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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

Crime - Child Porn

~~Lead Report!~~

May 9, 1996

The Honorable Janet Reno
United States Attorney General
Department of Justice
10th and Constitution, N.W.
Washington, D.C. 20530

Dear Attorney General Reno:

I have recently received an internal government memorandum and other information which raise serious questions about the willingness of Janet Napolitano, the U.S. Attorney in Phoenix, Arizona, to enforce federal child pornography laws. I am writing you to request further information so that I can investigate this matter thoroughly.

In particular, the information I have received indicates that Ms. Napolitano refused to authorize seeking a search warrant for the home of an individual who had ordered graphic child pornography from pornography distributors, including from undercover U.S. Postal inspectors. Importantly, the documents I have examined indicate this refusal was based on the personal philosophy of Ms. Napolitano, and not on legal flaws in the design or execution of the undercover operation.

According to my information, local authorities obtained a search warrant based on the same information supplied by Postal inspectors and reportedly found a large stash of child pornography, including pictures of the individual engaging in sexual acts with boys under 15 years of age. Apparently, the individual has admitted to the Phoenix Police Department that he had engaged in sex with underage boys at least 100 times. In fact, a multi-count indictment was handed down against this individual based on the evidence seized by local authorities pursuant to the search warrant. Sources in Phoenix, Arizona, and elsewhere have also informed me that Ms. Napolitano has a history of failing to prosecute child pornographers, many of whom have been successfully prosecuted in state courts in Arizona. If these allegations are true, they would be a serious concern for me and others.

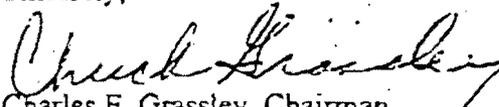
Furthermore, during the course of my background investigation on the situation in Phoenix, I have become concerned that other U.S. Attorneys have adopted a policy of declining prosecution of child pornographers or refusing to seek search warrants in child pornography investigations.

In order to determine the most appropriate way of handling the Phoenix matter, as well as other similar cases, I ask that you provide me with the following information:

- 1) a list of each and every instance in which the Justice Department or a U.S. Attorney has declined to prosecute a child pornographer; please identify the investigators, prosecutors and supervisory personnel associated with these cases,
- 2) a list of each and every instance in which the Justice Department or a U.S. Attorney has not authorized seeking a search warrant for suspected child pornographers; please identify the investigators, prosecutors and supervisory personnel associated with these cases; please also identify those cases where the suspect was identified as a result of a "reverse sting" operation,
- 3) any complaints received by the Department of Justice, or any of its agents, regarding the wrongful or inappropriate refusal to prosecute child pornographers or to authorize the seeking of a search warrant in a child pornography investigation,
- 4) any formal or informal statements of policies with regard to the execution of search warrants for the homes of child pornographers identified through "reverse sting" operations,
- 5) any formal or informal statement of policy regarding the declination of prosecution for accused child pornographers identified through "reverse sting" operations.
- 6) any formal or informal statement of policy regarding the prosecution or non-prosecution of child pornographers or child molesters where the gender of the adult offender is the same as the gender of the child victim,
- 7) any formal or informal statement of policy regarding the prosecution or non-prosecution of child pornographers or child molesters where the gender of the adult offender is different from the gender of the child victim.

Your prompt assistance in responding to my inquiry will be greatly appreciated. Thank you in advance for your cooperation.

Sincerely,



Charles E. Grassley, Chairman
Subcommittee on Administrative
Oversight and the Courts

cc: Chairman Orrin Hatch
Senator Joe Biden
Senator Jon Kyl
Senator John McCain



Office of the Attorney General
Washington, D. C. 20530

May 10, 1996

The Honorable Charles E. Grassley
United States Senate
Washington, D.C. 20510-6275

Dear Senator Grassley:

I am in receipt of your letter of May 9, 1996 regarding the federal prosecution of child pornography cases. I can assure you that the Department of Justice takes very seriously any exploitation of children, including child pornography, and vigorously enforces the law.

As you know, in a number of areas of criminal law the federal government shares jurisdiction with the states. In some criminal cases, federal penalties -- such as the Three Strikes provision -- are more stringent than those defendants might face at the state level. In other instances, however, the state sentence may provide harsher penalties. When that occurs, it may make more sense to have the case brought in state court.

Contrary to your assertion, the United States Attorney's office for the District of Arizona actively enforces the child pornography laws. For example, in 1995 the district successfully prosecuted Gerald A. Racicot for transporting teenage girls across the Mexican border to take pornographic photos. In 1994, John Matthews pleaded guilty to a charge of purchasing child pornography through the mail. Just this week, on May 8, 1996, a grand jury in the district issued a two-count indictment charging Norman Spiker with violating the child pornography statute. The United States Attorney for the District of Arizona -- like all of her colleagues -- bases prosecutorial decisions on the fair, neutral, and impartial principles that guide every Department decision regarding the filing of criminal charges.

The district also has been one of the most active in the country in prosecuting crimes where children are victims. During 1994-1995, for example, the district prosecuted more than 100 cases of child molestation or sexual contact with a minor. The United States Attorney has been a national leader in organizing multi-disciplinary teams to deal with the problem of child exploitation. To further demonstrate her commitment, she has assigned 17 Assistant United States Attorneys to spend a substantial part of their prosecutive time on child-victim cases.

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Moreover, the district has always and will continue to approve search warrants in child pornography cases where the law and the facts justify them. In fact, of the last ten search warrants presented to the District of Arizona for approval in child pornography cases, nine were approved and executed. These cases are still pending or under investigation.

You refer to the defendant in a specific case in your letter. You should know that, if convicted after trial in state court, the defendant could face a sentence that ranges from 10 to 24 years. In federal court, depending on his criminal history, the sentence under the federal sentencing guidelines could range from 12 to 24 months. Depending upon the charges and other considerations, the laws of other states may produce different results.

Contrary to the information you may have received, the Justice Department has been working closely and cooperatively with the United States Postal Inspection Service on "Project Special Delivery." Approximately three-quarters of the cases brought so far under that operation are expected to be charged in federal court. In fact, at his May 9 press conference, Chief Inspector Kenneth J. Hunter said, "I join with all the Postal Inspectors who worked on this case in expressing gratitude to the Child Exploitation and Obscenity Section of the U.S. Department of Justice and the state and local police for their tireless efforts in helping carry out this investigation." He also said, "The Postal Inspection Service is deeply indebted to United States Attorneys, as well as state and local prosecutors, for their efforts to prosecute the individuals we identified in this operation."

In your letter, you asked for a variety of information concerning the handling of child pornography prosecutions by the Department. To the extent that the information necessary to answer your questions is available to us, much of it is not maintained in the form requested. Therefore, although we have begun the process of assembling the information you are seeking, it will take some time. We will also need to evaluate these documents to determine whether it is appropriate to release the information you seek, much of which relates to investigative matters.

With respect to your request for information concerning any Department policies regarding the gender of an alleged offender or victim, it is the policy of the Department of Justice to not consider the gender of either the offender or the victim in making prosecutorial decisions.

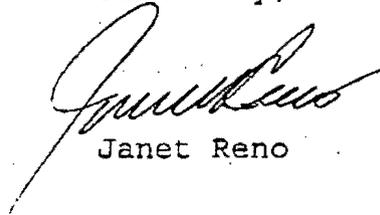
Since I became Attorney General, our commitment to the fight against violent crime and especially those who would exploit

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children has not wavered. I consider the protection of children to be among my most important responsibilities, and I will continue to do whatever I can to make sure children are safe everywhere.

We will keep you apprised of our progress as our efforts to respond to your inquiry continue. Please feel free to contact me if you have any further questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Reno", is written over the typed name.

Janet Reno

Date: 05/12/96 Time: 11:48
DFederal Enforcement of Child Pornography Laws

To: National Desk, Political Writer
Contact: Clarkson Hine of the Office of Sen. Bob Dole,
202-224-5358

WASHINGTON, May 12 /U.S. Newswire/ -- Following is the text of a letter sent today by Senate Majority Leader Bob Dole to Attorney General Janet Reno:

Dear Attorney General Reno:

Friday night, the ABC news show ``20/20'' ran a shocking story suggesting that Janet Napolitano, the United States Attorney in Phoenix, Arizona, refused to cooperate with the U.S. Postal Inspection Service in ``Project Special Delivery,''' a two-year undercover investigation to combat vicious child pornographers.

More specifically, the ``20/20'' segment suggests that Ms. Napolitano may have refused to authorize seeking a search warrant for the home of a man who had ordered graphic child pornography from undercover U.S. Postal inspectors. It appears that this refusal may have been based on Ms. Napolitano's ``philosophical'' opposition to the ``reverse sting,''' a law enforcement technique that is sometimes used to catch secretive criminals like child pornographers and terrorists. According to the ``20/20'' segment, officials in the U.S. Attorney's office in Phoenix may have also refused to authorize seeking a search warrant because they believed that ``Project Special Delivery'' improperly targeted gay men.

Needless to say, the U.S. Postal Inspection Service had good cause for concern. When local law enforcement authorities subsequently obtained a warrant and searched the Phoenix man's home, they found a large amount of child pornography. Apparently, the man has also admitted to engaging in sexual acts with underage boys dozens and dozens of times. Some of these boys are reportedly as young as 10 years old.

Earlier this week, Congress passed ``Megan's Law,''' a bill designed to protect our children from sexual predators who may be living in their local communities. It would be highly disturbing, to say the least, if our top federal law enforcement officials are not aggressively enforcing the federal child pornography laws at the very same time that Congress is attempting to strengthen these laws.

Attorney General Reno, I would appreciate hearing your views on the ``20/20'' segment. Do the decisions of the U.S. Attorney in Phoenix reflect the policies and priorities of the Justice Department and the Clinton Administration? If so, I cannot express my disagreement more strongly.

I would appreciate a prompt response to this inquiry. I have attached a copy of a partial ``20/20'' transcript for your review. Thank you in advance for your cooperation.

Sincerely,

BOB DOLE

Senate Majority Leader

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/U.S. Newswire 202-347-2770/

APNP-05-12-96 1150EST

Date: 05/12/96 Time: 13:04

Dole Continues Crime Critique, Questions Prosecutor's Conduct

WASHINGTON (AP) Sen. Bob Dole demanded Sunday that the Clinton administration explain the conduct of a federal prosecutor in Arizona during a major child pornography investigation. The White House labeled the inquiry a misguided campaign gimmick.

In a letter to Attorney General Janet Reno, Dole cited reports that U.S. Attorney Janet Napolitano of Phoenix refused to authorize a search warrant for postal inspectors during a two-year investigation of suspected child pornographers.

"It would be highly disturbing, to say the least, if our top federal law enforcement officials are not aggressively enforcing the federal child pornography laws at the very same time that Congress is attempting to strengthen these laws," wrote Dole, the Senate majority leader and presumptive Republican presidential nominee.

"Do the decisions of the U.S. attorney in Phoenix reflect the policies and priorities of the Justice Department and the Clinton administration?" Dole asked. "If so, I cannot express my disagreement more strongly."

Napolitano has defended her actions in the case, which were first questioned last week by a Dole GOP Senate colleague. Reno also defended Napolitano, saying she was among the department's leaders in pursuing child pornography cases and that in the case in question, the suspect faces far stiffer penalties under state law than had he been charged under federal law.

For Dole, the presumptive Republican presidential nominee, the letter was the latest salvo in an effort to question Clinton's crimefighting credentials by turning the spotlight on administration appointees Dole considers too liberal. Until Sunday, Dole had focused on Clinton judicial appointees, but advisers said Napolitano was one of several Clinton-appointed prosecutors that would receive scrutiny from the Dole campaign.

The administration has scoffed at the effort, and suggested Dole was trying to mask his own party's weaknesses on the crime issue, particularly its majority opposition to gun control. But the Dole focus has had an impact; Clinton last week withdrew the nomination of a Florida attorney and Democratic fund-raiser, Charles "Bud" Stack, for a federal appeals court post in the face of criticism from Dole that the man was unqualified.

"Sure, President Clinton talks tough on crime, but his rhetoric doesn't match his record," Dole said Saturday at a campaign event in Nebraska.

The administration has quickly responded to each Dole foray, and did so again Sunday after Dole released his letter to Reno, underscoring the sensitivity of both campaigns to the political power of the crime issue.

"What this is about is an attempt to whitewash Senator Dole's nonexistent record on crime," White House aide Rahm Emanuel said Sunday. "While President Clinton has tried to put more cops on the beat and get guns off the street, Senator Dole has fought us every step of the way."

In targeting Napolitano, a prominent Democratic activist in Arizona before being named to the Justice Department post by Clinton, Dole was following in the footsteps of GOP Senate colleague Charles Grassley of Iowa. Grassley, a senior Judiciary Committee member, wrote to Reno last week suggesting he had documents indicating that Napolitano has been reluctant to prosecute child pornography cases.

In the recent case, dubbed "Project Special Delivery" by

postal investigators, ABC News quoted a postal inspector as saying Napolitano refused to seek a search warrant after being presented with evidence against a suspect. The inspector told ABC she believed Napolitano's office refused to cooperate because it believed inspectors were unfairly targeting homosexual men in their investigation.

"It's just not true flat wrong," Napolitano said Saturday in response to those allegations.

She added that there had been no discussions or documents supporting the claim that prosecutors were concerned about homosexual aspects of the case.

"We don't care. It's pornography and we have to prosecute it," she said.

Inspectors took their case to a county prosecutor who approved the warrant to search the home of James Norman Moore, who was indicted on six counts of sexual exploitation of a minor. In all, the two-year investigation led to charges against 45 people in 36 states, and investigators say additional arrests are planned.

Napolitano said all federal guidelines were followed in the case and that nine of 10 requested search warrants were approved.

APNP-05-12-96 1306EST