National Advocacy Center obscenity conference a few weeks prior to September 13, 2006).
16. *United States v. Extreme Associates, Inc.*, 352 F. Supp. 2d 578 (W.D. Pa. 2005) (Document 52–Memorandum Opinion by Judge Gary L. Lancaster, Jan. 20, 2005). ("After *Lawrence*, public morality is no longer a legitimate, let alone compelling, state interest sufficient to justify infringing on adult, private, consensual sexual conduct even if that conduct is deemed offensive to the general public's sense of morality." (352 F. Supp. 2d at 594).
17. Kinsley, "The Myth of Obsolete Obscenity," pp. 618 and 621–623.
18. Ibid., p. 621.
19. Ibid., p. 620.
20. News release, "'Girls Gone Wild' Pleads Guilty in Sexual Exploitation Case," U.S. Department of Justice, September 12, 2006, https://www.justice.gov/archive/opa/pr/2006/September/06_crm_610.html (accessed June 17, 2026), and Claire Hoffman, "Maker of 'Girls Gone Wild' Runs Afoul of Law on Minors," *Los Angeles Times*, September 13, 2006, https://www.latimes.com/archives/la-xpm-2006-sep-13-fi-francis13-story.html (accessed June 17, 2026).
21. Interview with authors, May 4, 2026.
22. U.S. Department of Justice, Office of the Inspector General, "An Investigation into the Removal of Nine U.S. Attorneys in 2006."
23. Ibid.
24. Maine only has a Human Trafficking Working Group, established in 2006. It is not focused especially on children. Maine Sex Trafficking and Exploitation Network, https://www.mainesten.org/human-trafficking-task-force.html (accessed June 17, 2026).
25. *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. ____ (2025) (slip op. at 32).
26. Jared Hayden, "The Emerging AI Policy Consensus," Compact, May 20, 2026, https://www.compactmag.com/article/the-emerging-ai-policy-consensus/ (accessed June 17, 2026).
27. "Anything goes for adults, with some protective obscenity regulation and prosecutions for kids—that is the current dual-track pornography scheme." See Scott Yenor, "The Problem of Online Porn: It's Already Illegal," Institute for Family Studies, November 25, 2025, https://ifstudies.org/blog/the-problem-of-online-porn-its-already-illegal- (accessed June 17, 2026).
28. Scott Yenor, "A Postmortem on the Sexual Revolution: What Deregulation of Pornography Has Wrought," Heritage Foundation *First Principles* No. 78, May 19, 2020, https://www.heritage.org/marriage-and-family/report/postmortem-the-sexual-revolution-what-deregulation-pornography-has.

29. Gary Wilson, *Your Brain on Porn: Internet Pornography and the Emerging Science of Addiction*, rev. ed. (Common Ground Publishing, 2014); Claudio Vieira et al., "Problematic Pornography Use and Mental Health: A Systematic Review," *Journal of Behavioral Addictions*, Vol. 13, No. 1 (2024), pp. 1–25; Patrick Carnes, *Out of the Shadows: Understanding Sexual Addiction*, 3rd ed. (Center City, MN: Hazelden Publishing, 2001); Norman Doidge, "Acquiring Tastes and Loves: What Neuroplasticity Teaches Us about Sexual Attraction and Love," in James Stoner and Donna M. Hughes, eds., *The Social Costs of Pornography: A Collection of Papers* (Princeton: The Witherspoon Institute, 2010), pp. 21–56; Kelsy Burke and Alice Miller MacPhee, "Constructing Pornography Addiction's Harms in Science, News Media, and Politics," *Social Forces*, Vol. 99, No. 3 (March 2021), pp. 1334–1362; and Simone Kühn and Jürgen Gallinat, "Brain Structure and Functional Connectivity Associated with Pornography Consumption," *JAMA Psychiatry*, Vol. 71, No. 7 (2014), pp. 827–834 (and numerous follow-up studies through 2024).
30. Samuel L. Perry, *Addicted to Lust: Pornography in the Lives of Conservative Protestants* (Oxford, U.K.: Oxford University Press, 2019); Jill C. Manning, *The Impact of Internet Pornography on Marriage and the Family: A Review of the Research* (Institute for the Study of Sexual Addiction and Related Disorders, updated 2015–2022 editions); and Brian J. Willoughby and Carson R. Dover, "Context Matters: Moderating Effects in the Associations between Pornography Use, Perceived Addiction, and Relationship Well-being," *The Journal of Sex Research*, Vol. 61, No. 1 (2024), pp 37–50.
31. Gail Dines, *Pornland: How Porn Has Hijacked Our Sexuality* (Boston: Beacon Press, updated editions 2010–2020); Philip Zimbardo and Nikita D. Coulombe, *Man, Interrupted: Why Young Men Are Struggling & What We Can Do About It* (San Francisco: Red Wheel, 2016); Mark Regnerus, *Cheap Sex: The Transformation of Men, Marriage and Monogamy* (Oxford, U.K.: Oxford University Press, 2017); Gert Martin Hald, Neil M. Malamuth, and Carlin Yuen, "Pornography and Attitudes Supporting Violence Against Women: Revisiting the Relationship in Nonexperimental Studies," *Aggression and Violent Behavior*, Vol. 15, No. 1 (2010), pp. 1–7; and Frank W. Paulus et al., "The Impact of Internet Pornography on Children and Adolescents," *L'Encéphale*, Vol. 50, No. 6 (December 2024), pp. 649–662.
32. Victor B. Cline, *Pornography's Effects on Adults & Children* (New York: Morality in Media, 2002), and Dines, *Pornland: How Porn Has Hijacked Our Sexuality*.
33. Richard Wortley et al., "Accessing Child Sexual Abuse Material: Pathways to Offending and Online Behaviour," *Child Abuse & Neglect*, Vol. 154 (August 2024), p. 106936.
34. See, especially, Candeub, "Reading Section 230 as Written."