

November 2007

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Recommended Citation

McLawhorn, Richard E. (2007) "Summary of the Report by the Attorney General's Commission on Pornography," *The Linacre Quarterly*: Vol. 74: No. 4, Article 3.

Available at: <http://epublications.marquette.edu/lnq/vol74/iss4/3>

Summary of the Report by the Attorney General's Commission on Pornography

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Part I: Background

The purpose of this document is to summarize the "Attorney General's Commission on Pornography Final Report issued in July 1986 by the Department of Justice, so that the Report can be more easily understood and used by people from all backgrounds.

It should be emphasized that this is a summary and, as such, must omit many details of the full Report. However, every effort has been made to accurately reflect the Report's major conclusions and recommendations, along with its accompanying explanations. The Report contains areas of disagreement among Commission members, and these are summarized as fairly as possible. Those who need more details may wish to refer to the complete Report.

– Richard E. McLawhorn

Introduction

The Commission and Its Mandate – The Attorney General's Commission on Pornography was established pursuant to the Federal Advisory Committee Act on February 22, 1985, by Attorney General William French Smith as requested by President Ronald Reagan. On May 20, 1985, Attorney General Edwin Meese III publicly announced formation of the Commission and the names of its eleven members, all of whom served for the duration of the Commission's existence.

The Commission's mandate was broad. It was asked to "determine the nature, extent, and impact on society of pornography in the United States, and to make specific recommendations to the Attorney General concerning more effective ways in which the spread of pornography could be contained, consistent with Constitutional guarantees." Because it was a Commission appointed by the Attorney General, issues relating to the law

and law enforcement occupied a significant part of its work and Report. However, the Commission felt that it could not adequately address the issue of pornography unless it looked at the context in which pornography exists, so it also examined the nature of the industry, the social, moral, political, and scientific concerns relating to regulation of the industry, the relationship between law enforcement and other methods of control, and a number of other topics which are closely related to the entire subject.

The Work of the Commission – The Commission attempted to conduct as thorough an investigation as its “severe budgetary and time constraints” permitted. The budgetary constraints limited the size of its staff and prevented the Commission from utilizing independent research. All of the Commission members desired more time for continued discussion among themselves.

Despite these limitations, the Commission was as careful and thorough as possible. Public hearings were held in a number of locations throughout the United States so as to facilitate input from a wide range of perspectives. Public working sessions were held and considerable time was spent examining materials which are commonly considered to be pornographic. The Commission staff, numerous public officials and private citizens spent much of their own time and money providing the Commission a great deal of information.

The 1970 Commission on Obscenity and Pornography – The 1970 Commission had a budget of \$2,000,000 and two years to complete its task. This Commission had only one year, and a budget of \$500,000.

In addition to differences in time, budget, and staffing, there are differences in the perspectives of the Commissions. The work of the 1970 Commission provided much important information, but all of the 1986 Commission members took issue with at least some aspects of the 1970 Commission’s approach and conclusions. While most of these differences are explained throughout the Report, it should be noted that there had been enormous technological changes in sixteen years so that the 1986 Commission conducted its work in a different world from that of the 1970 Commission.

Definitions – There is a wide range of materials people are likely to designate as “pornography.” As used in the Report, a reference to material as “pornography” means only that the material is sexually explicit and intended primarily for the purpose of sexual arousal. The question of whether that material should be prohibited or condemned is not intended to be answered by definition.

“Hard core pornography” also is a term which has been used by people to describe various types of material. Basically, this terminology refers to the extreme form of what has been defined above as

“pornography,” describing material that is sexually explicit to the extreme, intended almost exclusively for sexual arousal, and devoid of any other apparent content or purpose.

When the Report uses the words “obscene” and “obscenity,” it is doing so in a narrow sense to refer to material that has been or is likely to be found to be legally obscene in the context of a judicial proceeding.

The History of Pornography

Pornography as a Social Phenomenon – Pornography has existed in one form or another since the beginning of recorded history. Regulation of this material by law in a form similar to current regulation of pornography is a comparatively recent phenomenon.

However, it is difficult to draw useful conclusions from this aspect of history. Until the last several hundred years, almost all written, drawn, or printed material was restricted largely to a small segment of society which constituted the socially elite. Also, the fact that many sexual references early in history were veiled rather than explicit indicates that some sense of taboo or social stigma has always been attached to public discussions of sexuality.

Regulation and the Role of Religion – Early attempts by law to regulate descriptions of sexual practices were largely in the context of religious, rather than secular, concerns. These enforcement efforts were directed not against depictions of sex itself, but only against depictions which were combined with attacks on religion.

Obscenity Law – the Modern History – The roots of modern American obscenity law are found in the first half of the 19th century in both Great Britain and the United States. The impetus in Britain came from private organizations as printing became increasingly economical and the kinds of sexually explicit materials that had circulated among the elite during the 18th century were more readily available to the masses. This greater production and circulation of sexually explicit material occurred in England at about the same time as general views about sexual morality, and especially public sexual morality, were becoming increasingly stern. Private groups were allowed to commence their own criminal prosecutions and their efforts from the early 1800s through the 1860s resulted in many prosecutions for “obscene libel.” Most of the private prosecutions were successful, and by the 1860s there had developed a well-established practice of prosecuting people for distributing works perceived as obscene.

Developments in America were similar to those in England. Sexual explicitness, while often condemned, was not until after 1800 taken to be a matter of serious governmental concern. As in England, most of the enforcement emphasis came from private organizations. The result of these

efforts in the United States was that the market of sexually explicit materials was driven underground.

Close scrutiny by the courts of the materials' contents began in the 1957 case of *Roth v. United States*. *Roth* established a stringent standard by which to measure the material, so regulation of obscenity became dormant by the late 1960s. Because of *Roth* and the issuance of the 1970 Commission Report on Pornography, an open proliferation of extremely explicit sexual material occurred.

Subsequent Supreme Court decisions, most notably *Miller v. California*, reversed the earlier stringent standard of *Roth* and made it clear once again that the First Amendment does not protect everything that may be sold or viewed by consenting adults. Since 1973, however, the extent of obscenity regulation has varied widely throughout the nation. In some geographic areas aggressive prosecution has ended the open availability of most extremely explicit materials, but more commonly prosecution remains minimal, and violent and degrading materials are widely available.

The Constraints of the First Amendment

The Presumptive Elements of the First Amendment – The First Amendment to the United States Constitution says that, “Congress shall make no law... abridging the freedom of speech, or of the press.” Court decisions have applied this prohibition to the states as well and have made it clear that the restrictions of the First Amendment apply to any form of government action. Because Commission members are citizens and governmental officials who have sworn an oath to uphold and defend the Constitution, the Commission considered the Constitutional issues which were involved in its deliberations and conclusions.

The First Amendment and Regulation of Obscenity – The first of two major legal principles concerning the regulation of obscenity is the principle that the law treats obscenity as either not being speech at all, or at least not the kind of speech that is within the scope of any of the aims and principles of the First Amendment. As a result, obscenity may be regulated by government without having to meet certain stringent standards of justification that apply to other types of speech. Thus, obscenity may be regulated as long as there exists merely a “rational basis” for the regulation.

The second major principle is that the definition of obscenity, as well as a determination of what in particular cases is obscene, is itself a matter of Constitutional law. The fact that obscenity may be regulated without violating the First Amendment does not mean that anything people or legislatures believe to be obscene may be so regulated.

The current definition of obscenity is found in the 1973 case of *Miller v. California*. According to *Miller*, material is obscene if all three of the following conditions are met:

- (1) the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest;
- (2) the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state (or federal) law; and,
- (3) the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

The Constitutionally-based definition of obscenity is enforced, not only by requiring the use of the definition in obscenity trials, but also by close judicial scrutiny of the materials in question.

The result of numerous determinations by the Supreme Court and lower courts is that obscenity prosecutions are limited to "hard core" material, devoid of anything but the most explicit and offensive representations of sex. Only the most thoroughly explicit materials overwhelmingly devoted to patently offensive and explicit representations and unmitigated by a significant amount of anything else can be and are, in fact, determined to be obscene.

Is the Supreme Court Right? – It was argued to the Commission that the Supreme Court's approach is a mistaken interpretation of the First Amendment. This view was that the First Amendment should protect all materials, no matter how "hard core." These arguments were considered, but rejected. The special protections of the First Amendment should be reserved for the conveying of arguments and information in a way that surpasses some admittedly low threshold of cognitive appeal. There was little doubt that most of what currently qualifies as "hard core" material falls below this minimum threshold of cognitive appeal.

Thus, the Commission concluded that the Supreme Court's approach is most likely correct. Arguments against that approach are becoming increasingly attenuated by the kinds of material which are commonly sold in pornography establishments in America.

The Risks of Abuse – While it is clear that some explicit materials may be prohibited without violating the First Amendment, the possibility that in practice other materials will also be restricted must be evaluated. Commission research shows that from 1971 to the present, there were few

actual or threatened prosecutions of material that is not legally obscene. Thus, risks of abuse are minimal since the application of the *Miller* standard has been overwhelmingly limited to materials which would satisfy anyone's definition of "hardcore."

The Market and the Industry

The Market for Sexual Explicitness – We live in a society pervaded by sex. In virtually every medium, from books to radio and television, matters relating to sex are discussed, described and depicted in a detailed manner. This pervasiveness makes it important to distinguish "pornography" from the entire range of descriptions and depictions that are more sexually explicit than would have been the case in earlier times and, therefore, produce objections from various people. A brief survey of other forms of material will be useful in discussing that which is unquestionably pornographic.

The Motion Picture Industry – With few exceptions, the "mainstream" or "legitimate" motion picture industry does not produce the kinds of films which are commonly shown in pornography outlets. Sexuality is present significantly in many of the mainstream pictures, and one result of that fact has been the rating system of the Motion Picture Association of America. If a film contains explicit sexual activity, it is rated "X" and no one under the age of 17 may be admitted. Only in rare cases will anything resembling pornographic movies be rated; more often, pornography will have a self-rated "X" designation, or no rating, or some unofficial promotional rating, such as "XXX." Not many *officially* "X" rated motion pictures would commonly be considered pornographic.

Adult Magazines – This genre remains largely directed to men. These adult magazines tend to be produced and distributed in a manner similar to that of most mass-circulation magazines. A few magazines of this variety combine sexual content with a substantial amount of non-sexually oriented, and frequently serious, textual or photographic matter. Some of the magazines in this category could not be considered legally obscene, while others have been occasionally considered to be legally obscene by particular courts. By and large these magazines which do not contain "hardcore" pornography circulate widely throughout the country without significant legal attack.

Television – While broadcast television has a frequent explicit or implicit sexual orientation, sexual activity of any explicitness at all or nudity has been largely absent from broadcast television. This fact is in part explained by the regulatory practices of the Federal Communications Commission, and in part by the practices of stations, networks, and sponsors.

Cable television, including satellite television, is quite different. Under current law, cable is not subjected to the same range of Federal Communications Commission content regulation as broadcast television, so it is often substantially more sexually explicit than anything that would be available on broadcast television. By and large, the sexually explicit material available on cable would not be of the type likely to be determined to be legally obscene. More often, it contains a degree of sexuality somewhat closer to that which is available in a mainstream motion picture theater but would not be available on broadcast television.

Video cassettes must be considered a form of television since television is the device by which such cassettes are viewed. The cassettes themselves are so varied in content that generalization is difficult. The availability of material ranges from standard motion picture theater fare to material which is available in "adults only" establishments.

The Pornography Industry – The pornography industry must be distinguished from other outlets for sexual material. There has been a dramatic increase in the size of the industry producing pornography, so it is not as clandestine as it was in earlier years. However, when this industry is compared to the industries which produce more "mainstream" material, it remains substantially "underground." Approximately 80% of the American production of this type of motion picture and video tape occurs in and around Los Angeles, California.

Production of pornographic materials is on a limited budget, usually in a temporary location such as a motel. Frequently the producer, director, and script writer are the same person and the performers are often secured through a number of agents who specialize in securing performers for highly sexually explicit films.

The process of distributing pornographic films is rapidly becoming history as the video cassette becomes the dominant mode of presenting this material. Films that are shown in theaters are distributed nationally by use of sophisticated distribution networks concentrating exclusively on highly sexually explicit material. As for video tapes, most of the distribution is on a national scale controlled by a relatively limited number of enterprises.

At the retail level, pornography outlets usually limit entry to those eighteen years of age or older, but the actual degree of enforcing these limitations varies considerably. The peep show, often combined with an outlet for the sale of pornographic books and magazines, is a major form of meeting consumer demands. The typical peep show is separated from the rest of the establishment and operates in extremely unsanitary conditions; peep show booths provide locations for sexual activities, while holes in the walls between booths allow anonymous sexual counters between male customers.

The Role of Organized Crime – The evidence indicates that there is a connection between the pornography industry and organized crime. While the lack of investigative resources made it impossible to investigate this matter directly, there was sufficient evidence presented for the Commission to conclude that such a connection exists.

An example of evidence establishing the connection between organized crime and the pornography industry is the statement to the Commission by Chief Daryl F. Gates of the Los Angeles Police Department. According to Gates, “Organized crime infiltrated the pornography industry in Los Angeles in 1969 due to its lucrative financial benefits. By 1975, organized crime controlled eighty percent of the industry and it is estimated that this figure is between eighty-five to ninety percent today.”

Because of this and other testimony, the Commission said that the following 1978 findings by the FBI “remain essentially correct”:

In conclusion, organized 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. Only through a *well coordinated all out national effort*, from the investigative and prosecutive forces can we ever hope to stem the tide of pornography. 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.

The Question of Harm

The Scope of Inquiry – A central part of the Commission’s mission was to examine the question of whether pornography is harmful.

In weighing the impact of a wide range of sexually explicit material, the Commission felt it was safe to conclude that such material is harmful if it is causally related to, or increases the incidence of, some behavior that is harmful.

Multiple Causation – Most consequences are caused by numerous factors. The Commission concluded that some forms of sexually explicit material bear a causal relationship to sexual violence and to sexual discrimination. In coming to this conclusion, the Commission recognized that the disappearance of those forms of pornography would not necessarily mean

that the problems of sexual discrimination and sexual violence would end, but at least one causal factor would be eliminated.

Identifying a causal relationship means that the evidence supports the conclusion that if there was none of the material in question, then the incidence of the consequences would be less. We live in a world of multiple causation. To identify a factor as a cause in such a world means only that if this factor were eliminated while everything else stayed the same, then the problem would at least be lessened.

The Varieties of Evidence – A wide range of types of evidence was considered: personal experiences of witnesses, clinical professionals, criminal offenders, victims, law enforcement personnel, experimental social scientists, and data from empirical science. Each type of evidence has its advantages and disadvantages, which were weighed accordingly.

The Need to Subdivide – The analysis made it clear that excessively broad terms like “pornography” and “sexually explicit materials” are too encompassing to reflect the results of the inquiry. Some varieties of material may cause consequences different from those caused by other varieties. Therefore, it was necessary to subdivide the materials, identify characteristics of the classes of those materials and look for harms by classes.

Conclusions about Harm

Sexually Violent Material – A causal relationship between this material and moral, ethical and cultural harm was found.

This category of material features actual or unmistakably simulated or unmistakably threatened violence presented in sexually explicit fashion with a predominant focus on the sexually explicit violence. Increasingly, the most prevalent forms of pornography, as well as an increasingly prevalent body of less sexually explicit material, fit this category. Some of this material involves sado-masochistic themes, including the use of whips, chains and other devices of torture.

Another type of this material is not sado-masochistic, but involves the recurrent theme of a man making some sort of an advance to a woman, being rebuffed, and then raping the woman or in some other way violently forcing himself on her. In almost all of this material, the woman eventually becomes aroused and ecstatic about the initially-forced sexual activity and usually is portrayed as begging for more.

The so-called “slasher” films, which portray sexual activity or sexually suggestive nudity coupled with extreme violence (such as disfigurement or murder) also fits this category.

When clinical and experimental research has focused on sexually violent material, the conclusions have been virtually unanimous: exposure

to sexually violent materials has indicated an increase in the likelihood of aggression. More specifically, the research shows a causal relationship between exposure to material of this type and aggressive behavior toward women. Therefore, the Commission unanimously and confidently concluded that the available evidence strongly supports the hypothesis that substantial exposure to sexually violent materials bears a causal relationship to antisocial acts of sexual violence and for some subgroups, possibly to unlawful acts of sexual violence.

Sexual violence is not the only negative effect from substantial exposure to sexually violent material. The evidence also strongly supports the fact that those with substantial exposure to violent pornography experience significant changes in their attitudes. Victims of rape and other forms of sexual violence are likely to be perceived as more responsible for their assaults and having suffered less injury. Rapists and other sexual offenders are more likely to be seen as less responsible for their acts and deserving of more lenient punishment.

The evidence also strongly supports the conclusion that substantial exposure to violent pornography leads to a greater acceptance of the "rape myth" in its broader sense – that women like being coerced into sexual activity, that they enjoy being physically hurt in a sexual context, and that as a result a man who forces himself on a woman sexually is in fact merely acceding to her "real" wishes. The myth holds that a woman who says "no" really means "yes," and that men are justified in acting on the assumption that the "no" answer is indeed a "yes" answer. The Commission had little trouble in concluding that this attitude is both pervasive and profoundly harmful and that any stimulus reinforcing or increasing the incidence of this attitude is for that reason alone properly designated as harmful.

Nonviolent Materials Depicting Degradation, Domination, Subordination or Humiliation – A causal relationship between this material and moral, ethical and cultural harm was found.

This category includes material that depicts people (usually women) as existing solely for the sexual satisfaction of others (usually men) or depicts people (usually women) in decidedly subordinate roles in their sexual relations with others, or depicts people engaged in sexual practices that would to most people be considered humiliating. Examples of this category include depictions of men urinating on a kneeling woman; two women engaged in sexual activity with each other while a man looks on; a woman being non-physically coerced into engaging in sexual activity with a male authority figure, such as a teacher, boss or priest, and then begging for more; a woman with legs spread wide open holding her labia open with her fingers; and a woman lying on a bed begging for sexual activity from a large number of different men.

The evidence supports the conclusion that this material bears some causal relationship to the attitudinal changes previously described concerning rape, rape victims and sexual offenders. The evidence also supports the conclusion that substantial exposure to material of this type increases the acceptance of the proposition that women like to be forced into sexual practices and, once again, that the woman who says "no" really means "yes."

On the basis of all the evidence which was considered, the Commission concluded that a population which believes that many women like to be raped, that sexual violence or sexual coercion is often desired or appropriate, and that sexual offenders are less responsible for their acts, will commit more acts of sexual violence or sexual coercion than would a population holding these beliefs to a lesser extent. The evidence supports the conclusion that substantial exposure to degrading material increases the likelihood that these attitudinal changes will occur, that such attitudes increase the likelihood that acts of sexual violence, sexual coercion or unwanted sexual aggression will occur, and that it bears some causal relationship to the level of sexual violence, sexual coercion, or unwanted sexual aggression in those so exposed.

The Commission also concluded that substantial exposure to materials of this type bears some causal relationship to the incidence of various nonviolent forms of discrimination against or subordination of women in our society. To the extent these materials create or reinforce the view that women's function is to satisfy the sexual needs of men, then the materials will have pervasive effects on the treatment of women in society far beyond the incidence of identifiable acts of rape or other sexual violence. The view of women as being available for sexual domination is one cause of discrimination, and degrading material bears a causal relationship to the view that women ought to be sexually dominated by men.

Nonviolent and Nondegrading Materials – The most controversial category was that of sexually explicit materials which are not violent and are not degrading. These are materials in which the actors appear to be willing participants occupying substantially equal roles in a setting with no actual or apparent violence or pain. This category is quite small in terms of currently available materials.

Commission members disagreed substantially about the effects of these materials. The fairest conclusion from the social science evidence is that there is no persuasive evidence supporting the connection between nonviolent and nondegrading materials and acts of sexual violence and that there is some, but very limited, evidence indicating that the connection does not exist.

However, the fact there does not appear from the social science evidence to be a causal link to sexual violence does not answer the

question whether such materials might not in themselves for some other reason constitute a harm, or be a causal link to consequences other than sexual violence but still taken to be harmful. It is here that the greatest differences of opinion existed on the Commission.

One issue related to materials that, although consensual and equal, depict sexual acts frequently condemned in this and other societies. A conclusion about the harmfulness of these materials appears to turn on a conclusion about the harmfulness of the activity itself. Commission members were unable to agree with respect to many of these activities.

A larger issue was the question of promiscuity. Although there are members of this society who advocate uncommitted sexuality, no Commission member believed that to be advisable. Some members, however, believed that the level of commitment in sexuality is a matter of choice by those who voluntarily engage in the activity, while others believed that uncommitted sexual activity is wrong for the individuals involved and harmful to society to the extent of its prevalence. The view as to the ultimate harmfulness of much of this material, therefore, reflected individual views about the extent to which sexual commitment is purely a matter of individual choice.

Even if this variety of sexually explicit material was not perceived as harmful for the messages it carries or the symbols it represents, the open display of what is commonly taken to be private was seen as a cause for concern. The question here is the preservation of sex as an essentially private act in conformity with the basic intimacy of sex long recognized by this and all other societies. The alleged harm here, therefore, is that as soon as sex is put on a screen or in a magazine it changes its character, regardless of what variety of sex is portrayed. The Commission was unable to agree about the extent to which making sex public and commercial should constitute a harm. However, Commission members unanimously rejected the argument that it is desirable for sexual explicitness to be publicly displayed to both willing and unwilling viewers. To the extent that such materials are displayed truly publicly, such as on billboards, it was unanimously concluded that this would be harmful to society in addition to being harmful to individuals. Even if unwilling viewers are offended rather than harmed by such actions, the large-scale offending of the legitimate sensibilities of a large portion of our population is harmful to society.

There is little doubt that much of this material finds its way into the hands of children. In fact, a 1985 Canadian study found that adolescents, ages twelve to seventeen, are more exposed to pornography than any other age group; two other studies found similar patterns in America. To the extent that pornography is used by children, all Commission members agreed that it is harmful. There may be disagreement about the extent to which we should tolerate adults engaging in sexual practices that differ

from the norm, but all members agreed that it is undesirable to expose children to most of this material. If the question is simply harm, and not the question of regulation by law, then all agreed that material in this category, with few exceptions, is generally harmful to the extent it finds its way into the hands of children.

The largest question is that of harm as it relates to the moral environment of society. There is no doubt that numerous laws, taboos, and other social practices serve to enforce some forms of shared moral assessment. All felt that some degree of individual choice is necessary in a free society and that a society with no shared values, including moral values, is no society at all. Commission members had numerous differing views about the way in which these competing values should best be accommodated in this society.

Therefore, with respect to materials in this category, there are areas of agreement and disagreement. The Commission unanimously agreed that these materials in some settings and when used for some purposes are harmful. No Commission member thought that the material in this category, individually or as a class, is in every instance harmless. To the extent that some of the materials in this category are educational or artistic, there was unanimous agreement that there is little cause for concern if it is not forced on unwilling viewers. But most of the material in this category would not now be taken to be educational or artistic, and to this balance of materials the disagreements among Commission members were substantial.

As to the category itself, it should be emphasized that the class of materials that are neither violent nor degrading is a small class and many of the disagreements by Commission members were more theoretical than real.

Nudity – None of the Commission members thought that the human body or its portrayal is harmful. There may be instances in which portrayals of nudity in an undeniably sexual context will generate many of the same issues discussed in the previous sections. There are legitimate questions about when and how children should be exposed to nudity, public portrayals of nudity and when “mere” nudity stops being “mere” nudity and has such sexual connotations that it should be analyzed as the foregoing categories of materials have been analyzed. All Commission members were concerned about the impact of explicit materials on children, attitudes toward women, the relationship between the sexes, and attitudes toward sex in general. However, there were differences of opinion regarding the extent of the harm.

None of the members found harmful the use of nudity in art for plainly educational purposes. All believed that in some circumstances the portrayal of nudity may be undesirable. It was impossible to draw universal conclusions about all depictions under all conditions, but by and

large the Commission found that the nudity which does not fit within any of the previous categories is not much of a cause for concern.

The Laws and Their Enforcement

Overview – The Commission did decide that certain kinds of material cause harm, but that fact alone does not lead to the conclusion that the material causing the harm should be controlled by law. In some cases, private action may be more appropriate than governmental action. In some cases, governmental action may be inadvisable as a matter of policy or unworkable as a matter of practice. And in some cases, governmental action may be unconstitutional.

However, since harms have been identified, the possible legal remedies for each harm must be carefully considered. It is important to emphasize that approaches other than traditional criminal actions do exist and are an integral part of thinking carefully about the issue of pornography.

Regulation by Law – The view was urged upon the Commission that pornography should not be regulated by law. The Commission concluded that certain types of pornography are harmful and it also accepted the Supreme Court's basic approach to the Constitutional question. For these and other reasons, the Commission was unpersuaded by the arguments for deregulation of pornography.

The Commission recognized that a determination must be made in the area of law enforcement about allocation of scarce financial and other resources. It concluded, however, that the problems of sexual violence, sexual aggression short of actual violence, and sex discrimination are serious societal problems that have received a disproportionately small allocation of resources. The images in pornography are a substantial cause of the harms which have been identified by the Commission and to the extent that this causal relationship has not been reflected in the realities of law enforcement, the Commission had little hesitation about recommending that increased priority be assigned to enforcing these laws.

The Criminal Law – In light of the conclusions regarding harm and other factors, the Commission rejected the argument that all distribution of legally obscene pornography should be decriminalized.

Federal laws and the laws of almost every state make criminal the sale, distribution or exhibition of material defined as obscene under the definition of *Miller v. California*. The successes in enforcing these laws in a number of localities plainly indicate that there are laws in place for those who choose the course of vigorous enforcement. However, the Commission made a number of recommendations to fine-tune existing laws. A new law incorporating a definition of obscenity different from that

in *Miller* would be challenged in court and spark years of constitutional litigation, so the Commission rejected the view that laws incorporating a different and constitutionally suspect definition of obscenity are needed or are in any way desirable.

The evidence is indisputable that with few exceptions the federal and state laws which are on the books go largely unenforced. There is striking underenforcement of these criminal laws and this underenforcement consists of underinvestigation, underprosecution and undersentencing. There is a multiplicity of factors explaining this lack of enforcement and changing that situation will require a multiplicity of remedies. The specific recommendations of the Commission should, therefore, be taken seriously.

Within that category of obscene materials that can be criminally prosecuted consistent with the *Miller* standard, there exist materials which are sexually violent, nonviolent but degrading, and those that are highly explicit and offensive to many but contain neither violence nor degradation. In light of the conclusions contained in this report, the Commission urged that prosecution of obscene materials which portray sexual violence be treated as a matter of special urgency; this material should be placed at the top of the state and federal priorities in enforcing the obscenity laws.

With respect to materials that are nonviolent yet degrading, the evidence supporting its findings about harm was not as strong as with respect to violent materials. The Commission did not hesitate to recommend prosecution of these materials. However, if choices must be made, prosecution of degrading and legally obscene materials might have to receive slightly lower priority than sexually violent material.

The issues are more difficult with respect to materials that are neither violent nor degrading. There seems to be no evidence in the social science data of a causal relationship between this material and sexual violence, sexual aggression or sexual discrimination. As for legally obscene material within this category, it seemed appropriate to some Commission members, at least in terms of long-term commitment of resources, for prosecutors and law enforcement personnel to treat such material differently from material containing sexual violence or degradation of women. If a community wishes to allocate sufficient resources to obscenity enforcement so that material in this category is prosecuted in the same way as the previously discussed categories, that is a legitimate decision for the community to make. But if a community does not wish to devote resources to that extent, or if a community believes that material in this category, even if legally obscene, is not a cause for the stringent sanctions of the criminal law, then it seemed to some Commission members appropriate for that community to concentrate its effort on material which is either violent or degrading.

Although material consisting entirely of the printed word can be legally obscene, there is a difference between reading a book and looking

at pictures, even pictures printed on a page. All Commission members strongly urged prosecution of legally obscene material containing only text when the material is either targeted at an audience of children or when its content involves child molestation or any form of sexual activity with children. Except for material plainly describing sexual activity with minors or targeted to minors, some members urged that materials consisting entirely of the printed word not be prosecuted at all, regardless of content. Regulation by Zoning – For many people the harms caused by pornography relate to the effect on the communities where the materials are sold, and some communities have attempted zoning regulations to address this problem rather than criminal prosecution. The Supreme Court has approved zoning regulations which include more material than could be prosecuted under the *Miller* standard, with the significant qualification that the zoning regulation not have the effect of total prohibition. The result, therefore, is that if communities wish to restrict the location of such “adult” establishments, they may do so, but they may not under the guise of zoning banish them altogether.

Therefore, the zoning approach is a poor tool if prohibition is the desired result. Moreover, zoning regulations usually contain “grandfather” clauses which eliminate from the restrictions businesses already in place, so the problem may not grow larger but little is done to diminish an existing problem.

Zoning is a solution to the problem of pornography only if pornography is not harmful. With respect to sexually violent material and degrading material, the Commission found that the evidence did not support such a modest view, and thus rejected an equally modest remedy for what is harmful. Since the Commission found the material in these categories to be harmful, its members could not urge, consistently with that finding, a remedy of simply moving it to another part of town.

As for materials that are neither violent nor degrading, and about which the evidence of harm is less, then zoning might possibly be more appropriate for establishments selling these materials. However, many Commission members were concerned that in practice such an approach will concentrate these establishments in or near the most economically disadvantaged segments of a locality. Some also felt that zoning may be a way for those with political power to shunt the establishments they do not want in their own neighborhoods into neighborhoods with less wealth and less power.

Restrictions on *public display* are, in effect, another form of zoning. The concept is that many materials, regardless of their legal status, should not be displayed in a manner that offends unwilling viewers. The same concern can be expressed about materials which are visible to children. Public display regulations, including such provisions as controlling the

display of advertisements on adult establishments and shielding the covers of sexually explicit magazines, are fully justifiable measures in a society that has long restricted indecent exposure.

Attempts have been made to restrict establishments through the use of nuisance laws and related legal remedies. These are attempts to serve many of the interests that generate the zoning approach, but the aim is prohibition rather than relocation. All effective uses of this approach for prohibition purposes have generally been found unconstitutional.

The Civil Rights Approach – Providing civil remedies against pornography has been proposed in a number of localities and was adopted in Indianapolis. The Indianapolis ordinance was held unconstitutional by federal courts. The Commission agreed with the goals of the Indianapolis ordinance, and its fears about abuse of the civil remedy procedure would evaporate if appropriate safeguards could be adopted to prevent abuse of that remedy. The Commission also agreed with the remedies this ordinance would provide to those who are frequently coerced into performing in pornographic films or into posing for pornographic pictures.

Obscenity and the Electronic Media – Where legally obscene material is transmitted by radio, television, telephone, or cable, the same legal sanctions are and should be available as are available for any other form of distribution or exhibition. The Commission recommended new provisions to fill the gap which currently exists in federal law. To the extent that obscene material appears on cable television, the Commission urged prosecution in the same manner as it did with respect to other forms of distributing obscene material.

There is a great deal available on cable television that is sexually explicit but not legally obscene. Some of this material contains sexual violence, some is degrading, and some is explicit but neither violent nor degrading. Recommending changes in the law so that material which is “indecent” might be kept from cable television to the same extent it has been kept off broadcast radio and television is an issue on which Commission members were deeply divided. Members were unable to reach agreement on the proposal that regulation of cable encompass more than the legally obscene.

Dial-A-Porn refers to telephone services that provide sexually explicit messages. Minors frequently use these services. It was not necessary to recommend new laws that are substantially more encompassing than the existing definition of legal obscenity since most of this material seemed to be well within the *Miller* definition of obscenity and therefore could be prosecuted.

The Commission urged that laws be enacted to allow the prosecution of legally obscene material transmitted by telephone, and also urged the enforcement of those laws. Partly because of court rulings, there currently

is little or no enforcement. In light of the frequency with which this material is used by minors, the Commission deplored the failure to have and to enforce obscenity laws with respect to material of this type.

Enforcing Both Sides of the Law – The Constitution is a law, and anyone who has taken an oath to uphold the law should also recognize that he must uphold the First Amendment. Many will make requests or demands on law enforcement personnel out of ignorance about the Constitutional constraints or out of frustration. When faced with such requests or demands, the Commission expressed the hope that law enforcement personnel will recognize their responsibilities and refuse to take any action which would threaten those who are exercising their Constitutional rights. In the long run, enforcement of the obscenity laws depends on the willingness of those who do the enforcing to respect appropriate Constitutional limitations.

Child Pornography

The Special Horror of Child Pornography – “Child pornography” is not so much a type of pornography as it is a form of sexual exploitation of children. Actual children, from as young as one week to age of majority, are photographed in some aspect of sexual activity, either with adults or with other children. Thus, child pornography *is* child abuse.

A Cottage Industry – Child pornography is largely distinct from any aspect of the industry which produces and makes adult pornography. Much of this trade involves photographs taken by child abusers themselves, and the pictures are then either kept or distributed to other child abusers. The desire to have collections of a large number of photographs of children seems to be a common, although not universal, characteristic of many pedophiles. Some of these photographs are exchanged in person, a great deal is sent through the mails, and a significant amount has begun to be exchanged by use of computer networks through which users of child pornography notify each other about the materials they desire or have available.

In addition to the foregoing noncommercial trade in child pornography, there is also a commercial network for child pornography which consists of foreign magazines selling the pictures in magazine form. These magazines frequently contain advertisements for the private exchange of pictures and publish the pictures themselves. The publication of these magazines is almost exclusively abroad, while most of their recipients and contributors are American. The extremely clandestine nature of the distribution networks makes it difficult to assess the size of the trade in child pornography.

The Law and the First Amendment – Child pornography is a permanent record of a child’s sexual activities which follows the child up to and through adulthood. There is substantial evidence that photographs of

children engaged in sexual activity are used as tools for molestation of other children. Photographs of children engaged in sexual practices with adults often constitute an important form of evidence against those adults in prosecutions for child molestation. The special harm inflicted upon the children in child pornography is extraordinarily serious and their consent to the activities is a legal impossibility.

As a result of these considerations, forms of deterrence which might not be advisable with adult pornography are appropriate with photographs of children. Most states have passed laws specifically directed toward child pornography which do not meet the *Miller* test for obscenity, and the US Supreme Court approved the basic scheme of those laws in *New York v. Ferber*. No Commission member disagreed with the constitutionality of these statutes.

Enforcement of Child Pornography Laws – Child pornography laws now seem to be the subject of a substantial amount of enforcement efforts at the state and local levels. Many cases remain uninvestigated, and state and federal prosecution of child pornography needs to be even more vigorous. There is less systematic underinvestigation, underprosecution, and undersentencing here than seems to exist with respect to the enforcement of other obscenity laws.

The Commission felt that child pornography is extraordinarily harmful both to the children involved and to society, and that fighting child pornography in all of its forms ought to be treated as a governmental priority of the greatest urgency. Aggressive law enforcement efforts are an essential part of this urgent governmental priority.

The Role of Private Action

The Right to Condemn and the Right to Speak Out – Citizens have every right to condemn a wide variety of material that is protected by the First Amendment. The fact that governmental action against certain communications is unwise or unconstitutional does not mean that those communications are valuable or that society is better off having them. Citizens should not only recognize that the First Amendment protects and encourages their right to express these concerns, but also that in many aspects of our lives to keep quiet is to approve. Communities are made by what people say and do, approve and disapprove, and what they tolerate and reject.

There is also value in citizens' protests being directed at government when they want government to do something it is not already doing. Citizens are encouraged to be actively involved in their government, and if they feel the government is not doing enough, or is doing too much with respect to prosecution of certain materials, then they should make their

wishes known to those who have the power to make changes.

The Methods of Protest – Citizens should not be hesitant in condemning that which they feel should be condemned. They should also feel no hesitation in taking advantage of their First Amendment rights in a more organized form, such as joining organizations in protests, pickets or demonstrations.

Picketing near the premises of businesses which sell objectionable material and boycotting those businesses are also practices which are well within the First Amendment rights of citizens. If people feel that a business, whether a local store or a multi-national corporation, is behaving improperly, it is their right and their obligation to make these views known.

The Risk of Excess – Citizens who protest, boycott, or picket are unquestionably exercising their First Amendment rights. But just as with the First Amendment rights of some of those who deal in pornography, these rights may be exercised harmfully or unwisely. This society is a free society not only because of the First Amendment, but also because of generally held attitudes of tolerance. People are not only encouraged to object to the objectionable, but also to tolerate the tolerable.

The Importance of Education – With respect to values and awareness as well as to facts, appropriate education is the real solution to the problem of pornography. Images in pornography affect attitudes and behavior, and images can also prevent behavior or cause different behavior. Positive messages can address love, marriage and sex in a wholesome manner, and may also specifically address pornography by discussing its dangers to individuals and to society. These positive messages might come from family members, teachers, religious leaders and political figures, or the messages might come from the mass media.

A significant part of the concern with pornography is about negative messages, and one way to deal with negative messages is to prevent them from being sent. Such attempts are appropriate, but cannot succeed by themselves. These negative efforts must be accompanied by positive efforts. Attitudes which people should have, forms of behavior which should be publicly admired – these and other factors need to be addressed in a positive manner.

It is important to know what the law can do and what it cannot do. In many respects the law can serve important controlling and symbolic purposes in restricting the proliferation of certain pornography that is harmful to individuals and to society. But to rely entirely or excessively on law is a mistake. If there are attitudes that need changing and behaviors that need restricting, then law has a role to play. But if we expect law to do too much, we will discover too late that few of our problems will be solved.

Part II: Proposals for the Justice System and Law Enforcement Agencies

A. Recommended Changes in Federal Law

1. Congress should enact a forfeiture statute to reach the proceeds and instruments of any offense committed in violation of the federal obscenity laws.

The Child Protection Act of 1984 contains forfeiture provisions with regard to offenses involving child pornography. Adding civil and criminal forfeiture provisions to other federal laws would greatly enhance their deterrent effect. In addition to the penalties already provided, a defendant could forfeit any profits derived from or property used in committing the offense.

Enacting these forfeiture provisions could have a profound effect since it would impact upon those who profit from their illegal activity and have created criminal enterprises large enough to own or lease real estate, fleets of motor vehicles, or other valuable assets. The loss of such valuable property would have a more significant deterrent effect than the imposition of fines or modest periods of incarceration. Forfeiture provisions would also aid law enforcement efforts by providing the government with property to use in future undercover operations and also by helping underwrite the cost of governmental investigations.

Congress has authorized forfeiture for other crimes under the RICO (Racketeer Influenced Corrupt Organizations) statute, which also applies to the distribution of obscene materials. However, RICO is inadequate to reach the profits and instruments without establishing proof of two or more predicate offenses. The proposed legislation would allow forfeiture in many cases where RICO cannot be used.

2. Congress should amend the federal obscenity laws to eliminate the necessity of proving transportation in interstate commerce. The laws should be enacted to only require proof that the distribution of the obscene material "affects" interstate commerce.

Current law requires the government to prove that the particular obscene material actually was transported in interstate commerce at a particular specified time to and from specified locations. This is an increasingly difficult burden for prosecutors to meet since distributors of obscenity frequently avoid the mails and common carriers by using their own trucks in intricate schemes to prevent proof of this element. Many times it is almost impossible to detect which items in a particular shipment

actually crossed state lines since the trucks make several stops in simulated deliveries or pickups along their routes.

A requirement that the transaction "affects" commerce is consistent with other federal statutes which have been held constitutional. The Commission found that virtually all distribution of obscene material substantially affects interstate commerce. This new legislation would be a substantial aid to prosecutors' efforts, and would not result in any more federal encroachment on state prosecutors' powers than present law permits.

3. Congress should enact legislation making it an unfair business practice and an unfair labor practice for any employer to hire individuals to participate in commercial sexual performances.

While the Commission did not advocate or condone the use of individuals in commercial sexual practices, its abiding concern for those who are used in sexual performances led it to recommend imposing fair labor standards on those businesses which employ such people. Regulations governing the production of obscenity are mostly self-imposed or non-existent; profits from obscene materials go largely untaxed; and employees often suffer varying degrees of mental and physical injury.

Congress should pass civil regulatory statutes which would subject the production of obscene material to the same types of laws and regulations as other businesses.

Legislation also should be enacted which would make it an unfair business practice and an unfair labor practice to hire individuals to participate in sexual performances for the purpose of producing unlawful pornographic materials. This legislation would prohibit the sale and distribution of any product made as a result of those unfair practices and provide a civil cause of action for anyone injured as a result of these practices. The law would also protect actors and models by making contracts for prohibited performances void and providing a way to determine the payment of damages and attorneys' fees.

4. Congress should amend the Mann Act to make its provisions gender neutral.

The Mann Act makes it illegal to transport a female in interstate commerce for prostitution or other immoral purposes. Those who exploit men and boys for the same purposes should be subject to the same punishment as those who exploit females.

The Act also should be amended to prohibit illegal acts rather than the current prohibition against immoral acts. This would alleviate the concerns of those who believe an overzealous prosecutor may use the Mann Act to harass individuals who engage in lawful consensual sexual activity.

5. *Congress should amend Title 18 of the United States Code to specifically proscribe obscene cable television programming.*

Federal law proscribes the transmission of any obscene, indecent or profane language by radio communication. Courts have held that cable and satellite programming is not conveyed by radio communication, so any such programming is not covered by these prohibitions.

The Cable Communications Policy Act of 1984 attempts to provide an avenue for prosecuting obscenity shown over cable television. This Act provides for the prosecution of anyone who transmits over a cable system matter which is obscene or otherwise unprotected by the US Constitution. The provisions of the Act may be in conflict with two other sections of the Act governing editorial control of programming by cable operators. The apparent conflict should be resolved by legislation providing clear guidance for cable operators, federal prosecutors, and law enforcement officers.

6. *Congress should enact legislation to prohibit the transmission of obscene material through the telephone or similar common carrier.*

The Commission received substantial evidence about "Dial-A-Porn," or use of the telephone to transmit obscene material. Two years ago, Congress enacted legislation prohibiting the use of a telephone to make obscene or indecent communications, but the legislation contained an exception for telephone operations which were in compliance with regulations issued by the Federal Communications Commission (FCC). The FCC on two separate occasions has promulgated regulations in accordance with the law, but the US Court of Appeals for the Second Circuit found those regulations invalid.

Congress should enact legislation that simply prohibits the transmission of obscene material through the telephone or similar common carrier.

B. Recommended Changes in State Law

7. *State legislatures should amend, if necessary, obscenity statutes containing the definitional requirement that material be "utterly without redeeming social value" in order to be obscene to conform with the current standard enunciated by the United States Supreme Court in Miller v. California.*

A minority of states, including California, retain the old requirement that material must be "utterly without redeeming social value" to be found obscene. This test makes it almost impossible to obtain convictions in obscenity cases since a defendant need only show some small social value in the material to win acquittal. Most states have adopted the standard of

the 1973 case, *Miller v. California*, which requires the material to lack any serious literary, artistic, political or scientific value.

California has not adopted the *Miller* standard, which is a major problem since the pornography industry in the Los Angeles area produces most of the material sold in the entire United States. The pornography industry in the Los Angeles area earns at least \$550,000,000 a year and produces 80% of the sexually explicit video tapes, eight millimeter films and novelties. California law enforcement officers blame the existing law for severely hampering their ability to eliminate this activity.

If states sincerely want to provide an effective basis for law enforcement, a change in standards is essential.

8. State legislatures should amend, if necessary, obscenity statutes to eliminate misdemeanor status for second offenses and make any second offense punishable as a felony.

Some state obscenity statutes provide that second and subsequent convictions are felonies, while other state laws provide that they are misdemeanors. Laws which provide misdemeanor penalties for repeat offenders have minimal deterrent effect. For example, in Miami, a corporation with twenty-five prior obscenity convictions was fined \$1,600. In Los Angeles, where the industry earns \$550,000,000 a year, a major distributor is often fined no more than \$10,000. The amounts of these fines are inconsequential when compared with the profits earned by many producers or sellers of obscene materials.

Amending state statutes by enhancing the penalties for subsequent convictions would recognize the recidivist nature of the crime, and should be directed to management personnel of the wholesale or retail operation. Classifying the crime as a felony would allow judges to impose substantial fines and periods of incarceration on repeat offenders.

9. State legislatures should enact, if necessary, forfeiture provisions as part of the state obscenity laws.

This would greatly enhance state laws' deterrent effect and be an effective tool for law enforcement officers to use against the most flagrant offenders. These forfeiture provisions may mirror such provisions found in a number of federal statutes.

Actions in the Orlando, Florida area provide an excellent example of the effectiveness of forfeiture provisions under state law. Police there obtained forfeitures of \$80,000-100,000 worth of property in a single investigation and prosecution. The forfeited property included two computer systems, two projection screen televisions and a large assortment of films, magazines and novelties. Used effectively, forfeiture can substantially handicap pornographic businesses.

10. *State legislatures should enact a Racketeer Influenced Corrupt Organizations (RICO) statute which has obscenity as a predicate act.*

For discussion of this recommendation, see recommendation #15.

C. The Department of Justice

11. *The Attorney General should direct the US Attorneys to examine the obscenity problem in their respective districts, identify offenders, initiate investigations, and commence prosecution without further delay.*

If the flow of obscenity is going to be resolved through criminal prosecution, the US Attorney General must take a significant, ongoing and personal role in directing a combined federal, state and local effort. The Attorney General should direct the US Attorneys to identify the major sources of obscene materials within their districts and commence prosecutions immediately. The US Attorneys should contact their state and local counterparts and identify those who are responsible for manufacturing and distributing obscenity in their districts. The Attorney General must also follow up on his directives to ensure compliance by the US Attorneys.

Guidelines of the Department of Justice place a priority on prosecuting three types of obscenity cases: those involving large-scale distributors who attain substantial incomes from multi-state operations; those where there is evidence of involvement by organized crime; and child pornography.

On two separate occasions, memoranda have been sent from the Justice Department encouraging aggressive prosecution of obscenity cases by US Attorneys. These memoranda have been ineffective. Of special note are the districts encompassing the Southern District of New York (Manhattan) and the Central District of California (Los Angeles) where most obscene materials are produced or distributed; the US Attorney in Los Angeles said it would be a "misuse" of his office's resources to prosecute "so-called adult films."

The perception is pervasive among federal law enforcement agents that most US Attorneys will not prosecute cases involving obscene matter. Both the Postal Inspection Service and the US Customs Service indicated that they present few obscenity cases to US Attorneys because the cases will not be prosecuted. In practice, emphasis on child pornography to the exclusion of adult obscenity cases is apparent.

Only the Attorney General by direct and continuous action and personal supervision can ensure that federal officers fulfill their responsibilities in this neglected area. The effects of his action in this regard will have long-range consequences and serve as the foundation for a continuing prosecution and enforcement program.

12. The Attorney General should appoint a high ranking official from the Department of Justice to oversee the creation and operation of an obscenity task force. The task force should consist of special Assistant US Attorneys and federal agents who will assist US Attorneys in the prosecution and investigation of obscenity cases.

This task force should attack the obscenity problem in a concerted and organized manner. The director of the task force should have a high degree of personal commitment to the objectives of the task force and should enlist aggressive and well-trained prosecutors. The FBI, Customs Service and the Postal Service should all contribute investigators to the task force.

The task force should be used to address two major concerns. First, its prosecutors would be particularly helpful in jurisdictions where US Attorneys are burdened with heavy caseloads and believe they cannot allocate manpower to prosecute these crimes or where the Assistant US Attorneys lack expertise in obscenity prosecutions. Second, the task force would assist, or at their request relieve, US Attorneys of these responsibilities, during major investigations of a national scope.

13. The Department of Justice should initiate the creation of an obscenity law enforcement data base which would serve as a resource network for federal, state and local law enforcement agencies.

There is no government department or agency which presently serves as a centralized source of complete information for prosecutors and investigators involved with obscenity cases. This data base would enable federal, state and local law enforcement personnel to draw on information and expertise gathered nationwide. The data base would complement the task force which is recommended in the preceding recommendation.

This project would result in a substantial reduction of investigative expenses. Two experienced attorneys with an adequate support staff could administer it.

14. The US Attorneys should use law enforcement coordinating committees to coordinate enforcement of the obscenity laws and to maintain surveillance of the nature and extent of the obscenity problem within each district.

Law Enforcement Coordinating Committees (LECCs) are composed of the US Attorney and the representatives of federal, state and local law enforcement agencies within a judicial district. Their objective is to improve cooperation and coordination among participating agencies. They also develop law enforcement priorities for the district, target the most serious crime problems and provide a forum for the exchange of information and intelligence.

The US Attorney for the Northern District of New York arranged an LECC conference on child pornography in his district, resulting in the immediate initiation of several child pornography prosecutions. The US Attorney for the Eastern District of North Carolina established an LECC Subcommittee to investigate obscenity, and as a result there has been a significant impact on the status of the state law in North Carolina and the business of pornography there. These two examples illustrate the effectiveness of LECCs when they are utilized by US Attorneys committed to fighting obscenity.

15. The Department of Justice and US Attorneys should use the Racketeer Influenced Corrupt Organization Act (RICO) as a means of prosecuting major producers and distributors of obscene material.

Prosecution under RICO arises when an individual demonstrates an established pattern of racketeering activity. The law requires that at least two of the federal or state predicate crimes which are contained in the law must have been committed by the individual within a ten-year period. Offenses relating to obscenity are included among the predicate offenses.

The penalty provisions under RICO provide for a maximum fine of \$25,000 or imprisonment for not more than twenty years, or both. The statute also provides for mandatory forfeiture of the proceeds or property derived from the proceeds of the illegal activities. The forfeiture provisions under RICO are one of the strongest weapons in the prosecution arsenal and could, in appropriate cases, virtually eliminate a large-scale pornography operation.

16. The Department of Justice should continue to provide the US Attorneys with training programs on legal and procedural matters related to obscenity cases and should also make such training available to state and local prosecutors.

The preparation for trial of an obscenity case involves complex legal and procedural issues. An inexperienced prosecutor may encounter an experienced defense counsel who specializes in obscenity laws and travels throughout the country defending these cases. Training programs offered by the Department of Justice which prepare attorneys to address the complex issues will enable federal prosecutors to be more knowledgeable and effective.

17. The US Attorneys should use all available federal statutes to prosecute obscenity law violations involving cable television.

Some of the feature films shown on cable and satellite television depict sexual themes, sexual acts and materials which may be obscene under the standards of *Miller v. California*. Although it is frequently argued

that this is permissible because people choose to watch it, courts have held that the exhibition of obscene materials to consenting adults only is not a defense to an obscenity prosecution.

In addition to other federal obscenity laws, the Cable Communication Policy Act of 1984 provides for prosecution of obscenity shown over cable television. Prosecutors should enforce these laws and any new legislation which may be enacted in this area.

D. State and Local Prosecutors

18. State and local prosecutors should prosecute producers of obscene material under existing laws including those prohibiting pandering and other underlying sexual offenses.

Pandering generally involves the procuring of an individual to commit an act of prostitution. The production of obscene material almost always involves acts of prostitution since performers are recruited and paid to perform sexual acts. Pandering laws are an effective law enforcement tool since they represent a separate and distinct crime and do not require proof of obscenity.

Law enforcement officers should view pandering which takes place through the production of obscene materials in the same manner as "ordinary" pandering of prostitution. Prosecutors should also scrutinize obscene material for evidence of any other underlying criminal offenses, such as physical sexual abuse, and bring appropriate charges against the persons responsible for the commission of those crimes.

19. State and local prosecutors should examine the obscenity problem in their jurisdiction, identify offenders, initiate investigations, and commence prosecution without further delay.

There is no substitute for an aggressive prosecutor who will vigorously enforce the existing obscenity laws. Prosecutors in Orlando, Atlanta and Cincinnati are impressive examples of this fact. State and local prosecutors must accept the challenge and enforce the existing laws stringently and consistently so that purveyors of obscene material will find no haven in their jurisdictions. These efforts by prosecutors should be based upon an evaluation of the relative harmful effects of the materials as discussed in the Report and this summary.

20. State and local prosecutors should allocate sufficient resources to prosecute obscenity cases.

The Report contains no discussion of this recommendation.

21. *State and local prosecutors should use the bankruptcy laws to collect unpaid fines.*

Courts frequently impose fines for obscenity violations. In a number of cases, especially those involving corporate defendants, these fines go unpaid. When a defendant accumulates two or more outstanding debts, the prosecutor can file an involuntary bankruptcy petition and the court can ultimately take custody of any assets and liquidate them to satisfy unpaid debts and fines. The prosecutor in Atlanta successfully used the bankruptcy laws to collect fines and made it unprofitable for many dealers in obscenity to stay in business.

Bankruptcy proceedings are also useful in determining the true ownership of the businesses dealing in obscene materials, which is particularly helpful when "sham" corporations are used to conceal ownership. This assists prosecutors in targeting individuals for subsequent criminal prosecution.

22. *State and local prosecutors should use all available statutes to prosecute obscenity violations involving cable and satellite television.*

Televising any material that is obscene under the *Miller* test should be prosecuted. A successful example of doing so can be found in Virginia Beach, Virginia, where seven indictments were returned against a cable operator for distributing obscene material. Because of those indictments, the cable operator eliminated the channel in question from its program offerings.

23. *State and local prosecutors should enforce existing corporate laws to prevent the formation, use and abuse of shell corporations which serve as a shelter for producers and distributors of obscene material.*

Producers and distributors of obscene materials often use multiple corporate entities as a means to conceal the true ownership or nature of their businesses. Separate corporations may be formed to conduct the different operations of a single bookstore. These and other tactics make it difficult for law enforcement officers to identify and bring charges against or collect taxes from the true owners.

State laws govern the formation of corporations and should be enforced fully to permit the identification of those persons managing and financing the obscenity industry. Corporation charters should be revoked when fraud is proven, and the assets seized when permitted.

24. *State and local prosecutors should enforce the alcoholic beverage control laws that prohibit obscenity on licensed premises.*

State and local alcoholic beverage control laws often prohibit obscene material and obscene performances on licensed premises.

Enforcement of these laws in the courts or through administrative proceedings is another tool at the disposal of law enforcement agents to remove pornography from theatres, restaurants and other establishments. A finding of guilt could bring suspension or revocation of an establishment's liquor license. The potential of such a loss of revenue to an individual or business would have a significant deterrent effect.

25. *Government attorneys, including state and local prosecutors, should enforce all legal remedies authorized by statute.*

See the discussions of nuisance laws, zoning, and anti-display statutes in other parts of this summary.

E. Federal Law Enforcement Agencies

26. *Federal law enforcement agencies should conduct active and thorough investigations of all significant violations of the obscenity laws with interstate dimensions.*

As recommended elsewhere, US Attorneys should begin prosecuting violations of federal obscenity laws without further delay. These efforts must be based upon and complemented by active investigations of all violations of obscenity laws by the federal law enforcement agencies.

The FBI derives its investigative jurisdiction in this area from the federal statutes covering obscenity and child pornography. The FBI's highest priority has been given to cases involving organized crime. There is evidence that two of the FBI field offices in one of the nation's most active obscenity distribution centers, New York City, will not investigate cases involving obscene material. The FBI should seriously step up its investigative effort relating to obscenity law violations.

The Customs Service's jurisdiction extends to all material entering the United States by land, sea or air. The Customs Service has been directed by its commissioner to step up its efforts to intercept obscene material, and special emphasis has been placed on child pornography. According to one customs agent assigned to Chicago, "countless thousands" of obscenity cases have not been presented to the US Attorney because agents believe that the cases will not be prosecuted.

The Postal Inspection Service has investigative responsibility over all federal criminal violations involving the mails, including the use of the mails to distribute obscenity. Internal guidelines, supplemented by those received from the Department of Justice, form the basis of the Postal Service Investigative program. The Postal Inspection Service presents very few cases involving obscene material for prosecution because they have been told by employees of the Justice Department that these cases are "not prosecutable."

The foregoing three law enforcement agencies are capable of making significant contributions to the investigation and prosecution of violations of the federal obscenity laws. Working with dedicated prosecutors, these agencies can have an even greater impact on the reduction of pornography in the United States. They should commit the manpower and resources necessary to fulfill the task and conduct active investigations of the federal obscenity laws.

27. The Internal Revenue Service should aggressively investigate violations of the tax laws committed by producers and distributors of obscene materials.

The Internal Revenue Service has compared the production and distribution of obscene material to drug trafficking since both generate staggering profits on an international scale but have minimal tax reporting. Authorities project that millions of dollars from obscenity may be escaping taxation through use of international banking channels. The frequent use of "cash only" transactions in the pornography industry provides other opportunities for tax evasion, and "adult" bookstores often fail to report income from peep shows.

The IRS should aggressively investigate violations of the tax laws by producers and distributors of obscene materials.

F. The Judiciary

28. Judges should impose substantial periods of incarceration for persons who are repeatedly convicted of obscenity law violations and when appropriate should order payment of restitution to identified victims as part of the sentence.

The Commission was repeatedly apprised of the minimal periods of incarceration and fines which have been imposed on those who frequently violate obscenity laws. In cases involving significant violations or repeat offenders, only a substantial period of incarceration will provide a deterrent effect. Judges also enhance basic law enforcement efforts when they impose substantial periods of incarceration.

Recidivist obscenity law violators should be viewed the same as recidivist violators of other criminal laws.

G. The Federal Communications Commission

29. The Federal Communications Commission should use its full regulatory powers and impose appropriate sanctions against providers of obscene dial-a-porn telephone services.

Dial-A-Porn recordings include graphic descriptions, complete with sound effects, of lesbian and homosexual acts, sodomy, rape, incest, excretion, bestiality, sado-masochism and other unlawful, violent or dangerous sexual acts involving adults and children. Dial-A-Porn numbers are openly advertised in pornographic magazines and, unknown to their parents, are often discovered and used by minors.

The FCC regulations on Dial-A-Porn which were invalidated by federal court were based on the faulty premise that obscene telephone communications are entitled to some measure of protection so long as they occur between or among consenting adults; the US Supreme Court has rejected this premise. The FCC, whose regulatory scheme is based on serving the public interest, could act to protect the public interest against obscene communications over the telephone if it chose to do so. The telephone industry, like the broadcasting industry, is closely regulated and must act in the public interest as a condition for its continued existence. The time is long overdue for the FCC to exercise its full regulatory powers with respect to this type of obscenity.

30. The Federal Communications Commission should use its full regulatory powers and impose appropriate sanctions against cable television programmers who transmit obscene programs.

An increasing number of films shown on cable fall under the "R" rating. These films depict nudity, sexual themes, simulated sex, graphic violence or offensive language. While a minor under the age of 17 cannot be admitted to view an "R-rated" film without an accompanying parent or guardian, the same films are available to the viewer of any age over cable.

Some cable channels offer movies which are unrated and go far beyond those in the "R" category; they would generally be considered "X-rated." These films are sometimes the same films shown in pornography movie theatres and include films which federal and state courts have found to be obscene. These more sexually explicit films earn a much larger profit for the cable channel.

The FCC has shown no interest in taking action on the contents of cable programming. The position of the FCC is based on the concept of deregulation. The FCC feels that the individual can act as his own gatekeeper and preclude those signals he does not desire to watch, so the government has no further interest in the matter.

The position taken by the FCC has enabled cable television to occupy a status given to no other medium. The policy considerations of serving the public interest which support governmental regulation of television broadcasting also apply to governmental regulation of cable television. The fact that a parent makes a conscious choice to engage the

cable service does not impair the accessibility of the programs to minors in the home. Once cable enters the home, it becomes the same in this regard as over-the-air broadcasts. In many homes, particularly single-parent homes or homes where both parents work, close supervision and screening of the selection of television programs may be either minimal or non-existent. Moreover, the US Supreme Court has held that obscene materials do not acquire constitutional immunity simply because they are exhibited to consenting adults.

The time is long overdue for the FCC to take an active role in enforcing laws and regulations against obscene cable programming.

H. Other Federal Organizations

31. The president's commission on uniform sentencing should consider a provision for a minimum of one year imprisonment for any second or subsequent violation of federal law involving obscene material that depicts adults.

There is considerable evidence with regard to the disparity in sentences obscenity law violators receive. The principal goal of the Sentencing Reform Act is to establish uniform, determinant federal sentencing that will accomplish the purpose of just punishment, deterrence, incapacitation and rehabilitation.

The President's Commission on Uniform Sentencing should specifically consider the problems associated with obscenity law violations.

Part III: Regulating Child Pornography

A. Recommended Changes in Federal Law

32. Congress should enact legislation requiring producers, retailers, or distributors of sexually explicit visual depictions to maintain records containing consent forms and proof of performers' ages.

The Child Protection Act of 1984 prohibits the use of minors in pornography. However, experts and law enforcement officers have difficulty enforcing this provision because in many cases it is impossible to determine the ages of the performers.

The recommended legislation would require producers to obtain release forms with proof of age from each performer. The forms would be filed at a specific location, listed in the opening or closing footage of the film, the inside cover of the magazine or standard locations in or on other material containing sexually explicit depictions. The release forms should be available for inspection by law enforcement officers.

33. *Congress should enact legislation prohibiting producers of certain sexually explicit visual depictions from using performers under the age of twenty-one.*

The Child Protection Act currently prohibits the use of performers under the age of eighteen in pornography. The Act should be amended to protect performers under the age of twenty-one.

The risks associated with sexually explicit performances include pregnancy, sexually transmitted diseases, physical abuse and damage to mental health. Partially because of immaturity, and partially because of economic and social factors, the health risks to teenagers are significant. Unlike the young prostitute who may be able to leave his or her past behind, the adolescent "porn star" must always live in fear that the film or photograph will surface, once again ruining his or her personal or professional life. These and other difficulties could be eliminated by prohibiting the use of those between eighteen and twenty-one in scenes of actual sexual activity.

34. *Congress should enact legislation to prohibit the exchange of information concerning child pornography or children to be used in child pornography through computer networks.*

Many pedophiles and child pornographers have traditionally used the mails as a source of information regarding potential victims. Recently, however, investigators have discovered that pedophiles use computer communications to establish contacts and sources for the exchange or sale of child pornography. Personal computer services are also used to identify particular children who can be used in making child pornography. The proposed legislation would provide a useful law enforcement tool in this area of serious concern.

35. *Congress should amend the child protection act forfeiture section to include a provision which authorizes the postal inspection service to conduct forfeiture actions.*

The Postal Inspection Service has investigative responsibilities over all criminal violations of federal law relating to the Postal Service, including child pornography laws. The efforts of the Inspection Service in the investigation of child pornography would be greatly enhanced by permitting forfeiture actions. Under current law, this is not allowed.

The forfeiture provision would enable inspectors to recover items of value which were used in or derived from illegal activities. This would help in making these investigations self-supporting, assist in defraying the cost of subsequent prosecutions, and remove resources from the hands of offenders.

36. *Congress should amend 18 U.S.C. 2255 to define the term "visual depiction" and include undeveloped film in that definition.*

Current law prohibits the transportation of certain sexually explicit visual depictions. Defense lawyers have been able to exclude from this prohibition undeveloped film which has been legally seized.

Thus, a dilemma is created for law enforcement agents and prosecutors. If an indictment is brought while the film is yet to be developed, the depictions contained on the undeveloped film are not subject to prosecution. If the film is allowed to remain in the hands of the offender until developed, it is virtually impossible to prevent the picture from being circulated in the child pornography network. This recommended legislation will end the dilemma and allow prosecution of child pornography contained on undeveloped film possessed by the offender.

37. *Congress should enact legislation providing financial incentives for the states to initiate task forces on child abuse and exploitation.*

The task forces will consist of experts from the judiciary, law enforcement and health fields who will be charged with recommending changes in the court system and other methods to more effectively handle cases of child abuse and exploitation which result from the production and use of child pornography. Grants would be made to state governments to establish and operate these programs. The programs should handle child sexual abuse cases resulting from the production of child pornography in a manner which reduces the trauma for the victims. The programs should also implement procedures which lead to an increase in successful prosecutions against pornographers who sexually abuse children.

Federal programs and funds should reward state governments which assume their proper roles in creating the task forces.

38. *Congress should enact legislation to make the acts of child selling or child purchasing, for the production of sexually explicit visual depictions, a felony.*

Prosecutors have been frustrated in their attempts to convict child buyers under existing laws because purchasing or selling a child is not a crime. In one case involving the sale of children for the use in the production of pornography, the only resort was for the Assistant US Attorney to prosecute the offender for an immigration violation. Specific legislation would provide additional protection for children and help curb the production and distribution of child pornography.

B. Recommended State Legislation

39. *State legislatures should amend, if necessary, child pornography statutes to include forfeiture provisions.*

See prior recommendations for a discussion of the use of forfeiture provisions.

40. *State legislatures should amend laws, where necessary, to make the knowing possession of child pornography a felony.*

Child pornography is used for a number of purposes, which include seducing child victims, illustrating activities in which the pedophile wishes the child to engage and blackmailing the child into further sexual activities.

The US Supreme Court outlined the harms to children from child pornography in *New York v. Ferber* and said, "the only practical method of law enforcement may be to dry up the market for this material." The prohibition of the mere possession of child pornography is a necessary incident to "drying up the market" for a product the Supreme Court has found to be extremely harmful to America's youth.

41. *State legislatures should amend, if necessary, laws making the sexual abuse of children through the production of sexually explicit visual depictions a felony.*

Sexual exploitation of children is the basis for producing and distributing child pornography. The classification of child pornography as a felony notifies child pornographers and child sexual abusers who produce child pornography that they will be dealt with in a serious manner. An offense classified as a felony receives more attention within a prosecutor's office than a crime classified as a misdemeanor. The enhanced priority will undoubtedly lead to more effective enforcement and prosecution.

42. *State legislatures should enact legislation, if necessary, to make the conspiracy to produce, distribute, give away or exhibit any sexually explicit visual depictions of children or exchange or deliver children for such purpose a felony.*

Individuals involved in the child pornography trade often form networks with local, national and international connections. Pedophiles and child pornographers use such networks as a means to traffic in child pornography, as well as to locate potential child victims. The existence of these networks and the magnitude of the harm they inflict upon children makes it imperative that state legislatures act, where existing laws are deficient, to implement this recommendation.

43. *State legislatures should amend, if necessary, child pornography laws to create an offense for advertising, selling, purchasing, bartering, exchanging, giving or receiving information as to where sexually explicit materials depicting children can be found.*

Pedophiles who are child abusers may use their publications to place advertisements for children or child pornography. The ability to easily obtain information regarding the location of children and child pornography allows pedophiles and child pornographers to continue the exploitation of children. Legislation is needed to prohibit these advertisements and related activities. The penalty for violating the new law should be a felony.

The advertisement of material which is illegal may be prohibited. Since child pornography is illegal, states may prohibit the advertising of it. Congress addressed this issue on an interstate level in the Child Protection Act of 1984.

44. *State legislatures should enact or amend legislation, where necessary, to make child selling and purchasing for the production of sexually explicit depictions a felony.*

Participants in international and local child sex tours provide children for pornography and prostitution. Some of these sex rings use child members to recruit new members and involve adults using many different children. Children are purchased or exchanged in the same way the resulting pornography is sold or traded.

45. *State legislatures should amend laws, where necessary, to make child pornography in the possession of an alleged child sexual abuser which depicts that person engaged in sexual acts with a minor sufficient evidence of child molestation for use in prosecuting that individual whether or not the child involved is found or is able to testify.*

Law enforcement officers and prosecutors are often unable to obtain a conviction against an individual on a charge of child molestation because they are unable to locate the child. Visual depictions of children in sexual activities are records of actual child molestation. Law enforcement efforts should not be barred because the children cannot be identified or located.

46. *State legislatures should amend laws, if necessary, to eliminate the requirement that the prosecution identify or produce testimony from the child who is depicted if proof of age can otherwise be established.*

Prosecutors are often unable to produce the victim of child pornography to testify at trial as to his age. The proposed legislation would allow testimony from a third party about the age of the child in the child pornography. The testimony may come from relatives or friends of the

child if the child is identified but not located. In addition, the prosecution would be able to use an expert witness to testify as to the age of the child based on physiological characteristics. Many cases are not prosecuted because this element of proof could not be met when the child victims could not be located.

47. State legislatures should enact or amend legislation, if necessary, which requires photofinishing laboratories to report suspected child pornography.

Photofinishers provide a key link in the chain of distribution of child pornography since many child pornographers use their laboratories. An attempt to address this problem was made by California with the Child Abuse Reporting Law, which has resulted in increased effectiveness in law enforcement efforts there.

48. State legislatures should amend legislation, if necessary, to permit judges to impose a sentence of lifetime probation for convicted child pornographers and related offenders.

The recidivist rate for pedophiles who act on their sexual desires is second only to that of exhibitionists. Supervised or unsupervised lifetime probation would give judges and probation officers a tool to monitor convicted child pornographers who pose a specific threat to society.

C. Federal Law Enforcement Agencies

49. The State Department, the United States Department of Justice, the United States Customs Service, the United States Postal Inspection Service, the Federal Bureau of Investigation and other federal agencies must continue to work with other nations to detect and intercept child pornography.

Child pornography and the sexual abuse of children have overwhelming international aspects. While some child pornography originates in Europe, many of the children depicted are American. A pedophile compiles photographs either for his personal use or in direct response to solicitations by pornography distributors. Child pornography magazine publishers and film makers obtain the photographs and movies of children from offenders and reprint them for commercial sale. The United States is the largest consumer of internationally produced child pornography.

Appropriate federal agencies should continue their efforts to negotiate with foreign countries to curb the flow of child pornography. To supplement the diplomatic efforts of the State Department, specific federal agencies should continue their efforts to control the distribution of pornography. The Commission applauds the efforts of these departments, but encourages enhanced cooperation and detection efforts. A unified

effort is the only means to an effective and lasting remedy for the overwhelming child pornography problem.

50. The United States Department of Justice should direct the law enforcement coordinating committees to form task forces of dedicated and experienced investigators and prosecutors in major cities to combat child pornography.

LECCs should use information and assistance available from drug and alcohol abuse programs and other social service agencies to fight child pornography. The expertise available through the various social service agencies should be tapped to provide law enforcement agencies with comprehensive enforcement efforts.

51. The Department of Justice or other appropriate federal agency should initiate the creation of a data base which would serve as a resource network for federal, state and local law enforcement agencies to send and obtain information regarding child pornography trafficking.

This data base should be integrated into the data base previously recommended in the Report. The data base would allow federal, state and local enforcement officials to draw on information gathered nationwide. It should allow an agency to submit as well as retrieve information.

52. Federal law enforcement agencies should develop and maintain continuous training programs for agents in techniques of child pornography investigations.

The most important factor in the effective enforcement of child pornography laws and related child sexual abuse laws is well-trained law enforcement personnel. This training should include the investigation and apprehension of individuals involved in child pornography and emphasize the special psychological needs of law enforcement officers who are involved in enforcing child pornography laws.

53. Federal law enforcement agencies should have personnel trained in child pornography investigation and when possible they should form specialized units for child sexual abuse and child pornography investigation.

Agencies with large enough field offices should include a specialized unit within the law enforcement agency to specifically investigate child pornography and related child sexual abuse cases. The specialized unit will allow an officer to acquire and implement expertise in the area and enhance overall law enforcement efforts. This approach should not require additional personnel or expense, but will allow an agency to use its existing personnel more efficiently.

54. Federal law enforcement agencies should use search warrants in child pornography and related cases as a means of gathering evidence and furthering the overall investigation efforts in the child pornography area.

Pedophiles are "collectors" and will retain material relating to children for many years. In child pornography investigations, executing a search warrant on the suspect's residence may reveal photos of the individual engaged in sex with children, thus supporting additional charges of child sexual abuse. An experienced prosecutor reported to the Commission that in one-half of child sexual abuse cases, proper searches recovered photos of the defendant engaged in sexual acts with children.

The scope of the search should include not only the suspect's home but also his office, car, or any other known place of habitation. Pedophiles who are involved in child sexual abuse are rarely without some portion of their child pornography.

55. Federal law enforcement agents should ask the child victim in reported child sexual abuse cases if photographs or films were made of him or her while engaged in sexually explicit activities.

An investigation of one offense should not eliminate an examination of related offenses. Law enforcement officers should acknowledge that child sexual abuse is the basis for the production of child pornography.

D. Public and Social Service Agencies

56. Public and social service agencies should participate in a task force of multi-disciplinary practitioners and develop a protocol for courtroom procedures for child witnesses that would meet constitutional standards.

Public and social service agencies should provide their expertise toward developing appropriate courtroom procedures which will assist child witnesses. The programs may take the form of an advocate to assist the child through the judicial process. This advocate would be assigned to the child and concerned only about his welfare.

57. Social, mental health and medical services should be provided for child pornography victims.

In many cases, official intervention into child pornography cases involves only legal and prosecutorial action against the perpetrator. Child victims of pornography are frequently used as witnesses for the prosecution and subsequently abandoned by the social, medical and mental health systems.

Victims of child pornography and their families should receive a full range of supportive services, including competent medical evaluation and

treatment, access to family therapy and peer support groups and legal counsel. Because child pornography and child sexual abuse are intrinsically related, certain treatment models for victims of child sexual abuse can be applied to victims of child pornography.

58. Local agencies should allocate victims of crimes funds to provide monies for psychiatric evaluation and treatment of child pornography victims and their families.

Sexual exploitation through the production of child pornography is expensive in economic terms and emotionally devastating. Sexually exploited children often must undergo extensive psychotherapy to restore their mental health. Therapy is costly and may be outside the coverage of medical insurance. Monies available in victims of crimes funds should be used to defray the costs of these evaluations and treatments. The distribution of monies from these funds will also recognize the real injury to which these children have been subjected.

59. Clinical evaluators should be trained to assist children victimized through the production and use of child pornography more effectively and to better understand adult psychosexual disorders.

Clinicians should be trained in the types of problems which are associated with the child exploitation involved in the production of child pornography. Counselors treating the children must be trained to work effectively with families and others responsible for the care of child victims so they can understand future negative behaviors of the children and alleviate their anxiety. Those evaluating the child victims also need training in legal and judicial procedures so their work does not conflict with the proper disposition of the criminal case.

60. Behavioral scientists should conduct research to determine the effects of the production of child pornography and the related victimization of children.

It is important for research to examine the short and long-term effects of sexual victimization of children. An understanding of the behavioral patterns of child victims is especially lacking. Research should also examine the effects of adult pornography on children.

Behavioral scientists should learn more of the characteristics of the child pornographer and the pedophile offender. This will help form the basis for a sound program to curb sexual exploitation of children.

61. States should support age-appropriate education and prevention programs for parents, teachers and children within public and private school systems to protect children from victimization by child pornographers and child molesters.

Educational programs must inform children and preserve their innocence and basic trust. The programs should focus on the difference between positive affection and touching or contact which is harmful to the child. Training for parents and school personnel can teach how to identify cases of child victimization and report them to the proper agencies.

62. A multi-media educational campaign should be developed which increases family and community awareness regarding child sexual exploitation through the production and use of child pornography.

This program should inform families and communities about the materials and seduction techniques which are used by child pornographers and pedophiles. The subtle manner in which they abuse their victims necessitates a heightened awareness on the part of children and their parents. The programs should list individuals or services in the community where parents or children may seek information and assistance.

Part IV: Recommendations Regarding Victimization

63. State, county and municipal governments should facilitate the development of public and private resources for persons who are currently involved in the production or consumption of pornography and wish to discontinue this involvement and for those who suffer mental, physical, educational, or employment disabilities as a result of exposure or participation in the production of pornography.

Victims of pornography may suffer a variety of physical and mental damages. The victimization may include coercion, intimidation, negative effects of forced consumption, physical assault and, sexual harassment. Resources currently exist for victims of sexual abuse and other crimes through victims' compensation and other programs, but if no crime is reported (as is often the case with pornography) compensation may not be available.

Resources for victims of pornography should include emergency "safe houses," financial assistance for damages and public information materials to make people aware of alternatives to continued victimization. Specialized training for counselors and therapists should also be developed so as to sensitize them to the special nature of pornography and related victimization.

Part V: Recommendations Regarding Civil Rights

64. Legislatures should conduct hearings and consider legislation recognizing a civil remedy for harms attributable to pornography.

The civil rights approach is the only legal tool suggested to the Commission designed specifically to provide direct relief to victims for injuries documented by the Commission. While the US Court of Appeals for the Seventh Circuit found the Indianapolis civil rights ordinance unconstitutional, the Court recognized that pornography harms women just as the US Supreme Court found that excessive working hours were harmful to women and segregated schools were harmful to minority students.

The pattern of harm documented by the Commission supports the conclusion that the pornography industry systematically violates human rights with impunity. Victims have been exploited and forced to perform sexual acts, public figures and private individuals are being defamed, and unwilling victims have been forced to consume pornography as a way of getting them to perform the acts depicted. Acts of physical aggression more and more appear tied to the targeting of women and children for sexual abuse in pornographic material. Through these and other means, the pornographers' abuse of individuals victimizes people and tells society that such abuses are acceptable.

The Commission concluded that pornography, when it leads to coerced viewing, contributes to assault, is defamatory, or is actively trafficked, constitutes a practice of discrimination on the basis of sex. Legislation consistent with the First Amendment should be adopted affording protection to those individuals whose civil rights have been violated. Any civil rights approach used to address harms attributable to pornography should include an affirmative defense of knowing and voluntary consent to the acts.
