# The Government vs. Erotica

#### **Basic freedoms**

and fair play are

at stake when the

**DOJ** pursues a

catalog company

The Government vs. Erotica: The Siege of Adam and Eve By Philip D. Harvey, Nadine Strossen

Prometheus Books, 2001 \$24, 295 pages

riticizing federal government prosecutors—especially in the fervent patriotic undertow following a wave of unprecedented terrorist attacks-is not a popular activity. Defending pornography has made people notorious but rarely popular. This unforgiving indictment by Philip D. Harvey and Nadine Strossen of the tactics of the U.S. Department of Justice against distributors of porno-

R. J. Comer is an

attorney who

**Etiquette for** 

Outlaws.

practices in Los

Angeles and wrote

the foreward to the

national best seller

graphic material does both and does them well.

Part courtroom drama, part cable movie melodrama, part incisive guerrilla documentary, The Government vs. Erotica: The Siege of Adam and Eve is

the story of Harvey's eight-year battle against successive DOJ-initiated obscenity indictments across various jurisdictions as the DOJ shopped for a jury that would declare obscene the pornographic material that Harvey's company still distributes. They could not convict him in his own state of North Carolina, so they indicted him in Utah. He countered by suing the federal government on conspiracy charges.

Although published before September 11 and focused on prosecutions initiated by former Attorney General Edwin Meese and his immediate successor, the book is timely. At a time when America has its most conservative attorney general since Meese, and at a time when the DOJ must strike a balance between preserving civil liberties while empowering law enforcement to combat elements that threaten America's sacred values, Harvey and Strossen remind us that the government is not always right and that its tactics are not always noble.

The story begins on May 29, 1986, with a surprise police raid on Adam and Eve, Harvey's adult product warehouse and mail order company in Carrboro, North Carolina. Armed with a warrant to search for and confis-

cate allegedly obscene material, federal and state law enforcement officials detained and interviewed employees and confiscated a large portion of Harvey's inventory. His surprise and indigna-

tion were exacerbated by the fact that he had recently conferred with his local district attorney to ensure that none of his material was obscene according to the recently revised North Carolina obscenity statute. At the district attorney's request, Harvey had removed several questionable items from the Adam and Eve catalog. So why was his company being raided?

The answer to this question

propels the legal battle fought for eight years following the raid. Through diligent and aggressive legal representation by the late Bruce Ennis, to whom the book is dedicated. Harvey and his legal team uncovered and eventually ended a government drive to put distributors of

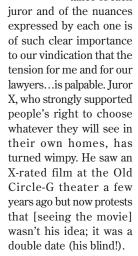
pornography out of business.

Ostensibly, the DOJ's National Obscenity Enforcement Unit (or NOEU) was intended to eradicate obscenity, but its true purpose was the elimination of all pornography-even pornographic material clearly protected by the Constitution. Obscene material is not protected, and what is obscene is defined in large part by local community standards. In partnership with local district attorneys, the DOJ engaged in multijurisdictional obscenity indictments, subjecting adult-oriented material to the standards of the most conservative local communities. In most cases, distributors of adult material lacked the wherewithal to defend themselves on multiple fronts and settled the indictments. In settlement, the DOI demanded that the distributors cease distributing all adult-oriented material, not just obscene material. By this strategy, the DOJ put several companies out of business without ever having to try a case.

Unlike other distributors. Harvey fought back. He emerged victorious from his first obscenity trial in Alamance County. The

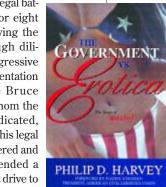
> book's narration of iury selection and trial tactics achieves edge-of-the-seat suspense. To re-create the tension in the courtroom, Harvey and Strossen intersperse the narrative with excerpts from his trial notes:

> > The excruciating importance of each



Trial attorneys will especially enjoy the transcription of voir dire, direct and cross-examination, and closing statements.

Having uncovered NOEU memoranda and other evidence that the NOEU was attempting to curtail all pornographic material, Harvey and his legal team struck back. They filed a complaint in the U.S. District Court in Washington, D.C. alleging that



then-Attorney General Richard Thornburgh and the DOJ were engaging in a conspiracy with local prosecutors to coerce distributors of protected adult-oriented material into selfcensorship by the threat of multijurisdictional enforcement actions. Harvey won a preliminary injunction, forbidding the DOJ from initiating multijurisdictional prosecutions against Harvey or anyone else.

While Harvey's civil suit was pending, the DOJ indicted Harvey in one of the most conservative communities in the country: Salt Lake City, Utah. Because Harvey was indicted in only one jurisdiction, and the prosecution was not initiated by the DOJ defendants named in Harvey's civil suit, the Utah indictment was not barred by the injunction. Rather than face a Salt Lake City jury, Harvey's legal team filed an interlocutory appeal claiming that Adam and Eve was immune from prosecution because the very proceeding violated the defendant's rights.

The remaining legal battles and the ultimate outcome are better read than reported. Suffice it to say that Harvey does not emerge unscathed but fares far better than the DOJ and its dubious NOEU. Adam and Eve is still in business. Ironically, Adam and Eve gained market share because the NOEU put so many of its competitors out of business.

The authors unfortunately interrupt the story with intermittent chapters addressing tired societal debates regarding pornography. Their errant ruminations on the harmlessness of pornography, pornography and class, and the clichéd question, "What are we afraid of?" all cover the issue respectably but add nothing new. While admirably attempting to bridge the gap between the abstractions of obscenity law and its societal antecedents, Harvey and Strossen merely reconstruct connections already drawn and discussed by others. Some readers who have never contemplated the relationship between sexual norms and pornography may find these chapters instructive, however. Others may skip them.

Readers are likely to greatly appreciate the book's restraint. Harvey is no Larry Flynt or Bob Guccione crudely ranting against government hypocrisy and professing that pornography is just good fun. The Government vs. Erotica is a thoughtful and self-aware narrative describing the dubious battle between American conservatism bolstered by political power and classic American individualism standing firm on the unpopular fringe of civil liberties. It is a must-read for any attorney who understands that courtrooms are sometimes political battlefields where the success or failure of our esoteric legal strategies can set the national boundaries of permitted human expression.

## LAWSUIT & ASSET PROTECTION



- ✓ Corporations, Limited Partnerships & LLC's
- ✔ Offshore Trusts, Corporations & Private Banking
- ✓ Tax, Estate Planning, IRS, Tax Court & Collections
- ✔ Real Estate, Business Law, Litigation, Contracts

#### **STEVEN SEARS** CPA, ATTORNEY AT LAW

Professional Confidential

714-544-0622 www.searsatty.com

## O.C. ATTORNEY—REFERRAL FEES PAID

## DOUGLAS S. UNGER

ATTORNEY AT LAW The City Tower, 17th Floor, 333 City Blvd. West Orange, CA 92868

> 714-938-3855 **DUI/FAMILY LAW/ CRIMINAL DEFENSE**

Highest Integrity & Professionalism 20 Years Experience

Save time, gas and hassle. Let O.C. attorney handle your O.C. matters and receive referral fee.

## I WANT IT FILED TODAY and I want a con-

formed caption page back today. I want it done quickly, reliably and professionally. I want the correct filing fee paid, too. Then I want it served on four parties in three cities in two counties, today! After that, I want proofs of service filed with the court. And, I want this done economically. Any problem? Not for Fax & File - we have 17 offices around the state.

> Fax & File Legal Services, Inc. 415/491-0606 • 213/617-1212 www.faxfile.com



