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Inside the FBI Inspections of Adult Movie Company Age-Verification Records: A Dialogue with Special Agent Chuck Joyner

Clay Calvert* & Robert D. Richards**

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I. INTRODUCTION

Aggressive enforcement of federal obscenity¹ laws.² It's an obvious government strategy for stanching the billion-dollar stream³ of sexually explicit adult movies that flow out of southern California's San Fernando Valley⁴ each year. The federal government, in fact, had four major obscenity prosecutions underway across the nation in 2007 targeting such content,⁵ after a virtual dormancy of prosecutor-

¹ Obscene expression is "not within the area of constitutionally protected speech or press." *Roth v. United States*, 354 U.S. 476, 485 (1957). The current test for obscenity, which was established by the United States Supreme Court in *Miller v. California*, 413 U.S. 15 (1973), focuses on whether the material at issue: 1) appeals to a prurient interest in sex, when taken as a whole and as judged by contemporary community standards from the perspective of the average person; 2) is patently offensive, as defined by state law; and 3) lacks serious literary, artistic, political or scientific value. *Miller* at 24.

² See 18 U.S.C. §§ 1461 – 1467 (2007) (setting forth the terms of the relevant federal obscenity statutes).

³ See Beth Barrett, *It's a \$12 Billion Industry, But the Profits Go Elsewhere*, L.A. DAILY NEWS, June 5, 2007, at N1 (writing that "[t]he San Fernando Valley's adult-entertainment industry – long considered the epicenter of the business – rakes in about \$1 billion annually, with more than 200 local companies jump-starting a national market worth about \$12 billion a year," and reporting that adult firms in the area netted "40 percent of the nation's \$2.4 billion in annual X-rated video sales and rentals").

⁴ Pornography is "the San Fernando Valley's great, unspoken business" and it "has been a major factor in the Valley's development, providing jobs, money and the people who have made up this community for decades." Brent Hopkins, *The Adult Movie Business Has Come A Long Way*, L.A. DAILY NEWS, June 3, 2007, at N1. So much adult entertainment content is produced in this area that it sometimes is referred to as Porn Valley. See, e.g., Brad A. Greenberg, *Frisky Kitty Battle Lands In Judge's Lap*, L.A. DAILY NEWS, July 17, 2006, at N1 (writing that the San Fernando Valley is "known to some as Porn Valley since it is home to most of the nation's pornography industry"); Sharon Mitchell, *How to Put Condoms in the Picture*, N.Y. TIMES, May 2, 2004, at Section 4, 11 (describing the San Fernando Valley as "Porn Valley" and contending that it is "where much of the sex-film industry is based").

⁵ One case, *United States v. Extreme Associates, Inc.*, already has worked its way up to the United States Supreme Court once before coming back down to the district court level, where it currently is pending before U.S. District Court Judge Gary Lancaster in Pittsburgh, Pa. *United States v. Extreme Associates, Inc.*, 352 F. Supp. 2d 578 (W.D. Pa. 2005), *rev'd*, 431 F.3d 150 (3d Cir. 2005), *cert. denied*, 126 S. Ct. 2048 (2006). In July 2007, the defendants' second motion to dismiss the case was denied. *United States v. Extreme Associates, Inc.*, 2007 U.S. Dist. LEXIS 55431 (W.D. Pa. 2007). The case, targeting southern California-based Extreme Associates and its proprietors, Robert Zicari and Janet Romano, has been described as a "major test of the Bush administration's campaign against pornography." Eric Lichtblau, *Justice Dept. Fights Ruling on Obscenity*, N.Y. TIMES, Feb. 17, 2005, at A25. A second case, *United States v. Five Star Video, L.C.*, targets southern California's JM Productions and is pending in Phoenix, Ariz. See Indictment, *United States v. Five Star Video, L.C.* (D. Ariz. May 23, 2006), available at http://www.usdoj.gov/criminal/pr/press_releases/2006/06/2006_4616_2_06-01-06obscenityfivestarindict.pdf (last visited Aug. 30, 2007); Press Release, U.S. Dep't of Justice, Federal Grand Jury Charges Arizona And California Companies And Their Owners With Obscenity Violations (June 1, 2006), available at http://www.usdoj.gov/opa/pr/2006/June/06_crm_343.html (last visited Aug. 30, 2007) (describing the case and noting that "Jeff Norton Productions of Chatsworth, California, also known as JM Productions, and Mike Leonard Norton, who resides in Woodland Hills, California, were

ial activity in the 1990s under the administration of President Bill Clinton.⁶

But proving to a jury today that sexual content involving consenting adults is obscene, at a time when adult content has “peeled off its brown-paper wrapping”⁷ and is now mainstreamed⁸ in a sex-satu-

charged with six counts of using an interstate common carrier to transport DVDs that are obscene”). See generally *Scandal Moves to Porn?*, XBIZ VIDEO, Apr. 2007, at 26, 74 (describing how there are “four adult titles now at issue in the JM Productions obscenity trial,” including “Filthy Things 6,” “Gag Factor 15,” “Gag Factor 18,” and “American Bukake 13,” and reporting that the case “remains a pending matter in the U.S. District Court for Arizona. No trial date has been set”).

⁶ As *Hustler* publisher Larry Flynt recently put it, “We didn’t have any federal obscenity prosecutions when Clinton was president. Clinton was smart – he knew that it was an uphill battle, and there were other things that he should be spending his time on.” Robert D. Richards & Clay Calvert, *Obscenity Prosecutions and the Bush Administration: The Inside Perspective of the Adult Entertainment Industry & Defense Attorney Louis Sirkin*, 14 VILL. SPORTS & ENT. L.J. 233, 275 (2007). Paul Little, the man better known as Max Hardcore who now is being prosecuted for obscenity in Tampa, Fla., agrees, stating that “Clinton was good for the industry, good for the economy, and he didn’t get us involved in any quagmire wars. Things were going pretty good, but I knew that things could change and that if Republicans were to get in to office, it would be a real problem. Sure enough, what I thought was going to happen did happen.” *Id.* at 276-277. See Mark Kernes, *The War Against Porn Continues*, PLAYBOY, Dec. 1, 2002, at 57 (writing that “Clinton took a hands-off approach (when asked why the administration didn’t go after pornographers, former attorney General Janet Reno said that it had more important things to do)”); Cheryl Wetzstein, *Clinton Told He Broke Promise to Give Anti-Porn Fight Priority*, WASH. TIMES, Oct. 28, 1997, at A9 (reporting “Justice Department figures that show obscenity prosecutions under Attorney General Janet Reno have dropped by half or more compared with the Reagan or Bush administrations”).

⁷ Charles Foran, *Damage on Parade*, UTNE, Sept.-Oct. 2006, at 64.

⁸ As Stormy Daniels, a leading adult video actress today who had a crossover appearance in the mainstream hit movie “The 40-Year-Old Virgin,” recently put it:

Adult has become so much more mainstream. I think there are two reasons for it. One has nothing to do with adult – it has to do with MTV and Britney Spears. She was dancing on stage in outfits that I wouldn’t wear on stage. Our stuff doesn’t target young children at all. Second, you have that whole new fad of what I would call accidental porn stars like Paris Hilton. She had the hottest selling sex tape two years ago – two years in a row, I believe. Clay Calvert & Robert D. Richards, *Porn in Their Words: Female Leaders in the Adult Entertainment Industry Address Free Speech, Censorship, Feminism, Culture and the Mainstreaming of Adult Content*, 9 VAND. J. ENT. & TECH. L. 255, 291 (2006).

Ron Jeremy, “a short, fat, mustached porn star who in recent years has attained a measure of pop culture celebrity,” agrees, noting that “[i]n the ‘70s, it was the hippy, dippy, outlandish, outlawish porn business. Now, it’s more mainstream, more accepted. It’s big business.” Keith Reed, *Not So Strange Bedfellows*, BOSTON GLOBE, Jan. 7, 2006, at C9.

See generally PAMELA PAUL, *PORNIFIED* 4-5 (2005) (writing that “today, pornography is so seamlessly integrated into popular culture that embarrassment or surreptitiousness is no longer part of the equation,” asserting that “[t]he all-pornography, all-the-time mentality is everywhere in today’s pornified culture,” and noting that “pop music is intimately connected with the pornography industry as today’s pop stars embrace and exalt the joys of porn. Eminem, Kid Rock, Blink 182, Metallica, Everclear, and Bon Jovi have all featured porn performers in their music videos”).

rated⁹ popular culture, is not always so easy. For instance, in October 2000, a jury composed of twelve women found that two videos – “Anal Heat” and “Rock Hard” – were not obscene despite the fact that they “depicted anal, oral and vaginal sex among women and between men and women.”¹⁰ As Paul Cambria, the attorney who successfully defended the video store owner in that case, explained it, the prosecutors “were convinced that they had a slam-dunk”¹¹ after getting an all-female jury, but expert testimony from the defense about the common use of adult videos today by normal couples as a stimulus and “as an opportunity to discuss relationship problems they might be having”¹² convinced the jurors otherwise. Juries, as long-time adult industry defense attorney Clyde DeWitt¹³ recently wrote, are the “wildcard” in the current spate of obscenity prosecutions, pointing out that “[i]n the last fifteen years, acceptance of sexually explicit materials has changed profoundly and nobody is quite sure how that will shape the attitude of juries.”¹⁴

But obscenity law, as it turns out, is not the only legal tool the federal government has at its disposal today to target adult movie companies. In 2006, for the first time in history and nearly two decades after the law went on the books,¹⁵ the Federal Bureau of Investigation

⁹ See generally Karen MacPherson, *Is Childhood Becoming Oversexed?*, PRIT. POST-GAZETTE, May 8, 2005, at A-1 (describing how “child development experts worry that such a sex-saturated culture encourages children and young adults to define themselves mainly by how sexy they are, and to see sex as the most important quality in a successful relationship”) (emphasis added).

¹⁰ Michele Munz, *Jury Finds Explicit Videos From Store Are Not Obscene*, ST. LOUIS POST-DISPATCH, Oct. 27, 2000, at 1.

¹¹ Clay Calvert & Robert D. Richards, *Adult Entertainment and the First Amendment: A Dialogue and Analysis with the Industry's Leading Litigator & Appellate Advocate*, 6 VAND. J. ENT. L. & PRAC. 147, 151 (2004).

¹² *Id.*

¹³ On his official Website, DeWitt is described as:

a partner in the Los Angeles based law firm of Weston, Garrou, DeWitt & Walters – a long-standing and now national firm that concentrates its practice in the area of adult entertainment. He has spearheaded anti-censorship litigation in dozens of jurisdictions around the country and has defended numerous obscenity prosecutions over the years, including defense of the adult motion picture industry back when 35-mm features were shown in theaters. His clientele ranges from adult video production companies to adult bookstores to adult internet sites.

See Clyde DeWitt, Attorney at Law Website, available at <http://www.clydedewitt.com> (last visited Aug. 31, 2007).

¹⁴ Clyde DeWitt, *Federal Obscenity Prosecutions – What's in Store?*, AVN, Aug. 2007, at 160, 161.

¹⁵ The law was tied up in litigation for many years and then, in 1995 when an injunction preventing its enforcement was dissolved, “[t]he Clinton Administration did not seem to think that 2257 was worth much, since there were no inspections or enforcement efforts during that time.” Clyde DeWitt, *Clyde DeWitt's Legal POV: Historical Perspective: Our*

began random inspections of the companies' age-verification records that are required pursuant to 18 U.S.C. § 2257¹⁶ and the related federal regulations,¹⁷ to prove that all performers engaging in sexually explicit conduct are at least eighteen years of age.¹⁸ It's the same law – one known simply as 2257 in the adult entertainment industry – with which Joe Francis, founder of the “Girls Gone Wild” videos, failed to comply.¹⁹

19th Year With 2257, AVN, Apr. 2007, at 112. See Matt O'Conner, *Diabolic Investigation Centered on Specific Performers*, XBIZ.COM, July 26, 2006, available at http://xbiz.com/news_piece.php?id=16195 (last visited Aug. 31, 2007) (describing the July 2006 inspection of Diabolic Video as “the first ever in the 11 years federal agents have had the green light to check records (the statute has been in place since 1988, but movies produced before July 3, 1995 are exempt)” and noting that the FBI determined that “Diabolic was 100 percent compliant on this investigation”).

¹⁶ The law, adopted in 1988 and revised several times since then, provides in relevant part: (a) Whoever produces any book, magazine, periodical, film, videotape, digital image, digitally- or computer-manipulated image of an actual human being, picture, or other matter which: (1) contains one or more visual depictions made after November 1, 1990 of actual sexually explicit conduct; and (2) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce; shall create and maintain individually identifiable records pertaining to every performer portrayed in such a visual depiction.

(b) Any person to whom subsection (a) applies shall, with respect to every performer portrayed in a visual depiction of actual sexually explicit conduct: (1) ascertain, by examination of an identification document containing such information, the performer's name and date of birth, and require the performer to provide such other indicia of his or her identity as may be prescribed by regulations; (2) ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name; and (3) record in the records required by subsection (a) the information required by paragraphs (1) and (2) of this subsection and such other identifying information as may be prescribed by regulation.

18 U.S.C. § 2257 (2007).

¹⁷ See 28 C.F.R. §§ 75.1 – 75.7 (2007) (setting forth definitions related to 18 U.S.C. §2257, and rules about the maintenance, categorization and location of records, as well as details about the statements and information that adult producers must place on and include in their products).

¹⁸ See Robert D. Richards & Clay Calvert, *The Legacy of Lords: The New Federal Crackdown On the Adult Entertainment Industry's Age-Verification and Record-Keeping Requirements*, 14 UCLA ENT. L. REV. 155 (2007) (examining the Section 2257 inspections and providing quotes and comments about the inspections from a number of leading adult entertainment industry leaders and representatives); Claire Hoffman, *Porn Studios Raided to Ensure Adult-Only Casts; The FBI Seeks Records to Make Sure Minors Haven't Been Hired*, L.A. TIMES, Jan. 12, 2007, at C1 (describing the inspections and noting that “about a dozen porn production facilities in pornography hot spots such as Van Nuys and Chatsworth have been taken by surprise in the last three months by a barrage of federal agents at their doors”).

¹⁹ Claire Hoffman, *'Gone Wild' Figure is Fined \$500,000; Joe Francis Also Must Do Community Service for not Documenting Ages of Everyone in His Videos*, L.A. TIMES, Jan. 23, 2007, at C2.

The inspections initially stunned the adult entertainment industry, creating what industry defense attorney Greg Piccionelli²⁰ termed “a great, collective gnashing of teeth”²¹ and “a level of anxiety in the industry that I had not seen for some time.”²² When coupled with the obscenity prosecutions, the Section 2257 compliance inspections put the adult industry in the San Fernando Valley under what hometown newspaper *Los Angeles Daily News*²³ called “the strongest legal pressure in more than a decade.”²⁴ Defense attorney Clyde DeWitt bluntly said the inspections and the strictures of Section 2257 were “designed to harass people who make this kind of movie so the FBI can snoop around and learn about them. It’s an end run around obscenity laws.”²⁵

The penalties for a record-keeping violation under 18 U.S.C. § 2257 are not insignificant. In particular, first-time violators face up to five years in prison, and those who break the law a second time “shall be imprisoned for any period of years not more than ten years but not less than two years.”²⁶

By August 28, 2007, FBI Supervisory Special Agent Chuck Joyner, the point person in Los Angeles for leading the inspections, reported in correspondence with the authors of this article that the Bureau had conducted a total of twenty-four inspections since the inspections began

²⁰ In his biography on his law firm’s Website, Piccionelli is described as having “counseled many of the world’s largest adult entertainment companies. His client list includes scores of domestic and foreign companies spanning the entire spectrum of the adult entertainment industry.” Biography, Gregory A. Piccionelli, *available at* <http://www.gregpiccionelli.com/bio.html> (last visited Aug. 31, 2007).

²¹ Brent Hopkins, *FBI Crackdown on Porn Makes*, L.A. DAILY NEWS, Feb. 8, 2007, at B1.

²² *Id.* See also Richards & Calvert, *supra* note 18, at 174 (writing that “when FBI officials began their Section § 2257 compliance inspections in the summer of 2006, it took the adult entertainment industry by complete surprise,” and adding that “adult producers had no prior warning that federal law enforcement authorities would suddenly show up to their companies’ offices and demand to see the required age-verification records, although the regulations certainly do authorize such unannounced inspections”).

²³ This newspaper is headquartered in Woodland Hills in the San Fernando Valley. See L.A. Daily News Website, *available at* <http://www.dailynews.com/whois> (last visited Aug. 31, 2007) (giving the newspaper’s address as 21221 Oxnard Street, Woodland Hills, Cal., and writing that the newspaper “is located in L.A.’s diverse San Fernando Valley, and the circulation area includes eastern Ventura County and northern Los Angeles County”) (emphasis added).

²⁴ Beth Barrett, *Crackdown By FBI Tests Adult Limits*, L.A. DAILY NEWS, June 7, 2007, at N10.

²⁵ *Id.* See also Richards & Calvert, *supra* note 18, at 180-181 (quoting adult industry defense attorney Jeffrey Douglas for the proposition that 18 U.S.C. § 2257 “exists solely for the purpose of (A) deterring people from participating – deterring performers because their privacy is not just invaded, but systematically exploited for no purpose whatsoever and (B) creating a series of rules and obstacles that are great enough that businesses will say, ‘It’s not worth it’”).

²⁶ 18 U.S.C. § 2257(i) (2007).

in 2006.²⁷ Out of those two-dozen inspections, only four companies were found to be in what Joyner termed “complete compliance on the date of the inspection.”²⁸ Seventeen of the twenty companies, however, “that were out of compliance on the date of the inspection were able to become compliant within one week.”²⁹ This means that, as Joyner put it, “[t]hree companies were unable to come into compliance”³⁰ with federal laws that ostensibly are designed to prevent minors from performing in adult movies. But this does not mean that underage performers have turned up; it only means that some terms of Section 2257 were not met. Indeed, Joyner noted that no underage performers have been discovered so far as a result of the inspections.³¹

Are the inspections going to stop any time soon? Apparently not. In that same August correspondence with the authors, Joyner wrote, “I expect the pace of inspections to be slightly more than one inspection every two weeks for the remainder of 2007 and 2008.”³² In fact, Joyner suggested that the reach of the inspections – he strenuously objects to them being labeled “raids” or “searches”³³ – soon would be expanded beyond the Southern California area, writing that “we are scheduled to conduct five out of state inspections the week of 09/16/2007.”³⁴ And while Joyner did not “foresee any changes in the inspection process,”³⁵ he did note that “we will begin to conduct inspections of internet companies.”³⁶

For the first time in any law journal, this article provides a unique, first-hand glimpse inside the FBI’s age-verification and record-keeping inspections from the perspective of the FBI. In particular, the article pivots on the comments, remarks and opinions of Supervisory Special

²⁷ E-mail from Chuck Joyner, Supervisory Special Agent, Federal Bureau of Investigation, 11000 Wilshire Blvd., Los Angeles, Cal., to Clay Calvert, John & Ann Curley Professor of First Amendment Studies, The Pennsylvania State University (Aug. 28, 2007, 18:00:19 EST) (on file with authors).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Joyner wrote in his August 28, 2007, e-mail correspondence:

I believe this has been corrected, because I haven’t seen it in recent news reports, but initially the inspections were referred to as raids or searches. As I mentioned earlier, I understand why these words were used as they elicit strong emotions, but they were not accurate. A raid indicates a violent action and a search is indicative of criminal activity conducted by the party being searched. Neither is correct in the case of 2257 inspections. Companies are randomly selected and this in no way is a negative reflection on the company selected.

Id.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

Agent Chuck Joyner, drawn from an in-person interview conducted in June 2007 with the authors at the FBI offices in Los Angeles, California.³⁷ From the manner in which the inspections are conducted to the results that he and his team of inspectors are finding, Joyner's answers to the authors' question provide a rare look at a governmental effort to regulate the conduct of the adult entertainment industry.

In addition to providing Joyner's perspective and viewpoint, the article includes the thoughts of two leading adult industry defense attorneys – Greg Piccionelli³⁸ and Jeffrey Douglas³⁹ – drawn from in-person interviews conducted by the authors in the days following the June 21, 2007 interview with Joyner. Douglas and Piccionelli comment about the inspections and how they are being conducted under Joyner's leadership, thus adding greater context and depth to the article.

Part II of the article briefly describes the methodology used for conducting the interviews.⁴⁰ Part III then turns to the interviews that are the centerpiece of this article, initially providing in Section A the comments, in question-and-answer format, of Supervisory Special Agent Chuck Joyner.⁴¹ Section B of Part III next provides the comments of Greg Piccionelli and Jeffrey Douglas.⁴² Finally, Part IV provides an analysis and summary of the collective remarks of Joyner, Piccionelli and Douglas.⁴³

II. THE SETTING AND METHODOLOGY

The interview took place on June 21, 2007 at 11:00 a.m. in the offices of the Federal Bureau of Investigation located at 11000 Wilshire Boulevard in Los Angeles, California. Also present during the interview was Laura Eimiller of the FBI's press and publications unit. Agent Joyner consented to having his comments recorded for potential use in a law journal article and other fora. His comments were recorded with Marantz, broadcast-quality recording equipment on an audiotape using a tabletop microphone. The tape of Agent Joyner's interview was then transcribed by the authors at their Los Angeles summer residence later that same afternoon and was reviewed for accuracy.

³⁷ Interview with Chuck Joyner, Supervisory Special Agent, Federal Bureau of Investigation, in L.A., Cal. (June 21, 2007).

³⁸ Interview with Greg Piccionelli, attorney, in L.A., Cal. (June 25, 2007).

³⁹ Interview with Jeffrey Douglas, attorney, in Santa Monica, Cal. (July 6, 2007).

⁴⁰ *Infra* notes 44–45 and accompanying text.

⁴¹ *Infra* notes 46–72 and accompanying text.

⁴² *Infra* notes 73–80 and accompanying text.

⁴³ *Infra* notes 81–102 and accompanying text.

The authors made a few very minor changes for syntax in some places but did not alter the substantive content or material meaning of any of the responses of Agent Joyner. Some of his responses were then reordered and reorganized, in question-and-answer format, to reflect the three major themes of this article set forth below in Part III, and other portions of the interviews were omitted as extraneous, redundant or simply beyond the scope of the purpose of this article. The authors retain possession of the original audio recording of the interview with Agent Joyner, as well as the printed transcripts of the interview.

Similar methodology was used for the recording and transcription of the in-person interviews conducted by the authors with attorney Gregory Piccionelli on June 25, 2007 at his Los Angeles law offices⁴⁴ and with attorney Jeffrey Douglas on July 6, 2007, at his Santa Monica law offices.⁴⁵

None of the three individuals interviewed for this article had an advance opportunity to review or preview any of the questions he was asked, thus allowing for greater spontaneity and immediacy of responses. In addition, none of the interviewees reviewed either the raw transcripts of the interviews or any of the drafts of this article before it was submitted for publication. Furthermore, none of the interviewees was either paid or otherwise compensated by the authors for his time and comments.

III. THE INTERVIEW

This part of the article presents the comments of the interviewees. Section A presents the remarks, set in question-and-answer format, of FBI Supervisory Special Agent Chuck Joyner. Section B contains the views and opinions of leading adult entertainment industry defense attorneys Gregory Piccionelli and Jeffrey Douglas.⁴⁶

⁴⁴ The offices of Piccionelli & Sarno are located at 1925 Century Park, Suite 2350, Los Angeles, Cal., 90067.

⁴⁵ The offices of Jeffrey J. Douglas are located at 1717 Fourth Street, Third Floor, Santa Monica, Cal., 90401.

⁴⁶ The authors have added footnotes, where relevant, in parts of the interviews in order to help explain, clarify or otherwise provide useful background information and depth about the topics or incidents discussed by the interviewees.

A. *The man in charge: Special Agent Chuck Joyner's perspective on the progress of the section 2257 inspections*

In this section, Supervisory Special Agent Chuck Joyner⁴⁷ discusses the reasons underlying the recent initiation of Section 2257 inspections in Southern California, and the reactions of the adult entertainment industry to the news that federal agents may show up, unannounced, to their businesses and legally request to view and photocopy documents. He explains the efforts he has made to reduce, if not completely allay, the industry's collective fears, and the industry's response. Joyner also talks about the inspection process and its results so far, as well as what the future may hold in terms of stepping up inspection and enforcement efforts.

QUESTION: What was the impetus for starting the Section 2257⁴⁸ inspections in 2006, when the law has been on the books since 1988?

JOYNER: This is rumor – not fact necessarily. My understanding is that the Attorney General⁴⁹ had placed a call to the Director of the FBI⁵⁰ saying, “start this program. The FBI will run it, and start it now.” It was a very quick-hitting program we got it up and starting within two months, which is unheard of.

QUESTION: When were you first notified about it?

JOYNER: April or May of 2006. I was a supervisor here in L.A., and I was told that I would be starting this program.

QUESTION: Do you know of any inspections prior to this time?

JOYNER: There were none.

QUESTION: What was the goal or purpose of the October 2006 meeting⁵¹ at FBI headquarters in Washington, D.C. between yourself,

⁴⁷ Speaking to the authors at the Federal Building – home to the FBI – in Los Angeles, California.

⁴⁸ *Supra* note 16.

⁴⁹ The U.S. Attorney General at the time of the June 21, 2007 interview with Supervisory Special Agent Joyner was Alberto Gonzales, who resigned later that summer. See Philip Shenon & David Johnston, *A Defender of Bush's Power, Gonzales Resigns*, N.Y. TIMES, Aug. 27, 2007, at A1 (noting that Gonzales “did not explain why he was resigning or refer to the turmoil over his actions as attorney general”).

⁵⁰ See About Us – FBI Executives, Robert S. Mueller III, available at <http://www.fbi.gov/libref/executives/director.htm> (last visited Sept. 7, 2007) (presenting a brief biography of current FBI Director Mueller).

⁵¹ See Claire Hoffman, *Porn Studios Raided to Ensure Adult-Only Casts*, L.A. TIMES, Jan. 12, 2007, at C1 (discussing how inspections “began in earnest after an October meeting between the FBI and the Free Speech Coalition, along with representatives from six of the Valley's largest porn companies – including mega-producers Vivid Entertainment, Larry Flynt Publications and Digital Playground, along with three porn industry lawyers, according to a person who was there who asked not to be named because the meeting was confidential”).

other law enforcement officials, and a select group of adult industry representatives and their attorneys?

JOYNER: Assistant Director Chip Burris called that meeting. The goal was to get a chance to meet with what we believed to be some of the major producers in the industry just so we could get the word out. Here's what's happening. Here's what we're doing. Here's what you can do to get in compliance. It was an attempt to make the inspection process as transparent as possible and to seek their input also. We had done a few inspections at that time and we were looking to see if they had any input into the process.

QUESTION: Would you characterize that meeting as a success?

JOYNER: Absolutely. You probably have read some of the reports that have been put out by *AVN*⁵² and *XBiz*⁵³ afterwards. Greg Piccionelli did a fairly long report on that, and I think it was complimentary.⁵⁴ I think from both perspectives – the FBI and the industry – it was a success. It was a beginning to opening the door to communication, which we continue to foster.

QUESTION: In the past, there hadn't been much communication, is that right?

JOYNER: In the past, the FBI was not involved with this program, so there was none. We did not have the program up and running.

QUESTION: How were the companies selected?

JOYNER: It's completely random. We obtain the names of the company like any consumer would. We started off with a database at a little over 300 companies, which was provided to us by analysts at headquarters. We've since taken that database, and it's now well over 1200, and it's continuously changing.⁵⁵

QUESTION: How did you choose the companies whose representatives attended the meeting in October?

⁵² *AVN*, The Adult Entertainment Monthly, is part of the AVN Media Network, which touts itself as "The Industry Standard," and whose content is available at <http://www.avn.com> (last visited Sept. 5, 2007).

⁵³ *XBiz* Video labels itself "The Industry Source for Studios, Distributors & Retailers," and its content is available at <http://www.XBiz.com> (last visited Sept. 5, 2007).

⁵⁴ Gregory Piccionelli, *The FBI Meets with Adult: I*, *XBIZ.COM*, Jan. 4, 2007, available at <http://XBiz.com/articles/18881> (last visited Aug. 29, 2007) (describing the meeting as "extraordinary both in its character and because it was initiated by the government for the stated purpose of obtaining input from, and establishing a dialogue with, the adult entertainment industry regarding the 2257 compliance inspection process").

⁵⁵ See Rhett Pardon, *FBI is Building Adult Company Database*, *XBIZ.COM*, Feb. 7, 2007, available at http://www.XBiz.com/news/news_piece.php?id=19544&mi=all&q=2257 (last visited Sept. 5, 2007) (noting that "[t]he FBI has built up a database that comprises more than 1,200 adult companies that could be eligible for 2257 record-keeping inspections" and quoting Special Agent Joyner as saying, "We are constantly updating our database").

JOYNER: It was just based on our belief of what we thought to be the largest companies at that time – Vivid,⁵⁶ Wicked.⁵⁷ We also tried to get a representative from someone outside of the L.A. area so that we could hit different regions of the country.

QUESTION: What's the most important thing that you learned from that meeting about the adult industry?

JOYNER: You seem to have two camps in the industry. One camp will not be very vocal. I've had people come up to me after I had spoken at the XBiz conference⁵⁸ and say, "Section 2257 is not a big deal. We get it. It's actually less cumbersome than doing taxes and we understand the reasoning behind it." That's one camp. Then, the other camp is one that says, "This is government harassment. This is overly expensive." That's another viewpoint. I think, for the most part, the industry has been very accepting of the regulations. They understand now what we're looking for. Good companies have no problem being in compliance or getting into compliance. In the majority of inspections that we've done – and we've done nineteen to date – seventy-five percent of the companies were out of compliance.⁵⁹ All of those (except for two) were able to get into compliance within a week. It's just a matter of fine-tuning, and that's our goal. If we walk away and within a week they're in compliance, then we've succeeded. Being in compliance means that they're doing the necessary record keeping to ensure that they're not negligently or accidentally hiring a minor. There are a couple of companies out there whose record keeping is so bad that they could easily hire a minor and would never know it.

QUESTION: What were some of the fears or concerns expressed by attorneys for the adult industry companies who were present at the meeting in Washington?

JOYNER: I think they initially had a fear about showing up.⁶⁰ Again, it's the paranoia that this is all a scam and that they're all going

⁵⁶ Vivid Video Official Website, available at <http://vc1.vivid.com/indexmain.php?x=6e6cff8685b44164e04d093dfb9a2b5> (last visited Aug. 29, 2007).

⁵⁷ Wicked Pictures Official Website, available at <http://tour2.wickedpictures.com/?nats=ODI1NToxMDox,0,0,0,0> (last visited Aug. 29, 2007).

⁵⁸ See Ken Knox, *FBI Inspector Addresses Industry During 2257 Seminar*, AVN.COM, Feb. 7, 2007, available at <http://www.avn.com/index.cfm?objectID=70F9F731-B1EE-818D931BEAF17B36C7C6&articleID=DB7C9602-FDD2-EEEEF-4EEBFDBD7505BB04> (last visited Sept. 7, 2007).

⁵⁹ See *supra* note 27 and accompanying text for updated inspection figures.

⁶⁰ See Piccionelli, *supra* note 52 (describing his reaction to the FBI's invitation to meet as follows: "Given the rich tradition of government hostility toward the adult entertainment industry, including the use of government sting operations, my client and I were reasonably concerned that there might be more to this 'invitation' than meets the eye. After all, since when does the government ask for the adult industry's input?").

to be arrested as soon as we walk in the door. If nothing else, the fact that we're sitting there and discussing this, all of those concerns were alleviated. They understand that we are here to meet, listen and communicate. As I said, we continue to communicate. I've given out my email address at the XBiz conference. That's been published. Anybody who wants to call me can do so. I know the attorneys were concerned about that, preferring instead that they be the filter. I don't care if someone identifies themselves or not, they can call me or email me if they have a question about the inspection process and I will be happy to explain it. I would much rather explain it in advance of an inspection and go on an inspection and have everything turn out great. We prefer that everybody be in compliance. Then we've done our jobs and they've done their jobs.

QUESTION: So one of the primary goals of that meeting was to allay some of the fears that they had, is that correct?

JOYNER: Yes. Also, we wanted to explain the process so that they could spread the word among the industry, which is "Here is the process. "Here's what we're looking at. Here are the violations that we've found to date, and here's how you can correct those violations."

QUESTION: Was the goal essentially the same at the XBiz conference⁶¹ – just a broader audience?

JOYNER: Yes. I had several people afterward come up and thank me for being there because it alleviates their fears, and the FBI will continue to have a communication. Any time we're invited, we'll be more than happy to show up.

QUESTION: Have you had any additional private meetings with any adult industry representatives, leaders or attorneys – meetings other than those during the actual execution of inspections, the XBiz meeting and the Washington, D.C. meeting?

JOYNER: No.

QUESTION: And there have been 19 inspections to date?⁶²

JOYNER: Yes. We had administrative issues. We're trying to find the permanent space and trying to get the equipment. We're still hiring

⁶¹ See Rhett Pardon, *XBIZ Conference Focuses on Industry's Economic Pressures*, XBIZ.COM, Feb. 8, 2007, available at http://www.xbiz.com/news/news_piece.php?id=19554&mi=all&q=2257 (last visited Sept. 7, 2007) (noting how Joyner spoke at a panel "discussion on 2257 record-keeping" at the "XBIZ Hollywood '07 Industry Conference"); Knox, *supra* note 56 (reporting that "several attendees of the standing-room-only session seemed to be slightly put at ease following the seminar, which attempted to clarify the purpose, process, and misconceptions surrounding the widely controversial 2257 guidelines").

⁶² See *supra* note 27 and accompanying text.

the contract inspectors. Our goal is to do at least one inspection every two weeks, if not more.⁶³

QUESTION: Of the nineteen inspections to date, how many companies have made it through inspection in total compliance the first time through?

JOYNER: There are three companies who made it through with no issues at all on the day of inspection.

QUESTION: How would you characterize the overall level of record keeping in the adult industry based on the inspections that the FBI has conducted to date?

JOYNER: Very poor. What we're also seeing is a change. We see a movement to improve the record keeping because they understand the need. Before, as business owner, you may have thought, "Yeah, I'll get to that eventually, but nobody's inspecting it anyway, so why worry about it?"

Now that they know we're out there and looking, and it is a serious issue if they have violations, we see evidence of companies taking this much more seriously and correcting their violations. Companies that have not been inspected yet, we're seeing them taking action to improve their system.

QUESTION: How did you find that out? Do they talk about it?

JOYNER: Yes.

QUESTION: Are there any typical or common violations?

JOYNER: The primary violations we've found are as follows: Initially, most of the companies were not doing any cross-referencing,⁶⁴ which is one of the requirements of the law. Many also have missing ID.⁶⁵ Some of the companies were missing ID for entire movies – en-

⁶³ See *supra* note 32 and accompanying text (providing updated inspection estimates).

⁶⁴ See Maintenance of Records, 28 C.F.R. §75.2 (d) (2007).

For any record created or amended after June 23, 2005, all such records shall be organized alphabetically, or numerically where appropriate, by the legal name of the performer (by last or family name, then first or given name), and shall be indexed or *cross-referenced* to each alias or other name used and to each title or identifying number of the book, magazine, film, videotape, digitally- or computer-manipulated image, digital image, or picture, or other matter (including but not limited to Internet computer site or services). If the producer subsequently produces an additional book, magazine, film, videotape, digitally- or computer-manipulated image, digital image, or picture, or other matter (including but not limited to Internet computer site or services) that contains one or more visual depictions of an actual human being engaged in actual sexually explicit conduct made by a performer for whom he maintains records as required by this part, the producer shall add the additional title or identifying number and the names of the performer to the existing records and such records shall thereafter be maintained in accordance with this paragraph.

Id. (emphasis added).

⁶⁵ See Maintenance of Records, 28 C.F.R. §75.2 (a) (2007). This section provides that:

tire titles. Another problem was that the ID on hand is not legible⁶⁶ – either the date of birth is not legible or the facial identification is just an ink blot. All of those are violations.

QUESTION: Is your practice to give them a week to correct the problem?

JOYNER: That came up in the D.C. meeting as an unintentional grace period. Once we complete inspections, there are quite a few reports that have to be done. It typically took me about five days to do that. When that came up in D.C., that was something they said they appreciated because it gave them time to correct any violations initially found. So we decided at that time that we will allow them a minimum of one week to correct any violations.

QUESTION: Does that mean that the report you would submit would be a clean bill if they actually came into compliance? Or would you say they were out of compliance but fixed the problem?

JOYNER: If we show up and there are violations, I will note those violations. Then, as a courtesy to the producer, I would prepare an unofficial report from me to them. This way they could look at it and say, “No, we do have this ID.” Or they might say, “Yeah, we don’t have it, but if you give me a couple of days, I can get it.” If anything gets resolved that day – before we leave – then the violation doesn’t exist. If they have to get the information from outside within a couple of days, we would note that it is a violation, but I would note on my

Any producer of any book, magazine, periodical, film, videotape, digitally- or computer-manipulated image, digital image, picture, or other matter that contains a depiction of an actual human being engaged in actual sexually explicit conduct that is produced in whole or in part with materials that have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce and that contains one or more visual depictions of an actual human being engaged in actual sexually explicit conduct made after July 3, 1995 shall, for each performer portrayed in such visual depiction, create and maintain records containing the following:

- (1) The legal name and date of birth of each performer, obtained by the producer’s examination of a picture identification card. For any performer portrayed in such a depiction made after July 3, 1995, the records shall also include *a legible copy of the identification document examined* and, if that document does not contain a recent and recognizable picture of the performer, a legible copy of a picture identification card. For any performer portrayed in such a depiction after June 23, 2005, the records shall include
 - (i) A copy of the depiction, and
 - (ii) Where the depiction is published on an Internet computer site or service, a copy of any URL associated with the depiction or, if no URL is associated with the depiction, another uniquely identifying reference associated with the location of the depiction on the Internet.

Id. (emphasis added).

⁶⁶ *Id.*

final report that they resolved it. All but two of them have resolved all their violations.

QUESTION: When you were talking about cross-referencing as a common violation, did you mean that in reference to performer's name, stage name and the performance?

JOYNER: And the titles they've appeared in.⁶⁷

QUESTION: What did they typically not have in the file?

JOYNER: I think a lot of companies didn't fully understand the law. They probably didn't have any attorney representing them that was providing them counsel on Section 2257, so they thought, "I have to have photo identification and I have the titles they appeared in and that's good enough." Most of the companies would have that much. If they shot Movie X and they had ten performers, they would have in the file labeled Movie X the ten performers' photo identification, and they felt that's all they needed. It's not. What other stage names have they used? What other maiden names have they perhaps used? What other films or books have they appeared in? That's what's required. What we're seeing now is that once companies realized they needed all that, they're getting on board. They do have the cross-reference system. Most of them have a database from which they can retrieve that information.

QUESTION: Are there any technical violations that are being overlooked, such as having extraneous paper in the files?

JOYNER: Yes. By law, the Section 2257 information must be kept separate from all other records.⁶⁸ A lot of the companies would also have, in addition to the Section 2257 records of the performer, things such as AIDS testing results.⁶⁹ I don't need to see that. I shouldn't see that. That's a privacy issue. I'll just tell them, "Take this out." I'm not going to write that up as a violation, but if they're missing information, I would write that as a violation. If they put too much information in, I would just tell them, "This should not be here. Please take it out."

⁶⁷ See *supra* note 64.

⁶⁸ See 28 C.F.R. §75.2 (a)(3)(e) (2007). This section provides that: Records required to be maintained under this part shall be segregated from all other records, shall not contain any other records, and shall not be contained within any other records.

Id.

⁶⁹ See Nick Madigan, *H.I.V. Cases Shut Down Pornography Film Industry*, N.Y. TIMES, Apr. 17, 2004, at A11 (explaining that "[a]bout 1,200 performers in the adult film industry are tested once a month for H.I.V., chlamydia, gonorrhea and syphilis. Most tests are done at the Adult Industry Medical Health Care Foundation's offices in the San Fernando Valley, where the adult-movie industry is centered, and performers must present evidence of test results to producers before filming").

QUESTION: In terms of the ID not being legible, what are you looking for in that document?

JOYNER: The typical problems are either the date of birth is not legible or the facial identification is just an ink blot. When the contract inspectors review a movie, they take several screen captures of the face of each performer – trying to get a good frontal picture like they would see in a driver’s license or see if it’s really the individual. There have been occasions where they’re not. If you have a photo in which we can’t make a facial comparison, then that’s illegible. We try to give them the benefit of the doubt. If we can see certain facial characteristics – how the eyebrows are, the forehead or the nose, for instance – and we think it could be the same person, we’ll give them the benefit if the doubt. Sometimes it’s such a mess that you can’t even do that.

QUESTION: Have you found any examples of underage performers?

JOYNER: No. What we have found on two occasions were records that indicated they had underage performers.

QUESTION: How did you determine that they actually weren’t underage when the records indicated they were?

JOYNER: That was a combined effort of those producers and the FBI. Honestly, if you’re a producer and you have an underage performer, that’s serious. Both producers recognized that, and they instantly determined what had happened. On one occasion, it was a performer from a different country that used a different calendar and they never bothered to calculate the age here. The ID they had showed the performer to be sixteen. We obviously had to translate it and calculate it and it looked like the person was sixteen. The story that we originally heard from the attorney was that this performer had lost her government ID and she wanted to be in the movie. It’s expensive to get new government ID, so she borrowed her roommate’s ID, and her roommate was underage. It turns out that it was true. It’s actually what happened. The producer had somebody go over to the country. They had him videotaped and took still photos. They had him saying, “Here’s what happened” and the other one saying, “Yeah, this is what happened.” When we looked at it, we said, “That’s right.”

QUESTION: How long did that take to get cleared up?

JOYNER: Actually, it didn’t take that long. The producer moved quickly on it because child pornography charges are serious.

On the second occasion, there was, I believe, an eastern European performer – a woman with a lot of makeup. Sometimes it’s very difficult to see the resemblance. Again, they had ID on record that showed this person was 16 or 17 at the time of the performance. We looked at

it and said, "There's a problem here." They said, "Oh no, no. We must have just put the wrong ID in there. Here's the right one." It turned out to be true.

We have not found any underage performers yet. I suspect if we do it's more likely to be with Internet companies as opposed to established producers. Our role in the Section 2257 program is not to conduct investigations; it's to conduct inspections. So if we do receive information of an underage performer that requires investigation, that will be assigned to a different group. My belief is there are several out there, but we have not discovered them in a Section 2257 inspection.

QUESTION: Is that the next move – to get more involved with Internet companies?

JOYNER: Yes. That's what we're doing now.

QUESTION: Have all the inspections carried out to date been of films, or have you had printed materials like magazines?

JOYNER: All of them have been of films, one also included a web site. We will look at any product that includes a sexually explicit act. It could be a book, a magazine. There are certain producers – the largest ones you can think of, typically – that will produce a magazine, a video, and something on the Internet. What we'll do in that case is pull a product from each one of those media.

QUESTION: When we spoke to Sean Berrios⁷⁰ at Hustler, he told us he would have to have the records for each of the individuals who appear in the phone-sex ads in the magazine.

JOYNER: Yes. I met him at XBiz. He's a nice guy. You do have companies – particularly large companies – that have done a very good job of keeping these records.

QUESTION: When the random number is generated, you're not trying to get one film producer, one Internet company and one magazine, etc.?

JOYNER: No. Whatever comes up is what we have.

QUESTION: Has the industry been cooperative during the inspection process?

JOYNER: Absolutely. I think they had concerns. We had concerns. We weren't quite sure how the first inspection was going to go. They're very cordial, professional, and accommodating. Every place that we inspected so far has provided all the information we needed. I wouldn't say it's a friendly relationship because it's not supposed to be a friendly

⁷⁰ See Custodian of Records – Title 18, U.S.C. §2257 Compliance, Hustler Website, available at <http://hustler.com/2257.html> (last visited Aug. 29, 2007) (listing Sean Berrios as "Custodian of Records" for LFP Internet Group, LLC, and LFP Video Group, LLC).

relationship, but it's a very professional, courteous relationship that we have.

QUESTION: Can you take us through the inspection process?

JOYNER: Sure. When we first arrive, either I or the other supervisor will go into the office. Actually, before we do that, we take photographs. (This is standard procedure so we can't be accused later of trashing the place or something like that. Also, this is evidence that we are at the correct location). We'll take a photograph of the outside of the business that shows the address. We'll take a photograph of any other locations nearby, so that we can confirm the location. As soon as I walk in, I'll show my identification to whoever is there. I'll identify myself and I'll explain that we're there to conduct a Section 2257 inspection and I need to see either the owner or the custodian of records. Once I speak to that person, I'll show them an Excel spreadsheet that we've done that shows all of the products that have been reviewed and all of the performers we've identified as appearing in that product. I explain that our inspection is restricted to whatever is on the spreadsheet.

QUESTION: How many products are looked at for an inspection?

JOYNER: It depends on the size of the company. More than likely, we'll review two or three products. A company the size of Wicked,⁷¹ which you mentioned, obviously produces hundreds of products. We'll take a small sample – maybe twenty to thirty of their products. We want some reasonable sample.

We also give them a letter saying if we find a violation, we can re-inspect them at any time. They have a chance at that time to ask any questions or address any concerns. It is against the law to prevent us from doing the inspection. That has never been an issue. They've always been very cordial. They lead us to where the Section 2257 inspection records are kept. We take a photograph of that area. We ask that we be given some sort of work area where we can spread out and get more done quickly. We bring our own printers. We take a photograph again as we leave.

They will pull the Section 2257 records for everything listed on the spreadsheet that we've provided them. We'll review that with the screen captures that were made. We'll make copies of the photo identification – the Section 2257 records. We'll identify any violations at that time. I'll do my unofficial preliminary report of the violations and provide that to the owner or custodian of records. We'll go through that together. If there is something there that we can correct right then and

⁷¹ *Supra* note 57.

there, then we will. If not, then they're giving one week to correct them. Then we leave.

QUESTION: With computerized records, do they print out the record for you?

JOYNER: We do it at no cost to them. What we prefer – if they have it in digital form – is that we just throw it on a CD-Rom.

QUESTION: Do most companies have their records on computer? Is that standard practice?

JOYNER: I think you're seeing more of that now. What's interesting is that one of the companies that had absolutely no violations had everything on a 3-by-5 card, and it was a fairly large company. Our first assumption was this may not be really good, but it was outstanding. The person who was custodian of records was very detail oriented, very sharp and the 3-by-5 cards were absolutely perfect.

QUESTION: Did they have pictures of the driver's license on the card?

JOYNER: That was part of the cross-referencing system. It would cross-reference to a file folder that had the ID. I didn't think it could be done, but they did it. Most of the companies have gone to some sort of data system where they have it digitalized.

QUESTION: Once you've completed the inspections and you've written your report, what happens next?

JOYNER: The final report is a listing of all the reports done by the contract inspectors. We list the procedures that we follow – the pre-inspection procedures and the inspection procedures. Then I list the violations and cite the law where this is a violation. Once all that is completed, copies go to FBI headquarters. Copies go to the U.S. Attorney's Office for that district – for the most part, that would be here in L.A. because that's where most of the companies are. A copy also goes to the Department of Justice.

QUESTION: Do you ever, at that stage, make recommendations about whether charges should be filed?

JOYNER: No. Again, the FBI's role is simply to enforce the law. We just say these are the violations that we discovered. In personal conversations with the U.S. Attorney's Office, we may get into that. But it's not our place to say we need to go after this company. We simply report what we found.

QUESTION: Is this unusual for the FBI to have a regulatory compliance mission?

JOYNER: The FBI has never been involved in doing regulatory inspections before. The D.A. does it for pharmaceutical companies.

ATF does it for weapons companies. This is the first time we've been involved.

QUESTION: Have you changed any of your procedures along the way?

JOYNER: No, because some of the things were left open (like the grace period). The law is somewhat straightforward, so we know what we're looking for in terms of violations. I think the industry knows what the Section 2257 law says and they're in compliance or attempting to get in compliance.

I attended several conferences of the adult industry before starting this program, and I listened to the Section 2257 seminars. The advice given by the attorneys, typically, was dead on. What they were advising their clients to do was excellent. I think most legitimate companies were doing everything they could to comply. What I also found interesting is that they were trying to get across that if you know a company that is outside of the law, throw them to the wolves – and that's a quote – because it affects all of us. I think there is a large group in the industry that is trying to do everything they can to abide by the law. Like any industry, you may have some people on the fringes that are not.

QUESTION: A number of people in the adult industry, in commenting on your reasonable and professional attitude in conducting the inspections, openly worry that once you are no longer in charge of conducting the inspections, the next special agent in charge may not be as accommodating. How do you respond to that concern?

JOYNER: I understand the concern. Any time you have a change in the people involved in the program, they could have a different focus and a different purpose and that could change. My answer is that we are establishing precedent, and it is a documented precedence.

QUESTION: Do you intend to stay on this assignment, or are you getting "porn overload"?

JOYNER: I do not review the product. My involvement is managing the contract inspectors, being the lead inspector and ordering the product, and researching the companies. So I don't have porn overload. I'm eligible to retire in less than two years and who knows? I may be here for less than two years or I might be here another six years. At this point, I have no interest in going elsewhere. This actually is a very good assignment. The other supervisor and I competed for these positions against other people. We were fortunate enough to get selected. There are benefits. Both of us are getting headquarters time for this, which is a nice benefit.

QUESTION: Have you been involved in all the inspections? Have you guys split up the inspections?

JOYNER: I have been involved in all but two. We had another supervisor who was briefly assigned to the program until it was a permanent selection, and he attended one that I did not. Steve Lawrence is the other supervisor and he has been on one inspection that I have not been on. I would like for both of us to attend most of the inspections, but eventually, as we start doing more of them, I will do mine by myself and he'll do his by himself.

QUESTION: Has there ever been an inspection where no one was there at the office?

JOYNER: Yes, on three occasions that I can think of. One was a fairly large company and it was during regular work hours and they weren't there. Now, again, that is a violation. As it turned out, there was some medical emergency in the family that led to this and we just came back another day – and we didn't write that as a violation.

QUESTION: How many times would you go back before it becomes a violation?

JOYNER: We try to be as reasonable as possible. It's a case-by-case basis. If there's no indication that they're purposely ducking us, I don't mind coming back two or three times.

QUESTION: Has it ever been the case that someone was purposely ducking you?

JOYNER: It's arguable. At a certain point, we have to make that call and we will contact them in advance. We are not to give advance notice. We have given advance notice on two occasions, and there were reasons for it. Typically, it's our attempt to be fair and reasonable. The records, in those cases, were kept at somebody's residence. So we did so out of respect. Were we required to? Absolutely not. We may do that in the future, but we haven't in these cases because we've attempted to respect the privacy of their homes.

QUESTION: Did you have certain expectations of the industry before you got involved in this process? Have you been surprised by anything?

JOYNER: I've been surprised by a few things. Our assumption was they would be in complete compliance, and I was surprised to see that very few are. Most of them are out of compliance. That was a surprise.

QUESTION: Do you think some of your advance work – going to the XBiz conference and having the meeting in Washington – perhaps has led to this courteous relationship?

JOYNER: I hope so. But even before that meeting in D.C., we had conducted three or four inspections and even those were very good. If you go on the websites for different attorneys, you can see the recom-

mentations that they give. They tell their clients, “Don’t delay, don’t be hostile.” That’s good advice. Again, we’re being professional and polite. It’s nice when that’s returned. It helps the whole process go much more professionally.

QUESTION: Have all the inspections been here in Southern California or was there one in Philadelphia involving Sebastian Sloane?

JOYNER: There was never an inspection in Philadelphia.⁷² It’s interesting because some of the attorneys at XBiz and AVN have even said on their websites that they had been given bad information, perhaps.

QUESTION: So all nineteen inspections have been in Southern California?

JOYNER: Yes. Now, that’s going to change very soon. The database is countrywide, It’s just a matter of now getting approved from headquarters to travel to those locations.

QUESTION: Will the inspections in the other states be run from here – out of your office?

JOYNER: We would travel out. The reason we didn’t do it before was because of the costs involved and we were still establishing the program. We’re still not in permanent space. We still have the administrative issues that we’re trying to resolve to get fully functioning. I would say that, within a month, we’ll start doing some companies outside of California.

QUESTION: On that first inspection, before your meeting in Washington, you undoubtedly surprised the company. Did they ask to call their attorneys? What was that like?

JOYNER: Actually, it was on the AVN and XBiz website while we were still there conducting the inspection, which is fine. The owner was very good about it. The owner even asked me, “Do you have any problems if I call my attorney?” The answer was absolutely not. This is a routine inspection. There’s no indication of any wrongdoing on your part. You were randomly selected. You’re lucky enough to be first! If you want to call XBiz, go ahead.

QUESTION: If there was one piece of advice that you could pass along to members of the adult industry that might help them in terms of their record-keeping operations or their conduct when you conduct the inspections, what would that be?

⁷² Steve Javors, *FBI Continues 2257 Inspections*, XBIZ.COM, June 20, 2007, available at http://www.xbiz.com/news/news_piece.php?id=23700&mi=all&q=Sebastian+Sloane (last visited Sept.5, 2007) (noting that “[t]he FBI’s inspection of Bethlehem, Pa.-based SEBASTIAN SLOANE Productions was prompted by an unrelated search warrant”).

JOYNER: If they're not in compliance, hire the people they need to get in compliance as quickly as possible. And we're seeing that happening.

QUESTION: So far, then, would you characterize the process as a success from the FBI's perspective?

JOYNER: Absolutely. Our goal is to make sure the company is in compliance. Our goal is to ensure that minors aren't being sexually exploited, that the record keeping is such to ensure that that's not happening. As companies are improving their record-keeping, we're meeting our goal. We're ensuring that minors are not being involved in this.

QUESTION: What makes a good record-keeping system?

JOYNER: A good custodian of records who is just diligent in keeping the records. That's been the case. Once we walk in, within minutes of meeting the custodian of records, we can pretty much determine if this is going to go well or not. If they hire an 18-year-old kid to keep the records, it may not go well. One company actually hired someone with a Ph.D. in computer science. To me, that indicates how seriously they take it.

QUESTION: Have any charges been filed?

JOYNER: No. Because it's a new program, there's a strong push from DOJ to start prosecuting. It's up to the U.S. Attorney's Office as to when and who to prosecute. Again, we have two companies that have not been in compliance – even after re-inspection. We simply conduct the inspections. We cite the violations. We don't make the determination if it's going to be prosecuted or not. There are several reports that are with the U.S. Attorney's Office and back at the Department of Justice that are undergoing review right now to determine who to prosecute.

QUESTION: Are you asked for your recommendations on that?

JOYNER: No, I'm not.

QUESTION: One of the concerns people in the industry have is the apparent disconnect between the FBI and the Department of Justice. Is that a problem?

JOYNER: I wouldn't use the term "disconnect." There's always constant communication between the Department of Justice, U.S. Attorney's Office and the FBI. The mission is clear. The mission is to prevent sexual exploitation of children. There's no disconnect there. There's always a determination as to who to prosecute and who not to prosecute. The first case will be an important case.

QUESTION: Can you give us the names of the companies who are in violation?

JOYNER: No. That probably would be a privacy issue with them.

QUESTION: How long in the foreseeable future will the inspections continue?

JOYNER: Indefinitely. Right now our staffing is two full-time supervisors – I am a full-time FBI agent and the other person is also. We have four contract inspectors that are retired FBI agents. We’re hiring a fifth. We have three other vacancies that we’ll probably re-advertise in the next month or two.

B. *The lawyers’ take: Viewpoints of two veteran adult industry attorneys on the section 2257 inspections to date*

This section sets forth the comments of Gregory Piccionelli⁷³ and Jeffrey Douglas,⁷⁴ two long-time adult industry attorneys who were interviewed for this article shortly after the authors’ interview with Special Agent Joyner. The lawyers provide their thoughts about the Section 2257 regulations and the conduct of the inspections thus far.

1. Gregory Piccionelli, Esq.

QUESTION: Why are the Section 2257 regulations problematic for the adult entertainment industry?

PICCIONELLI: Section 2257 is what I’ve called a weapon of mass destruction for the industry because if you put people in jail for failing to have one ID, one cross reference, or failing to properly word the compliance statement, then that’s pretty cut and dried. If there are violations of Section 2257 that they can indict a party on, they are also free to indict them on distribution of obscenity, which they know they’ll never win, but with a loaded indictment, there’s a likelihood they will get someone to plead out – pay a fine, leave the industry, go to jail for a period of time, probation, or something to that effect. They could go after a lot of people that way. Fortunately, that may not, as of yet, be a significant threat for the Internet folks. The fact that the DOJ is inspecting the content producers – DVD manufacturers, for example – is a real risk for them.

Even if the DOJ could run out all of the content producers, it would just hasten the moment when it runs into the grassroots.

QUESTION: Is that why the FBI began the content inspections in 2006?

⁷³ See *supra* note 20.

⁷⁴ See Jeffrey J. Douglas Website, available at <http://www.lawyers.com/jdouglaslaw/jsp2182609.jsp> (last visited Sept. 7, 2007).

PICCIONELLI: Congress, in the PROTECT Act⁷⁵, pretty much told the executive branch and the Attorney General that “Section 2257 has been on the books and effective since 1995, and there hasn’t been one inspection or one prosecution. You have a year to do this.” A year went by and, still, no prosecutions and no inspections. Instead, there was the promulgation of another set of Section 2257 regulations⁷⁶ and that frustrated a lot of folks. When Gonzales came in, there was a fresh push by members of Congress to help get Gonzales approved so that something would be done with Section 2257. Indeed, I think that’s what this is about.

So far, it’s been a relatively tepid response. We don’t see dozens of inspectors all over the country. There are substantial problems with applying Section 2257 to where the greatest amount of distribution is currently occurring, which is on the Internet. DVDs, for heaven’s sake, are disappearing.⁷⁷ It does not seem to me to be an effective strategy for taking down the business. With the passage of Section 2257(a)⁷⁸, Congress has pretty much demonstrated what the least restrictive means for accomplishing the purposes of Section 2257 and Section 2257(a) are. Send a letter to the Attorney General stating that you are in compliance with state and federal labor laws. I think Section 2257 might also disappear as a means for going after the business in the fullness of time.

QUESTION: How would you characterize Special Agent Joyner’s performance in overseeing the inspection process?

PICCIONELLI: He’s a great guy. For the first time in the history of the adult entertainment industry, a governmental agency has said – and this is what Mr. Burris said when we met with him in Washington – “I was charged to do these inspections.” The FBI has never engaged in

⁷⁵ The “Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today” or “PROTECT Act,” Pub. L. No. 108-21, 117 Stat. 650 (2003), required the U.S. Attorney General to promulgate new regulations to enforce 18 U.S.C. §2257.

⁷⁶ Inspection of Records Relating to Depiction of Sexually Explicit Performances, 70 Fed. Reg. 29607 (May 24, 2005) (to be codified at 28 C.F.R. part 75).

⁷⁷ See Matt Richtel, *For Producers of Pornography, Internet’s Virtues Turn to Vices*, N.Y. TIMES, June 2, 2007, at A1 (noting that “[t]he online availability of free or low-cost photos and videos has begun to take a fierce toll on sales of X-rated DVDs”).

⁷⁸ See Adam Walsh Child Protection and Safety Act of 2006, H.R. 4472, 109th Cong. §503 (2006) (amending Section 2257 by inserting Sec. 2257A “Record Keeping Requirements for Simulated Sexual Conduct,” which essentially provides an opt-out clause for producers of simulated sexually explicit conduct if it “is created as a part of a commercial enterprise by a person who certifies to the Attorney General that such person regularly and in the normal course of business collects and maintains individually identifiable information regarding all performers, including minor performers. . .”).

any administrative inspection regime, like the FDA⁷⁹ or the FAA.⁸⁰ To his credit, he went to the other agencies and said, “How do you do this?” The heads of the other agencies said to him, “You contact the companies that are the significant players in the industry and you have them help you work this out,” which he did. Believe me, there was a lot of paranoia; a lot of people thought they were being set up.

So far, I must tell you, they have been honest, forthright and fully forthcoming in that everything they have told us would occur has actually occurred. Because of it, there has been an enormous amount of cooperation. The adult business has fallen over itself to be cooperative – something that we have said all along we would do if, instead of trying to sandbag the industry, you worked with the industry.

I may be wrong – it may smack of being naïve – but at the moment I have no reason to believe that they have performed in any way other than exactly the way they said they would.

QUESTION: Do you think the fact that the FBI participated in the XBiz conference will help to normalize relations between law enforcement and the adult entertainment industry?

PICCIONELLI: I do hope that will happen. It will be good for the industry, it will be good for kids, it will be good for parents, it will be good for business, and it will be good for the United States because it will keep the business here – it won’t fly offshore.

The steps the FBI has taken to create a reasonable, mature, practical, professional, and business-like method of having these inspections occur have, indeed, sort of created a normalized relationship on that very, very, very narrow topic.

The industry still stands – ready, willing and able – to allow itself to be regulated as the big business that it is, professionally and within the law. Unfortunately, as long as there are folks out there that just refuse to see it beyond the big S-E-X word, we’re going to have a problem here. But in the fullness of time, I think there will be normalized relations. The media will need the adult business to drive traffic and, at some point, people will wake up and say:

You know, it’s been thirty-five, forty or fifty years since hardcore material has been available everywhere and, you know what, we’re all still alive, we all grew up with it and we’re all not sex fiends just raping people on rapid transit buses.

⁷⁹ See U.S. Food and Drug Administration Website, available at <http://www.fda.gov> (last visited Sept. 7, 2007).

⁸⁰ See Federal Aviation Administration Website, available at <http://www.faa.gov> (last visited Sept. 7, 2007).

There is a really transcendent issue that is buried here with adult business – particularly with the online adult business. Most people don't know how a computer works. They can't tinker with a computer game and alter it. Most people don't know how Websites work and how the Internet works. It is one of the reasons adult parents have thrown up their hands and said to the government, "I don't know how this thing works. You've got to regulate this for me."

That ignorance of how this whole thing works has created a tendency to over regulate. All of the focus of overregulation has been in the sex area. Meanwhile, if they wanted to, the Chinese could probably have the ability to unplug us at the individual computer level.

Once again, because of this puritanical obsession with sex, the focus has been in the wrong place. In the fullness of time, the whole story will be told and the parties that will push it, at the right time, will do so when there's an economic incentive for people to say, "Let's stop this. Let's use sex. Let's sell soap. Let's make money." Then, they'll come up with all kinds of ways to rationalize it. People will then do exposés on how much damage has been done by the religious right in its preoccupation with sex.

2. Jeffrey Douglas, Esq.

QUESTION: How do you feel so far about the FBI's conduct in the Section 2257 inspections?

DOUGLAS: It's both very admirable in some ways and shameful in others. In terms of the admirable, they are not overreaching and they are being excruciatingly businesslike and professional. The template for the inspections was designed to be as non-disruptive as possible. As one who has experienced both a Section 2257 inspection and an obscenity search warrant execution, they are just night and day. The FBI agents engaged in the execution of the Section 2257 inspections say – and I believe – that they are not coming at this in an adversarial role, and I think they are trying very hard not to have an adversarial role. It is particularly noteworthy because, as they say, in the long, proud history of the FBI, they have never done any regulatory inspections. They didn't want to – it was just forced on them – and they have gone about it appropriately by being as professional as possible and, in a limited fashion, entering into a dialogue with the industry they are regulating.

QUESTION: And on the flipside?

DOUGLAS: The rules themselves are inherently arbitrary, internally contradictory and therefore, by necessity, they have to be arbitrary in their enforcement. For instance, one of the regulations says that you only have to keep records for seven years after production. I suspect

that a substantial fraction of the records they are searching for are more than ten years old. One entire inspection was of a company that went bankrupt, was bought by a company, then bought by another company, and then they go and execute the Section 2257 on Sunshine and the original company hadn't made a movie in ten years. When one points something like that out to them, the shades come down because they don't have any choice and it's just, "I'm doing what I'm told." That part is very, very frustrating and it is perfectly inconsistent with how they want to be seen and how they view themselves, but it is inherent when you are attempting to enforce something as entirely arbitrary as this system is.

IV. ANALYSIS & CONCLUSION

"They did their job, and they're willing to work with us, not against us. They were fair and honest."⁸¹ That's how Gentlemen's Video President Michael Esposito described the inspection that Special Agent Chuck Joyner and his team conducted at his company's headquarters in Chatsworth, California, in July 2007.⁸² Esposito's remarks reflect the professional demeanor that Joyner espoused throughout the interview with the authors of this article and underscore the FBI's objective to maintain a non-confrontational, non-aggressive posture in carrying out the inspections. That deliberate approach is even borne out by Joyner's deliberate choice of wording regarding the process – he stresses that they are inspections, not raids or searches.⁸³

From the outset, Joyner has strived to maintain an open approach, as he told the attendees at the adult industry's XBiz Hollywood conference in February 2007: "The FBI wants to make the inspection process as transparent as possible. It is not a game of 'gotcha.'"⁸⁴ During the interview, he also observed, with respect to speaking with industry groups to aid their understanding of the inspection process, "Any time we're invited, we'll be more than happy to show up."⁸⁵

Although the FBI is working with the adult entertainment industry to make the inspection process as painless as possible, Joyner's overall impression is that the industry's record-keeping is "[v]ery poor, with a

⁸¹ *FBI Inspects 2257 Records at Gentlemen's Video*, XBIZ.COM, July 20, 2007, available at http://www.xbiz.com/news/news_piece.php?id=82150&mi=all&q=2257+records (last visited Sept. 4, 2007).

⁸² *Id.*

⁸³ *Supra* note 33.

⁸⁴ *FBI Building Adult Company Database*, XBIZ.COM, Feb. 7, 2007, available at <http://www.xbiz.com/news/newspiece.php?id=19544&mi=all&q=2257+inspections> (last visited Sept. 4, 2007).

⁸⁵ *Supra* Part III, Section A.

couple of exceptions.” In fact, only four out of the twenty-four companies inspected as of August 28, 2007 had passed the inspection process – on the first round – without a violation. Joyner emphasized that it may have been that companies delayed getting their records in order because previously there were no inspections. As he suggested, “[n]ow that they know we’re out there and looking, and it is a serious issue if they have violations, we see evidence of companies taking this much more seriously and correcting their violations.”⁸⁶

Once violations are documented, it is within the purview of the Department of Justice – not the FBI – to decide whether a business will be prosecuted. Joyner warned during the interview that, “because it’s a new program, there’s a strong push from DOJ to start prosecuting,” adding that “[i]t’s up to the U.S. Attorney’s Office as to when to prosecute and which one they’ll select.”⁸⁷ He further noted that “[t]he first case will be an important case.”

Joyner made it clear when he addressed the XBiz gathering in February that the FBI “would be delighted if every inspection that went on was in complete compliance.”⁸⁸ Indeed, during the interview, he stressed that he and his team are trying to be equitable about conducting the inspections and documenting violations. For instance, if upon visiting the business the FBI is unable to locate a company official in charge of the records – a violation of the 2257 regulations⁸⁹ – Joyner has not found the company in violation. “We try to be as reasonable as possible,” he noted. “It’s a case-by-case basis. If there’s no indication that they’re purposely ducking us, I don’t mind coming back two or three times.”⁹⁰

Joyner seems most surprised by the level of cooperation he has received from the adult businesses that the FBI has inspected, and he credits adult industry attorneys. “Every place that we’ve been to – and I think it’s because they received good counsel from their attorneys – has been very cordial,” he noted. “They understand the law and they understand they can’t delay us, so it’s been a very professional relationship.”⁹¹

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See Knox, *supra* note 56.

⁸⁹ 18 U.S.C. §2257 (c) (2007) (indicating that “[a]ny person to whom subsection (a) applies shall maintain the records required by this section at his business premises, or at such other place as the Attorney General may by regulation prescribe and shall make such records available to the Attorney General for inspection at all reasonable times”).

⁹⁰ *Supra* Part III, Section A.

⁹¹ *Id.*

One of those attorneys, Jeffrey Douglas, thinks the FBI agents are going out of their way to show “they are not overreaching and they are being excruciatingly businesslike and professional.”⁹² He praised the above-board approach observing:

The FBI agents engaged in the execution of the Section 2257 inspections say – and I believe – that they are not coming at this in an adversarial role, and I think they are trying very hard not to have an adversarial role.⁹³

Nonetheless, Douglas finds the very regulations the FBI is charged with inspecting to be “inherently arbitrary, internally contradictory and therefore, by necessity, they have to be arbitrary in their enforcement.”⁹⁴ This echoes his sentiment, published in the online version of *Xbiz* in January 2007, that Section 2257 is “extraordinarily burdensome regulatory scheme.”⁹⁵

Gregory Piccionelli, who said of Special Agent Joyner after his remarks at the XBiz conference, “You can’t take to the bank all of the answers that you just heard,”⁹⁶ – a reference to Joyner being an FBI agent rather than a Department of Justice attorney – now observes, “He’s a great guy.”⁹⁷ For Piccionelli, the key to the successful relationship thus far between the FBI and the adult industry, in terms of the process, is that the inspection agents “have been honest, forthright and fully forthcoming in that everything they have told us would occur has actually occurred.”⁹⁸ According to Piccionelli, this transparency has resulted in a high level of cooperation by the adult entertainment industry. He noted during the interview that “[t]he adult business has fallen over itself to be cooperative – something that we have said all along we would do if, instead of trying to sandbag the industry, you worked with the industry.”⁹⁹

Whether the mutual cooperation that appears to be occurring at this juncture continues remains to be seen, particularly if and when prosecutions begin. When asked whether the professional demeanor of both parties to the inspection process will lead to normalized relations between the federal law enforcement and the adult entertainment industry, Piccionelli indicated he hoped it would, adding,

⁹² *Supra* Part III, Section B (2).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Jeff Douglas, *A 2257 Update*, XBIZ.COM, Jan. 29, 2007, available at <http://www.xbiz.com/articles/legal/19350> (last visited Sept. 7, 2007).

⁹⁶ See Knox, *supra* note 56.

⁹⁷ *Supra* Part III, Section B (1).

⁹⁸ *Id.*

⁹⁹ *Id.*

It will be good for the industry, it will be good for kids, it will be good for parents, it will be good for business, and it will be good for the United States because it will keep the business here – it won't fly offshore.¹⁰⁰

What remains to be seen, of course, is what the Justice Department ultimately does with the reports that it receives from Agent Joyner – whether it chooses to bring prosecutions for Section 2257 violations identified by the FBI or whether it decides to pass and to move on to other, perhaps more pressing matters. With Alberto Gonzales's resignation in late 2007 as U.S. Attorney General¹⁰¹ and with Democrats now controlling both the U.S. Senate and House of Representatives, prosecutions are not necessarily inevitable.¹⁰² The eventual decision, however, about whether to bring Section 2257 prosecutions, will affect and influence the next saga in the government's efforts to rein in the adult entertainment industry.

¹⁰⁰ *Id.*

¹⁰¹ See Shenon & Johnston, *supra* note 47, at A1 (describing Gonzales's resignation).

¹⁰² As Jeffrey Douglas put it in January 2007, several months after the inspections had begun:

There really was only one constituency supporting 2257. It has not been the Department of Justice and certainly not the FBI. It has been the favorite child of a handful of religious extremist Republican lawmakers. In the minority, they cannot pressure the Bush administration to allocate more resources to 2257. This will make for much more reasonable regulation and perhaps, for the first time in American history, actual dialogue between the regulators and the regulated.

Douglas, *supra* note 95.