Testimony of

Mr. Patrick Trueman

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STATEMENT OF PATRICK A. TRUEMAN

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My name is Patrick Trueman. I currently serve as senior legal counsel for the Family Research Council in Washington, D.C. I also serve as a consultant and law enforcement coordinator to Capital City Partners on its contract from the U.S. Department of Health and Human Services Rescue and Restore Campaign on Human Trafficking. For the Rescue and Restore Campaign, I work with and train federal, state, and local law enforcement officers on human trafficking. Also, I serve as counsel to the Paul and Lisa Program of Connecticut, a leading child advocacy organization which helps child and adult prostitutes get off the streets and to reclaim their human dignity. While I am not testifying today on behalf of Capital City Partners nor the Paul and Lisa Program, I mention my work with these groups because it is my observation, after nearly twenty years of working against pornography, that pornography is closely linked to an increase in prostitution, child prostitution, and human trafficking. I dare say that the belief that pornography is a powerful factor in creating the demand for illicit sex is a near universal observation of those involved in assisting the victims of prostitution and human trafficking...

From the end of the Administration of President Ronald Reagan in 1988 to the end of the Administration of President George H. W. Bush, I also served in the United States Department of Justice as Chief of the Child Exploitation and Obscenity Section (CEOS) in the Criminal Division. For the year prior to this, I served as the deputy in CEOS. CEOS prosecuted federal child sexual exploitation and abuse, child pornography, and obscenity crimes and coordinated the investigation and prosecution of these crimes nationally. During those years, under three Attorneys General, the Department of Justice had a very active and successful prosecution effort under way against the major producers and distributors of obscene material in the United States. The effort involved numerous nationwide federal obscenity prosecutions with indictments returned in many federal districts.

It has long been clear to prosecutors and the public that obscenity lies outside First Amendment protection. The Supreme Court has said as much in a number of cases. See, e.g., Roth v. United States 354 U.S. 476 (1957). In Miller v. California, 413 U.S. 15, 34 (1973) (quoting Breard v. Alexandria, 341 U.S. 622, 645 (1951)), additionally, the Court held that "to 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 . . . . It is a 'misuse of the great guarantees of free speech and free press.'"

Although the constitutional status of obscenity was clear, however, the Department prosecuted only a handful of cases in the twenty years prior to the establishment of CEOS. Because the Department was ignoring obscenity crimes, pornographers were emboldened, producing and distributing illegal products throughout the country, in stores, on cable/satellite television, and through the mail. Then the Department reversed course and began vigorously prosecuting obscenity. The impetus for the increased prosecution effort, starting in 1987, was the Attorney General's Commission on Pornography. That Commission, which began its work under Attorney General William French Smith, reported its findings in a "Final Report" delivered to Attorney General Edwin Meese III in 1986. Attorney General Meese followed a key recommendation of the Commission's Final Report and established a "strike force" (later called CEOS) in Washington D.C. to prosecute obscenity cases and to coordinate U.S. Attorneys in doing the same. General Meese, following the Commission's recommendations, also ordered his staff to draft key updates to the federal obscenity and child pornography laws and encouraged Congress to pass them. Congress did

so in passing the Anti-Drug Abuse Act of 1988, PL 100-690, 102 Stat. 4489, Title VII, § 7521 (adding sections 1466 and 1469 to Title 18 of the U.S. Code), overwhelmingly in both the Senate and House.

It goes without saying that leadership from the Attorney General, the nation's chief law enforcement official, is critical in defeating crime. That certainly was the case with General Meese and his two successors in the Bush Administration, Richard Thornburgh and William Barr, who took a strong hand in making sure that U.S. Attorneys, as well as federal investigative agencies, pursued obscenity cases. That support and continued involvement of these Attorneys General was critical to our success.

During my several years at CEOS, we found obscenity law quite workable and, moreover, well understood by jurors who had to make decisions on the guilt or innocence of fellow citizens. To those who argue that the prosecution of obscenity crimes is a waste and an unwise use of resources, I would point out that during the time I was section chief of CEOS we received more than $24 million in fines and forfeitures as a result of our aggressive prosecution activities. This amount was in excess of the budget of CEOS during those years. Those opposing obscenity prosecutions often claim that such prosecutions take resources from child exploitation cases. However, we don't hear that bank fraud or tax evasion prosecutions take resources from child pornography cases. Pitting child pornography prosecutions against obscenity prosecutions makes no sense to a concerned parent who might ask: "Why is the government spending tens of thousands of dollars prosecuting and incarcerating Martha Stewart rather than the criminal who spams hardcore pornography to my children?" When I hear law enforcement authorities pit child pornography against obscenity, I see it as is an excuse for doing nothing on obscenity crimes.

There were two large obscenity prosecution projects undertaken by the Department while I worked at CEOS and I would like to mention each today. Under my predecessor, Robert Showers, CEOS and multiple U.S. Attorneys teamed with the U.S. Postal Inspection Service in "Project Postporn" targeting the major mail order distributors of obscenity. It targeted those who were widely distributing sexually oriented advertisements through the mail offering obscene material. Most often, the advertisements themselves were obscene, and many were prosecuted as such. The offending companies would often send these advertisements to children who happened to be on a purchased mailing list. Prosecutions were brought in districts from which citizen complaints emanated. "Postporn" resulted in 50 individual or corporate convictions in 24 cases in 20 federal jurisdictions and nearly every mail-order distributor of obscenity caught in its net. These convictions all but ended the practice of sending pornographic advertisements through the mail.

For the second large-scale prosecution project, we targeted the major producers and suppliers of obscene material in the U.S. With the cooperation of the Los Angeles Police Department Vice Squad, we assembled a list of the top violators of Federal obscenity laws, including about 50 companies. Most of them were located in the Los Angeles area and LAPD Vice already had in-depth investigative knowledge of them. After the list was established, we worked with FBI field offices and local law enforcement agencies throughout the country to learn which of the top suppliers were shipping products into cities across the country. This was done by surveying products on the shelves of pornography shops. Then, with the backing of the Attorney General, we called a meeting in Los Angeles of U. S. Attorneys, as well as interested federal, state, and local law enforcement agencies, to demonstrate that obscenity laws were being violated in the various jurisdictions of those present. From this meeting, our so-called "Los Angeles Project" was launched. U.S. Attorneys agreed to initiate investigations of those on our target list who were likely violators of obscenity laws. Because of the scarcity of federal investigative resources--a perennial problem--we relied heavily on police and sheriffs' offices for our investigations. Often, we would have them deputized as U.S. Marshals to provide them with federal authority and thus enable them to act outside the bounds of their normal jurisdiction. We found local law enforcement agencies quite willing to lend support to these investigations.

About 20 companies of the 50 or so on that list were convicted under this project. I want to emphasize that these were major producer/suppliers, so convictions against them made a significant difference in the amount of illegal products distributed in interstate commerce. We were beginning the second phase of this project when the Bush Administration ended and the next administration all but halted obscenity prosecutions.

Our prosecution strategy in this project was ultimately to bring cases against all the major producer/suppliers of obscenity, and to bring those cases in every state where such material was produced and distributed. We prosecuted cases from California to Florida; from Texas to Minnesota. The man that the Attorney General's Commission identified as the top distributor of illegal pornography, Reuben Sturman, was prosecuted in Las Vegas. It was my

belief then, as it is today, that we could win federal obscenity cases in any state. It is difficult to imagine a part of America where citizen-jurors would assert that their community standards are so low as to embrace obscene materials. We also brought prosecutions on a wide variety of material that we believed to be obscene under Miller, rather than going after only the most extreme material. We did this because we believed it was important to let juries decide what material offended community standards. Miller outlined what may be found to be obscene, depending on community standards, i.e., "erotic depictions of ultimate sexual acts, normal or perverted, actual or simulated; masturbation; excretory functions; lewd exhibition of the genitals; or sado-masochistic sexual abuse." 413 U.S. at 25. Our experience demonstrated that juries were willing to convict on material across the spectrum of obscenity described by Miller.

In addition to the two prosecution projects mentioned above, the Department also prosecuted many local, large-scale pornographers owning multiple pornography shops in various cities. Examples include Ferris Alexander, who monopolized the illegal pornography industry in Minnesota for decades. The conviction was upheld on appeal. See U.S. v. Alexander, 509 U.S. 544 (1993). A similar fate befell Dennis and Barbara Pryba of Alexandria, Virginia. They were convicted in a jury trial of obscenity-based RICO charges and forfeited their 12 pornography stores and a warehouse. The only distributor of obscenity via satellite, Home Dish Only, pleaded guilty to obscenity charges in the Western District of New York and the District of Utah.

I believe that our prosecution strategy during the years I was at CEOS was a correct one and it is a shame that it was abandoned when President Bush left office. Though our efforts were cut short by a change of presidential administrations, we made a very substantial dent in the obscenity industry in the United States. I was pleased to hear Attorney General Gonzales recently indicate strong support for enforcement of obscenity laws.

By the end of the administration of President George H.W. Bush, we were successful not only in gaining convictions throughout the country, but in changing the nature of hardcore material produced. Themes of rape, incest, bestiality, pseudo-child pornography (in which adults dress and act like children while engaging in sex) -- all common themes prior to our prosecution efforts--disappeared from store shelves and were no longer produced by the major pornography companies. Some distributors of hardcore pornography refused even to ship products to those states where convictions were obtained.

The Department's numerous cases during that era gave ordinary people sitting on juries across America, applying the Miller standard for obscenity, the opportunity to decide whether it was right to have pornographers flood their town with hardcore pornography. Almost without exception they said, "No." People would do the same today, I believe, if given the chance. However, if the Department of Justice shrinks back from enforcing obscenity laws or prosecutes only the most extreme material, it deprives the people of their lawful opportunity to rid their communities of obscene material. People are tired of an "anything goes" community standard and want their community to be a decent place to live. Few prefer to live or work near a porn shop or even do their shopping near such a business. For these reasons, they do not want the Department of Justice to look the other way, especially today when the reach of pornographers is far greater than ever before because of cable and satellite TV and the Internet. It is my hope, judging from the Attorney General's recent comments, that the Department has heard this message. The Internet has now been in popular use for more than a dozen years. It is the primary means for distributing obscene material and it has touched the lives of countless children who unwittingly or willingly gain access to such material. The Supreme Court has recognized that obscenity and child pornography laws are still in effect, both for physical transfers and electronic transfers, noting in Reno v. ACLU, 521 U.S. 844, 877 n.44 (1997), that: "Transmitting obscenity and child pornography, whether via the Internet or other means, is already illegal under federal law for both adults and juveniles." The Department should vigorously prosecute Internet obscenity.

Over the last few years some have said we should adopt a "go slow approach" in order to stay within the legal boundaries set by the Court, which may otherwise loosen or jettison altogether the Miller community standards framework. But Miller has remained vital for over three decades, suggesting that vigorous enforcement of the obscenity laws is well within constitutional bounds. Moreover, vigorous prosecution could well promote the "community" aspect of community standards. Some believe that prosecutions must "start with the hardest material" such as bestiality or rape films because the public's attitude toward pornography has changed. Then, it is suggested, once a number of convictions have been secured involving the most extreme material, prosecutions can begin against less extreme material. Yet, public attitudes are more likely to change for the worse precisely because of this strategy. If pornographers know that only the most extreme obscene material will be prosecuted, they will believe

they are safe in distributing virtually all obscenity into communities and on the Internet and cable/satellite TV. Hence, it should not be surprising that we have seen an explosion of hardcore pornography in our society, and that, correspondingly, our young people have become desensitized to ever-more brazen obscene material.

Some argue that there exists no evidence that obscene material harms, and thus there is no reason to enforce obscenity law. That is merely an argument for substituting the prosecutor's judgment for the judgment of the people, expressed through their elected representatives. It is also perhaps an argument for the need for more research. However, the common sense of the people, as reflected in the valid government interests identified by the Supreme Court, also has a place in the discussion. In Paris Adult Theater I v. Slaton, 413 U.S. 49, 58 (1973), the Court stated that the interests which support the prohibition on obscenity include "the quality of life and total community environment, the tone of commerce in the great city centers, and, possibly, the public safety itself." Any vice cop in any city in America can tell you that pornography shops are magnets for crime, including prostitution, child prostitution, and the sale of illicit drugs.

I believe Attorney General Alberto Gonzales and federal prosecutors would have great public support if the Department vigorously prosecuted obscenity crimes. Indeed, a great segment of our society is clamoring for it to do so. A poll conducted by Wirthlin Worldwide in March of 2004 found that eighty-two percent of adult Americans surveyed said that the Federal laws against Internet obscenity should be vigorously enforced. Perhaps more telling is the number of complaints or reports of potential obscenity crimes by the public. The exact number is unknown but one indication of that figure comes from Morality in Media. That organization set up a very helpful tool for both the public and federal prosecutors. The tool is a Web site, www.obscenitycrimes.org where citizens who receive pornographic spam or find potentially obscene material on the Internet may file a report. The report of the incident is then forwarded to the Department of Justice in Washington as well as to the appropriate United States Attorney in the district from where the report originated. Since the inauguration of this unique effort, more that 50,000 reports or complaints have been registered with the Department of Justice. The attached summary from Morality in Media compiles the number of reports received by federal districts. Given the sound constitutional foundation of and strong public backing for our obscenity laws, I am hopeful that we will find the Department of Justice again to be a willing advocate for proper enforcement. A sound prosecution plan, should, in my judgment, include numerous prosecutions brought by multiple United States Attorneys, coordinated by CEOS, against the major producers and distributors of obscenity including publicly-traded companies that are now engaged in selling obscenity due to high profits. Prosecutions should be on a wide variety of material. Let the people decide!