

Hard Rain

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And I'll tell it and think it and speak it and breathe it,
And reflect it from the mountain so all souls can see it,
Then I'll stand on the ocean until I start sinkin',
But I'll know my song well before I start singin',
And it's a hard, it's a hard, it's a hard, it's a hard,
It's a hard rain's a-gonna fall.

--*A Hard Rain's A-Gonna Fall*, Bob Dylan, Copyright © 1963; renewed 1991 Special Rider Music

Ashcroft Convenes “National Obscenity Symposium” and Calls for Aggressive Federal Obscenity Prosecution

On May 7, 2002, Attorney General John Ashcroft announced that he would conduct Obscenity Law Enforcement Symposium to be held in early June at the National Advocacy Center, bringing US Attorneys and other prosecutors and law enforcement officials from all around the country together to share information and formulate an order of battle and combat plans for a federal prosecutorial initiative against adult obscenity. He invited all US Attorneys to participate in and support this “**initiative**” and he invited a “**partnership in launching and sustaining this important endeavor**”. Under his manual signature, the Attorney General wrote the invitation to all of the US Attorneys:

As I am sure you are aware, the proliferation of *obscenity*, both via the Internet as well as through more traditional channels, has become a pervasive and destructive element in our society. I am committed fully to dedicating the resources necessary to combat this burgeoning problem.

To that end, I am pleased to announce an initiative aimed at developing a *national obscenity strategy for aggressive federal prosecutions of such cases*. On June 6-7, 2002, at the Department's National Advocacy Center in Columbia, South Carolina, the Executive Office of U.S Attorneys and the

Criminal Division's Child Exploitation and Obscenity Section are sponsoring an Obscenity Law Enforcement Symposium This symposium will provide a forum to discuss the current state of the sex industry, the legal challenges in investigating and prosecuting obscenity cases, and the policies and guidelines necessary to develop our strategies in a thoughtful and deliberate way.

I encourage you and your staff to support and participate in this initiative and the upcoming symposium. I look forward to our partnership in launching and sustaining this important endeavor.

<http://www.ccv.org/images/Ashcroft%20Obscenity%20Priority.pdf>

[Emphasis added.]

Ashcroft to Vindicate “The Right of the Nation to Maintain a Decent Society” Through Obscenity Prosecutions

Mr. Ashcroft’s fire in Columbia was not only directed at child pornography and the effects of adult pornography on children, but more broadly and generally he addressed himself to the material that he characterized as “obscene”. The full text of Mr. Ashcroft’s June 6th, 2002 prepared remarks to the nationwide gathering of prosecutors and law enforcement officials at the National Advocacy Center has now been posted online at

<http://www.nationallawcenter.org/Remarks%20of%20Attorney%20General%20John%20Ashcroft.htm>. The Attorney General described the **Internet** as “**perhaps the most pernicious medium for obscenity**” and “**a conduit for child exploitation and obscenity that respects no boundaries and recognizes no jurisdictional lines**”. Citing the text of the 1973 United States Supreme Court Opinion in *Paris Adult Books v. Slaton* for support, authored by then-Chief Justice Warren Burger, a decision announced by the High Court on the same day that *Miller v. California* was announced, Mr. Ashcroft asserted the public’s interest “**in the quality of life,**” and the “**right of the Nation and of the States to maintain a decent society.**” Claiming that this industry has ties to organized crime (in the present tense, but offering no support for that proposition), and asserting that the availability of pornography has adverse societal consequences, Ashcroft observed that:

In addition to harming children directly, obscenity has tremendous consequences for our broader society. For instance, clinical and

experimental evidence show a correlation between exposure to sexually violent materials and an increase in aggressive behavior directed towards women.

Ashcroft pledged that **“To prevent such debasement, the Department of Justice is committed unequivocally to the task of prosecuting obscenity.”**

He indicated two first steps in support of that commitment. At a cost of one million dollars, he has added two attorneys and five staff specialists to the CEOS office to work full-time **“making prosecutions against child pornography and obscenity offenders using the Internet.”** Second, Ashcroft has directed that the “lockout” provisions of the US Attorney’s Manual be revised to permit CEOS to investigate locally with only a notification to the US Attorney in whose district the investigation is conducted, rather than with the consent of the local US Attorney as has been Justice Department policy to this point. This is done, he asserted, **“to bring the full weight of the Department of Justice to the fight against child pornography and obscenity.”** (This may also reflect an understanding by Justice – as a result of the Supreme Court’s various opinions and concurrences and dissent in *Free Speech Coalition v. Ashcroft* - that it looks very unlikely that local geographical community standards may be applied to judge the obscenity of materials distributed via the Internet; The main point of the earlier lockout provision was that a local US Attorney was better poised to know than Washington what kinds of material were convictable obscenity under local standards and therefore what kinds of investigations would be a waste of time. Ashcroft’s team may view the potential of “national standards” as a reason to justify more centralized control in the control of obscenity prosecution, a control which may decrease the influence of local US Attorneys in charging decisions.)

Ashcroft said that CEOS will not **“alone”** prosecute obscenity cases and called for co-operation from the local US Attorneys. The obvious suggestion is that CEOS itself does have plans to bring obscenity prosecutions.

Ashcroft mentioned and thanked various individuals from outside the Justice Department who participated in the Symposium, from the Organized Crime and Vice Division of the Los Angeles Police Department, from the US Postal Service, from The American Center for Law and Justice, and from the National Law Center for Children and Families. He praised them collectively as **“tireless in their efforts to support the Justice Department's mission to combat the proliferation of obscenity in our society.”** [Emphasis added.]

The National Obscenity Symposium and Mr. Ashcroft's remarks there put his May 1, 2002 National Victims of Obscenity Awareness Month statement into more readily understandable significance, a statement chiefly dealing with *adult obscenity*:

Pornography and adult obscenity are more than demeaning pictures in magazines and on the Internet – they are steps down a path to the degradation and, too often, the real abuse of predominantly women and children.

The Department of Justice is dedicated to prosecuting those who illegally distribute adult obscenity materials and child pornography. These prosecutions are a priority for this Department, and the Criminal Division's Child Exploitation and Obscenity Section and the 94 United States Attorneys across this country stand committed to enforce the federal statutes in this area.

Over the past year, the Department has made significant progress toward reversing an almost decade-long absence of adult obscenity prosecutions. With the recommendation of the Attorney General's Advisory Committee, the so-called 'lock out provision' of the United States Attorneys' Manual was eliminated. Now, for the first time in many years, prosecutors from the Child Exploitation and Obscenity Section of the Justice Department have increased flexibility to initiate cases across the country. Additionally, the Child Exploitation and Obscenity Strategy [sic] has been working with our United States Attorneys to put together a June 2002, symposium to devise a common and coordinated approach to the prosecution of obscenity providers.

This Department is dedicated to vigorously enforcing the laws of the United States, and those who illegally distribute obscene material will be prosecuted aggressively.

<http://www.ccv.org/images/Ashcroft%20VOP%20Statement.pdf> [Emphasis added.]

Finally, all of this coincides with the launching of a new website by Morality in Media under the name <http://www.obscenitycrimes.org/>, a website providing a convenient form (including a handy means to check off such content items as “Anal Sex” and “Lewd Exhibition of the Genitals”) to submit reports of allegedly obscene online material to Morality in Media, where it will be screened, and if deemed prosecutable by that organization, to be forwarded to the reporter’s local US Attorney with a request for investigation under the reporter’s name. This report form and this site are exclusively concerned with adult pornography and those persons with information regarding child pornography are directed to another site. No tips are accepted at obscenitycrimes.org without geographical information about the location of the reporter, which is a real clue as to what the site is all about. After (misleadingly) advising the reader that “Most obscene materials consist of little (if anything) more than depiction after depiction of hardcore sexual conduct”, the site alludes to its real aim, that of applying pressure to local US Attorneys: **“MIM does expect U.S. Attorneys to take reports of possible violations of obscenity laws seriously and to initiate prosecutions in appropriate cases. . . MIM will periodically publish on this Web site the number of reports forwarded to each U.S. Attorney and the number of obscenity prosecutions initiated by each U.S. Attorney.”**

Morality in Media is putting the Moral Right on the case of the US Attorneys and keeping track of the numbers; Pressure will be applied by MIM and ultimately by DOJ in Washington; CEOS will get prosecutions jump-started on its own with or without the OK of the local US Attorneys, now that Mr. Ashcroft is changing the US Attorney’s Manual to empower CEOS to do this.

You Don’t Need a Weatherman to Know Which Way the Wind Blows

But, all that having been said, as Bob Dylan once wrote, “You don’t need a weatherman to know which way the wind blows.” It is clear from every sign that adult obscenity prosecutions on a measurable scale are about to begin in the imminent future. To borrow another expression, one coined by Robert Anton Wilson and Robert Shea in

Illuminatus!, Mr. Aschcroft has imminentized the eschaton. Thus far, the adult webmaster community at large has seen chiefly the upside, the economic benefits of this risky business; The downside, known so well to the videotape community in its memories of the Reagan/Bush years, the knock on the door, the seizure of capital assets and the means of production, the humiliation of arrest and bond court, the expense and anxiety of a criminal defense, are all matters that, in short order, will be learned by some among the webmasters. And some lives will be destroyed no matter how the jury returns.

Practical Advice in Dangerous Times

What is to be done by the adult site operator?

There is no substitute for the guidance, advice, and review of your site and its content and procedures with an attorney experienced in this area. If you bought your terms and conditions and 2257 disclosure statement for a two digit price from an online form store or by otherwise acquired it by cut and paste from another site that looked to you like it had a lawyer, you may learn that the office of the US Attorney does not craft its affidavits in support of an application for a warrant in this manner.

If you are targetted, if you are the subject of a search warrant, you will be charged with any and all criminal laws whose violation can be made out from what they find, including matters found in plain view that were not a part of the original investigation.

In every single case in which law enforcement becomes involved, it will aggressively and resolutely search for evidence of child pornography. Among other things, that item makes the prosecutorial burden much easier and simpler. Accordingly, the number one priority must be to positively assure that you are never in possession of even a single image containing any underage person in any situation that is even remotely sexual. The necessary implication of this is that you cannot afford to possess any erotic image whose origin you cannot identify.

If you are an adult webmaster, you must make very, very sure that you have no technical violations of Section 2257 or its associated regulations. Each of them carries a maximum penalty of two years in prison. Do not make the task of putting you out of a business an easy and straightforward assignment.

Finally, take a serious and good look at your site and do everything in your power to assure that it is not obscene. Consult with a lawyer who knows the law of content. Regardless of the uncertainties you cannot control, if you choose to make your living on the adult Internet, aspire to give your site serious value. There are no magic bullets, amulets or robes of invisibility, there are no cookie-cutter solutions, and the advice to “put in some text” or to run a guide to esoteric sexual practices of the East or a penile enlargement lesson are less than satisfactory. There is a difference between a serious work and a pretext that will not be lost on judge, jury, or prosecutor. One unchanging axiom that runs through all of the Supreme Court cases dealing with obscenity in the modern era is that no work can be proscribed and criminally outlawed if, taken as a whole, it has serious literary, artistic, or scientific value. Were it possible to ban speech with serious value, American society itself would become the victim of censorship through its loss of a work of serious value, and that is a result that the constitution cannot permit. A serious contemplation of this issue will offer both hope and challenge to the webmaster.

Aspire to create a work whose overall theme is not an appeal to the morbid or unhealthy. It is the motorist who is passing all of the other cars that gets tagged every time. The extreme nature of some content can sometimes – but not always need be – a substitute for creativity, artistry, and vision. If you aspire to meet the needs of a narrow niche, pick one that offends broadly American sensibilities the least while attracting a customer base with inescapable magnetism. Be creative when you write, design, and integrate your site. This is a matter that is entirely within your control. You must choose and you must continue to choose a path that will avoid the demons.

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