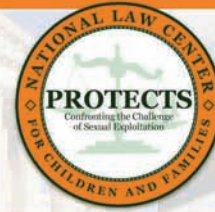


The Enforcer

A Publication of the NLC PROTECTS Training Program



Fall 2009
Issue 11

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Dr. Frank Kardasz, a law enforcement officer and member of the National Law Center's Law Enforcement Advisory committee, sent an open letter to the U.S. Sentencing Commission. This letter was in response to media reports on Child Pornography sentencing concerns. This commentary presents the perspective from a law enforcement professional who works in this area on a daily basis and we think needs to be heard. We are pleased to present this letter in its entirety and thank Dr. Kardasz for his permission to publish this important commentary.

- The Editors

I solemnly read a news report that began with the following troubling headline: Sentences for Possession of Child Porn May Be Too High, Judges Say (1). The story described a recent meeting of the U.S. Sentencing Commission where judges advocated softening sentences for possessors of child pornography. Not in attendance, and sadly unrepresented at the commission meeting, were thousands of anonymous victims of child sexual abuse whose tortured images and videos are being traded as you read this, by pedophiles, sex offenders, and the criminally sexually curious. As a law enforcement officer, having supervised thousands of investigations into unlawful images over the past ten years, it is disheartening to see some in the judiciary attempting to unravel years of progressive legislation against this disturbing form of child abuse.

Normally I am reticent to contradict judges because I am only a humble policeman, dutifully aware that judge-liness is next to godliness in the justice system but I must herein rebut some of the misinformation from the report for the purpose of informing those in the judiciary who do not deal with this subject on a regular basis. Opinions expressed herein are personal and do not represent the thoughts of any government agency.

According to the report, one judge said that he "doesn't condone possession of child pornography or understand it, but focused on the unfairness of treating one person sitting in his basement receiving videos over the Internet the same as a commercial purveyor of child pornography."

Escalating Offenses: From Basement to Abomination

Former criminal profiler John Douglas described the relationship between pornographic images and sex offenders. He said, "With most sexually based killers, it is a several-step escalation from the fantasy to the reality, often fueled by pornography, morbid experimentation on animals, and cruelty to peers (2)." Here in Arizona, my colleagues and I saw the beginning of this progression in a recent investigation where an offender admitted that he no longer enjoys lawful adult pornography and that he now must use child pornography to gratify himself.

Sometimes, experts say, the offender emerges from the proverbial basement described by the judge, emboldened by what he has seen and then, like an enthusiastic but twisted movie-goer emulating an on-screen hero, endeavors to re-enact the horrible video somewhere in real life. Dr. Chris Hatcher, Professor of Psychology at the University of California said, "It begins with fantasy, moves to gratification through pornography, then voyeurism, and finally, to contact (3)."

(Continued on page 5)

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Letters to the editor may be sent to:

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Updates from the Battle Against Child Exploitation

FORMER TEACHING ASSISTANT FROM FRANKLIN CHARGED FOR DEALING WITH CHILD PORNOGRAPHY

Franklin, TN, September 28, 2009: The Tennessean.com released an article about a former teaching assistant being accused of engaging in sexual activity with at least four boys as well as sharing and distributing computer files containing child pornography.

Scott Z. Myers, 27, worked as a teaching assistant at a Franklin, Tennessee school for approximately three years. During that time he also worked at a morning and afternoon care program for about 20 days.

According to the Tennessee Department of Justice, officers approached Myers' home with a search warrant when they saw the defendant leave his home with two young boys. After further examination of his residence, officers allege that they found computer files with inappropriate images of young children engaged in sexually explicit conduct.

MURFREESBORO MAN ARRESTED FOR POSSESSION OF CHILD PORNOGRAPHY

Murfreesboro, TN, October 14, 2009: According to the Murfreesboro Post, a 63 year-old man has been arrested for alleged possession of child pornography. Glenn M. Little Sr. is alleged to have ordered and purchased eight videos that portrayed young children engaging in sexually explicit activities.

After executing a search warrant, law enforcement officers confiscated the defendant's computer as well as 150 DVD's containing disturbing images of child sexual abuse. Little allegedly confessed to investigators that he had been collecting child pornography for 20 to 30 years.

This case was investigated by the Internet Crimes Against Children Task Force of the Franklin Police Department. However, this case could not have been solved without the effective collaboration between the Franklin Police Department, the United States Postal Inspection Service and the United States Secret Service.

The National Law Center for Children and Families will be holding its 19th PROTECTS seminar in Franklin, TN in order to train and educate local law enforcement, prosecutors and other agencies on such exploitation crimes.

ROBINSON MAN CHARGED FOR POSSESSING CHILD PORNOGRAPHY

Robinson, IL, September 29, 2009: A report issued by the United States Attorney's office of the Southern District of Illinois stated that Richard D. Glenn, 49, has been charged with a child pornography offense on September 9, 2009. The defendant faces a fine up to \$250,000, a 5 year to lifetime supervised release and up to 10 years in prison.

Richard D. Glenn reportedly admitted that he possessed child pornography on June 28, 2008 and July 10, 2008 which has been "mailed, shipped or transported in interstate commerce by any means, including by computer".

The case is being prosecuted by Assistant United States Attorney George A. Norwood, and was investigated by the Federal Bureau of Investigation Southern Illinois Cyber Crimes Task Force, the Illinois Attorney General's Office Crimes Against Children Task Force, as well as state and local law enforcement agencies such as the Crawford County Sheriff's Office and the Robinson, IL Police Department.

In 2008, the NLC held its training seminar in Southern Illinois and the Southern Illinois US Attorney's office co-sponsored this event.

FORMER BAND TEACHER FROM IOWA CONVICTED FOR ATTEMPTED ENTICEMENT OF A MINOR

Clinton, IA, October 19, 2009: Clinton (Iowa) Herald, a local community newspaper, reported that 34-year-old James Young has been sentenced to 13 years in federal prison for one count of attempted enticement of a minor to engage in illicit sexual activities. In addition, Young will have to pay an assessment of \$100 to the Crime Victims Fund, serve ten years supervised release after the imprisonment, and may not use a computer or own a camera unless he receives permission to do so.

The defendant who was also a former band teacher at the Clinton High School joined an Iowa chat room on November 4, 2008 where thought he was talking to a 14-year-old girl. The girl, however, was an undercover detective from the DeWitt Police department. He suggested a variety of sexual activities and proposed meeting at a local hotel where he was later arrested.

The NLC held its 18TH PROTECTS seminar in Iowa where 50 law enforcement officers and prosecutors were trained on the different aspects of child exploitation crimes.

Cybercop Speaks Out on Possession Sentencing

(Continued from page 1)

Image-Fueled Offenders Case Studies

After one child pornography-fueled murder, software developer Michael Brier admitted that viewing child pornography made him long for the sex acts that led to him kidnapping, murdering and dismembering ten year old Holly Jones in Toronto in 2003. Brier is now in prison and little Holly is gone forever (4). Serial killer Arthur Gary Bishop was similarly fueled by child pornography. The child pornography addict killed five boys in Utah before being caught and executed in 1988 (5).

Offenders Risk Assessment

Pursuant to my work with the Arizona Internet Crimes Against Children Task Force I am beginning to understand the crimes and the offenders. My training and experience suggests that a significant number of possessors of unlawful images are also undiscovered "hands-on" contact offenders. Formal academic research indicates that there may be a correlation between those who possess child pornography and those who are also "hands-on" contact offenders. A surprising study of federal prisoners indicated that 85% of those in custody for possession of unlawful images were also "hands-on" molesters whose contact offenses had never been discovered (6). In landmark research (7), psychiatrists Bourke and Hernandez compared two groups of child pornography offenders participating in a voluntary prison treatment program. The goal was to determine whether the possessors were collectors of child pornography at little risk of engaging in hands-on sexual offenses, or if they were contact sex offenders whose criminal sexual behavior involving children went undetected. The research found that Internet offenders were significantly more likely than not to have sexually abused a child via a hands-on act. The findings were apparently so shocking to the prison rehabilitation project that the Federal Bureau of Prisons tried to prevent the release of the surprising study.

Doctors Bourke and Hernandez concluded their report by saying:

- In fact, if it had not been for their online criminality, these offenders may not otherwise have come to the attention of law enforcement.
- Upon being discovered, these offenders tend to minimize their behavior. They may attribute their search for child pornography to "curiosity" or similar benign motivation. They may "accept responsibility" only for those behaviors that are already known to law enforcement, but hide any contact sexual crimes to avoid prosecution for these offenses, or to avoid the shame and humiliation that would result from revealing their deviance to family, friends, and community.
- Only later do the majority of sex offenders who enter treatment acknowledge that they were not, as they initially claimed, merely interested in sexual images involving children; they were (and are) sexually aroused by children.
- Further...it appears that the manifestations of their deviant sexual arousal was not limited to fantasy. Rather, when an opportunity arose (either incidentally or as a result of planned, predatory efforts), many offenders molested or raped children, and engaged in a variety of other sexually deviant behaviors.
- Results of the study suggest...that many Internet child pornography offenders may be undetected child molesters, and that their use of child pornography is indicative of their paraphilic orientation.

Images: Video with Sound

Unlawful images are an unusual type of evidence because the images themselves are contraband and cannot be released for public viewing. Images are the only form of contraband introduced to the human brain through the sense of sight. When described in text the dispassionate details of unlawful images use sanitized statutory legalese to explain the sex acts. The pedantic written accounts of the images and videos can never fully explain the abominations suffered by the victims nor can a written description reproduce the shocking sounds of sexual violence.

Empathy, Sympathy and Victim Reality: Children are Citizens and Humans

Existing tough penalties against unlawful images were earned at the expense of tiny human victims whose voices are heard on secretive videos trafficked and traded by criminal pedophiles and other sexual deviants. Some of us in law enforcement have seen the violations and heard the victims' cries. They plead, "No! No!" while being penetrated by men and sometimes animals. Some of the infant victims are so young that they cannot yet formulate words, only scream in pain. I could further describe the exact details of the abuses but I know that I would lose this reading audience. These are not "baby-in-the-bathtub" images.

If, as you read this, you find descriptions of sexual abuse emotionally troubling it means that you are probably normal. Now consider those who view images of child abuse and find them sexually gratifying. Those who possess or purvey child pornography are criminally abnormal.

(Continued on page 6)

Those who would soften the penalties against unlawful images dishonor the young victims of horrific sex crimes. Victims who cannot appear at sentencing commission hearings. Children who become political afterthoughts because they do not make financial contributions to political campaigns and who do not vote. Babies who cannot organize and hire influential lobbyists to represent them before legislators. Minors who are the mute and powerless constituents of well-intentioned elected officials who are often unwittingly blind to their victimization.

Media and the Public Psyche

Sex crimes against children are sometimes so horrible that the news media is unable to fully describe the incidents. The public psyche abhors reporting of sex crimes against children. Television and print reporters only discuss the sanitized version of events. News producers cannot permit too much time spent describing the crimes because audiences will switch channels in disgust. Hollywood does not focus on the subject because no audience can stomach it.

Offenders, the Public and Law Enforcement

In the book *Child Molesters: A Behavioral Analysis* (8) former investigator Ken Lanning discussed crimes against children. He said that most people wish to disassociate themselves mentally from thoughts of abuse involving children. Law-enforcement investigators must deal with the fact that the identification, investigation, and prosecution of child molesters may not be welcomed by their communities—especially if the molester is a prominent person. Individuals may protest, and community organizations may rally to the support of the offender and even attack the victims. City officials may apply pressure to halt or cover up the investigation. Many law-enforcement supervisors, prosecutors, judges, and juries cannot or do not want to deal with the details of deviant sexual behavior. They will do almost anything to avoid these cases.

Offenders: Public Dr. Jekyll and Private Mr. Hyde

Pre-sentence reports to the court about the offenders in these cases are sometimes a joke. I know from training and experience that some offenders are adept at creating public personas as trustworthy and demure individuals while privately they are sexually deviant predators, waiting for an opportunity to strike. They may present to the court as socially awkward simpletons. Once caught they often feign religious transformations and plead for mercy from the court while privately mocking the justice system as they re-offend.

Offenders sometimes practice techniques enabling them to thwart polygraph and penile plethysmograph tests. Dubious "12-step" pornography addiction treatment programs have sprung up because the psychological community has no proven method of rehabilitating some sex offenders. As the Latin proverb states: *Pardus maculas non deponit* - a leopard does not change his spots.

In court, offenders are seldom charged with each and every terrible image or video in their voluminous illegal collections and most plead to reduced charges based on just a few images. Consequently judges never fully review all of the evidence.

Policing the Images

Crimes against children are the most reviled types of investigations for most law enforcement officers. While respectful of the need to bring offenders to justice many officers say, "I could never work those kinds of crimes." Although it is highly rewarding to capture the offenders, the true details about the sexual victimization of minors is so psychologically distressing that few cops can emotionally tolerate being deeply involved in the investigations. Viewing the images and videos is troubling. The victims of unlawful images include those who must view the images in the course of their law enforcement duties (9).

Prosecution

Pressured by defense arguments that defendants are really good and solid citizens prosecutors can be worn down by the psychologically brutal nature of the crimes and the tiring nature of the system and may offer progressively weaker pleas to offenders. One concern is that over time, those diluted pleas will become the standardized norm, and the legislative imperative of mandatory sentencing will eventually be abandoned.

Dr. Frank Kardasz is a Sergeant with the Phoenix Police Department and the Project Director for the Arizona Internet Crimes Against Children (ICAC) Task Force. He has supervised and participated in over 2,000 investigations of Internet Crimes Against Children and the Arizona Task Force has apprehended over 200 Internet sexual offenders. Dr. Kardasz earned a Master of Public Administration Degree from Arizona State University and a Doctor of Education Degree from Northern Arizona University. His doctoral dissertation was entitled, *Ethics training for law enforcement: A study of current practices*. Contact Dr. Kardasz at: kardasz@kardasz.org.



In Arizona, the penalties on the books are some of the toughest in the country. Despite the history of these strict penalties being upheld at the appellate level, some prosecutors are offering lighter pleas to "attempt" possession of unlawful images thus negating the mandatory sentencing provisions intended by legislators. The "attempt" charge avoids the mandatory sentencing provisions of Arizona law and gives the court wide discretion to drastically lessen the period of incarceration.

Judiciary

It must be difficult for judges to fully apprehend the gravity of these crimes. In plea-bargained cases, judges seldom review the troubling images or videos so they never have a full appreciation of the entirety of the case. Having supervised hundreds of arrests and subsequent pleas involving unlawful images, my investigators and I know of only a handful of sentences involving a judge who took the time or had the fortitude to view the disturbing images or videos.

The commission report mentioned one judge who lumped child pornography sentences in with gun and drug crimes and characterized the sentences for each of those crimes as being too harsh. Such "apples vs. oranges" comparisons of crimes are predictable from the overworked ringmasters of an assembly-line process that has become America's criminal justice system. Uninitiated courtroom observers might compare sentencing day in some courtrooms with a fast-food restaurant order process. I sometimes imagine the defense attorney shouting, "Hold the prison, extra probation and can you super-size that release please, your honor!"

Judges are often offended when laws come to them with mandatory penalties. Apparently voters and legislators are tired of the legal loopholes and sentencing reductions that keep letting criminals out of jail to re-offend. This naturally offends those judges whose egos convince them to believe that only they know, better than anyone else, how criminals should be penalized. Despite progressively tougher legislative actions to properly criminalize and punish possessors of unlawful images, some judges wish to improperly create sentencing law from the bench while attempting to undo the enacted will of legislation.

Perhaps some overworked judges must suffer from compassion fatigue, a gradual lessening of empathy and sympathy over time, the result of the taxing nature of showing compassion for someone who is suffering in a situation that is continuous and irresolvable. If that is the case, I hope that judges remember that the unlawful images situation is resolvable. The resolution is incarceration of offenders.

Not Disparate Sentencing

The report of the commission meeting also described the following tired and misleading statement that I have grown to abhor: "In some cases, a person who has watched one video gets a maximum sentence that may be higher than someone sentenced for raping a child repeatedly over many years."

The statement is misleading hogwash for two reasons. First, no offender who is charged with unlawful images has ever watched only one video. The offender may be charged with only one count of the many crimes he committed, but offenders typically watch dozens, often hundreds of different videos, hundreds of times, over weeks, months or years while simultaneously sexually gratifying themselves. Secondly, when a person who rapes a child receives a short period of incarceration it is often because contact offenses are much tougher to prove due to the uncommunicative nature of the young victim. Sometimes the light sentence is offered by the prosecution as a plea bargain so that the child does not have to re-live the horror by testifying in open court. It is misleading to try to compare child pornography offenders to rapists.

Berger Case Study

In 2003, former Arizona high school teacher Morton Berger was convicted on 20 counts of possession of child pornography and sentenced to 200 years prison. Berger chose not to accept a plea to lesser charges. He went to trial and lost. He appealed the sentence based on arguments of equal protection under the law and cruel and unusual punishment. In December 2004, the conviction was affirmed by two of the three judges of the Arizona Court of Appeals (10). Mirroring language found in previous U.S. Supreme Court decisions, Arizona Judges Susan Ehrlich and Philip Hall dismissed Berger's appeal with arguments including:

- It is evident beyond the need for elaboration that a State's interest in safeguarding the physical and psychological well-being of a minor is compelling.
- ...the victimization of a child continues when that act is memorialized in an image. The materials produced are a permanent record of the children's participation and the harm to the child is exacerbated by their circulation. Unfortunately, the victimization of the children involved does not end when the pornographer's camera is put away.
- The legislative judgment...is that the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child.
- ...the possession of child pornography drives that industry and...the production of child pornography will decrease if those who possess the product are punished equally with those who produce it.
- ...it (the law) will decrease the production of child pornography if it penalizes those who possess and view the product, thereby decreasing demand.
- ...the possession of child pornography inflames the desires of child molesters, pedophiles and child pornographers. The State has more than a passing interest in forestalling the damage caused by child pornography: preventing harm to children is, without cavil, one of its most important interests.

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- ...we cannot fault the State for attempting to stamp out this vice at all levels in the distribution chain.
- Berger downloaded images from the Internet, and every time he visited a website, he demonstrated to the producers and sellers of child pornography that there was a demand for their product. Berger's demand served to drive the industry; there need not have been a direct monetary exchange.
- Berger maintains also that, because his possession of the pornographic images was passive and because he did not use threats or violence in the commission of his crimes, his sentence is grossly disproportionate. This logic is abstruse. As was described by this court in *Hazlett*, 205 Ariz. at 527 p. 11, 73 P. 3d at 1262, and as is evident from the violent pornographic images in this case.
- Child pornography is a form of child abuse. The materials produced are a permanent record of the children's participation and the harm to the child is exacerbated by their circulation.

Conclusion

The justice system could do more at every level to address the growing problem of unlawful images. Law enforcement agencies devote minimal personnel to investigate the crimes. Overworked investigators have thousands of cases and only a handful of staff. Harried prosecutors with overwhelming caseloads must arrange plea deals to avoid time-consuming trials while allowing offenders to plead to fewer charges or lesser offenses. Strained judges misunderstand the crimes and mischaracterize the offenders. Knowing that prisons are overcrowded, it becomes easy for judges to convince themselves that someone who possessed pictures cannot possibly be as bad as someone who committed robbery or rape. Such comparisons are unfair and disregard the serious nature of unlawful images.

Please do not marginalize the young victims of unlawful images and do not minimize the offenses. Let minimum sentences remain in the purview of the legislature.

Finally, Judges, when you look out over the bench and into the court gallery at sentencing time, please imagine the seats filled with child victims quietly requesting justice; then act in accordance with the law.

Thank you for considering this letter.

Dr. Frank Kardasz

NOTES

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Calendar of Upcoming Training Events

November

- November 4-5, 2009** **National Law Center for Children and Families**
(www.nationallawcenter.org)
19th Protects Seminar
(Franklin, TN)
- November 8-9, 2009** National Center for Missing and Exploited Children (www.ncmec.org/training)
“Missing and Exploited Children Chief Executive Officer Seminar “
(Alexandria, VA)
- November 8-11, 2009** Paraben Forensic Innovation Conference (PFIC) 2009 (www.pfic2009.com)
Executive Director Richard Whidden is presenting.
(Park City Marriott, Park City, Utah)
- November 16-20, 2009** National Child Protection Training Center (<http://www.ncptc.org>)
“Interviewing and Preparing for Court”
(Winona, MN)
- November 19, 2009** Crimes Against Children Conference (www.cacconference.org)
“Therapists as Expert Witnesses”
(Online)

December

- December 16, 2009** Crimes against children conference (www.cacconference.org)
“Where was his head?”
(Online)
- December 7-11, 2009** The National Children’s Advocacy Center (<http://www.nationalcac.org/>)
“Forensic Interviewing of Children”
(Huntsville, AL)

Please visit the websites listed above for the most current information regarding course offerings, including dates and locations, registration deadlines, and forms.

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18th NLC Protects Seminar in Iowa



The National Law center held its NLC PROTECTS Seminar in Johnston, Iowa on September 1st and 2nd, 2009. A total of 50 law enforcement professionals, prosecutors and probation officers attended the event which took place at Camp Dodge. Topics presented at the seminar were basic computer forensics, sex offender management at local level, and juvenile prostitution as well as other topics on child exploitation crimes.

The National Law Center received positive feedback from its attendees. "Great seminar for awareness of resources available to victims and identifying victims", one attendee remarked after the seminar and "The diverse representation of attorneys, law enforcement and child services was nice to see and hear what one group needs from the other" another attendee stated when leaving the conference.

Since 2006, nearly 1700 law enforcement officers, prosecutors and probation officers have been part of the NLC PROTECTS Seminar Series. The National Law Center for Children and Families would like to express its appreciation to the participants of the Seminar Series. We would also like to thank all experts who shared their knowledge and experience with the group as well as individuals and organizations who have helped distribute information to prospective attendees.



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