

The pornographers have won

By Patrick Trueman

In 1986, Attorney General Edwin Meese III declared war on those trafficking in illegal pornography. That war is now over. Pornographers have won. Nearly every battle in that war was won decisively by the Department of Justice. One by one, soon after Meese announced the effort, porn kings were convicted in federal courts and sent off to jail. Many of those convicted had their business assets confiscated by the federal government to assure they wouldn't return to their businesses after serving their time. The nature of pornography itself changed as a direct result of the federal war on illegal pornography. It became "softer" because the industry knew that the harder the material, the easier the conviction. By the end of the Bush Administration, those in the pornography industry knew it was just a matter of time until the feds arrived at their door. While the end of the war was not yet in sight, its outcome was not in doubt.

It is easy to fix a date that the war on pornography was lost, Jan. 20, 1993 — Inauguration Day — though we didn't know it until recently. No final battle was fought. It was just a quiet, slow surrender.

To understand this turn of events, it is necessary to understand how the war was fought. In 1986, against the advice of nearly all his senior advisors, and with the strong encouragement of President Ronald Reagan, Mr. Meese set up a special task force to prosecute violators of federal obscenity (hard core pornography) laws. The task force, later renamed the Child Exploitation and Obscenity Section (CEOS), was staffed by several first-rate and experienced obscenity prosecutors. The prosecution of obscenity was raised to a criminal justice "priority" by Meese, and the 93 U.S. Attorneys, the chief federal prosecutors throughout the country, knew the boss meant business. Mr. Meese ordered every U.S. Attorney to designate and train from their staffs an obscenity prosecutor. He also enlisted the considerable investigative resources of the FBI, the Postal Inspection Service, and the U.S. Customs Service. The effort was coordinated by CEOS. Working with the Los Angeles Police Department (L.A. is home to most of the country's major pornographers), CEOS developed a long list of pornography kings from coast to coast who were suspected of being major obscenity violators, and targeted them for investigation. Thus began the war.

Those targeted quickly learned how formidable the federal effort was, and they had no doubt that war had been declared on them. Three elements were critical to the Justice Department success during the

Reagan and Bush presidencies — leadership, commitment, and resources. Both Presidents Reagan and Bush and their attorneys general provided strong leadership for the war on pornography (a term coined by Dr. James Dobson). President Reagan got Congress to pass his Child Exploitation and Obscenity Act of 1988 giving strong new tools to federal prosecutors. President Bush, speaking from the White House, twice condemned the ACLU notion that pornography is one of the "blessings of liberty" in American society and promised no let up in the effort. The commitment from the U.S. attorneys and their staffs to prosecute those trafficking in illegal pornography was firm and constant. But leadership and commitment would have been meaningless without the necessary resources. For nearly twenty years prior to this time, no substantial federal resources were made available for the prosecution of obscenity, enabling the pornography industry to thrive. This changed dramatically under Meese and succeeding U.S. Attorneys Richard Thornburgh and William Barr. Prosecutors were given the resources to win.

In the Clinton administration, neither the president nor Attorney General Janet Reno have provided any leadership on the issue. The president fired Mr. Bush's U.S. attorneys soon after he was sworn in and appointed his own. Those he appointed have demonstrated that they are not committed to obscenity prosecutions and, in fact, for the most part, oppose them. As a consequence of this lack of leadership and of commitment, no significant federal resources are spent fighting obscenity. This explains a recent Wall Street Journal headline "Porn Broker... Thrives in Business of Supplying Adult Entertainment." The article details Kenny Guarino's recent rise to the top of the pornography industry with his company, Southpoint Industries, which since last fall is publicly traded on the NASDAQ national stock market. The fact that Guarino, who, the Journal article intimates, has ties to the Gambino organized crime family, would sell stock in his company on a national stock exchange says more about the priority of obscenity prosecutions in the Clinton Justice Department than it does about the hubris of those in the pornography industry.

One federal prosecutor told me recently that the prosecution of obscenity is a "dead issue" in this administration. Another, who has personally been responsible for numerous successful prosecutions, lamented to me that the effort is right back to where it was several years ago before the Meese initiative — no Washington leadership and not much happening. Still another, a senior Justice Department official, told me that the Clinton administration targeted CEOS for abolishment. It was saved from this fate only by the great public and congressional outcry over the department's weakened child pornography prosecution standard, announced in the case of *Knox v. U.S.*, before the U.S. Supreme Court. Senior Justice and

White House officials realized eliminating CEOS could only further embarrass the Administration and increase the public outcry. The department's child pornography debacle itself only served to embolden those trafficking in illegal adult pornography, who could assume that the department wasn't interested in prosecuting child pornographers.

By stating that the war on pornography is over, I do not mean that no one is fighting any longer. There are many across the land still in the fight who will never give up. God bless them! But the spread of illegal pornography cannot be stopped without the leadership, commitment, and resources of the federal government. Pornographers know this and, like Kenny Guarino, they're taking advantage of the opportunity President Clinton is giving them to expand their empires.

In his 1992 presidential campaign, Bill Clinton wrote the following to those who asked his views on the prosecution of illegal pornography: "Be assured that aggressive enforcement of federal obscenity laws by the Justice Department — particularly by the Child Exploitation and Obscenity section — will be a priority in a Clinton-Gore administration." This unequivocal promise has been broken. The question the president should answer is why did he surrender to the pornography industry? Decency should not be a Republican only issue. Nor is the First Amendment the issue. The Supreme Court has held repeatedly that obscenity is without First Amendment protection.

The Supreme Court has ruled that prevailing community standards determine what pornography is "obscene." Thus, perhaps in Manhattan only the more extreme hard-core pornography may be illegal, while pornography showing "mere" lewd exhibition of the genitals may be obscene, and thus illegal under community standards in Tupelo, Mississippi. But what is illegal is essentially determined by what is successfully prosecuted in a community. That is because all pornography is presumptively protected by the First Amendment, according to the high court, until a court (normally in a jury trial) determines it to be "obscene." Once certain items of pornography are determined in a court proceeding to be obscene in a community, then those items serve as a guide for community standards. A typical prosecution may involve, for example, five or ten pornographic videos. The jury may find all videos to be obscene or may say, based on the themes or content involved, some are obscene and others are not. Whatever they decide, helps to define community standards. Thus, when a U.S. attorney refuses to prosecute any pornography in his jurisdiction, he is, in effect, setting the community standard. And the standard becomes "anything goes." This is the problem the Clinton administration has created. All pornography could soon be considered "non-obscene" and, thus, in effect, legal in all communities across America.

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