

November 6, 2008

President-elect Barack Obama
OBAMA FOR AMERICA
P.O. Box 8102
Chicago, IL 60680

RE: ENFORCEMENT OF FEDERAL OBSCENITY LAWS

Dear President-elect Obama:

First, let me congratulate you on Tuesday's victory. You fought and won a long and difficult campaign against two worthy opponents. But if you now hope to become the President of all Americans, you will have to make policy decisions that citizens who voted for and against you can support.

I am writing to you again about the need to vigorously enforce federal obscenity laws. I am writing now because planning for a new Administration begins soon after an election. In particular, the individuals you nominate to serve as Attorney General, Director of the FBI and U.S. Attorneys will play crucial roles in the matter of enforcement or non-enforcement of federal obscenity laws.

In the longer term, your nominations for federal judges will also play a crucial role – whether in upholding the laws of the land or in weakening or overturning Constitutional laws necessary for the protection of morality, family life and children. I say “Constitutional laws” because I do not subscribe to the despotic theory that the Constitution is whatever unelected federal judges say it is.

During the campaign, I encouraged both Senator McCain and you to make public your position on enforcement of federal obscenity laws. Both of you chose to remain silent on this issue – as if our nation did not have an already serious and still growing problem with “adult” obscenity, as if the public did not have a right to know or didn't need to know where you stood on this important issue.

For the record, “adult” obscenity does not depict actual children, but does include hardcore pornographic depictions of sex with persons who look like children, sex with barely legal teens, sex with animals, sex with excrement, sex with family members, sex with multiple partners, sex with prostitutes, sex with she-males, sex with someone else's spouse, and the degradation, rape, and torture of women.

Also for the record, the victims of “adult” obscenity include individuals who participate in hardcore pornography (harms include exposure to sexually transmitted diseases and physical abuse); individuals of all ages who become addicted to hardcore pornography; spouses of individuals who become addicted to hardcore pornography; women who are sexually harassed, sexually assaulted and raped by individuals who are addicted to hardcore pornography; and children and teens who are sexually assaulted by other children and teens who act out what they see in hardcore pornography. Adults who prey on children also use “adult” obscenity to stimulate themselves and to arouse, desensitize and instruct their victims.

Despite what we often read and hear in the mainstream media, the First Amendment does not protect obscene materials. As the Supreme Court stated in a 1973 obscenity case, *Miller v. California*:

This much has been categorically settled by the Court, that obscene material is unprotected by

the First Amendment...[T]o equate the free and robust exchange of ideas and political debate with commercial exploitation of obscene material demeans the grand conception of the First Amendment and its high purposes in the historic struggle for freedom. It is a “misuse of the great guarantees of free speech and free press”... [415 U.S. 15, at 23, 34]

In another 1973 obscenity case, *Paris Adult Theater I v. Slaton*, 413 U.S. 49, 57-59, the Supreme Court identified several “legitimate governmental interests” that justify a prohibition on obscene materials “even if it is feasible to enforce effective safeguards against exposure to juveniles.” [Emphasis supplied] These interests include protecting the community environment, protecting “public safety,” and maintaining “a decent society.” The *Paris* Court continued [at page 63]:

The sum of experience...affords an ample basis for legislatures to conclude that a sensitive, key relationship of human existence, central to family life, community welfare, and the development of human personality, can be debased and distorted by crass commercial exploitation of sex.

It is of course no secret that the United States has failed miserably at “enforcing effective safeguards against exposure to juveniles.” The Internet in particular is awash with hardcore pornographic materials that are available to minors without cost or proof of age; and surveys indicate that large numbers of children have been inadvertently exposed to these materials or have sought them out.

It has failed miserably because federal judges have repeatedly invalidated the Child Online Protection Act of 1998, which would require websites that commercially distribute pornography to take reasonable steps to restrict children’s access to pornography, and because federal Internet obscenity laws have rarely been enforced since they were enacted in 1996. What the Congressionally created COPA Commission stated in its October 2000 *Final Report* about curbing “adult” obscenity is still largely true:

Law enforcement resources at the state and federal level have focused nearly exclusively on child pornography and child stalking. We believe that an aggressive effort to address illegal, obscene material on the Internet will also address the presence of harmful to minors material.

Citizen organizations involved in the “war against obscenity” have often and rightly criticized the Bush Administration for its failure to vigorously enforce federal obscenity laws. But in fairness to the Bush Administration, it has made some progress in the “war against obscenity.” See my article, “The 2008 Presidential Election and Its Impact on Enforcement of Federal Obscenity Laws,” published at <http://www.obscenitycrimes.org/news/2008PresidentialElectionImpactOnObscenityLawEnforcement.pdf>

The choice for you as the next President is either to build on the progress made by your immediate predecessor or to allow the Justice Department to revert to the policy adopted under President Clinton’s watch – namely, to give commercial distributors of hardcore pornography a “free ride.”

If you choose to be a builder, the large majority of Americans old enough to vote will support you. According to the results of an April 2008 Harris Interactive poll, 75% of Americans 18 years of age and older said they would support the next President were he to do all in his power “to ensure that federal obscenity laws are enforced vigorously against commercial distributors of hardcore pornography.” Only 11% said they would “strongly oppose;” another 8% said they would “just somewhat oppose.”

Sincerely,

Robert Peters
President