



U.S. Attorney Buchanan takes lead in porn case appeal

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By Torsten Ove, Pittsburgh Post-Gazette

In a legal debate being watched nationwide, U.S. Attorney Mary Beth Buchanan will face off today against a company that sells videos with brutal and graphic depictions of sexual violence.

Ms. Buchanan and H. Louis Sirkin, a Cincinnati lawyer who represents California-based Extreme Associates, will argue before a three-judge panel of the 3rd U.S. Circuit Court of Appeals, which is hearing cases this week in Pittsburgh. The case represents the first major test of the obscenity laws in 15 years, and the federal government is on the defensive.

Ms. Buchanan's office lost the first round in January when U.S. District Judge Gary Lancaster threw out an indictment of Extreme and its owners, Robert Zicari, who calls himself "Rob Black," and his wife, Janet Romano, who uses the name "Lizzie Borden."

The judge ruled that federal obscenity statutes as applied by the prosecution violate protections of liberty and privacy.

The statutes say possession of obscene materials is legal, but distribution of them is not. So in essence, the judge said, the government ban on distribution of obscenity illegally infringes on people's constitutional right to possess it.

The decision was a blow for the Justice Department and Ms. Buchanan, who brought the indictment in 2003 after an investigation by Los Angeles police and U.S. postal inspectors in Pittsburgh.

The case was part of a renewed crackdown by the government on extremely hard-core, violent pornography. The videos sold by the company show men gang-raping women, defecating and

urinating on them, forcing them to drink bodily fluids and slitting their throats.

Ms. Buchanan said last week she couldn't talk about the pending argument, one of the biggest in her career.

But in her legal briefs she said Judge Lancaster was wrong in how he interpreted two Supreme Court decisions, Stanley v. Georgia in 1969 and Lawrence v. Texas in 2003, to reach his conclusion.

In Stanley, the high court ruled that people could not be prosecuted for viewing obscenity in their homes. In Lawrence, the court ruled that two men could not be prosecuted for having sex in their home.

As he has done previously, Mr. Sirkin will rely on both cases in saying the government is improperly intruding on constitutional rights. He says people have the right to view porn videos in the privacy of their homes, but that right is infringed if they can't get the films.

"If I can't buy them, there really is no right," he said last year in squaring off with one of Ms. Buchanan's assistants, Stephen Kaufman. "In order to be able to possess it, I need to be able to buy it."

Mr. Sirkin also says people's sex lives are none of the government's business.

Judge Lancaster largely agreed. He said the Stanley decision, in particular, means people have a corresponding right to distribute and receive obscene materials.

Ms. Buchanan said he's wrong.

"The Supreme Court ... has historically and repeatedly rejected the specious claim, and the flawed conclusion, that any right to privacy the court discussed in Stanley created some correlative right to receive or distribute obscene material," she wrote.

In looking at Lawrence, Judge Lancaster also sided with Mr. Sirkin in saying "the government can no longer rely on the advancement of a moral code, preventing consenting adults from entertaining lewd or lascivious thoughts, as a legitimate, let alone compelling, state interest."

Ms. Buchanan said the obscenity statutes don't require the

government to enter anyone's house.

"An individual's interest in the privacy of his home is not implicated ... by a prohibition on the shipment or distribution of obscenity because such prohibition does not require the government to invade the sanctity of the home," she wrote. "It is not personal intimate relations, but the commercial distribution of obscenity, that is at issue here."

Advocates on both sides of the debate have filed friend-of-the-court briefs in the case, although the papers weren't available yesterday.

Those arguing before the 3rd Circuit normally have 15 minutes each. But in this case, Ms. Buchanan and Mr. Sirkin have each been granted 25 minutes.

The judges won't rule from the bench but will write an opinion at a later date.

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