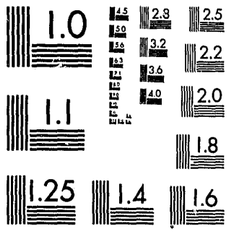

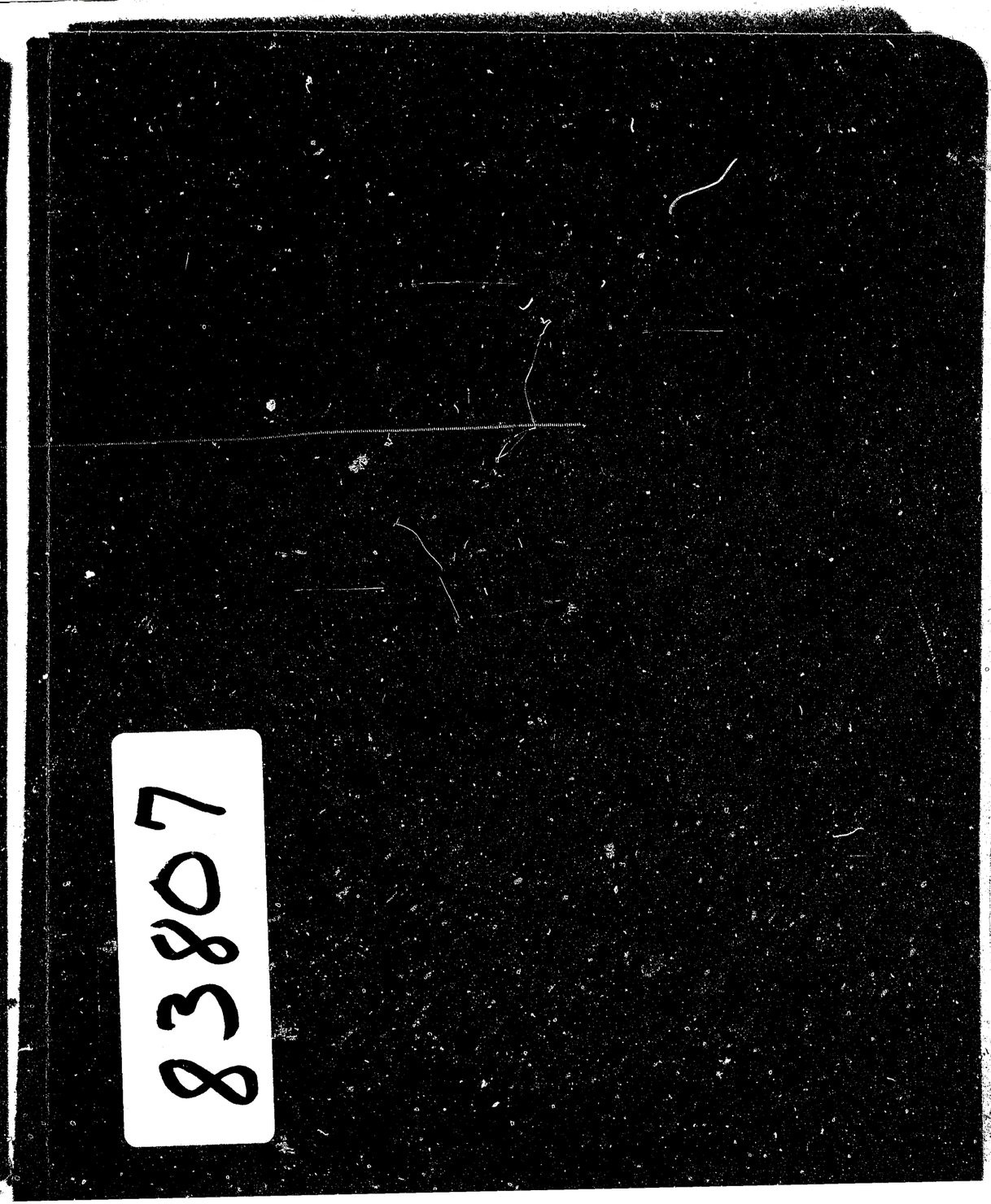

Department of Justice

STATEMENT

OF

MARK RICHARD
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON JUVENILE JUSTICE
UNITED STATES SENATE

CONCERNING

CHILD PORNOGRAPHY

ON

APRIL 1, 1982

My name is Mark Richard and I am Deputy Assistant Attorney General in the Criminal Division of the Department of Justice. I am pleased to appear before you here today to discuss the enforcement of 18 U.S.C. 2251 and 2252, which were enacted on February 6, 1978, and deal with the production and distribution of material depicting minors engaging in sexually explicit conduct; 18 U.S.C. 1461 and 1462, which prohibit the mailing and interstate transportation of obscene material as these statutes have been utilized in connection with child pornography; and 18 U.S.C. 2423, the portion of the White Slave Traffic Act which deals with minors.

Prior to May of 1977, it had been Department of Justice policy to place priority upon obscenity prosecutions involving large-scale distributors engaged in multi-state operations and cases in which there is evidence of involvement by known organized crime figures. This policy was dictated by the fact that United States Attorneys are responsible for litigation under literally thousands of criminal and civil statutory provisions, and limited manpower and other resources require United States Attorneys to carefully budget the amount of time and effort that can be devoted to any one subject area. Having become aware by that time of an increasing problem involving the distribution of obscene material depicting children, the Department added child pornography to the categories of priority prosecution in the obscenity area. Some statistical information with regard to these prosecutions was provided to this subcommittee.

by our letter of November 5, 1981, a copy of which is attached to this statement, in response to Chairman Specter's letter of October 30, 1981, and I would like now to update the information provided at that time.

Since May of 1977, 47 persons have been indicted under all available obscenity statutes for distribution of obscene material depicting minors, 43 defendants have been convicted, none acquitted, and charges against three are still pending because the defendants are foreign nationals who cannot be extradited under any available treaties.

Utilization of 18 U.S.C. 2252 has been limited by the fact that that statute covers only distribution for commercial purposes, and we have learned that many of the individuals who distribute this material do it by trade or exchange rather than by sale. Sections 1461 and 1462 contain no such limitation, and if 18 U.S.C. 2252 is to be rendered more useful as a prosecutive vehicle, the commercial purposes limitation should be deleted. Indictments naming 18 of the above-mentioned defendants included charges under 18 U.S.C. 2252; 14 defendants were convicted of this violation, two were convicted of other obscenity violations, and a case involving one defendant charged under this section, a foreign national, is still pending. One defendant charged under 18 U.S.C. 2252 committed suicide.

Regrettably, we have been singularly unsuccessful in developing prosecutions under 18 U.S.C. 2251. Due to the clandestine nature of the child pornography industry, it has proven extremely difficult to develop evidence that an individual

was responsible for the production of mailed or shipped material. Only one individual has been indicted under 18 U.S.C. 2251; he subsequently pled guilty to other charges under 18 U.S.C. 2252 and was sentenced to eight years imprisonment.

We work closely with the Postal Service and the Federal Bureau of Investigation who share investigative jurisdiction for violations of these statutes, and with the United States Attorneys, and we feel we have developed an effective program for prosecution of these violations. In fact, all child pornography cases that have been brought to our attention by the investigative agencies here in Washington have been prosecuted except for a very few which were factually deficient for one reason or another, and we are unaware of any unwillingness on the part of United States Attorneys to prosecute cases which have been brought directly to their attention. While the FBI, as an in-house investigative agency, has always directly referred these cases to United States Attorneys, coordination with the Postal Service, until recently, was maintained at the national level; that is, all Postal referrals were cleared through the Criminal Division before being sent out to United States Attorneys. However, as a result of the considerable expertise that Postal Inspectors have developed in this area over the past couple of years, we have recently authorized the Postal Service to make direct referrals to United States Attorneys. In light of the extensive experience which Criminal Division attorneys have developed in the obscenity area, our guidelines in the United States Attorneys' Manual require United States Attorneys to consult with the Criminal Division before returning any indictments in these cases. We

have received a high degree of cooperation from the United States Attorneys in this area. Finally, attorneys in this Division have participated in special training seminars that have been held by both the FBI and the Postal Service dealing with the prosecution of these cases.

Prosecutions under the White Slave Traffic Act, including 18 U.S.C. 2423, have been traditionally referred by the FBI to United States Attorneys who have been given a high degree of independence in the handling of these cases. Departmental guidelines provide that prosecution is generally limited to commercial prostitution activities, but that other violations of the statute may be prosecuted after consultation with the Division where the facts warrant. Statistics concerning prosecutions under 18 U.S.C. 2423 were included in our letter to Chairman Specter of November 5, 1981, and we have now obtained data for Fiscal Year 1981. As we noted in that letter, prosecution statistics under 18 U.S.C. 2423 are obtained from monthly reports submitted by United States Attorneys to the Department. However, this data is reported by the United States Attorneys only by reference to the principal statute involved in the case. Therefore, our statistics are limited to only those cases where 18 U.S.C. 2423 was the sole or principal violation. With this limitation in mind, we can report that during Fiscal Years 1978 through 1981 charges were filed against 21 defendants under 18 U.S.C. 2423, 18 defendants were convicted, one defendant was acquitted and charges against one defendant was dismissed. Once

again, I would note that there may have been additional charges filed and dispositions obtained under 18 U.S.C. 2423 which were reported by United States Attorneys under other statutes and which, therefore, have not been picked up in our statistical reporting system.

I previously noted the limitation in the usefulness of 18 U.S.C. 2252 due to the fact that it requires that distribution be for a commercial purpose. I would now like to comment briefly on certain other aspects of these statutes.

First, jurisdiction under 18 U.S.C. 2251 may be predicated either upon the actual mailing or transportation in interstate or foreign commerce of a visual or print medium. However, jurisdiction also may be found where a defendant "knows or has reason to know" that the visual or print medium will be so transported or mailed. While there will be no difficulty in establishing jurisdiction where it can be shown that material, in fact, was mailed or was shipped in interstate or foreign commerce, the alternative basis for jurisdiction will obviously be more difficult to establish if no such mailing or transportation occurs. However, up to the present time we have not had to deal with any problem caused by this jurisdictional language.

Second, 18 U.S.C. 2253 defines "sexually explicit conduct" as, among other things, "sado-masochistic abuse (for the purpose of sexual stimulation)." This definition is vague because it

fails to specify whose sexual stimulation is intended--the defendant's, the child's or some prospective viewer of the material. This vagueness could, perhaps, be cured by changing the relevant language to "sexually oriented sado-masochistic abuse."

Third, the age of the minor is an element of the offense in both 18 U.S.C. 2251 and 2252. Some obscene material depicts children who are clearly under the age of sixteen; however, the age of the child is not so readily apparent in other obscene material. In the latter cases it may be necessary to identify the child and offer proof of age in order to establish this element of the offense. In light of the clandestine fashion in which such obscene films and magazines are produced this will often be extremely difficult. Unless we have such proof of age, we are forced, as a practical matter, to limit our prosecutions to cases where the subjects depicted in the material are clearly younger than sixteen.

With regard to 18 U.S.C. 2423, we have two suggestions, both of which were made in informal discussions with Judiciary Committee staff at the time this legislation was under consideration.

First, jurisdiction over offenses under the statute extends to offenses taking place "within the District of Columbia." This anachronistic provision is not needed since the District of Columbia has its own criminal code and has set forth a number of prostitution offenses in that code.

Second, we believe that the language "debauchery or other immoral practice" which was deleted when the statute was amended, should be reinserted. This language did not prove troublesome when it was a part of the statute and appears to reach conduct which is not prostitution or commercially exploited prohibited sexual conduct, such as the taking of a minor across the state line for personal gratification. I would also note that this language is included in the parallel provisions in sections 2421 and 2422 dealing with adult prostitution.

In closing, I want to assure the Subcommittee that the Department of Justice takes very seriously the potential for child abuse that is implicated in the violation of these statutes and intends to devote appropriate resources consistent with our other prosecutive obligations to the prosecution of these cases. Once again, I appreciate the opportunity to appear before you today.

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 05 1981

Honorable Arlen Specter, Chairman
Subcommittee on Juvenile Justice
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your letter to the Attorney General dated October 30, 1981, requesting information concerning enforcement of Public Law 95-225.

Seventeen defendants have been indicted under 18 U.S.C. 2251-2253. 1/ Ten defendants were convicted under these statutory provisions. Two defendants were convicted under other pre-existing obscenity statutes. 2/ No defendants were acquitted. As of the present date cases involving four defendants are pending.

The above figures do not reflect the full extent of the Department's enforcement program in the child pornography area. The Department initiated a program of priority emphasis in this area in May of 1977 before Public Law 95-225 was enacted. Since that time forty-three defendants have been indicted under all available statutes including 18 U.S.C. 2251-2253. Thirty-four defendants have been convicted, no defendants acquitted, and cases involving eight defendants are pending as of the present date. The use of 18 U.S.C. 1461-1465 has been mandated in a number of child pornography cases because 18 U.S.C. 2251-2253 is limited to production and distribution for commercial purposes, and many of the distributors of this material are involved in consensual exchange of material, which is violative of the pre-existing obscenity statutes, rather than commercial distribution.

1/ One defendant committed suicide before trial.

2/ Some of the cases brought under 18 U.S.C. 2251-2253 included charges under 18 U.S.C. 1461, 1462 or 1465 as well.

Nichols

Data concerning prosecutions under 18 U.S.C. 2423 is obtained from monthly reports by United States Attorneys to the Department. However, this data is reported by the United States Attorneys only by reference to the principal statute involved in the case. Therefore, the following data concerning prosecutions under 18 U.S.C. 2423 is limited to only those cases where 18 U.S.C. 2423 was the sole or principal violation. With this limitation in mind, we can report that during fiscal years 1978 through 1980, charges were filed against fourteen defendants under 18 U.S.C. 2423, eight defendants were convicted, one defendant was acquitted and charges against one defendant were dismissed. As explained above, there may have been additional charges filed and dispositions obtained under 18 U.S.C. 2423 which were reported by United States Attorneys under other statutes and which, therefore, have not been picked up in our statistical reporting system. Data for fiscal year 1981 is not yet available but should be available in the near future if the Subcommittee desires to have it.

The Federal Bureau of Investigation has investigative jurisdiction of violations of 18 U.S.C. 2423, and the Bureau shares investigative jurisdiction with the Postal Service for violations of 18 U.S.C. 2251-2253. The Bureau is presently compiling information concerning investigations in response to your inquiry, and this information will be forwarded as soon as it is available. You may wish to contact the Postal Service with regard to child pornography investigations that have been conducted by that agency.

I trust this satisfies your inquiry.

Sincerely,

(Signed) Robert A. McConnell

ROBERT A. McCONNELL
Assistant Attorney General

END