

Testimony of

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October 15, 2003

STATEMENT

OF

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BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

REGARDING

INDECENT EXPOSURE: OVERSIGHT OF THE EFFORTS OF THE
DEPARTMENT OF JUSTICE
TO
PROTECT PORNOGRAPHY'S VICTIMS

PRESENTED ON

OCTOBER 15, 2003

Mr. Chairman, Senator Leahy, and Members of the Committee: I am J. Robert Flores, Administrator of the Office of Juvenile Justice and Delinquency within the Department of Justice's Office of Justice Programs. On behalf of the Office of Justice Programs, I am grateful to have the opportunity to testify before you today on the subject of the Department's efforts to protect the victims of pornography.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) continues to commit resources to protect children and families from the harms associated with sexual exploitation, sexual abuse, child pornography, and sexual predators. Historically, OJJDP has provided that assistance through its administration of funds provided by Congress to develop and provide technical assistance, training to law enforcement and prosecutors on the state and local levels, and public education programs that disseminate methods and programs that work to keep kids safe. I want to assure you that this commitment has never been stronger, and, as I will detail for you, help that the President and Attorney General have publicly committed to providing is being expanded for children and families.

The Internet Crimes Against Children Task Forces

OJJDP has tackled child pornography and computer-facilitated child sexual exploitation since 1998 when we identified and funded the first ten Internet Crimes Against Children (ICAC) Task Forces. Last year, the President sought and obtained from Congress additional funding to assure that the Task Forces could provide nationwide coverage. There are now 40 Task Forces, which have become regional clusters of technical and investigative expertise that offer prevention and investigative services to children, parents, educators, law enforcement officers, and other individuals working on child sexual exploitation issues. The theory behind the ICAC Task Forces is well understood and has been repeatedly tested in other law enforcement arenas and found to work. Simply put, by combining law enforcement personnel from local, state, and federal agencies so that jurisdictional and technical barriers can be overcome and subject matter expertise can be accessed quickly and efficiently, ICAC Task Forces draw upon the combined strengths of each participating agency, thereby overcoming any individual weaknesses.

The ICAC Task Force program is not a luxury but a necessity because predators, pornographers, and promoters of material harmful to minors continue to exploit new computer technologies to advance their own goals. Moreover, unlike some adults who view the benefits of the Information Age dubiously, children and teenagers have seized upon the Internet's educational and recreational capabilities with astonishing speed and casualness and will continue to do so. Adapting information technology to meet everyday needs, young people increasingly go online to meet friends, satisfy information needs, purchase goods and services, and complete school assignments. Currently, 28 million children and teenagers have access to the Internet, and industry experts predict that they will be joined by another 50 million globally by 2005. Although the Internet gives children and teenagers access to civilization's greatest museums, libraries, and universities, it also increases their risk of being sexually exploited or victimized.

Large numbers of young people encounter sexual solicitations they do not want and sexual material they do not seek. In the most serious cases, they are targeted by offenders seeking children for sex. Research conducted by the University of New Hampshire reveals that one in five children between ages of 10 and 17 received a sexual solicitation over the Internet in 1999. One in 33 received an aggressive solicitation from a stranger who asked to meet them somewhere, called them on the telephone, or sent them mail, money, or gifts. As my colleague, Mr. Malcolm, has stated in his written testimony, the percentage of children touched and thereby harmed by pornographic material is now higher than in 1999 and continues to grow.

Cloaked in the anonymity of cyberspace, sex offenders can capitalize on the natural curiosity of children and seek victims with little risk of detection. Preferential sex offenders no longer need to lurk in parks and malls. Instead, they can roam from chat room to chat room, trolling for children susceptible to victimization in that child's own bedroom. This alarming activity has grave implications for parents, teachers, and law enforcement officers because it circumvents conventional safeguards and provides sex offenders with virtually unlimited opportunities for unsupervised contact with children.

Today's Internet has also become the new marketplace for offenders seeking to acquire material for their child pornography collections. More insidious than the exchange of sexually explicit material among adults, child pornography depicts the sexual assault of children and is often used by child molesters to recruit, seduce, and control future victims. Pornography is used to break down inhibitions, validate sex between children and adults as normal, and control victims throughout their molestation. When offenders lose interest in their victims, pornography is often used as blackmail to ensure the child's silence. When posted on the Internet, pornography becomes an enduring and irretrievable record of victimization and a relentless violation of that child's privacy.

OJJDP recognizes that the increasing online presence of children, the proliferation of child pornography, and the lure of predators searching for unsupervised contact with underage victims present a significant threat to the health and safety of children, and a formidable challenge for law enforcement today and into the foreseeable future. Many factors complicate law enforcement's response to these challenges. Conventional definitions of jurisdiction are practically meaningless in the electronic universe of cyberspace, and very few investigations begin and end within the same jurisdiction. Because they involve multiple jurisdictions, most investigations require close coordination and cooperation among federal, state, and local law enforcement agencies.

The National Center for Missing and Exploited Children's (NCMEC) Cybertipline, launched March 9, 1998, assists law enforcement with the identification of online predators and those who would sexually exploit children. It also serves as the national clearinghouse for tips and leads about child pornography and child sexual exploitation. Additionally, NCMEC launched Cybertipline II to handle child pornography leads reported by the electronic service providers. These reports are available online in "real time" only to the Federal Bureau of Investigation (FBI), the Bureau of Immigration and Customs Enforcement (ICE), and the ICAC Task Forces.

It is clear, as evidenced by the data in NCMEC's Quarterly Progress Report submitted to OJJDP for the third quarter of Fiscal Year 2003, that the flow of child pornography complaints has not slowed down since the Cybertipline was launched in March 1998. In fact, according to NCMEC, more than 21,000 complaints of child pornography were reported to the Cybertipline from July 2003 to September 2003. That brings the total number of reports to the Cybertipline to more than 150,000. While the total figure is staggering in and of itself, 21,000 complaints occurred in the third quarter of Fiscal Year 2003 alone, representing nearly 15 percent of the total child pornography complaints.

The cooperative efforts of NCMEC's Electronic Crimes Unit and the Louisiana Attorney General's Office ICAC Task Force, funded by OJJDP, recently brought to closure a case that represents the impact of just one cybertip. In this particular case, an ex-Navy officer was found to have "hundreds and hundreds" of child porn images stored and organized by age on his computer. The suspect, who was also involved in the local school district and owned his own computer company, was arrested in July 2003 on one count of possession of child pornography.

As in the example above, NCMEC figures only represent actual reports of child pornography submitted to the Cybertiplines. Unfortunately, there is no way to quantify the full scope of the child pornography issue because there is no way to know how much undocumented child pornography exists.

Without a doubt, the pervasiveness of the child pornography problem is enormous. However, there is a tremendous amount of work being conducted by law enforcement and prosecutorial agencies at the federal, state, and local levels. Within the Department of Justice alone, three separate entities, OJJDP, through the ICAC Task Forces; the Child Exploitation and Obscenity Section (CEOS) of the Criminal Division; and the FBI's Innocent Images Initiative, are spearheading multi-agency, multi-jurisdictional efforts to stem the tide of child pornography.

The new Predator initiative developed by the Department of Homeland Security's (DHS) Bureau of Immigration and Customs Enforcement is working hand-in-hand with the Department of Justice to protect children worldwide. This comprehensive DHS program will identify child predators and remove them from the United States (if subject to deportation). Operation Predator will also work to identify children depicted in child pornography to help rescue them, and assist U.S. Attorneys in developing cases and prosecuting the people responsible for making and distributing the pornographic material. Also within DHS, the United States Secret Service (USSS) is expanding its Forensic Services Division to assist with cases involving missing and sexually exploited children.

Finally, the long-standing work of the U. S. Postal Inspection Service (USPIS) is ever present in addressing cases pertaining to child pornography and child exploitation.

While the work completed by these federal, state, and local agencies is impressive, it demonstrates a level of improved cooperation and coordination that is even more impressive. At all levels, and in concert, law enforcement is tackling the child pornography issue aggressively. A new sense of teamwork and joint ownership of the problem has emerged to pursue child pornographers ranging from the lowly collector to the most heinous of offenders who would manufacture and distribute child pornography images.

An excellent example of this cooperative spirit is reflected in the creation of a National Child Victim

Identification System. In an unprecedented partnership with NCMEC, the FBI, the USFIS, USSS, the ICAC Task Forces and CEOS, ICE's CyberSmuggling Center hosts the nation's only comprehensive, searchable system for identifying digital child pornography images. With its capacity to search and identify known images, the system is designed to help law enforcement agencies throughout the world identify and rescue children featured in child pornography, and facilitate prosecution of those who possess or distribute digital child pornography images in the wake of a 2002 Supreme Court decision (*Ashcroft v. Free Speech Coalition*) requiring proof that such images depict an actual child. Because the effort leverages a comprehensive partnership among federal, state, and local law enforcement agencies, this system will eventually contain all known child pornography images on the Internet. Already, the ICE CyberSmuggling Center has positively identified children featured in roughly 300 images and has provided this information to law enforcement agencies nationwide for prosecutorial purposes.

With improved coordination, successful arrests and prosecutions are being reported daily. In fact, the 40 OJJDP-funded ICAC Task Forces alone have been responsible for more than 1,500 arrests in the past five years, with nearly 500 of those taking place in just the past 12 months. In addition to these arrests, the ICAC Task Forces have made nearly 2,600 case referrals to non-ICAC law enforcement agencies. Of the 14,000 cases the ICAC Task Forces have been involved with in the past five years, either through actual investigations, referrals or technical support, nearly 11,000 of those arrests have been directly related to the possession, distribution, or manufacturing of child pornography. There is no question that the ICAC Task Force program has made an indelible mark in the battle against child pornography and child exploitation. In response to President Bush's October 2002 directive at the White House Conference on Missing, Exploited, and Runaway Children, OJJDP is further expanding the ICAC Task Force program and, by Winter 2004, will have 45 state and local ICAC Task Forces in place and operational.

Next steps in combating child exploitation

With all of our success in arresting and prosecuting predators, the reality is that child pornography is only one component of the broader child exploitation issue. Another key element is the targeted distribution of obscene material to children. This alarming trend is intended to have a twofold impact. First, as noted previously, child pornography depicts the sexual assault of children and is often used by child molesters to recruit, seduce, and control future victims. However, predators do not use child pornography in all cases, but instead, send obscene, possibly adult, pornography to children. Predators employ these same tactics to break down a child's barriers and desensitize them as a means to lure and seduce them into sexual exploitation.

Secondly, the distribution of obscene material to children is the commercial porn industry's vehicle to create a new generation of pornography "junkies" drawn to commercial Web sites through the manipulation of common and well-known children's Web site names. This disturbing trend was recently reflected in charges filed by the U. S. Attorney for the Southern District of New York, when, in September of this year, a suspect was arrested in his Florida hotel room on charges arising from his alleged creation and use of misleading domain names on the Internet to deceive minors into logging onto pornographic Web sites. The activity allegedly brought the suspect as much as \$1 million a year, paid by the commercial porn industry for every hit directed to their sites.

In light of this reality, it is my considered judgment that it is critical to fulfill the President and Attorney General's mandate to address not only the worst of these predators and exploiters, but also those who deluge children and families who use the Internet with illegal and unwanted pornography. Today, the Internet is so polluted that it is difficult to pick out a single item of garbage. The amount, types, and frequency have left many children and parents feeling overwhelmed. Moreover, as the pornographic morass has grown, it is now much easier for a predator to find a place to hide amid the garbage. The decision to allow Internet pollution to grow and with it the sense that anything goes, has cost our children a great deal. Thus, we must begin to look at all illegal activity on the Internet and send a clear signal that the law does apply to this critically important medium and that we will not abandon the Internet to those who would abuse it.

In response, OJJDP has undertaken a program that we will build together with other Justice Department components and other agencies that have a direct and strong interest in protecting children and families.

First, the Department has directed the ICAC Task Forces to include, as a part of their investigative efforts, a new focus on adult obscenity cases when a child is the target of the obscene material or where such material has been used to seduce or facilitate the exploitation or abuse of a child. While case prioritization is and must be given to life threatening situations or when imminent danger of continued physical and/or sexual abuse is present, obscene material directed at children should be viewed as an important and potential precursor to real physical or sexual abuse. Most important, however, is the fact that we cannot protect children if we do not change the environment on the Net from one where predators flock with an expectation of safety to one where they surf or troll at their peril.

As with most deviant behavior, arresting and prosecuting offenders will not alone solve the problems of child pornography and sexual exploitation. On the contrary, as the number of homes with Internet access continues to increase, the pool of potential victims correspondingly grows. Likewise, children cannot but help reach the dangerous conclusion that obscenity must be okay if we, the adults responsible for their safety, allow it to grow unabated and continue to send them into this environment. Like any successful effort to change expectations and behavior, we must send consistent messages on every front and not merely be content to say, through our actions, that we will respond only when it directly threatens the immediate physical safety of a child. Our children are simply owed more.

The decision to ask the ICAC Task Forces to take on this responsibility flows naturally from the direction the President has provided: Build once, use many times. These task forces already possess the forensic and computer skills to undertake obscenity investigations. Their membership includes local and state investigators who are familiar with the local community standards and have relationships with local and state investigators in other task forces with whom they can work when the obscenity case at issue begins or ends in another jurisdiction. Finally, it is imperative that we shepherd federal investigative and prosecution resources carefully so that where appropriate cases are developed, they can be referred for federal prosecution, keeping in mind that the protection of our citizens from the harms caused by obscenity and pornography must remain a state and local responsibility as well. By extending the ICAC task force reach, we allow them to go where the evidence leads and not ignore viable prosecutions and investigations. Finally, if each task force opened only three to five cases in the next 12 months, that would result in an increase of 135 to 225 cases nationwide. By taking small steps together, task forces can substantially enhance the efforts of the Criminal Division and the U. S. Attorneys.

Even as we begin to send a clear message that obscenity investigations will increase, we must also work to encourage parents, teachers, businesses, and the faith community to shoulder a greater share of responsibility to work to create a safe and supportive Internet environment for our children. As I travel throughout the country speaking to law enforcement, children, Internet service providers, and Internet safety experts, they all tell me that they continue to struggle with the question of how to engage adults, especially parents, on issues of Internet safety. Most, if not all, of the education efforts to protect children have been directed to children and teens. Congress has passed several statutes addressing corporate activities connected to the distribution of pornography, and libraries and schools have had their funding of Internet access conditioned on taking significant steps to protect children. While we are beginning to see progress on these fronts, parents continue to be the missing cog and they remain the best way to protect children. We must make progress on this front.

OJJDP will focus on efforts to engage and involve parents, as part of a comprehensive strategy that takes advantage of where we are today and addresses the reality of current demands on parents, children, corporate America, schools, and our nation's safety.

In March 2002, OJJDP hosted an Internet Safety Focus Group that brought together government officials and representatives from private corporations and non-profit organizations to discuss the increasing number of children and teenagers using the Internet, the proliferation of child pornography, and the heightened

activity by predators searching for unsupervised contact with underage victims. During the day-long session, the group concluded that it is critical to address computer-facilitated child exploitation, which presents a threat to the health and safety of young people, and is a formidable challenge for parents, teachers, and professionals in law enforcement and youth service agencies. However, there was consensus that child exploitation was endemic of broader social issues concerning the Internet and its use. In short, the group concluded that significant areas of concern remain that have not been adequately addressed.

First, although education about the problem is extensive and law enforcement efforts have never been greater, our country has continued to lose ground to predators, pornographers, and others who seek to harm our children, as reflected in NCMEC's report.

Second, in spite of aggressive law enforcement efforts, law enforcement resources pale in comparison to those of the population that is set on exploiting children or polluting the Internet that our children use, resulting in new forms of exploitation and danger.

Third, despite widespread information in the media, through schools, and commercial marketing, which warns of the risks of unsupervised Internet use, parents have failed to substantially increase their involvement in their children's Internet use or utilize danger-reducing technologies.

Finally, even where efforts have been made by parents, students, schools, communities, or law enforcement, these efforts have lacked coordination and, as a result, have been only moderately successful at best.

With the number of households connecting to the Internet increasing yearly, coupled with the populations of preteens and teenagers burgeoning in the next five to ten years, it is now time to develop a strategy for the future of Internet Safety. OJJDP has taken the first step by convening the focus group. OJJDP believes that the problem of Internet-based obscenity, child exploitation, and other related dangers is one that has numerous causes and that any successful effort must have the participation of multiple agencies.

To move forward, I have scheduled a meeting on November 4, 2003, with officials from the Departments of Education, Commerce, and Health and Human Services, as well as key policymakers from four select user communities, to create and develop an approach targeting this broad issue. OJJDP, in partnership with the other agencies, will pursue lowering the risk of abuse or exploitation to children using the Internet. Metrics to determine whether such a goal is being met will include determining whether children face increased difficulty in obtaining material that is harmful to them whether intentionally or not; whether or not there is a lower incidence of illicit or illegal activity reported by industry serving the local community; if there is a greater likelihood of discovery of illegal activity as a result of easier reporting, better forensic tools; and if the number of reported Internet-based offenses is reduced.

Local partners in the select communities will include schools, parent/teacher organizations, business, law enforcement, computer/Internet industry, and the faith community. Jointly, we will explore the best models for attacking the pervasiveness of child pornography and child exploitation and continue to work diligently to bring it to an end.

I have great confidence that this effort can succeed because we stand in a different place than we did even a year ago. Today, corporate America has recognized, perhaps in a way it wished it did not, that an environment of lawlessness and an inability of Internet users to properly translate how law operates from the real world to the cyber world, also puts corporate America in jeopardy. I think that corporations are now ready to work in a different way to support safety and law on the Net. Parents now recognize, as they have with underage drinking, that conduct they facilitate might cost them personally. And, educators and librarians now see that there are constitutional limits that can properly be placed on the use of taxpayers' hard earned money. Finally, to those of us who have been in the battle to protect children, we have come to understand that it is the adult's responsibility to protect a child, and while we have many ways to do this, failure to accomplish that goal lies squarely at the feet of the adult community.

I am encouraged that we are here today and that much progress has been made. I look forward to reporting back how we give life to the President's direction and the Attorney General's decision to once again pursue an Internet that is safe for children and families.

This concludes my statement. I welcome the opportunity to answer any questions that Committee members may have.