



Children's Legal Foundation

"protecting the innocence of children"

June 30, 1989

Honorable William W. Wilkins, Chairman
United States Sentencing Commission
1331 Pennsylvania Avenue, NW, Suite 1400
Washington, D.C. 20004

Dear Sir:

I serve as Executive Director of Children's Legal Foundation, (formerly Citizens for Decency through Law, Inc.), a national, non-profit legal organization devoted to assisting police and prosecutors to enforce constitutional laws prohibiting obscenity, child pornography and sexual exploitation. Since 1957, CLF has been involved in all aspects of the fight against pornography, but especially in providing expert legal assistance to allow communities, cities, states and the federal government to take effective action against illegal activity involving pornography.

I formerly served as Executive Director of the Attorney General's Commission on Pornography and Chief of the Criminal Section of the U.S. Attorney's Office in Louisville, Kentucky.

Children's Legal Foundation assisted Congress in drafting the federal pornography statutes affected by these guidelines. Indeed, on several occasions CLF provided expert testimony in Congress. Memoranda of law authored by CLF's legal staff were entered into the Congressional Record as bedrock support for these laws on three separate occasions. CLF has submitted amicus curiae briefs in every case before the Supreme Court involving obscenity or pornography for the last three decades. In addition, CLF currently represents a 4-year-old victim of dial-a-porn in a \$10 million lawsuit against the pornographic message provider and Pacific Bell. The child was molested by a 12-year-old boy after he listened to two-and-a-half hours of explicit sex messages. CLF has hundreds of affiliated citizen organizations around the United States with thousands of members, and hundreds of thousands of contributors. These supporters were instrumental in motivating Congress to pass the above legislation.

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This letter is in response to your June 2, 1989 request for comment on the proposed temporary emergency amendments to the Sentencing Guidelines regarding distribution of obscene materials. I would first request that you review the April 6 letter of our General Counsel, Benjamin Bull (copy attached), which sets forth in detail our views generally on this matter.

With respect to the proposed temporary, emergency amendments, Children's Legal Foundation renews its objections to several of the guidelines:

(1) The base offense level of (6) is too low to adequately confront a billion-dollar industry controlled almost exclusively by organized crime. When Congress overwhelmingly passed this legislation, it certainly did not intend that it never be used by federal prosecutors. Yet that will undoubtedly be the effect if the penalties remain this low -- prosecutors will recognize that convictions will have little to no impact on the illegal pornography industry.

(2) We oppose any attempt to increase or decrease the penalty depending on the "retail value" of obscene materials transported or whether transported for "pecuniary gain." Obscenity is illegal because it is considered harmful to communities, and to the nation as a whole. The motivation of its purveyors should not be relevant in sentencing. The fact that organized crime controls the industry because of its profitability supports our push for harsher penalties. But we do not seek to suppress obscenity only because organized crime gets rich selling it. We seek to suppress obscenity because it is harmful to our nation. Harsher penalties will deter organized crime, and therefore reduce the harm to our country. But it is the harm caused by obscenity, not its mere profitability, that should be the focus of law enforcement efforts and sentencing guidelines. And the harm flowing from the proliferation of obscenity in the United States exists whether disseminated for proven "pecuniary gain" or not. There is no Congressional intent to the contrary.

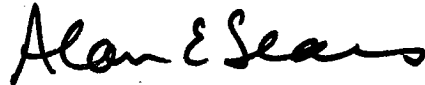
Again, we would ask the Commission to reconsider its proposed guidelines in light of this legislation's overwhelming support in Congress and the nation as a whole. We should point out that the trend in recent state and federal legislation has been to increase, not decrease, penalties for violations of obscenity and child pornography statutes, in recognition of growing evidence of organized crime's control of the industry.

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The Commission's recommendations fall far below the penalties in current law for numerous states for similar intra-state violations. Let us not make the federal law into a paper tiger, to be laughed at by the career criminals who flout it daily with impunity.

Thank you very much for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Alan E. Sears". The signature is written in a cursive, flowing style.

Alan E. Sears
Executive Director

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