



Education and Legal
Defense Foundation, Inc.

July 6, 1989

Mr. William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, D.C. 20004

Dear Chairman Wilkins:

I am writing to you on behalf of the American Family Association Education and Legal Defense Foundation, Inc., a non-profit organization working together with American Family Association, Inc., to promote moral principles in our society. AFA has a mailing list of over 380,000 individuals and churches and has local chapters in all fifty states.

AFA and its Legal Defense Foundation have consistently been concerned with the enforcement of obscenity laws and the efforts to curb the exploitation of women and children through the production and distribution of pornographic material. As the Attorney General's Commission on Pornography found in 1986, the most effective means of curbing the flow of obscene material is through the enforcement of the law and the punishment of the offenders.

I would offer two specific concerns regarding the currently proposed Guidelines regarding obscene material and child pornography. The first is with respect to the base offense level set for the crime of distributing obscene materials. AFA Education and Legal Defense Foundation strongly urges the use of a minimum level 8 for such an offense. We are becoming increasingly aware of the dangers the distribution of such material poses in our society and the punishment for such a crime should reflect the seriousness of the crime.

Secondly, the formulation of the enhancement provision based upon the retail value of the obscene material does not reflect the nature of the crime or its prosecution. The prosecution of organized criminal enterprises engaged in the distribution of obscene material is generally based upon a limited number of items within the vast array of similar material. Consequently, the total retail value of the material found to be obscene is actually a relatively insignificant percentage of the total

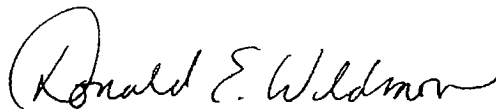
illegal operation. Therefore any sentence based upon the pecuniary value of the material found to be obscene does not accurately reflect the nature of the enterprise.

In addition, the application of a pecuniary value standard to materials involving the sexual exploitation of children is inapplicable. Such material is routinely traded in a clandestine network rather than openly sold as a business venture. Therefore, the severity of the crime should not be judged by the retail value of the material since the societal harm is measured by the number of children who are abused through the production and distribution of the depictions.

I would urge the Sentencing Commission to set a minimum level for an obscenity offense which would mandate actual jail time. Anything less does not properly reflect the severity of the act or society's intolerance for this form of exploitation. In addition, reliance on a measure of retail value of the material which is the subject of the prosecution is misplaced. The nature of the crime and the criminal enterprise involved in the distribution of obscene material or child pornography defies common theories of criminal activity.

I appreciate this opportunity to comment on these proposals. Please feel free to contact me if additional information is required.

Sincerely,

A handwritten signature in cursive script, reading "Donald E. Wildmon". The signature is written in dark ink and is positioned above the typed name.

Donald E. Wildmon
President
American Family Association
Education and Legal Defense
Foundation, Inc.