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Review of Child Pornography and Obscenity Crimes

Report Number I-2001-07

July 19, 2001

The Honorable Frank R. Wolf
 U.S. House of Representatives
 Washington, D.C. 20515

Dear Congressman Wolf:

I write in response to your request that the Office of the Inspector General (OIG) conduct a study of the number of pornography cases, including child pornography, that have been prosecuted from 1980 to 2000. In your letter, you expressed concerns that the Department of Justice (Department) was not aggressively pursuing pornography crimes.

Background

Distribution of child pornography and adult obscenity has expanded exponentially with advances in computer technology and increased availability and popular use of the Internet. This globalization of criminal activity is a significant challenge to the Department's capacity to investigate and prosecute these crimes. ¹ In its strategic plan, the Department states that one of its strategies for reducing violent crimes is to "provide [continued] leadership and technical program support to ensure that our nation-wide capacity to quickly and effectively respond to all incidents of crimes against children is strengthened." ²

Child pornography is relatively easy to identify. Obscenity is less easy to identify and the legal definition of obscenity was established by the U.S. Supreme Court in *Miller v. California*, 413 U.S. 15 (1973). Under this ruling, the following three conditions must be met before material is considered obscene and subject to prosecution:

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

Increasingly obscenity is transmitted via the Internet and this has caused confusion as to which "community standards" should be applied in determining whether material is obscene. Consequently, according to officials from the Criminal Division, the Executive Office for United States Attorneys (EOUSA), and the Federal Bureau of Investigation (FBI), the Department, as a matter of policy, pursues major producers and traffickers of obscene materials.

Scope and Methodology

To respond to your request, staff from our Evaluation and Inspections Division interviewed officials from the Criminal Division, EOUSA, and the FBI. We also obtained statistical data from the FBI and EOUSA related to the investigation and prosecution of both child pornography and obscenity crimes. We also contacted the Department's Office of Juvenile Justice and Delinquency Prevention to obtain information on grant programs that provide funding to state and local law enforcement agencies to investigate child pornography cases.

The data provided by EOUSA was obtained from its automated case management system, Legal Information Office Network System (LIONS). The LIONS database comprises caseload data entered by each of the 94 United States Attorneys' offices (USAOs). Although you requested data for the period 1980 to 2000, EOUSA reported that the data prior to 1992 is not consistent with the data from 1992 to 2000. In addition, EOUSA stressed that the data could not be provided timely or without considerable cost. The EOUSA changed its database system in 1992, which affected the method by which the data could be entered and retrieved. Under the previous database system, the USAOs would enter only the lead charge into the database. ³ Since 1992, however, the USAOs have been entering all charges into LIONS. Thus, the data prior to 1992 would understate the Department's caseload.

The EOUSA therefore provided us with data on the number of referrals, prosecutions, and declinations for cases involving obscenity and child pornography crimes from fiscal year (FY) 1992 to 2000. We also obtained data on the source of the referrals, the results of the prosecutions, and the reasons for the declinations. For each year, EOUSA provided us with reports detailing the case information by statute and summarizing the case information. The summary report counted a case only once regardless of how many charges were included. We used the data from the summary reports rather than the detailed reports because the detailed reports can double count cases based on multiple charges against a defendant. According to EOUSA, the summary method of counting cases would not result in duplication.

Child Pornography Prosecutions

The U.S. Attorneys' Manual states that "Prosecution of all crimes involving the sexual abuse or sexual exploitation of children and the distribution of child pornography is strongly encouraged." ⁴ To assist the USAOs, as well as state and local officials, in prosecuting cases relating to crimes against children, the Department established the National Obscenity Enforcement Unit within the Criminal Division in 1987. The unit was later renamed the Child Exploitation and Obscenity Section (CEOS) to reflect its work on child sexual exploitation crimes. CEOS attorneys assist USAOs in investigations, trials, and appeals of child pornography cases. These cases include the prosecution of individuals who possess, manufacture, or distribute child pornography; who sell, buy, or transport children interstate or internationally to engage in sexually explicit conduct; who travel interstate or internationally to sexually abuse children; who abuse children on federal lands; and who transport obscene material in interstate or foreign commerce. Occasionally, due to their particular expertise, CEOS attorneys may prosecute cases themselves. In addition to assisting prosecutors, the CEOS has several other responsibilities relating to child pornography and child exploitation issues. These include advising USAOs on child victim witness issues; developing proposals for policies, legislation, government practices, and regulations; and training federal, state, local, and international prosecutors, investigators, and judges.

The CEOS works with other law enforcement organizations that are investigating child pornography operations. In 1995, the U.S. Postal Inspection Service, in conjunction with CEOS, initiated a nation-wide program designed to identify and prosecute individuals who used the U.S. mail to distribute and receive child pornography. In 1995, the CEOS worked with the FBI to initiate the Innocent Images National Initiative (IINI), discussed on page 8 of this report.

The CEOS has also been involved in coordinating investigations of international child pornography operations. CEOS worked with the U.S. Customs Service on one such investigation, a multi-national effort entitled Operation Cheshire Cat culminating in 1998. It resulted in the arrest of 107 individuals in 12 countries who were dealing in Internet child pornography. This investigation focused on the Wonderland Club, an Internet pedophile ring, that required its members to submit at least 10,000 pornographic images of children for exchange with other members.

Table 1 below shows prosecutions of child pornography crimes by attorneys from both the USAOs and the CEOS under Title 18 of the United States Code, sections 2251 through 2260. Appendix I contains a summary of these statutes.

Table 1: Federal Prosecutions of Child Pornography Cases

Fiscal Year	Cases Referred	Cases Prosecuted	Cases Declined
1992	253	104	147
1993	221	79	162
1994	190	72	148
1995	500	121	148
1996	593	279	297
1997	716	320	283
1998	873	382	361
1999	1,131	510	422
2000	1,161	563	468
Total	5,638	2,430	2,436

Source: EOUSA

Note: There is not necessarily a correlation between cases referred, prosecuted, or declined in any particular year. Cases referred may have been prosecuted or declined in a subsequent year; cases declined may include those cases referred from a prior year.

Data provided by EOUSA for this 9-year period showed that the FBI, the U.S. Postal Service, and the U.S. Customs Service were the primary sources of referrals of child pornography cases to the USAOs. The FBI referred almost half of all the cases. See Table 2 below.

Table 2: Child Pornography Referrals by Source

Fiscal Year	FBI	Customs	Postal Service	Other	Total
1992	62	50	136	5	253
1993	57	38	111	15	221
1994	67	39	76	8	190
1995	227	101	150	22	500
1996	231	152	169	41	593
1997	310	243	108	55	716
1998	415	257	130	71	873
1999	706	243	111	71	1,131
2000	696	200	161	104	1,161
Total	2,771	1,323	1,152	392	5,638

Source: EOUSA

In 89 percent of the cases, the defendants either pled guilty or were found guilty at trial. Of the remaining cases, approximately 8 percent were dismissed, 3 percent were terminated for other reasons, and 0.5 percent resulted in acquittals. See Table 3 below.

Table 3: Child Pornography Conviction Statistics

Fiscal Year	Guilty Plea	Guilty Verdict	Acquitted	Dismissed	Other	Total
1992	85	9	0	9	2	105
1993	72	15	2	13	2	104
1994	61	4	0	9	4	78
1995	79	3	2	6	4	94
1996	135	9	0	10	8	162
1997	261	19	0	15	14	309
1998	265	19	3	28	9	324
1999	360	18	2	30	7	417
2000	422	23	1	45	7	498
Total	1,740	119	10	165	57	2,091

Source: EOUSA

The primary reasons reported by the USAOs for declining a case involving child pornography were weak evidence (22.9 percent), prosecution of suspect by other authorities (20.9 percent), lack of evidence (11.7 percent), and lack of evidence that a federal crime had been committed (11.5 percent). See Table 4 below.

**Table 4: Reasons for Not Prosecuting Child Pornography Cases
FY 1992 - FY 2000**

Basis for Declination	Total	Percent
No crime		
No federal offense evident	280	11.5
Referred or handled in other prosecution		
Suspect prosecuted by other authority	510	20.9
Suspect prosecuted on other charges	54	2.2
Alternative resolution		
Civil, administrative, or other disciplinary	26	1.1

Pre-trial diversion complete	118	4.8
Suspect-related reasons		
Suspect a fugitive	3	0.1
No known suspect	38	1.6
Suspect deceased	43	1.8
Suspect deported	1	0.0
Suspect serving sentence	12	0.5
Case-related reasons		
Jurisdiction or venue problems	52	2.1
Lack of evidence	285	11.7
Stale case	23	0.9
Statute of limitations exceeded	10	0.4
Weak evidence	558	22.9
Witness problems	9	0.4
All other reasons		
Agency request	99	4.1
Court policy	1	0.0
Department instructions	5	0.2
Department policy	10	0.4
Juvenile suspect	23	0.9
Lack of resources	48	2.0
Minimal federal interest	77	3.2
Offender's health, age, prior record, or other personal circumstances	27	1.1
U.S. Attorney policy	58	2.4
Petite policy	16	0.7
Suspect's cooperation	6	0.2
Other reasons	44	1.8
Total declinations	2,436	99.9

Source: EOUSA

Note: Total percentage does not add to 100.0 due to rounding.

Child Pornography Investigations

The FBI established its Office of Crimes Against Children in 1997 to focus specifically on crimes such as child exploitation, child pornography, child abduction, and parental kidnapping. In addition to the headquarters staff, each of the FBI's 56 field offices has at least two special agents dedicated to crimes involving children.

To specifically address Internet child pornography issues, the FBI, with the assistance of the CEOS, established the IINI in 1995. As a part of the IINI, FBI agents and task force officers go undercover on-line in Internet chat rooms by either posing as children (potential victims) or as adults seeking child pornography. Table 5 below reflects the results of the IINI. The increase in the number of cases largely reflects the increase in resources dedicated to the IINI over the years.

Table 5: IINI Results and Resources

Fiscal Year	New Cases Opened	Arrests, Locates, or Summons^a	Convictions	Direct Agent Work Years
1996	113	68	68	33.7
1997	301	56	87	63.4
1998	698	103	84	59.1
1999	1,497	337	309	93.6
2000	1,541	482	472	115.1
Total	4,150	1,046	1,020	364.9

Source: FBI

^aLocates refers to the identification of individuals with outstanding warrants not issued by the FBI.

Task forces with representatives from the FBI, the U.S. Customs Service, the U.S. Postal Inspection Service, and the USAOs, as well as state and local law enforcement agencies are involved in the IINI. In addition, the U.S. Customs Service and the U.S. Postal Inspection Service manage their own national and international initiatives, such as Operation Cheshire Cat, to combat the distribution of child pornography.

Although the FBI's IINI has helped convict those who sexually exploit children, the true scope of the on-line problem is unknown. Pornographic websites are prolific and international; on-line predators and pornography traffickers can easily mask their location and identity. According to FBI officials, the IINI has experienced difficulties in keeping up with rapidly changing technology that allows criminals to avoid detection. Another problem in these investigations is the lack of a requirement mandating the length of time that an Internet service provider must retain its records. While the larger Internet service providers are cooperative, thousands of smaller Internet service providers, when subpoenaed, report that their records already have been deleted. Perpetrators of child pornography crimes often are savvy to these recordkeeping weaknesses and use smaller Internet service providers with fewer controls.

The FBI also works closely with the National Center for Missing and Exploited Children (Center). The Center, a nonprofit organization established in 1984, serves as a clearinghouse for information related to missing or exploited children. The Center operates the CyberTipline, an on-line mechanism for the public to report Internet child pornography and sexual exploitation, and the telephonic Child Pornography Tipline. Internet service providers also have been required since 1999 to report child pornography to the Center. The Center forwards the information it receives from both the public and the Internet service providers to the appropriate law enforcement officials for investigation. To assist in the process, the

FBI has assigned a supervisory agent to the Center who reviews the information received and identifies cases of interest to the FBI. The FBI stated that this review consists of approximately 1,500 to 3,000 tips a month related to child pornography and sexual exploitation.

The Office of Juvenile Justice and Delinquency Prevention's Child Protection Division (Division) administers programs related to crimes against children and provides leadership and grant funding in the areas of enforcement, intervention, and prevention. One program, the Internet Crimes Against Children Task Force Training and Technical Assistance Program, provides grant funds to 30 regional task forces and 24 investigative groups (satellites) to work on child pornography and cyberentertainment cases. The regional task forces are designed to provide forensic, investigative, preventive, and technical assistance on a state-wide or regional basis; the investigative satellites are designed to provide smaller law enforcement agencies with training and equipment to respond to on-line crimes against children in their jurisdictions. The Division is in the process of adding 16 investigative satellites, with another 15 scheduled to be added in October 2001. In FY 2001, the Division also provided \$2.25 million to the Center for administering the CyberTipline and for training community investigators and law enforcement officials.

Obscenity Investigations and Prosecutions

The U.S. Attorneys' Manual states:

Prosecution of large scale distributors of obscene material who realize substantial income from their multi-state operations also is encouraged. Prosecution priority should be given to cases in which there is evidence of involvement by known organized crime figures. However, prosecution of cases involving relatively small distributors can have a deterrent effect and would dispel any notion that obscenity distributors are insulated from prosecution if their operations fail to exceed a predetermined size or if they fragment their business into small-scale operations. Therefore, prosecution of such distributors also may be appropriate on a case-by-case basis.⁵

The Manual further requires that substantial deference be given to the factors set forth in *Miller v. California* in determining the viability of potential obscenity cases. Officials within the FBI's Violent Crimes Unit and the Criminal Division's CEOS stated that because *Miller v. California* requires an assessment of community standards in determining obscenity, the Department relies more on the states and localities to investigate and prosecute obscenity cases involving individuals. The FBI and the CEOS also stated that because much of the obscene material is distributed over the Internet, it is difficult to identify a case's jurisdiction and therefore which community standards should be applied. They stated that the Department focuses its resources on investigating and prosecuting obscenity cases involving major producers and interstate and foreign distributors of obscene material. In addition, they stated that the Department investigates and prosecutes obscenity cases where organized crime or other crimes such as money laundering, extortion, and trafficking in women are involved. According to the FBI, since 1994 it has investigated a total of 58 obscenity cases, 12 of which were related to organized crime.

Table 6 below shows the Department's prosecutions of obscenity crimes under Title 18 of the United States Code, sections 1460 through 1470. Appendix II contains a summary of these statutes.

Table 6: Federal Prosecutions of Obscenity Cases

Fiscal Year	Cases Referred	Cases Prosecuted	Cases Declined
1992	70	44	63
1993	62	25	52
1994	50	28	55
1995	50	26	48
1996	44	18	32
1997	28	20	22
1998	34	13	26
1999	42	11	37
2000	34	20	25
Total	414	205	360

Source: EOUSA

Note: There is not necessarily a correlation between cases referred, prosecuted, or declined in any particular year. Cases referred may have been prosecuted or declined in a subsequent year; cases declined may include those cases referred from a prior year.

The data provided by EOUSA for this 9-year period showed that the FBI, U.S. Postal Service, and the U.S. Customs Service were the primary referral sources of obscenity cases to the USAOs, with the FBI referring 43 percent of the cases. See Table 7 below.

Table 7: Obscenity Referrals by Source

Fiscal Year	FBI	Postal Service	Customs	Other	Total
1992	30	34	2	4	70
1993	28	20	9	5	62
1994	14	22	8	6	50
1995	21	20	5	4	50
1996	21	9	8	6	44
1997	12	6	5	5	28
1998	12	12	4	6	34
1999	23	5	8	6	42
2000	16	6	9	3	34
Total	177	134	58	45	414

Source: EOUSA

In the majority of the cases (63 percent), the defendants either pled guilty or were found guilty at trial. Of the remaining cases, approximately 30 percent were dismissed, 5 percent were terminated for other reasons, and 2 percent resulted in acquittals. See Table 8 below.

Table 8: Obscenity Conviction Statistics

Fiscal Year	Guilty Plea	Guilty Verdict	Acquitted	Dismissed	Other	Total
1992	34	5	0	8	3	50
1993	29	2	6	6	1	44

1994	28	2	0	34	3	67
1995	27	2	0	18	2	49
1996	25	0	0	4	5	34
1997	18	2	1	2	0	23
1998	8	0	0	6	0	14
1999	11	0	0	16	0	27
2000	7	0	0	1	1	9
Total	187	13	7	95	15	317

Source: EOUSA

The primary reasons reported by the USAOs for declining a case involving obscene material were weak evidence (18.3 percent), lack of evidence that a federal crime had been committed (12.5 percent), lack of evidence to support the case (11.9 percent), prosecution of suspect by other authorities (11.7 percent), and minimal federal interest (10.6 percent). See Table 9 below.

**Table 9: Reasons for Not Prosecuting Obscenity Cases
FY 1992 - FY 2000**

Basis for Declination	Total	Percent
No crime		
No federal offense evident	45	12.5
Referred or handled in other prosecution		
Suspect prosecuted by other authority	42	11.7
Suspect prosecuted on other charges	18	5.0
Alternative resolution		
Civil, administrative, or other disciplinary	6	1.7
Pre-trial diversion complete	9	2.5
Suspect-related reasons		
No known suspect	5	1.4
Suspect deceased	2	0.6
Suspect serving sentence	2	0.6
Case-related reasons		
Jurisdiction or venue problems	2	0.6
Lack of evidence	43	11.9
Stale case	12	3.3
Statute of limitations exceeded	1	0.3
Weak evidence	66	18.3
Witness problems	4	1.1
All other reasons		
Agency request	26	7.2
Department instructions	1	0.3
Department policy	2	0.6
Lack of resources	12	3.3
Minimal federal interest	38	10.6
U.S. Attorney policy	12	3.3
Suspect's cooperation	6	1.7
Other reasons	6	1.7
Total declinations	360	100.2

Source: EOUSA

Note: Total percentage does not add to 100.0 due to rounding.

I hope this information is responsive to your questions about the Department's efforts to detect and prosecute child pornography and obscenity cases. If you have any questions about this report or would like any additional information, please contact me or Mary Demory, the head of our Evaluation and Inspections Division.

Sincerely,

[Signed]

Glenn A. Fine
Inspector General

Footnotes

1. FY 2000-2005 Strategic Plan, Department of Justice.
2. Ibid.
3. The lead charge is the most serious offense that is encompassed by the defendant's conduct and that is readily provable. This is ordinarily the offense for which the most severe penalty is provided by law. Defendants may also be charged with other criminal acts if the proof and the government's law enforcement objectives warrant additional charges.

4. The U.S. Attorneys' Manual (USAM) contains general policies and procedures relevant to the work of the U.S. Attorneys' offices and to their relations with the legal divisions, investigative agencies, and other components within the Department. USAM 9-75.020 pertains to child abuse, child pornography, and obscenity crimes.
5. USAM 9-75.020.