

ENHANCING CHILD PROTECTION LAWS AFTER
THE APRIL 16, 2002 SUPREME COURT DECISION,
ASHCROFT V. FREE SPEECH COALITION

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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**ENHANCING CHILD PROTECTION LAWS
AFTER THE APRIL 16, 2002 SUPREME
COURT DECISION, ASHCROFT V. FREE
SPEECH COALITION**

WEDNESDAY, MAY 1, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:08 p.m., in Room 2141, Rayburn House Office Building, Hon. Lamar S. Smith [Chairman of the Subcommittee] presiding.

Mr. SMITH. The Subcommittee on Crime, Terrorism, and Homeland Security will come to order.

Our hearing today is on the implications of the April 16, 2002 Supreme Court decision in *Ashcroft v. The Free Speech Coalition*.

Our witnesses today are three and they are Michael J. Heimbach, unit chief, Crimes Against Children Unit, Federal Bureau of Investigation, here from the headquarters in Washington, D.C.; Ernest E. Allen, president and chief executive officer, National Center for Missing and Exploited Children in Alexandria, VA; William C. Walsh, lieutenant of police, Youth and Family Support Division, Dallas Police Department, Dallas, TX.

In addition to the Subcommittee Members who are part of the official panel, we have two colleagues in attendance today as well. I want to introduce them. Both of them are active Members of the Congressional Missing and Exploited Children's Caucus.

Because of their specific interest in the issue at hand today, we appreciate their attendance as well. They are Congressman Mark Foley to my right and Congressman Earl Pomeroy to my left. As I say, we welcome their interest and attendance.

I'm going to recognize myself for an opening statement and then we will recognize the Ranking Member, Bobby Scott, for his as well.

On April 16, 2002, the Supreme Court of the United States in *Ashcroft v. Free Speech Coalition* held that the current definition of child pornography as enacted by the Child Pornography Protection Act of 1996 is unconstitutional.

The court held that the prohibition on child pornography using adults who look like minors or by using computer imaging is overbroad. Still Congress has a compelling interest in prohibiting

child pornography in all its forms, including virtual child pornography.

As Judge Robert Bork recently stated about the Supreme Court decision, "All that is protected is the right of the individual to satisfy his desires, no matter how base, without regard to the rights of others or the health of the society."

Whether we agree or disagree with the Supreme Court, we now have to deal with the consequences of that decision. Based upon the Court's majority opinion, Congress needs to enact legislation that will prohibit all child pornography without limiting works of art and literature that are protected by the first amendment and have a redeeming social value.

I have introduced legislation that addresses the concerns of the Court and creates a new definition of child pornography that is neither overbroad nor unconstitutional.

This legislation also adds an affirmative defense that gives defendants the opportunity to present evidence to prove beyond a reasonable doubt that the images they are charged with possessing do not constitute child pornography.

Without amending the current law, this country faces a proliferation of child pornography. At risk are the prosecutions against child pornographers who are frequently child molesters.

The technology already exists to disguise pictures of real children and make them unidentifiable and to make real children appear computer generated. The technology will soon exist, if it doesn't already, to make virtual children look real.

How can we protect our children when the prosecution will have to prove beyond a reasonable doubt that a child pornographer possesses a picture of a real child and not a computer generated picture.

This hearing will explore the intrinsic relationship between child pornography, whether real or virtual, and child molestation. We also will examine the technology that exists and how it could be used to the advantage of those who sexually exploit and abuse children.

Child pornography, virtual or otherwise, is detrimental to our vulnerable children. The deviancy it promulgates has no place in our society. In a study of convicted child molesters, 77 percent of those who molested boys and 87 percent of those who molested girls admitted to their habitual use of pornography.

Child pornography is not used simply for the viewing pleasure of an individual. It is also used as a means to an end, that end being the victimization of children and in some cases the end of a child's life.

Sex predators have access to the most vulnerable members of our population. With an estimated 24 million children online, the Internet has proved a useful tool for pedophiles and sex predators as they distribute child pornography, engage in sexually explicit conversations with children and hunt for victims in chat rooms.

The more child pornography these individuals access, the higher the risk of them acting out what they see, including sexual assault, rape, and child molestation.

As this Subcommittee has learned in the past, compounding this problem is the high rate of recidivism among sex offenders. Offend-

ers who molest young girls repeat their crimes at rates up to 25 percent and offenders who molest young boys at rates up to 40 percent.

A study funded by the National Institute of Mental Health found that the typical sex offender, "molests an average of 117 youngsters, most of whom do not report the offense."

Earlier today, the Attorney General announced a legislative response to the Supreme Court's decision. I have introduced that bill which will be marked up by our Subcommittee early next week. The elimination of child pornography in all forms and the protection of children from sexual exploitation should be one of Congress's highest priorities.

After the witnesses testify today, there will be a demonstration of the technology available that allows child pornographers to change the identity of children to avoid prosecution. We look forward to hearing what our witnesses have to say on these same issues.

With that I'll recognize the gentlemen from Virginia, the Ranking Member, Bobby Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I'm pleased to join you in convening this hearing on the recent Supreme Court decision in *Ashcroft v. Free Speech Coalition*. Sexual abuse of children, child pornography including computer generated child pornography and other sexually related crimes against children are serious crimes which warrant prosecution and punishment.

The images are produced involving children, prosecutions are left intact by the recent Supreme Court decision. What the Court struck down was the criminalization of non-obscene computer generated and other depictions of children in undesirable, including sexual situations where no child was actually involved in making of the material.

Now, the court has held that protection of children justifies restriction in what would otherwise be free speech. But when children are not involved the Court did not approve of the prohibitions. Therefore, if children are involved it can be illegal and if children are not involved the court struck down our prohibitions.

I look forward to hearing from the witnesses to see how new legislation might address the quandary, particularly in light of the fact, as you indicated, sometimes the computer generated images are indistinguishable from the real thing. I look forward to their testimony.

Mr. SMITH. The gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, and to the Ranking Member. I always know that the balanced perspective that will be offered by this is Committee will be constructive and helpful on the combined interest that we have in a very important issue before us.

I want to welcome the witnesses, and particularly, Mr. Allen. We have been engaged in the last couple of weeks with a missing 13-year-old in the neighborhood of my Congressional District. So, I'm going to be looking forward, Mr. Chairman, to listening to the testimony.

I will offer qualifiers as we proceed. Those qualifiers, of course, will acknowledge my respect for the basic constitutional tenets of reasonable search and seizure. I juxtapose that, of course, to, I think, the horrificness of using technology to solicit or entice children, but as well to manipulate and abuse the figure or the image of children.

I do think that it is important that we find the right balance. I truly believe that out of that balance will come one of the strongest bipartisan support for trying to understand and work over and around the Supreme Court decision. I'm very cognizant of some of the issues that we must be concerned with, but I cannot believe that we can give value to anyone that would morph any figure that would ultimately suggest heinous sexual acts with children.

There are places where some of us will draw the line, but we do realize there has to be a balance.

Mr. Chairman, let me conclude simply and ask that my entire statement be submitted into the record. I know that I'll have an opportunity to intersperse some of the thoughts that I have in the opening statement.

But let me just say something, Mr. Chairman, in the kindest and gentlest spirit that I can. That is that my colleague, Mr. Lampson, is a chair of the Missing and Exploited Children's Caucus. I believe his co-chair may be present.

I am a founder and chair of the Congressional Children's Caucus. I, too, have a bipartisan caucus and we have worked on issues in a bipartisan manner.

With that in mind, we are understanding that legislation was filed last evening that did not include Mr. Lampson or myself. And I'm sure you're going to clarify my interest and my inquiry, but it's this kind of approach that puts a damper on collective bipartisan effort. If that is the case, I would certainly like to have the opportunity to discuss it.

The intent of Mr. Lampson and myself was to draw as many of our colleagues that were from the Democratic Caucus to be interested in this issue as possible. It certainly doesn't speak to that opportunity if the legislation has already been filed and neither myself or Mr. Lampson, to his knowledge, have been included in the opportunity to work with anyone on that language and that legislation and to ensure that we have a completely bipartisan, fair and just and respectful process.

So, with that, Mr. Chairman, I will yield back the balance of my time, but it dismays me. Might I just say for the record, it has happened over and over again. I thank the gentleman.

Mr. SMITH. Thank you, Ms. Jackson Lee. We do welcome your support of the legislation. You are welcome to get on that bill today. It was filed late last night with about 10 minutes notice. Quite frankly, the people who were the original cosponsors were the ones who were on the House Floor at that late minute of the House session last night.

I'm sorry we overlooked you, but like I say, we do welcome your support.

Ms. JACKSON LEE. Mr. Chairman, would you just yield for a moment?

Mr. SMITH. I'll be happy to yield to the lady.

Ms. JACKSON LEE. Mr. Chairman, you have obviously, the bill, I don't know if it is in our materials, but obviously the bill has been filed. I would imagine it had some changes to it.

Might I just add, I thank you for the offer. I can't speak for Mr. Lampson. I can't speak for myself at this point, not seeing the bill, but in any event, I think the point that I'm making is that there were others who expressed outrage after the Supreme Court decision was rendered and would have like to have had the opportunity to have input, be involved. It appears that was not the case.

As I said, I'm sure that there can be a further explanation, that we don't have to take up the record, but I do want it to be on the record and I don't want to speak any more for Mr. Lampson. He shares in my concern about him not being on the legislation. But I will convey to him, but I hope that there will be an opportunity in looking at this legislation that we can have input in some of the language.

It's already rewritten and gone and filed. So, you are just saying, "Jump on as a cosponsor." We're talking about a truly collaborative effort that would bring about, maybe, the standard—we don't want to be overturned by the Supreme Court again. So, we need to look at this in a way that, if it has any opportunity for passing constitutional muster, because we can go through this process over and over again; pass legislation and go back again. They are going to always take us to the courts. Any way of reaching that bar, we wanted to do it in a bipartisan manner.

So, I will look at the legislation, Mr. Chairman, but I'm also going to ask for the opportunity for that legislation to seek out input. That is important to us, and to truly work in that bipartisan manner.

I thank the gentlemen for being kind enough to yield to me.
[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF TEXAS

Thank you Mr. Chairman for holding this important oversight hearing. Let's face it, the idea of children being shown having sex or in pornographic positions is repugnant to most of society. I share in a disgust for the lascivious portrayal, and lewd and heinous acts toward children. We must persevere in our endeavor to protect children from this type of sexual abuse and exploitation.

The problems and the care of children are of special interest to me. Early in my tenure as a Congresswoman, I founded and am still Chair of the bi-partisan Congressional Children's Caucus. I am also an active member of the Congressional Caucus on missing and Exploited Children, the Congressional Child Care Caucus and the Congressional Human Rights Caucus. In my tenure, I have worked with many children's organizations and advocated issues dealing with child abuse, poverty, child care and children's education. The point is, I care about children.

The issue we are here to deal with today is whether the Congress previously drafted legislation (the Child Pornography Prevention Act of 1996 (CPPA)) that is over broad in its interest of protecting children from predatory sexual behavior. This legislation banned visual depictions that appear to be children, even if children are not actually used in the picture.

The Supreme Court said, in essence, that the law was not narrow enough to get at the real issue of sexual child abuse. They said one cannot ban virtual child pornography because they are not real people and not real children and because child protection laws are geared towards protecting society's interest in the sexual abuse of children.

If constitutional free speech has been challenged, we must continue our efforts to strike a balance with the important interest of protecting the child and freedom of expression considerations. However, we all know that the first amendment is not

absolute, for example crying fire in a crowded theater is not protected. Hopefully, this hearing will shed some light on this problem.

Mr. Chairman, you have just submitted legislation, namely H.R. 4623, that is said to address the Supreme Court's concerns in *Ashcroft v. Free Speech Coalition*, and we all have concerns about that decision, but we have not had the chance to see if H.R. 4623 properly addresses the Supreme Court's concerns. We need to discuss such important legislation with bi-partisan input that will stand up to muster and not get bounced back in our laps from the Court.

I suggest we begin this process right here and right now. Thank you.

Mr. SMITH. We will now go to our first panel.

STATEMENT OF MICHAEL J. HEIMBACH, UNIT CHIEF, CRIMES AGAINST CHILDREN UNIT, FEDERAL BUREAU OF INVESTIGATION

Mr. HEIMBACH. Thank you, Mr. Chairman. Mr. Chairman and distinguished Members of the Subcommittee, I welcome this opportunity to testify on an issue of great importance to this country and this society, the protection of children from sexual predators and the Government's ability to investigate and prosecute those sexual predators in light of the Supreme Court ruling.

There is a clear correlation between sexual abuse of children and the collection of child pornography and the FBI's operation, codenamed "Candy Man," supports that correlation. Out of the 92 people arrested to date, Operation Candy Man identified 13 offenders who admitted to having sexually molested a combined total of 48 children.

In a recent study conducted by Dr. Andres Hernandez, the Director of the Sex Offender Treatment Program of the Bureau of Prisons, his data indicated that majority of the persons in his study convicted of child pornography offenses, actually molested significant numbers of children.

Dr. Hernandez found that 76 percent of the 62 offenders convicted of child pornography crimes were traveling to engage in sexual conduct with a minor, admitting to having actually committed contact sex crimes with children which went undetected by the criminal justice system. This group of offenders admitted to having molested a combined total of 1,433 victims.

Sexual predators of children use their child pornographic collections in different ways and for different purposes. For some predators, the images definitely fuel their deviant fantasies and whet their appetites for real world sexual encounters with children.

It is also common for sexual predators of children to use images of children engaging in sexual activity to lure children into sexual encounters. Special agents who pose as children on the Internet report that sexual predators routinely send images of child pornography to them as a part of the grooming process to increase the likelihood of a sexual encounter.

I want to discuss the significant impediments that exist to the successful prosecution of child pornography cases due to the recent decision of the Supreme Court. Before I begin, may I make two points very clear? There is no evidence to suggest that child pornography circulating on the Internet today depicts anything but real children.

Law enforcement agents have been only able to successfully identify a minute fraction of these victims. Technological advances in

the area of computer imaging have sparked a debate about the possibility of creating images of child pornography without the use of real children, which I will refer to as completely computer generated images.

The question is whether such images can be created that are indistinguishable to a jury and even to an expert from images of real children. This technological debate has led the defense bar to challenge the reality of the image of child pornography, insisting that the Government disprove that the images are completely computer generated to gain a conviction.

Despite the fact that there is no evidence to suggest that these images over the Internet do not involve actual child victims, this ready-made defense has had a dramatic impact on the Government's ability to prosecute child pornographers.

Given that we can only identify a minute fraction of the child victims exploited in these images, the result standards be clear: The mere possibility that this technology exists or is on its way cripples our ability to prosecute child pornography crimes where children and images are very real, but unidentified to law enforcement.

There are strong reasons to believe that the images of child pornography on the Internet today almost universally involve child victims. Leading experts in the field have told us that it will take investments of millions of dollars of research and equipment to produce an indistinguishable completely computer generated image of a child engaging in a sexually-explicit act.

Sadly, it is still far cheaper, less time consuming, and easier for child pornographers to use real children to create a high quality product for distribution. Child pornography circulating on the Internet has by definition by digitally uploaded or scanned into computers and has been transferred over the Internet, usually in different file formats from trafficker to trafficker. An image seized from a collector of child pornography is rarely a first generation product. It may be the 1,000th generation.

It is often difficult, if not impossible, for experts to discern which generation of a particular image is on a individual's computer. With each transmission the DNA of the image undergoes a subtle alternation which can make it impossible for an expert to conclusively opine that a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format.

This task can be even harder since proper forensic delineation may depend on the quality of the image scanned and the tools used to scan it.

Let me add this: While there is no evidence to suggest computer-generated images of child pornography actually exist on the Internet, this does not mean that a well done, completely computer generated image would not be harmful to real children.

Let me finish by saying and reiterating your comments, Mr. Chairman, there is no legitimate place in our society for life-like photo quality images of children engaging in sexually explicit conduct, whether that image involves a real child who has already been victimized or a seemingly indistinguishable image that is used to entice innocent and vulnerable children into becoming real victims themselves.

In a motion to dismiss the file the day after the Supreme Court's decision, one alleged offender even insisted on the return of his cherished collection of child pornography in addition to the dismissal of the pending charges against him.

Let me finish by saying thank you to the Committee for allowing the FBI's input. Collectors of child pornography should not escape punishment. The correlation between the collection of child pornography and the actual child abuse is too real and too grave to ignore.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Heimbach follows:]

PREPARED STATEMENT OF MICHAEL J. HEIMBACH

Mr. Chairman and distinguished members of the Subcommittee, I welcome this opportunity to testify on an issue of great importance to this country and this society: the protection of children from sexual predators and the government's ability to investigate and prosecute those sexual predators in light of the *Free Speech Coalition* case.

I have been asked by this Subcommittee to address several specific issues, and I will address each of those in turn. I have been a law enforcement officer for more than twenty five years, and an FBI agent since 1988. For the last twenty months, I have served as the Unit Chief for the FBI's Crimes Against Children Unit. As Unit Chief, I am the Program Manager for all investigations, operations and initiatives involving crimes against children, including the FBI's Innocent Images National Initiative. My role in such matters is to provide coordination between the investigative, behavioral science and administrative resources of the FBI, as well as the prosecutorial resources of the Department of Justice.

In preparation for my testimony I have consulted with SSA James T. Clemente of the FBI's National Center for the Analysis of Violent Crime, (NCAVC), Behavioral Analysis Unit, (BAU). SSA Clemente is a recognized expert in the fields of Child Sex Offender Behavior, Child Sexual Victimology and Child Pornography. Much of the information provided in my testimony represents the institutional knowledge of the NCAVC, BAU and has been accumulated by that unit over the last quarter century. It is based on interviews with hundreds of child sex offenders and victims and consultations with thousands of investigators.

Members of the NCAVC have personally interviewed offenders and victims in various settings and consulted on the interviews of thousands more. SSA Clemente's predecessor at the BAU and perhaps the most recognized law enforcement expert in the field of Child Sexual Victimization for the past 20 years has been SSA Ken Lanning (FBI, Retired as of 2000). As a member of the NCAVC, BAU, Lanning published numerous peer-reviewed articles and monographs on the sexual victimization of children and offender behavioral characteristics. These articles have been cited in hundreds of publications and the concepts they discuss have been presented to tens of thousands of law enforcement officers, attorneys, judges, and mental health professionals around the world. In fact, Lanning has testified before Congressional Committees on seven previous occasions.

Before I turn to your specific inquiries, allow me to express my appreciation for this Subcommittee's unwavering support of efforts to identify, investigate and prosecute sexual predators of children. Your continued support is essential to our success in the wake of the setback given us by the Supreme Court in *Ashcroft v. Free Speech Coalition*. As the Attorney General has stated, the Court's decision and the Constitution "leave open legislative avenues to protect our children from harm," and I thank the Subcommittee for its prompt attention to this important subject.

The Subcommittee has asked whether there is any connection between those who trade or possess child pornography and those who molest children. Based on my experience and based on my consultation with experts who have made it their business to study that connection, my answer is a resounding and alarming—yes.

The Internet has caused explosive growth in the market for child pornography. The volume of child pornography circulated on the Internet is staggering and the number of persons obtaining, trading and distributing these images is downright appalling. Recently, Operation Candyman uncovered more than 7,200 such traffickers worldwide in a single e-group. The number of e-groups, newsgroups, bulletin boards, and the like that cater to child pornography is enormous. Yet, these facts, and this trend, do not sufficiently capture the gravity of the situation.

Our experience in the investigation of these crimes also signals a strong correlation between child pornography offenders and molesters of children. In Operation Candyman, for example, of the 90 people arrested thus far for their participation in the child pornography e-group, 13 of them who chose to make inculpatory statements admitted to molesting a combined total of 48 children. These offenders included a school bus driver, a foster parent, a mentor for underprivileged children, a member of the armed forces, a delivery person, a landscaper, a prison case worker, a janitor, an office manager, a security guard and his wife. This number, though alarming, probably represents only a small fraction of child molestations committed by the more than 7,200 Candyman members—he vast majority of whom did not make admissions.

My colleagues at the U.S. Postal Inspection Service tell me that, according to statistics compiled from their investigations, a frighteningly high percentage of the child pornography offenders investigated were also involved in the sexual molestation of children. Their studies indicate consistently that, of the total number of child pornographers investigated over the past several years, nearly 40 percent have been determined to be child molesters.

In addition, in November 2000, Dr. Andres E. Hernandez, PsyD., Director of the Sex Offender Treatment Program, Federal Bureau of Prisons, FCI Butner, presented the results of his study of child pornography offenders entitled, *Self-Reported Contact Sexual Offenses by Participants in the Federal Bureau of Prisons' Sex Offender Treatment Program: Implications for Internet Sex Offenders*. This study, among other things, explored the correlation between child pornography offenses and actual child molestation. Dr. Hernandez' data indicates that the majority of the persons in his study convicted of child pornography offenses actually molested significant numbers of children without detection by the criminal justice system. The study also indicated that "these offenders target children in Cyberspace in a similar manner as offenders who prey on children in their neighborhood or nearby park. They seek vulnerable children, gradually groom them, and eventually contact them to perpetrate sexual abuse."

I have attached to my written testimony a summary of the report prepared by Dr. Hernandez. Dr. Hernandez concluded that 76 percent of the child pornographers or travelers (those who travel or intend to travel interstate for the purpose of having sex with a minor) who participated in his study admitted to having committed contact sex crimes which went undetected by the criminal justice system. These offenders had an average of 30.5 child sex victims each. In fact, this group of offenders admitted to having molested a combined total of 1,433 victims without ever having been detected. That is not 1,433 more offenses—it is 1,433 more victims. If you factor in the number of times they offended against each individual victim, the number would be significantly higher. In addition, while Dr. Hernandez' study lumped child pornographers and travelers in the same category, his data shows that the number of undetected sex crimes was significantly higher for child pornographers than it was for travelers. In short, child pornographers, who consisted of 49 of the 62 subjects, were responsible for the vast majority of the 1,433 victims reported for that group. [The group consisted of 49 Child Pornography Offenders and 13 "Travelers."]

The Subcommittee has asked whether child molesters use child pornography to seduce children. Our experience has shown that the answer to that question is undeniably—yes. The FBI's Innocent Images Task Force has conducted several hundred online investigations where the agents pose as children. The agents report that sexual predators routinely send images of child pornography to them as part of the grooming process to increase the likelihood of a sexual encounter. The child pornography typically depicts a child of the same age as the Agent's cover having sexual acts with an older man. The purpose behind this is clearly to lower the inhibitions of the person the offender believes is a child and to convince the child that the activity is fun and acceptable.

Specifically, we have found that child pornography is used by child molesters to:

(a) *Demonstrate sex acts to children.* Offenders commonly use pornography to teach or give instructions to naïve children about how to masturbate, perform oral sex and/or engage in sexual intercourse.

(b) *Lower the sexual inhibitions of children.* Some children naturally fear sexual activities. Some offenders show pictures of other children engaging in sexual activities to overcome these fears, indicating to their intended victims that it is all right to have sex with an adult because lots of other boys and girls do the same thing.

(c) *Desensitize children to sex.* Offenders commonly show child pornography to their intended victims to expose them to sexual acts before they are naturally curious about such activities.

(d) *Sexually arouse children.* Offenders commonly use pornographic images of other children to arouse victims, particularly those in adolescence.

(e) *Groom them into a sexual relationship.* Some offenders take advantage of the fact that some children are curious about sex. They show them images which appear to depict other children enjoying sexual activities with adults to encourage their victims to engage in sex. Others take advantage of the guilt and shame commonly experienced by their victims by taking pictures or videos of the sexual activities with their child victims to use as an insurance policy against disclosure by them.

The Subcommittee has asked whether child pornography seduces child pornographers to molest children. It definitely has that effect on some of the collectors. Those who trade in child pornography participate in organized (like “Candyman”) or informal (chat rooms, F-serves, news groups, bulletin boards, Web sites, etc.) networks of like-minded individuals, which serve as support groups. That these individuals can easily find, identify with, correspond with, and trade child pornography with each other, gives them comfort in the fact that they are not alone and tends to validate their offending behavior. They feel they are part of a vast network of like-minded people who believe it is acceptable to engage in sexual fantasies about children, thus lowering their inhibitions about acting on their fantasies and increasing the likelihood that they will actually molest children.

The best indicator of future behavior is a pattern of past behavior. The next best indicator of future behavior is what an individual wants to do. Some individuals may be sexually aroused by viewing images depicting nude children but are repulsed by seeing images depicting an adult interacting with a child sexually. Others might enjoy viewing images depicting nude children but are more excited by viewing depictions of children “playing” sexually with other children. Others still are aroused by viewing any image depicting children engaged in sexually explicit conduct, but are most aroused when viewing images depicting children engaged in sexual acts with adults.

An individual’s child pornography collection is the best indicator of what he is fantasizing about. In turn, an individual’s fantasies are the best indicators of what he wishes to do. Therefore, those who collect images depicting adults engaging in sexually explicit conduct with children are the most likely to molest children.

I am aware of no real evidence that child pornography alone induces a sexual attraction to children where the offender lacks a sexual predisposition for children. However, when used by individuals who have a predisposed sexual interest in children, child pornography can sexually arouse them, fuel their sexual fantasies about children, validate their sexual attraction to children, and help them rationalize this behavior. All of these behaviors increase the risk that these individuals will act out their fantasies by sexually molesting children.

Our practical experience confirms these findings. The FBI’s Behavioral Analysis Unit has conducted interview upon interview of child sex offenders. The information obtained from the offenders themselves leaves no doubt that child pornography fuels some child pornographers to live out their fantasies on real children.

The Subcommittee has asked about the technology for creating computer-images of “virtual” children and the effect of the technology on our ability to prosecute child pornographers. I welcome the opportunity to discuss the significant impediments that exist to the successful prosecution of child pornography cases and will explain why the recent decision of the Supreme Court in *Free Speech Coalition* further hinders our ability to bring these dangerous predators to justice. Before I begin this discussion, let me make two points very clear: (1) there is no evidence to suggest that the child pornography circulating on the Internet today depicts anything but real children; and (2) law enforcement agents have only been able to successfully identify a minute fraction of those child victims.

Technological advances in the area of computer imaging have sparked a debate about the possibility of creating images of child pornography without the use of real children—which I will refer to as completely computer-generated images. The question is whether such images can be created that are indistinguishable to a jury, and even to an expert, from the images of real children.

This technological debate has led the defense bar to challenge the reality of the images of child pornography, insisting that the government disprove that the images are completely computer-generated to gain a conviction. Despite the fact that there is no evidence to suggest that these images on the Internet do not involve actual child victims, this ready-made defense has had a dramatic impact on the government’s ability to prosecute child pornography offenders.

We have already had a glimpse of the practical effect of the Court’s decision. Since 1999, when the Ninth Circuit issued its decision in *Free Speech Coalition*, there has been a significant adverse effect on prosecutions in that circuit. Since that decision, no prosecution has been brought in the Ninth Circuit, with few exceptions, except in the most clear-cut cases in which the government can specifically identify the child in the image. As I noted earlier, such cases are relatively infrequent. Of

course, the Court's decision does not require us to identify the child depicted, and we are committed to pursuing viable child pornography cases even when the actual victim is unknown. But the understandable reaction of front-line prosecutors in the Ninth Circuit vividly underscores that the practical problems with proving particular cases will be significant.

This result has not been limited to the Ninth Circuit. Other districts have also proceeded cautiously in light of the Ninth Circuit's decision. Although I have no figures for you today, from my discussions with prosecutors and fellow agents, I can say that the number of prosecutions never brought is significant. That number is going to increase exponentially in the aftermath of the Supreme Court's decision in *Free Speech Coalition*. While the FBI and the Department of Justice are committed to pursuing these cases—even where the children are not identified—I fear that in many cases, this speculative technological debate will indeed result in a bitter end.

There are strong reasons to believe that the images of child pornography circulating on the Internet today almost universally involve actual child victims. Leading experts in the field have told us that it would take an investment of millions, if not hundreds of millions, of dollars in research and equipment, not to mention somebody with the type of talent that would guarantee a lucrative career in Hollywood, to produce an indistinguishable, completely computer-generated image of a child engaging in explicit sexual conduct. While consultations with leading experts in the area indicate that the technology exists that might *theoretically* allow for the creation of such images, it is highly improbable that the producers of child pornography currently possess such resources. Sadly, it is still far cheaper, less time consuming, and easier for child pornographers to use real children to create a high-quality product for distribution.

Moreover, just because it is highly unlikely that the producers of pornography possess the resources or the technology to create a *new*, completely computer-generated image that would fool a competent expert into believing that it is an image that depicts a real child, that does not mean that the *Free Speech Coalition* case, if unredressed, will not pose a substantial impediment to child pornography prosecutions now and in the future. Ironically, while it may be difficult to fool an expert with a new image, the same cannot always be said for an old image. Child pornography circulating on the Internet has, by definition, been digitally uploaded or scanned into computers and has been transferred over the Internet, usually in different file formats, from trafficker to trafficker. An image seized from a collector of child pornography is rarely a first-generation product; it may be the 1,000th generation. It is often difficult, if not impossible, for experts to discern which generation of a particular image is on an individual's computer. With each transmission, the "DNA" of the image undergoes a subtle alteration, which can make it impossible for an expert to conclusively opine that a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format, this task can be even harder since proper forensic delineation may depend on the quality of the image scanned and the tools used to scan it. Therefore, despite the overwhelming probability that images of child pornography do come from real children, the inability of an expert to state as a matter of scientific certainty that a given image seized from a defendant's computer is a picture of an identifiable child, will severely undermine our ability to bring these perpetrators to justice.

Because of the ready-made nature of the "virtual image" defense to child pornography charges, I am reasonably certain that, in the future, in cases in which the child victim remains unidentified, child pornography prosecutions will devolve into a "battle of the experts" that will sufficiently confuse jurors and place our prosecutions at risk. The number of competent experts in the field is few. Because of the limited number of experts involved and the considerable costs entailed in retaining such experts, assuming their availability, and because of the difficulties that face such experts in reaching definitive conclusions when confronted with images that have been propagated through multiple generations over the Web, the foreseeable and tragic result will be that offenders who possess images of real, but unidentified, children will escape prosecution and will continue to use such material to harm still more innocent children. Indeed, in a motion to dismiss filed the day after the Supreme Court's decision, one alleged offender has even insisted on the return of his cherished collection of child pornography, in addition to dismissal of the charges pending against him.

Let me add that, while there is no evidence to suggest that completely computer-generated images of child pornography actually exist on the Internet, this does not mean that a well-done completely computer-generated image would not be harmful to real children. To the lay person, including the vast majority of child predators and vulnerable children, such images may more than suffice for the pernicious task at hand. There is every reason to believe that offenders who obtain and distribute

such images on the Internet can and will use them in much the same manner that they currently use images with real child victims, that is, to fuel their fantasies, to whet their appetites for real children, and to groom real and vulnerable children for sexual encounters by lowering their inhibitions, desensitizing them to the sexual acts, and convincing them that the behavior is acceptable and fun. In short, there is no legitimate place in our society for lifelike, photo-quality images of children engaging in explicit sexual conduct, whether that image involves a real child who has already been victimized or is a seemingly-indistinguishable image that is used to entice innocent and vulnerable children into becoming real victims themselves.

The Subcommittee has also asked me to explain two concepts: morphed imagery and composited imagery. “Morphing” refers to a software process in which one image is transformed into another over a period of time. This term of art is commonly, and erroneously, used to refer to generic digital image manipulations, but it actually refers to a fairly simple process. The software works simply by moving pixels, or individual picture elements, while changing their color. Take the example of two pictures, one of a man frowning, and one of a man smiling. The computer operator wishes to animate the transition between these two facial expressions. First, the operator would define shapes on the start and end images, to tell the software that the mouth is the primary changing feature between the faces. The software then calculates the in-between mouth positions, and generates the frames to show the transition. While the end result might be interesting, it does not capture the minute but detectable nuances of human expression. While it would be possible to morph two entirely unlike images, such as a child and an adult, the end result would not be a believable hybrid of the two. Morphing only works well if the source images are extremely similar.

“Compositing” refers to the digital combination of multiple photographic images into a single image, in effect cutting up different photographic prints and then gluing the pieces together to create a new collage image. The process is simple, and the software to do it is readily available. However, just as cutting a picture from a magazine and gluing it over a family snapshot will not create a believable end product, neither is digital compositing the magic solution to artificially creating images. Retouching is a subset of compositing, in which one uses digital paint tools to modify a digital photograph. Magazines “clean up” photographs of models by air brushing out blemishes, for instance. While an expert can certainly alter a photograph in this way with results that may fool a lay person, a competent expert can discern the difference between the two. Extensive retouching leads to an airbrushed, overly smooth look to the picture, as all the natural detail becomes obscured. Nevertheless, determining whether an actual minor was used in an image where compositing is alleged or uncovered may be difficult, because forensic investigators have only a portion of the child victim’s anatomy to inspect and, thus, fewer investigative clues are available.

The Subcommittee has asked that I comment on the threat to children posed by the sex tourism industry. Sex tourism appears to be a growing problem in countries where large segments of the population live in poverty. During the last few years the Justice Department and the Federal Bureau of Investigation have received increasing requests for training and advice on combatting this problem. Of course, children are severely threatened by sex tourism. Sex tourists are often under the impression that it is “safer” to have sex with a child than an adult prostitute, and some adult men do actively seek out young female or male sex partners.

The Administration has been working with Congressional Staff to broaden our jurisdiction to prosecute Americans who go abroad to have sex with children or pay minors for sex. The Administration has proposed legislation that:

- (1) will make it easier to prosecute “sex tourists” and tour operators who serve them by creating a new crime of knowingly assisting sex tourists who prey on children and prostitutes under 18 years of age.
- (2) will allow the United States to prosecute Americans who go abroad and engage in statutory rape of children, without having to show the person intended the act before leaving the United States; and
- (3) will broaden the prohibited sexual acts to include any purchase of sex from a person under 18 years of age.

Current law, 18 U.S.C. § 2423(b), requires that the government prove that the defendant intended to engage in statutory rape when he departed the U.S., which is very difficult to establish. Our proposal will create a new crime of simply leaving the country and engaging in statutory rape, or paying any minor for sex. We will retain the old language and use it for sting operations or when we have intercepted the traveler prior to his participation in the sex act. In addition, we cover all use

of minors for prostitution, even if it would not constitute statutory rape (i.e., minor includes 16 and 17 year-olds). The U.S. would still be forced to rely on foreign law enforcement to develop evidence of the crime that occurred abroad. In addition, we create a new crime of knowingly facilitating sex tourists, which will help us prosecute sex tour operators.

Finally, the Subcommittee has asked me to comment about the perception that pornographers use deceptive practices to lure unsuspecting children to pornographic sites. This topic is probably best addressed by the Federal Communications Commission and even the Federal Trade Commission. Nonetheless, I am aware of this practice. An April 24, 2002 MSNBC article online revealed that the FTC was taking action against a pornography company that falsely advertised free Sony Playstations to lure targets to their pornography sites.

Let me finish this testimony by thanking this Subcommittee for seeking the FBI's input. Collectors of child pornography should not escape punishment. The correlation between collection of child pornography and actual child abuse is too real and too grave to ignore.

Mr. SMITH. Thank you, Mr. Heimbach.

Mr. Allen, we will proceed with you. Let me mention that the bells that you just heard indicate a vote. If you possibly can and if you all will limit yourself to four or 5 minutes, we can finish with the testimony, go vote, I hope this one time, and be back fairly quickly for questions as well.

Mr. Allen.

STATEMENT OF ERNEST E. ALLEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN

Mr. ALLEN. Thank you, Mr. Chairman. I will be brief. I have submitted written testimony and with your approval, I will summarize.

Mr. SMITH. Without objection, all of your complete testimonies will be made a part of the record as will any opening statements that any individual Members want to submit as well.

Mr. ALLEN. Thank you very much. Mr. Chairman, you asked if I would speak to our view of the impact of the *Ashcroft v. Free Speech Coalition*.

In our judgment, we think it's devastating for America's children. The probable impact is a proliferation of child pornography, unlike anything we have seen in this country for the past 20 years. We believe that it's also going to mean that thousands of children are going to be sexually victimized.

Since determining the identity of children in child pornography is very difficult, often times impossible, the requirement that a specific child be identified will result in thousands of prosecutions not happening. Let me interject that just yesterday we received an e-mail from a State law enforcement agency that reads: "Due to the Supreme Court ruling, our U.S. attorneys are running scared and refusing to prosecute any porn cases where the victims can't be identified or proven that the images are not morphed. I'm hoping that you can ID one or all of the sample images I'm sending."

We agree with Mr. Heimbach's assessment that experts can still discern the differences in many cases, however, advances in technology have made and are making virtual child porn virtually indistinguishable from actual child porn. Thus in many cases it's going to be impossible for law enforcement and prosecutors to establish which is which, particularly in local police departments across the country.

Why is this such an important issue for the National Center for Missing and Exploited Children? Well, for one, Congress has asked us to become sort of the epicenter in the war against child pornography. Since 1987, we have operated the National Child Pornography tipline.

In 1998, at the request of Congress, we created a Cyber Tipline to receive leads online regarding sexual exploitation of children. We have handled through this morning 71,000 leads, 61,000 of which relate to child pornography. We were making great progress as a nation. But our concern is that after the Ferber decision in 1982 when, because of the Ferber decision and the court's dictum that child pornography was not protected speech, it disappeared from the shelves of adult bookstores. The Postal Services cracked down on the use of the mails, but it went underground and with the advent of the Internet it had begun to reappear in a major way.

Because of the involvement and the leadership of Federal, State and local law enforcement however, we were having substantial impact, but that is changing. This decision changes that, changes the implications of the Ferber decision, the requirement that we identify who the child is in these cases makes thousands of cases effectively non-prosecutable.

How can a police officer or prosecutor anywhere in America ascertain the true identity of the child? For the past 2 years, we at the Center have been working with State and local police in trying to do that and we continue to work on that capacity. However, most of these kids, as Mr. Heimbach indicates, are not identifiable.

Our judgment is that child pornography is not like other speech. It is a molestation tool. It is a tool used by predators and pedophiles to seduce and manipulate, to break down inhibitions, to make sex between adults and children appear normal. It is not speech. It is speech which is in many ways an integral part of illegal action.

While the creation of purely virtual child pornography, we think, will increase dramatically, it is also, in our judgment, going to increase the likelihood that predators will continue to sexually victimize children, photograph those acts and then modify the images to make them look like virtual images, therefore escaping or making it more difficult to identify the child.

We are enthusiastic about the Attorney General's commitment to use other statutes to prosecute these cases, but that is very difficult and we are very grateful for the leadership of Congress and the leadership of the two caucuses and this Committee to doing something meaningful to fixing the problem identified by the Court.

Finally, we hope that as you fix this problem we continue to do more to address the problem that exists today and we ask your help. As I mentioned, the National Center has been identified by Congress as the primary reporting source for child pornography through our Cyber Tipline.

I hope you will help us send the message to citizens that it is more important than ever to report this content to us so we can put it in the hands of law enforcement and continue to aggressively investigate and we can ask the public across America where they know who these kids are or who they are, to tell us.

Mr. Chairman, thanks for your leadership and the leadership of this Committee. We are available to be a resource in any way.
[The prepared statement of Mr. Allen follows:]

PREPARED STATEMENT OF ERNEST E. ALLEN

Mr. Chairman and members of the Committee, I am pleased to appear before your Subcommittee today and express my views and those of the National Center for Missing & Exploited Children (NCMEC) regarding the probable impact of the Supreme Court's recent decision in the case of *Ashcroft v. Free Speech Coalition*. Our views are very basic and straightforward:

1. We believe that the Court's decision will result in the proliferation of child pornography in America, unlike anything we have seen in more than twenty years;
2. We believe that due to advances in imaging technology, actual child pornography and virtual child pornography have become virtually indistinguishable; and
3. We believe that as a result of the Court's decision, thousands of children will be sexually victimized, most of whom will not report the offense.

I want to elaborate on those points, but before I do, let me first provide the Committee with some general background on NCMEC and why we are so concerned about this issue. NCMEC is a not-for-profit corporation congressionally mandated under the Missing Children's Assistance Act of 1984. NCMEC works in partnership with the U.S. Department of Justice as the official national resource center and clearinghouse on the issue of missing and exploited children. NCMEC is a true public-private partnership, funded in part by Congress and in part by the private sector. NCMEC's federal funding supports specific operational functions mandated by Congress, including a national 24-hour toll-free hotline; a photo distribution system to generate leads regarding missing children; a system of case management and technical assistance to law enforcement and families in the search for and recovery of missing children; training programs for federal, state and local law enforcement; and much more.

While we are perhaps best known for our work in the field of missing children, NCMEC is also a leader in the battle against child sexual exploitation and has become the epicenter of the war against child pornography. How did we become such a central figure in the child pornography battle?

- The Child Porn Tipline was launched in June 1987 as a service for the U.S. Customs Service and subsequently for the U.S. Postal Inspection Service. In partnership with the U.S. Customs Service and U.S. P.I.S., NCMEC has received and processed more than 10,900 such leads.
- In 1994, months before the nation or the news media viewed online victimization as a problem, NCMEC first printed the brochure, "Child Safety on the Information Highway," a publication discussing online child safety. Subsequently, a number of children were lured away to meet adults they'd met online, and suddenly online victimization became front-page news. Because we were the only child advocacy group with solid tips on how to prevent online victimization, the news media and families turned to NCMEC for help.
- On January 31, 1997, in response to the increasing prevalence of child sexual victimization, NCMEC officially opened its Exploited Child Unit (ECU). The ECU is responsible for receipt, processing, initial analysis and referral to law enforcement of information regarding the sexual exploitation of a child.
- In 1997 the Director of the FBI and I testified before the Senate Appropriations Subcommittee on Commerce, Justice, State and the Judiciary. The committee asked how serious was the problem of Internet-based child sexual exploitation. Director Freeh and I agreed that it was a serious and growing problem that we were just beginning to recognize and address, and that much more needed to be done at the federal, state and local levels. As a result of that hearing, Congress directed NCMEC to establish an Internet-based, reporting mechanism for child pornography, online enticement of children, child molestation, child prostitution and child sex tourism. Congress also directed the Justice Department to establish multi-jurisdictional Internet Crimes Against Children Task Forces across the country.
- On March 9, 1998 NCMEC launched its new CyberTipline, www.cybertipline.com, the "911 for the Internet," to serve as the national on-

line clearinghouse for investigative leads and tips regarding child sexual exploitation. NCMEC's CyberTipline is linked via server with the FBI, Customs Service and Postal Inspection Service. Leads are received and reviewed by NCMEC's analysts, who visit the reported sites, examine and evaluate the content, use search tools to try to identify perpetrators, and provide all lead information to the appropriate law enforcement agency and investigator. The FBI, Customs Service and Postal Inspection Service have "real time" access to the leads. Both the FBI and Customs Service have assigned agents who work directly out of NCMEC, and review reports. The U.S. Secret Service has assigned three analysts who assist in the review and prioritization process. The results: to date, NCMEC has received and processed over 70,000 leads, 60,000 of which were reports of child pornography, resulting in hundreds of arrests and successful prosecutions.

- In December 1999, Congress passed the *Protection of Children from Sexual Predators Act*, mandating that Internet Service Providers and others report child pornography on their sites to law enforcement, with the ISPs subject to substantial fines for failure to report. Again, Congress asked NCMEC if it could handle the reports through its CyberTipline. NCMEC agreed. While the reporting mechanism is being formalized, NCMEC has entered into agreements with 85 major ISPs, including industry leaders America Online and the Microsoft Network, who are already reporting child pornography on their sites voluntarily.

Today, NCMEC is receiving hundreds of reports and tips regarding child pornography from across America and around the world each week, and it is pursuing those leads aggressively with the appropriate law enforcement agencies. Between March 1998 and April 2002, NCMEC received 93 child sex tourism leads, 789 child prostitution leads, and 2,358 non-family child sexual molestation leads.

We are proud of the progress. Following the Supreme Court's 1982 *Ferber v. New York* decision holding that child pornography was not protected speech, child pornography disappeared from the shelves of adult bookstores, the Customs Service launched an aggressive effort to intercept it as it entered the country, and the U.S. Postal Inspection Service cracked down on its distribution through the mails. However, child pornography did not disappear, it went underground. That lasted until the advent of the Internet, when those for whom child pornography was a way of life suddenly had a vehicle for networking, trading and communicating with like-minded individuals with virtual anonymity and little concern about apprehension. They could trade images with like-minded individuals, and in some cases even abuse children "live," while others watched via the Internet.

However, in recent years law enforcement began to catch up, and enforcement action came to the Internet. The FBI created its Innocent Images Task Force. The Customs Service expanded its activities through its CyberSmuggling Center. The Postal Inspection Service continued and enhanced its strong attack on child pornography. The Congress funded thirty Internet Crimes Against Children Task Forces at the state and local levels across the country. Child pornography prosecutions have increased an average of 10% per year in every year since 1995. We were making enormous progress.

That is why we are so concerned about the impact of the Court's decision. We fear that this decision permits those who prey upon children to legally produce, possess and distribute sexually explicit images that are virtually indistinguishable from images of actual children. Increasingly, graphics software packages and computer animation are being used to manipulate or "morph" images and to create "virtual" images indistinguishable from photographic depictions of actual human beings. Not only will this enable continued victimization of actual children and fuel the growth of the child pornography market, but it severely impairs the ability of law enforcement and prosecutors to protect children by enforcing existing laws prohibiting such crimes.

NCMEC has been the national leader in the use of imaging technology for good. Our forensic artists are "aging" photos of long-term missing children, and performing facial reconstructions from morgue photos and skeletal remains of unidentified deceased children. These techniques keep long-term cases alive, generate new leads for police, and provide hope for searching parents. It is a powerful use of technology. However, the same technology can be used for evil as well.

It is already happening. Just last week, NCMEC received a child pornography report in which the image depicted a graphic sexual act between an adult male and what appeared to be an eight or nine year old girl. One of NCMEC's CyberTipline analysts recognized the child from a photo on a nudist site. The original photo of the child did not depict any sexual activity. In the new image, the pornographer had

taken the child's image, cut it off at her waist, attached her body from the waist up to another photograph, and created a new image depicting the child being violated by an adult male.

That image still qualifies as child pornography under current law since the child is identifiable and will be harmed by the distribution of her image. Thus, the pornographer's next step is simply to make the child another child so that she is no longer identifiable. Alas, that now appears to be protected speech.

Recently, in California, an individual was arrested and convicted on molestation and child pornography charges. This individual took images of high-profile U.S. gymnasts (all under the age of 18) and, using computer technology, removed their leotards. He then added in genitalia and lewd poses. These images were then used to lower the inhibitions of a twelve-year-old girl whom he later molested. Technically, this is a "morphed" child pornography case. However, it does prove the point that the existence of child pornography images are often used to exploit more children than just those seen in the image itself.

One last example I'd like to offer is from a 1995 U.S. Postal Inspection Service investigation. The defendant in this case would first convince young girls to "model" for him by showing them pictures of young girls wearing only underwear. Then, progressively, he showed the children child pornography videotapes to lure them into a sexual relationship. The videotapes were produced in the 1980's & early 1990's (prior to the known morphing technology). The defendant was convicted and is now dead.

How can a police officer or prosecutor anywhere in America ascertain the true identity of the child? For the past two years, NCMEC has worked with state and local police to identify as many of these children as possible, and we continue to build that capacity. Since the child victims are local residents somewhere, and since these images are rapidly disseminated all over the world, working closely with local law enforcement is key to our on-going process of identifying victims, enabling more prosecutions. However, it is very difficult, and clear that most children in child pornography are not identifiable. Based on the court's new standard, thousands of cases will not go forward.

Child pornography is different, not like other kinds of speech. A decade ago, FBI Special Agent Ken Lanning, now retired, author of NCMEC's major publications in this field, outlined for Congress why pedophiles collect and distribute child pornography:

1. To justify their obsession for children
2. To stimulate their sexual drive
3. To lower a child's inhibitions
4. To preserve a child's youth
5. To blackmail
6. As a medium of exchange
7. For profit

As Agent Lanning noted, molesters use child pornography to stimulate their own desires and fuel their fantasies for children as sexual partners. Viewing these images whets the appetite of the molester and serves as a precursor to his own sexual acts with children. The more frequently a molester views child pornography, the more he, like his child victims, becomes desensitized to the abnormality of his conduct. He can convince himself that his behavior is normal, and eventually he will need more and increasingly explicit child pornography to satisfy his cravings. When mere visual stimulation no longer satisfies him, he will often progress to sexually molesting live children.

Child pornography is not just an aberrant form of free expression, it is a criminal tool, used to seduce and manipulate child victims, break down a child's inhibitions, and make sex between adults and children appear "normal." Just as we charge drug dealers with the possession of drug paraphernalia and would-be burglars with the possession of "burglary tools," so must we have the ability to limit the use of child pornography, a clear, unambiguous "molestation tool" for pedophiles and child molesters.

There is compelling evidence that visual depictions of sexually explicit conduct involving children cause real physical, emotional and psychological damage not only to depicted children but also to non-depicted children. It is just as insidious, whether it is a photographic record of a child's actual victimization, or a photographic depiction used as a tool or device to subsequently victimize other children.

What will be the primary impacts of the Court's decision?

1. While the creation of purely “virtual” child pornography will increase dramatically, it now becomes more likely that predators will sexually victimize children and photograph the act. However, before distribution, they will use imaging techniques to morph and manipulate images to create a new identity for the child, thereby avoiding prosecution. We are already seeing perpetrators modify existing images to make them look more like “virtual” images.
2. Since determining the identity of children in child pornography is very difficult, oftentimes impossible, the requirement that a specific child be identified will result in thousands of prosecutions under child pornography law not happening.
3. Since advances in technology have made virtual child porn indistinguishable from actual child porn, in most cases it will be impossible for law enforcement and prosecutors to establish with certainty, which is which.
4. Thousands of kids are going to be harmed as a result.

In conclusion, let me say that we do not believe that all is gloom and doom. We are encouraged and supportive about Attorney General Ashcroft’s commitment to use other statutes to aggressively prosecute these cases.

We are encouraged by the swift reaction from Congress. We believe that a new statute on this point is absolutely justified by the State’s compelling interest in protecting children from the serious threat that child pornography, real or virtual, poses to their physical and mental health, safety and well-being.

Finally, we are encouraged that today as never before, America cares. In the aftermath of the Court’s decision, it is more important than ever for every citizen to be alert and report suspected child pornography to NCMEC at its CyberTipline, www.cybertipline.com or hotline, 1 (800) 843-5678. We ask your help in getting that message out to all of those who care about the safety of America’s children.

Thank you so much for the opportunity to express our concerns. As always, I hope you will view NCMEC as a resource as you begin this process. We stand ready to assist in any way we possibly can.

Mr. SMITH. Mr. Walsh, instead of cutting your testimony short, we are going to go on and take a 15-minute or so recess and then we will come back and then resume with your testimony at that point.

[Recess]

Mr. SMITH. The Committee will come to order. Mr. Walsh.

**STATEMENT OF WILLIAM C. WALSH, LIEUTENANT OF POLICE,
YOUTH AND FAMILY SUPPORT DIVISION, DALLAS POLICE
DEPARTMENT**

Mr. WALSH. Thank you, Mr. Chairman and Members of the Committee for the opportunity to address you today about the impact of the recent Supreme Court decision on the ability of law enforcement in this country to protect children from child pornography.

You have heard a great deal of discussion from our previous speakers about the issue of technology and its relationship to child pornography. If you would bear with me, I would like to augment my prepared statement by taking you into the world of a police officer who spent the last 15 years of his life devoted to working crimes against children.

I have experience over my lifetime as a police officer investigating everything from the intra-familial abuse of children, the abductions of children, the sexual assault of children, the murder of children and most recently the computer facilitated victimization of children due to pornography trafficking on the Internet and traveler cases where children are lured on the Internet.

One of the things I realize over my career is that as the technology has evolved, law enforcement has had to deal with these

evolving technologies used by offenders and change our methods and change laws to keep pace.

Fifteen years ago, offenders often used Polaroid pictures to memorialize their victimization of young children. But as time would pass and those pictures would fade and it made it hard to correctly identify when that picture was made, we found we could use the production code on the back of the photograph to get an approximate date to when that picture was made and we could prosecute that way.

Then with the advent of 1-hour photo labs we see people taking pictures of children they had victimized with higher quantity cameras, 35-millimeter film that they would drop off and put a phony name so that they couldn't be detected.

When we learned that was happening, we would then go to photo labs and advise them under the Texas law their requirement to report those issues to law enforcement. We made scores of people who were victimizing children in that fashion.

Along came the VCR and the video camera and then we found people who were then turning to videotape to memorialize their victimization of children in live time. Offenders learned that law enforcement knew they were doing that, so sometimes offenders would actually reverse the reels on the videotape so that if you played the tape it would look like there was nothing on it. We learned that technique and we learned to identify tapes that that had been done to so we could still investigate them.

Over a decade ago, before the Internet existed, people started to use computer technology with electronic bulletin boards where they would meet other people where they could trade child pornography. One man I met nearly 15 years ago showed me a videotape of him raping a 7-year-old girl in the Philippines.

My understanding on this Supreme Court decision, since we could not identify that child today, that man could not be prosecuted. His daughter was a victim of child pornography at his hands over 20 years ago and still, to this day, she calls me, worrying about her images being displayed on the Internet of her being abused as a little girl. I have to, from time to time, console her and tell her there's no evidence that that is going on.

Today, with the advent of the Internet, people use different technologies to trade child pornography, pier-to-pier file transfer, the IRC. But the big thing that we have seen is the use of child pornography commercial Web sites.

Dallas has an Internet Crimes Against Children Task Force, one of 30 regional programs funded by this Congress that has combated this issue. Last year we were involved in a case called Operation Avalanche where a Fort Worth couple made nearly \$1 million selling access to commercial child pornography on the Internet. Both those people were apprehended and are, in fact, in prison.

But one of the things we found out in Operation Avalanche is that people were, as a result of our undercover investigation, were contacting us. They wanted to buy children from us. They wanted to order child pornography. In many of our cases when we would do meetings or control deliveries, we would identify victims.

In one case in Pennsylvania when we delivered a videotape to a man and searched his house, in his safe were videotapes and photographs of him raping his 13-year-old daughter.

As I near the end of my career and look back on what I have had to deal with, what I would ask you, if this Congress in a bipartisan fashion using your wisdom, to pass legislation that will enable law enforcement that follows me to continue to combat child pornography and the people who chose to hurt the children in this great country.

Thank you.

[The prepared statement of Mr. Walsh follows:]

PREPARED STATEMENT OF WILLIAM C. WALSH

Mr. Chairman and members of the Committee, I am very grateful for the opportunity to appear before your subcommittee today and to express my views as a career law enforcement officer regarding the probable impact of the recent Supreme Court decision in the case of *Ashcroft v. Free Speech Coalition*. My views are based on nearly 15 years of experience supervising the investigation of thousands of cases involving the sexual abuse or exploitation of children as well as the investigation of hundreds of cases of child pornography trafficking. The views that I share with you today are based on the practical concerns and issues for criminal justice professionals that I believe are shared by my fellow law enforcement officers throughout the United States. Those concerns are as follows:

- As a result of the Court's action regarding "virtual child pornography," there will be an unprecedented growth in the volume of such material that will be traded by individuals on the World Wide Web, by Email, in newsgroups, by peer to peer file sharing, on the Internet Relay Chat (IRC) and other computer related venues.
- This increased consumer trading will be accompanied by a similar explosive growth pattern in commercial child pornography websites that charge customers to view pornographic images and videos of children.
- The market for child pornography will eventually become an unbelievably profitable criminal enterprise that will attract the participation of organized crime, both in this country and overseas.
- Because of advances in computer imaging technology, that are certain to come in the near future, criminal justice agencies, for all purposes, will be unable to distinguish between actual child pornography and virtual child pornography. This will result in less law enforcement of child pornography laws.
- The United States will add to its dubious distinction of being the world's largest consumer of child pornography, by also claiming the title of the world's largest producer of child pornography

Please allow me to explain these concerns and why I have come to hold them. My beliefs are based on a career spent investigating crimes against children and my personal experience of managing *Operation Avalanche*, which is credited with being the largest undercover investigation of Internet child pornography in the history of the United States to date. At last count, this investigation has resulted in nearly 200 arrests nationwide.

In April 1999, the Dallas Police Department's Internet Crimes against Children Task Force, one of the 30 such task forces funded by the Congress, began a joint investigation with the U.S. Postal Inspection Service into a company that was providing Internet access to child pornography websites on a credit card payment basis. The investigation involved a small Internet company in Fort Worth, Texas called Landslide, Inc., which was operated by a husband and wife named Thomas and Janice Reedy. The Landslide business provided two major services. The first service was a credit card verification service for customers that wanted to view adult porn sites. Landslide would take a customer's credit card number, verify that it was valid and then issue the customer a password that would allow them access to hundreds of adult porn sites for varying time periods. Most customers paid around \$50 for this privilege. The Reedys made a profit by charging a percentage for every credit card transaction that they facilitated.

The other service provided by Landslide was a credit card verification service for customers that wished to visit websites that offered child pornography. With this

service, customers paid either \$30 or \$40 *per month, per website* for access. This service proved to be the greater source of income for Landslide. We later learned that there were many customers that concurrently subscribed to multiple websites. Some individuals were spending hundreds of dollars per month for the ability to visit these websites that featured names like *CHILDREN FORCED TO PORN*, *CYBERLOLITA* and *RUSSIAN PRETEEN*. The content on these websites was among the most hardcore child pornography that either my detectives or I have ever viewed in our careers.

After several months of online investigation, in which Dallas detectives purchased many of these websites using an undercover credit card, sufficient probable cause was established to apply for a federal search warrant for the Landslide business and the Reedy's home. In September 1999, these two search warrants were executed. One of the items that were recovered during the search of the Landslide computer system was their customer database. This list contained the names of over 36,000 American citizens that had subscribed to one or more of the child pornography websites. Among the business records that were seized were numerous copies of wire transfers to foreign webmasters in amounts ranging from \$20,000 to \$65,000. It was later learned that these wire transfers were for the foreign webmasters share of the revenue generated by the child pornography websites.

The Reedys were eventually prosecuted in federal court for their crimes. Neither one would accept the plea bargain that was offered by the U.S. Attorney's Office and they elected to go to trial. On December 1, 2001, Thomas Reedy was sentenced to serve the rest of his life in prison. Janice Reedy was sentenced to 14 years in prison. Three of the foreign webmasters were also indicted, but have yet to be apprehended by law enforcement. It was estimated by Postal Inspectors that the Reedys were grossing nearly \$750,000 per month. They were living in a beautiful custom home and driving luxury vehicles that were fully paid for.

This investigation was law enforcement's first experience with a commercial child pornography operation, which was operated on the Internet and located in America. Though effective law enforcement intervention in the 1980's had virtually eliminated the sale of child pornography in our country, and forced it go underground, the creation of the Internet had now provided an opportunity for individuals to again profit from the pain and suffering of children that were depicted being sodomized, raped, and otherwise brutalized. We have found that many of the pictures of the same children appear on more than one website. Though many of the children appear to be from foreign countries, there were also many that appear to be American children based on the backgrounds observable in the pictures.

The second phase of this investigation was the targeting of the individuals that subscribed to the child pornography websites. We developed online undercover techniques that we are still using to make contact with these individuals. Many people who we contacted wanted to trade or purchase child pornography. One 52-year-old man wanted videotapes depicting the "moderate torture of pre teen girls." Others requested that we provide them children for sexual encounters. Let me tell you about two of these individuals.

One man in Pennsylvania ordered child pornography videos from our undercover operation, thinking we were affiliated with the Landslide Company. Upon performing a "controlled delivery" of this contraband, law enforcement officers executed a search of the man's residence. In a safe, the officers discovered nude pictures and videos depicting the man having sexual intercourse with his daughter from the ages of 13 to 18. Polaroid pictures were also found depicting the girl engaged in sexual activity with a dog. Prior to the execution of this search warrant, the girl had never disclosed her victimization. Another customer of the child pornography websites wanted to pay for the opportunity to have sex with a 12-year-old girl. He eventually traveled to Dallas and was arrested in a hotel where he thought he was going to meet the child.

The Landslide investigation taught us several important lessons. First, that there is a very profitable commercial market for child pornography on the Internet. This market is fueled by a tremendous consumer demand for this material. This demand is coupled with a supply that is practically unlimited for the person who would choose to host a website offering child pornography. (A current ongoing child pornography investigation being conducted by the Dallas Internet Crimes against Children Task Force has identified nearly triple the number of customers that were involved in the Landslide case). Pornographic images of children can be easily obtained electronically, without paying for them, by downloading them from other sites, from newsgroups or the IRC. These conditions, along with the Supreme Court's legitimization of virtual child pornography, will open the floodgates for people who will trade or commercially traffic in child pornography and avoid prosecution by claiming the content does not contain real children, whether it does or not.

In yet another ongoing investigation, in which we have purchased child pornography websites, we have observed on our credit card bills that the dollar amounts for the purchases were converted to rubles and that the money is being sent to Russia. It is only a matter of time before organized crime in either this country or Russia follow the Reedy's example and start to become actively involved in the business of selling child pornography on the Internet.

Since it appears that the standard for criminal prosecution in child pornography cases will be to establish that a "real" child is involved, there will be a marked decrease in such cases. Though it is estimated that there are hundreds of thousands of child pornography in existence and available on the Internet, it has been said that law enforcement has established the identity of less than one hundred children to date. Law enforcement is just not going to be able to establish the identities of the vast amount of children depicted in child pornography on the Internet.

In his concurring opinion, Justice Thomas stated that, "*the Government points to no case in which a defendant was acquitted based on a computer-generated images defense.*" But yet, the day after the Court's decision was rendered, I learned of a case in which a federal prosecution for child pornography possession was dismissed by the prosecutor because he knew that he could not identify the children depicted as real individuals. This decision has, and will continue to have, a chilling effect on the prosecution of such cases. People interested in trafficking in child pornography will only become bolder in their actions, knowing the limitation of law enforcement to identify the children that are depicted.

The Internet and computer technology has forever changed the landscape when it comes to the issue of child sexual exploitation. The Internet has no borders. Individuals are able to solicit children in different jurisdictions for sexual interaction on the Internet and then travel to meet them. People can trade child pornography files over the Internet in huge volumes at little or no cost. And now technology has allowed for the creation of "virtual" and "morphed" child pornography.

While there is little scientific evidence or proof of the impact of child pornography on the children that are involved, there is a great deal of personal observation and anecdotal data that supports the position that it is very detrimental to a victim's mental health. I still receive phone calls from an adult woman who was a victim of child pornography over two decades ago. She still worries about images of her being sexually abused being traded or sold on the Internet.

In order to protect children from people that would choose to exploit them, I would ask you to draft a new statute that will prohibit both actual and virtual child pornography.

Mr. SMITH. Mr. Allen, before we go to questions by Members, I understand you have a presentation to show us the technology used by child pornographers.

Mr. ALLEN. Yes, sir, if I can move over here.

Mr. WALSH. Sure.

Mr. ALLEN. Mr. Chairman, I know that Members of the Committee are aware of the use of technology by the National Center for Missing and Exploited Children for good; aging the photographs of long-term missing children, rebuilding faces from unidentified deceased remains.

We cannot show you, by law, child pornography images or examples of images that we are receiving through the Cyber Tipline. With me today is Joe Mullins who is one of our forensic artists at the Center here at the PC. What we would like to do is to show you a couple of examples of ways that images can be and are being manipulated using off-the-shelf software. This is software, Adobe Photo Shop, that anybody can buy at Office Depot or CompUSA or anywhere in town.

This imaging software is able to make a virtual child look real, is able to make a real child look virtual and is able to disguise a real child through morphing.

To begin our brief presentation, we have four images on the screen and I guess sort of a quiz for the Committee. Among these images are images of real children and virtual children. I am not

going to embarrass anybody by asking you to pick out which is which, but I would say to you that the photo in the lower left, or for those of you looking at the TV screens, the photo on the lower left is the only real child in the group. The other three are virtual children.

Now, again, the standard that the court talked about is virtually indistinguishable. I would argue that the technology is improving so that it is very difficult and will become increasingly difficult to differentiate one child from another.

Now, the other challenge, Joe, let's move on to the next example, is that can you create a child from scratch using imaging software without the use of another child's image or facial parts, purely artistic rendering and creation.

What we are preparing to show you here is such an example. Here you see the outline of a face, gradually Joe is adding additional facial characteristics to the child, gradually building a face. Again, all of this is artistically created, none of it from libraries of facial parts or other actual children. It looks a little bizarre for a while, but ultimately you can begin to see the face of a real child appear.

Again, this is done with off-the-shelf software and the artistic skills of one person. So this is a completely manufactured facial image. There is no real child anywhere that is a part of this image of any facial parts from a child. Virtually indistinguishable? Again technology is proving this is something we did quickly as a demonstration for this Committee.

Finally, one of the real concerns that we have in light of the court's decision is that increasingly pornographers, pedophiles will use morphing techniques to disguise the real identity of a child. Now in this case we start with a real child. This happens to be a childhood photo of our artist Joe Mullins who was willing to expose himself to this sort of attention.

Joe, show them how we are changing his identity through morphing in facial parts from another child to create a new identity, a new mouth, new nose, new eyes, new hair, changing ears, a virtual image.

Now, if a Member of the Committee would ask: Is this mythology or is it real, just this week through our Cyber Tipline we received a report in which someone had taken an image of a child, transferred that image on to cut her off of the waist and attached her to an image which created a graphic depiction of the rape of a child which was displayed on the Internet. That, at this point is still child pornography because the child was identifiable. Morphing or changing that image to create a new identity in many ways, under a reading of the Ashcroft case, becomes protected speech. We have to identify that child, a real child, in order to move forward.

I submit to you, and let us finally show you those three images that we did today. One is real. One is wholly manufactured without any external input. One is morphed from other images. Mr. Chairman, I submit that they are increasingly virtually indistinguishable and that this is a huge challenge for law enforcement in the future.

Mr. SMITH. Thank you, Mr. Allen. That is a very persuasive

presentation. Let me begin the questioning. In fact, my first question really goes, Mr. Allen, to you and to Mr. Walsh. It is this: Much of the Supreme Court decision as I read it was based on the '82 Ferber case. It strikes me that back in 1982, that was almost before the Internet age.

In your opinion, back in 1982 when the case was decided, and the holding in the Ferber case was that you had to have a visual image of an actual child, but I'm wondering if that was maybe reaching it a little too far back for the Supreme Court. Maybe they are not as computer literate as a lot of people, and I'm in that category of not being as computer literate as I should be.

But I wonder if they missed something by relying on a case that is 20 years old and that was really before not only the age of the Internet or before we had the virtual imaging that we have today where, as you just demonstrated, it is almost impossible to distinguish between a real and a virtual image.

What is your opinion of what was available back then? Was it, in fact, possible back then to create a virtual image that was not able to be distinguished from a real image or not?

Mr. ALLEN. No, sir, I certainly don't think so. The strength of that decision in 1982 was by saying that child pornography was not protected speech and focusing on the victimization of an actual child, there really wasn't an alternative because there was not this kind of technology if you have a graphic image, if you have a true child pornography image, there was an actual child, and therefore the presumption contribute made and has been made for 20 years that a prosecution is justifiable.

My, perhaps, greatest concern, and I want to emphasize I do not speak for the Justice Department or anybody else, but for the National Center for Missing and Exploited Children, is that this decision effectively requiring that we identify the child in order to sustain a child pornography prosecution effectively eradicates 95 percent of child pornography prosecutions.

There was no technology back then. Reading the opinions, I think Justice O'Connor understood that point. But I think one of our great concerns is that while there was great focus on the movie, "Traffic" and "American Beauty" and while the decision of the court may well be justified, the reality is when we are talking about child pornography, Mr. Heimbach and Lieutenant Walsh and I are talking about child pornography, we are not talking about "American Beauty," we are talking about the graphic sexual victimization of children which is captured on film or on video or on the Internet or is used as an integral part of the victimization of children by pedophiles and predators.

Mr. SMITH. Thank you, Mr. Allen. Mr. Walsh?

Mr. WALSH. I agree, Mr. Chairman. Back then we talked about child pornography in formats like magazines, 16-millimeter movie film, Polaroid pictures. Digital technology that the average person could manipulate didn't exist. So, I think the decision was based on what was going on at that place and time in our society.

Mr. SMITH. Thank you, Mr. Walsh.

Mr. Heimbach, I wanted to ask you, just as we can manufacture or concoct virtual images that look like real children, isn't it just as possible that images or pictures of real children, actual children,

could be disguised as computer generated in an effort to foil any kind of prosecution or any kind of deterrence efforts?

Mr. HEIMBACH. Absolutely, just as the National Center has demonstrated for you, that software is readily available to our child predators and they could take a child and reverse it and utilize the same technology that was displayed here.

Mr. SMITH. Also, Mr. Heimbach and Mr. Walsh, how difficult is it to prove beyond a reasonable doubt the identity of a child that is being depicted for pornographic reasons?

Mr. HEIMBACH. It's extremely difficult. We can tell you in the FBI right now our Innocent Images initiative has been up and running since 1997. We only have approximately 80 to 90 identified child victims out of terabytes of pornographic pictures that we have. You may say, "why?" "Why" is because many of our children that are exploited worldwide, either from South America or Asia or Europe, the reality is we will never know their true identity. It is quite difficult for law enforcement.

Mr. SMITH. Thank you, Mr. Heimbach. Mr. Walsh?

Mr. WALSH. I would agree, sir. I would even say it is not only difficult, it may be impossible. In the traditional case that we had where somebody photographed a child and put it in a Fox Photo Store to be developed, we would use techniques like announcing the suspect's arrest in the paper, encouraging people who have been victimized to come forward and children in our own community could come forward.

But the Internet knows no boundaries. As Mr. Heimbach said, we have seen a lot of images of children from foreign countries, from all over the world on these commercial child pornography sites. We could never identify them.

Mr. SMITH. Thank you, Mr. Walsh. Let me say to Members of the Subcommittee that before they are tempted to push the time limits beyond 5 minutes as I tried to do, that we going to have a second round of questioning. So I hope we can keep our comments to 5 minutes.

That is not directed toward anyone, but I happily recognize the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you.

Let me ask Mr. Heimbach, are you with the FBI?

Mr. HEIMBACH. Yes, sir.

Mr. SCOTT. What code section requires you to give the identify of the child rather than just to identify it as a child? Is identifying the subject as a live child sufficient even though you don't know the name of the child?

Mr. HEIMBACH. If we can prove beyond a reasonable doubt, that's the question, that it is an identifiable child, that's the question.

Mr. SCOTT. You don't need to know the name of the child, just know that it was in fact—

Mr. HEIMBACH. An identifiable child, that's correct.

Mr. SCOTT. The problem we have in this case, I'm just going to read a portion of the syllabus published by the Supreme Court. They mention the Ferber case and mention two things. First is why we have the justification to prohibit the real children virtual images. It says first, "As a permanent record of the child's abuse, the continued circulation itself would harm the child who had partici-

pated and second because the traffic in child pornographic was an economic motive for its production. Under either rationale, the speech had what the court in effect held was an appropriate link to the crime from which it came.”

“In contrast to the speech in *Ferber*, speech that is itself a record of the sexual abuse, the CPPA prohibits speech that records no crime and creates no victims by its production.”

One of the reasons that I am concerned about this is that the product of sexual abuse does not fall outside the first amendment’s protection. Second, *Ferber* did not hold that child pornography is by definition without value and recognized that some works in this category might have significant value, but relied on virtual images, the very images prohibited by the CPPA as an alternative and permissible means of expression.

If you in fact did not use children, how under this language can we prohibit it?

Mr. HEIMBACH. Well, Mr. Scott, our view is that first obviously we disagreed with the Court’s conclusion in this situation, but obviously, we believe that child pornographic is intrinsic to the victimization of children. We believe that there is harm. It has been 30 years since I have been in law school, but the old *Schenck* case and the notion of speech which takes on the character of illegal action, that is what is happening here.

Child pornography is a tool, is a criminal tool used by pornographers to victimize children.

Mr. SCOTT. Well, let me read further on. The argument that virtual child pornography whets pedophile’s appetites and purges them to engage in illegal conduct is unavailing because the mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it, absent some showing of direct connection between the speech and eminent illegal conduct under the *Brandenburg v. Ohio* standard.

Mr. ALLEN. I think the court was focused on a different level of content. I think Mr. Kennedy and others were concerned about the over-breadth issue and criminalizing films like traffic and *American Beauty*.

I would argue that *Ferber* is not terribly useful in this modern environment. And for anybody to think that this isn’t a license for people to manipulate images—

Mr. SCOTT. Wait a minute. Let me read this before the light comes on and my colleague criticizes me. “Finally, the first amendment is turned upside down by the argument that because it is difficult to distinguish between images made using real children and those produced by computer imaging, both kinds of images must be prohibited. The over-breadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process.”

Mr. ALLEN. I understand the opinion, Mr. Scott. My concern is—

Mr. SCOTT. Are we saying we disagree with the opinion or is there some way we can get around it?

Mr. ALLEN. Well, in our judgment, at a minimum we should narrowly define, we should make the case, we should do what this Committee is doing about the impacts. Narrow the breadth of that

earlier statute so that it really does focus on those images which are virtually indistinguishable.

Mr. SCOTT. Well, that violates the entire principle. The Ferber case said the point is to protect children. If children weren't involved, they said specifically you can't do virtual.

Mr. ALLEN. Your Committee asked us to talk about the impacts. In my judgment, the impacts of this statute are to effectively make child pornography in America protected speech and to end to a great extent the prosecution of child pornography. I think it is a misunderstanding of child pornography to think that it is somehow abstract speech that people are sitting in their dens perusing child pornography in the same way that they would read a novel or look at a video tape.

I think the better reading from abundant evaluated is that it is a criminal tool used to victimize children. We would hope that there is a way to fix the problems identified by the court. And I understand that they didn't agree with us.

Mr. SCOTT. Well, Mr. Chairman, I guess your job was to show us the problem.

Mr. SMITH. The gentleman from Wisconsin, Mr. Green, is recognized for his questions.

Mr. GREEN. Mr. Chairman, thank you. Let me just say, gentlemen, I have found your testimony absolutely chilling and terrifying. But I do want to follow up on this last line which, Mr. Scott, Mr. Allen asked you, at least implicitly to make some suggestions to us. I guess that's what I would do. What do we do?

The impacts of this decision? I agree with what you said. I do agree with your characterization of the potential impact. So, what is it that we can do as a Committee and as legislators to try to minimize these impacts and move forward. I would ask that of all three of you.

Mr. ALLEN. Well, my reaction is, I think certainly the steps that you are already taking in terms of the legislation that I understand is going forward is a very positive step and we certainly support that. As it relates to this particular decision, I think one important distinction is to distinguish between child erotica and child pornography.

There are legal distinctions. If the concern of the court is above over-breadth and about, you know, Traffic and American Beauty, let us, you know, when it goes back to the court, focus on what is, you know, the most heinous, the most onerous, the most, you know, compelling aspect of this problem. That is where, I think, we should start.

Mr. WALSH. I would add to that, Mr. Green, when we talked about fervor, I don't think the word, "virtual" was even in our vocabulary at that time. When we talk about it, at least as a police officer now for 23 years, when I think of child pornography, I'm talking about images where children are being penetrated, where they are being raped; not where two children are under a blanket and you make an assumption as to what's happening.

I think that's where the court had the problem with the "appears to be," you know, issue. You cannot have this without children being hurt. What I failed to mention earlier in my prepared remarks was that what I fear is there is going to be an explosion of

commercial child pornography Web sites available on the Internet that will advertise and say, "This is virtual child pornography" and it will be as real as anything and they will hold it out and prosecutors will refuse to prosecute those cases.

I see the opportunity for organized crime to step up to the plate now because there is a profit motive. In the landslide case or the Operation Avalanche Case that we are involved in, we had a Fort Worth couple that grossed over \$1 million, living high on the hill, nice house, luxury cars, on the pain and suffering of children.

We are involved in another case today. So, I think we are going to see this be a license. We are going to see the floodgates open for people to step up and because of profit, not because of some sexual deviancy, get involved.

The adult film industry that was obviously in support of the other side on this, they have the ability to make these images and hold them out as virtual. I think it is going to really stymie law enforcement's effort to protect children.

Mr. HEIMBACH. Thank you, sir. I think Mr. Allen puts it best also. Let's look at it as a tool, whether it is virtual or real. It seems that the Supreme Court discounted many of the studies of the sex offenders that we have interviewed. We have shown that it lowers the sexual inhibitions of children. It desensitizes children to sex. It sexually arouses children. It grooms them into sexual relationships.

Based on our studies and interview upon interview of convicted sex offenders and Dr. Hernandez' study just reiterates the fact that whether it is virtual or real is inconsequential. Also, if you use virtual child pornography to entice children into a sexual act, that is illegal.

Mr. GREEN. Well, I would invite all of you as the legislation moves forward, please give us your input and help us through this difficult time. The quicker we can address this, Mr. Chairman, the better off we all are.

Mr. SMITH. Thank you, Mr. Green.

The gentlewoman from Texas, Ms. Jackson Lee is recognized for her questions.

Ms. JACKSON LEE. Thank you, Mr. Chairman. As I indicated in the early part of my remarks, this is a societal crisis that needs to be addressed as quickly as possible. We need to be able to address it with the recognition that the third branch of Government has ruled and that we must find a way for there to be sort of a coming together of the heinousness of these acts and what they ultimately generate in our society and what I hope is certainly a value that we are concerned about. That is, of course, the protection of the first amendment which, I think, we all adhere to.

I want to probe Mr. Allen again. Let me thank you for the leadership that you have given to this issue and also the service that the Missing and Exploited Children's Center has brought to this whole question of child abuse in general.

Let me also knowledge that we are in new technology and again, if I might cite my own home community, we have experienced over the last couple of weeks a number of incidences. One included the enticement of a 12-year-old by a lady from Detroit through the Internet. The 12-year-old male child was discovered enroute, in her car that she had come to pick him up in Houston, sort of a periph-

eral issue and they were enroute back to her home town when the law enforcement discovered them.

The other incident, of course, that we are grappling with right now is the snatching off the street of a 13-year-old girl who we have not yet found a single sign of. One can only speculate what the intentions of these two children.

So, I do think that there is a balance of the need of society, which I do believe that the Supreme Court has a sense of. It has to be sort of a collective voice of the rightness of societal determinations; what is right and what is wrong.

But let me ask you, Mr. Allen, with respect to this whole question of how the tool generates criminal activity, which I think is a question that needs to be reinforced before the court, and that is how this virtual tool can both whet the appetite, generate criminal activity or negative activity as it relates to the sexual attach on children.

Mr. ALLEN. Well, several years ago, Ken Lanning, former Special Agent with the FBI, testified before Congress and he talked about the seven uses of child pornography. It was his view, and I quote from that time, he said that were there not pedophiles, there would be no child pornography, buttressing our point that this not typical speech. I think it is almost a misnomer to characterize child pornography as speech at all.

He said that pedophiles use child pornography for seven reasons: to justify their obsession for children, to stimulate their sexual drive, to lower a child's inhibitions, to preserve a child's youth, to blackmail as a medium of exchange and for profit, some combination of those seven things.

Our view is that child pornography is comparable in many ways to, for example, the statutes addressing drug paraphernalia. It is a tool used by a molester or pedophile for one of those seven reasons or burglary tools. If you apprehend the burglar before he has burgled, you can charge him with that.

We believe that it is important to separate child pornography from adult pornography and other free speech issues. Clearly, we recognize that child pornography can be prosecuted using the obscenity laws, the kinds of child pornography that we are talking about. But the obscenity laws are difficult they are time-consuming. They do not criminalize the mere possession. Recognizing the use of child pornography as a tool, every State in the United States has criminalized the mere possession of child pornography.

So, when you download it off the Internet, you have committed a crime.

Ms. JACKSON LEE. Let me pursue your line of reasoning and suggest, as I look at the Supreme Court's decision, they suggest that we cannot ban virtual pornography because we have laws geared to preventing child sexual abuse and virtual pornography is dealing with a non-child, if you will.

On the other hand, when you look at the uses of the first amendment and stricture that we have put in place through case law, we know that the theory that you cannot, if you will, cry fire in a crowded theatre is a limitation on the first amendment. So, I believe not having studied what we have before us right now in terms of the legislation, hoping that it does narrow the interpretation

that would be presentable to the Supreme Court, I would argue that the fact that you can entice bad behavior by the utilization of a virtual child.

What I would hope that we could do is to define its utilization to create bad behavior and that that could be regulated and would not be a violation of free speech. As we pursue this, Mr. Chairman, I see you leaning toward your microphone, I would just simply say, would you gentlemen think of that as we might possibly go to a second round? Thank you.

Mr. SMITH. Thank you, Ms. Jackson Lee.

The gentleman from Virginia, Mr. Goodlatte is recognized for his questions.

Mr. GOODLATTE. Thank you, Mr. Chairman, Thank you for holding this very important hearing.

I must say that I share the concerns already expressed about the testimony that you shared with us. I also find it very disturbing and agree with your concerns about the underlying Supreme Court decision.

I have in my Congressional District an organization that is sponsored by the Department of Justice, a local sheriff's office that has a program called Operation Blue Ridge Thunder that has done some very, very good work in the area of dealing with so-called "travelers," individuals who are essentially stalking children and I fear with very dire consequences for them.

I visited the site. In fact, we had them up here to make a presentation to Members of Congress and staff. What I found when I visited their site was that pornography is, as you say, Mr. Allen, a tool that is used by these individuals to lure children into this.

Can you describe in greater detail? You or, Mr. Walsh or Mr. Heimbach, how they do that? In other words this is part of a process. It is not simply an isolated thing.

Mr. WALSH. We are working a case right now where a man who is identified for molesting his own granddaughter and videotaping that, introduced that video tape and showed it to other children who then became involved in the molestation. He had the children lie on a bed and begin to fondle one another. We are talking about, you know, school-aged children.

He would show them that videotape and make a game out of it. They would laugh. The children didn't know what they were doing was wrong. It was just because they could see themselves on TV, if you will and they found that, you know, quite amusing.

I have seen another case where a man was actively molesting a boy and he would show them a video tape of a prior molestation, if you will, to get the boy excited because the victim in that case was a little girl. In that case when we eventually identified the individual and we had to watch tape over and over again, and at one point he or someone mentioned the little girl's name. Through some good police work, we identified the girl in Oklahoma. It was 7 years after she had appeared on that videotape.

When the detectives called her to the principal's office and identified themselves and asked her if she knew an individual by the name of Robert Jolley, the suspect, the look on her face, the terror, you know, what happened to her years previous had come back to haunt her.

The mere existence of child pornography should not be free speech in this country. It terrorizes children. Back to the case where the woman calls me to this day, a grown woman, worried. "Lieutenant Walsh, my picture is on the Internet. That cannot be legal."

Mr. GOODLATTE. So, if this is virtual pornography, an individual doesn't have access to videotapes of real children, they can go ahead and either create it or secure it and then begin this process in that fashion. What concerns me is that in many instances we don't have a situation like where you describe where these children are coming by and he shows it to them.

He uses this on the Internet as a way to establish a relationship with somebody who may be a great distance away and has no other contact with him. The mere use of these creations is a problem in and of itself. I don't think the issue should be narrowly focused just on the fact that it is not real children who are being victimized in the creation of it.

I think you are all correct that there is victimization that takes place in the use of it and the exploitation of it. Does anybody else want to add to that?

Mr. HEIMBACH. If I could, sir, I'd just like to add that again reiterating what Mr. Allen says is a tool, most of our children are concerned. They fear sexual activities. So, when the enticer or the traveler will use this tool, and we struggle here, all of us, about what is virtually indistinguishable, a child doesn't know whether it is or not.

This is the mechanism that our predators are enticing our children and showing them that, "Hey, look at these boys and girls in this picture that I've sent you, look what they are doing." Then it becomes an acceptable practice and in turn it leads to the enticement of the child to travel and to meet one of our sexual offenders, real or not real.

Mr. GOODLATTE. Now, in looking for a way around the U.S. Supreme Court decision, which is always a challenge, in fact we met this challenge with regard to child pornography on several occasions now, are there some related actions or activities that we could tie in here that while we wouldn't be going directly after the virtual pornography, there might be some actions that are so commonly associated with them that if we passed laws prohibiting those activities, we would be helping to get at this action which the Supreme Court is otherwise not allowing us to get to? I'd ask you to give some thought to that because we are going to have to be very creative in order to find a way to solve this.

I guess my time has expired, Mr. Chairman. So I'll return it to you.

Mr. SMITH. Thank you, Mr. Goodlatte.

Mr. GOODLATTE. I thank the gentleman.

Mr. SMITH. The gentleman from California, Mr. Schiff is recognized for his questions.

Mr. SCHIFF. Thank you, Mr. Chairman. I thank you for having this hearing, as disturbing as it is for us to hear the testimony, it's testimony that we need to hear and we need to work together with you to try to find the right answer. I recognize your view that the Supreme Court decision is flawed. It may be flawed. It's probably

flawed, but we are stuck with it nonetheless. The challenge for all of us here is drafting a response to that decision that is consistent with the decision and is consistent with the objection of ridding society of this problem.

My question is really very much the same as Mr. Goodlatte's. That is partly a legal question and partly an enforcement question. If you are comfortable taking on either piece of it, I would welcome it.

The legal question is: Do you think in your view of the *Ashcroft* decision there are ways to craft a new law attacking child pornography and indeed even virtual pornography that is not precluded by the decision? Can we carve out a subset of child pornography that is distinguishable from American Beauty that you think the court would uphold in light of its language in *Ashcroft*?

The second question is: Are there other ways to attack virtual child pornography that may not be on its face an attack on virtual pornography but are an attack on the means of communication or who it is exhibited to or what it is used for.

I know the Chairman is working on a draft that establishes, for example, an affirmative defense which I think is a very interesting idea, if it's not foreclosed by the court opinion because then it relieves the prosecution of the burden of proving the unprovable for the prosecution and places that burden on the defense where, if in fact, it's a valid defense it would be more approvable.

If in fact a child pornographer has used a computer off-the-shelf kit and exclusively used that and can demonstrate that that is all that has been used, then it would be a successfully affirmative defense.

So, what are your thoughts on the court decision and whether it precludes us from attacking purely virtual pornography, which frankly, I think, is unworthy of first amendment protection, even if no child is involved.

Beyond that, if there isn't a way of attacking it directly, given the fact that we cannot in any meaningful law enforcement way, really distinguish between the two. It would really gut effect the prosecution. Are there are other steps in either dissemination or the production or distribution of child pornography that you think we can attack?

Mr. ALLEN. My response, Mr. Schiff, is that the question is probably better for the Justice Department. I know they are working on that. We were very encouraged in the afternoon of the decision when the Attorney General said, "We are going to assess every possible statute that can be used."

Our view is that you approach it on two levels. One is you scour the existing statutes and figure how best to come at it. The concern, however, is that almost implicit in that is that a child has to be harmed first. So, a child has to be a victim before we can go at this in another way.

Secondly, and I agree with your reading that solutions are difficult based on what the court did. I think our view is that the O'Connor opinion is a place to start and that, you know, the best way to approach it is to narrow the scope somewhat from the original statute.

I think we just have to do a better job about making the case about what child pornography really is and the harm that is inherent in child pornography. I mean no disrespect, but I think by and large the court was arguing about something else and that, you know, I would hope that Congress can construct a law in that we can really make the case of what child pornography really is and the inherent harm that is associated with it.

Mr. SMITH. Thank you, Mr. Schiff. Mr. Schiff, I wanted to respond to the first part of your first question where you suggested we might carve out a smaller universe of pornographers and be able, within the constitutional bounds that have been set for us, to perhaps make their particular actions illegal.

I hope you will take a look at the bill that was introduced because we tried to do just that, which to say, narrow the definitions, narrow the universe, in fact, to be able to fall within the constitutional restrictions that have been imposed upon us. So, if you will take a look at that, I'd be interested in knowing your response as well.

Mr. Allen, in the Supreme Court's decision, one of their findings and one of the findings on which they based their decision was that they said they could not make a determination, that there was a correlation between those who possess child pornography and those who molest children.

You have already touched upon that to some extent, but would you elaborate on the connections that you have found and maybe that will help us out in the future as well.

Mr. ALLEN. Mr. Chairman, I think the connections, the correlation, the evidence of connection is overwhelming. We, for example, in our training programs train law enforcement that when you serve a search warrant on a molester or suspected molester or pedophile, you always look for pictures. You always look for imagery.

Whether it is a molester photographing his victim or whether it is a molester using images for arousal or whether it is a molester using images to persuade a child, "see it's not so bad; other kids do it," or whether it's a molester using images to extort that child by say, "Boy, will your Mom be embarrassed if she sees these pictures," to maintain a child's silence, it is absolutely connected and experts at all levels can testify to that and I think there's overwhelming evidence of the connection between child pornography and child molestation.

Mr. SMITH. Thank you, Mr. Allen.

Mr. Heimbach, the Supreme Court also found in their opinion that virtual child pornography was not intrinsically related to the abuse of children. What is your opinion of that?

Mr. HEIMBACH. Well, we disagree, obviously. We feel that it is intrinsically related to the actual sexual abuse for reasons that Mr. Allen's also stating, but on the previous reasons that are documented in my reason testimony about how it demonstrates sexual acts to children, lowers their inhibitions, is used as a grooming tool for this. We definitely think it is tied intrinsically with the child pornography.

Mr. SMITH. Thank you, Mr. Heimbach.

Mr. Walsh?

Mr. WALSH. Mr. Smith, in my career, I can think of one case where I can say with all certainty that this person was a collector of child pornography and up to that point in his life had not molested a child, one case that stands out. All the other cases, and as Mr. Allen said, one of the things that we do, and we even interview victims, is bring up the issue, "Were you ever photographed? Were you ever videotaped? Were you shown photographs or videotapes?" Because they are so tightly linked and some of the most significant cases that we have been involved in in Dallas started from a call from a photo lab about some pictures being dropped off to be developed.

Mr. SMITH. Mr. Walsh, I won't ask the obvious question which is why wasn't the Supreme Court aware of the correlation. I do have another question for both you and Mr. Heimbach. That is: Are you aware of the specific instances and can you give examples where investigations have not proceeded, where prosecutions have not been brought because of failure to identify a child?

Mr. WALSH. I can tell you because it just so happened the day after the decision was announced, I was doing training in Las Vegas on Internet investigations. During the break a special agent from the Colorado Bureau of Investigations came up and said that two cases that he was involved in, he had just been advised, had been dismissed by the prosecutor because he was anticipating the defense was, "These are not real children."

I guess he didn't want to add to bad case law. He said, "Rather than go forward with this prosecution, I think what we are going to do is we are going to dismiss those charges and just go forward on the actual child molestation."

So, Day One, we are already seeing prosecutors adopt that philosophy.

Mr. SMITH. You anticipated my next question which was: How do you see prosecutions changing as a result of the Supreme Court decision? You just got into that a little bit.

Now, Mr. Heimbach, if you could answer those two questions, that would be great.

Mr. HEIMBACH. Yes, sir. The first question is: Since this decision began in the Ninth Circuit, they were the ones most affected. So there was literally very minimal possession of child pornography cases brought to prosecution there from the time it was decided in the Ninth Circuit.

What they did get around the decision was that we did find pictures that were pre-Internet or pre-technology that were from the Leader magazines that we could definitely show were pre-morphing or that technology and we were still able to go through with the possession charges.

The second part of your question, sir, was?

Mr. SMITH. The second part of the question was: How are prosecutions going to change as a result of the Supreme Court decision?

Mr. HEIMBACH. Well, the guidance we have given, and as you know, hundreds of prosecutions that are pending, is one, we are looking at the obscenity statute. But as you are aware, that is applicable to some degree, but we have to show the transmission or the receipt. The mere possession of obscenity is not illegal. So, that is one avenue we are looking at. The other avenue is that we are

trying to make sure that we populate our child victim identification program with known identified child victims.

We send out to all of our 56 field offices all the images that we had identified and all the prosecutors and agents are scrambling to see and go through all the images to see if we have an identified child.

Mr. SMITH. As a result, if Congress does not pass legislation to try to slow down the increase in child pornography incidence, you all feel that they are going to dramatically increase as a result of the Supreme Court decision? Mr. Heimbach, you do?

Mr. HEIMBACH. Yes, sir.

Mr. SMITH. Mr. Allen?

Mr. ALLEN. I do, sir.

Mr. SMITH. Mr. Walsh?

Mr. WALSH. I do.

Mr. SMITH. Thank you all for answering my questions. I don't have any further questions, but I'll recognize other Members who might, starting with Mr. Scott, the gentleman from Virginia.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, I guess as an example, as part of the problem we have, the suggestion was that we start off with O'Connor's concurring opinion. Unfortunately, we have one, two, three, four, five votes before we get there. Thomas filed a concurring opinion, so you've got six before you even get to O'Connor. So, we definitely have a problem.]

Maybe that's the question. We have heard about American Beauty. If they had used children rather than adults who looked like children, would there be any question that that would have been illegal and prosecutable?

Mr. ALLEN. Mr. Scott, I don't question the court's conclusion that perhaps the statute was overbroad. My argument would be that there is a real legal distinction between child erotica and child pornography.

My suggestion is that our focus as a nation and our focus under law needs to be on real child pornography.

Mr. SCOTT. Well, I guess one of the fundamental questions we have, can you have child pornography without a real child?

Mr. ALLEN. Well, obviously the court did not agree. Our argument is, yes, you can, because as I have said a number of times, we believe that child pornography is intrinsically connected with illegal action, that it is not speech in an abstract sense, that it takes on the character of illegal action.

Mr. SCOTT. Is it illegal for an adult to show sexually explicit pictures to minors?

Mr. WALSH. Mr. Scott, in the State of Texas we have a statute specific to that issue, sexual performance by a child, to show children hard-core adult pornography is illegal.

Mr. SCOTT. Pornography that is not obscene?

Mr. WALSH. Yes, pornography that you can buy in an adult book store. We have seen offenders use that, showing them that kind of material, again, to excite them. I think in Texas the legislature had used it for that purpose, and that is enforceable, just that act, even if it didn't go further to the molestation of the child.

Mr. SCOTT. Is it illegal in other States to your knowledge? I mean don't you get contributing—

Mr. WALSH. I know in several other States I have trained in, I have heard it is. I know from my previous law enforcement experience, I know in Pennsylvania it was charged under the statute of corrupting the morals of a minor, also, and there was pending State statutes there.

Mr. Scott, Daniel Armaugh, who is our Chief Counsel on these issues, said yes.

Mr. SCOTT. So, if you had that activity with a virtual, no child involved depiction, you would still have a prosecutable case, just on the corruption of the morals or contributing to the delinquency of a minor?

Mr. WALSH. I would think you would.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Scott.

The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. There are several concurring opinions. I'm going to review again Justice O'Connor's opinion to see how the present drafted legislation, filed legislation precisely raises the question or answers the questions and follows the road map that she has laid out.

What I would suggest, and I think this hearing is important, I might even suggest to the hearing that another hearing is appropriate because I think what we are learning and gleaning from the *Ashcroft* decision, we are getting a roadmap from what the Supreme Court believes was not answered in the record in the lower court, meaning the nexus between the question that I previously asked, which is the utilization of these pornographic images and then the ultimate act.

Inasmuch as this a whole new virtual world, cyberspace world, and probably a whole new world from even the writing of the legislation and child abuse cases. So, I would think also since it is likely that even legislation that we pass in the next foreseeable future would be subjected to a constitutional test, the question is, will we be able to document.

I go to Mr. Allen. I don't want to leave out Mr. Walsh and Mr. Heimbach this time around. But Mr. Allen, if you would just quickly tell me, do you think we will be able to find sufficient supporting evidence, a record that can support the proposition that you just enunciated when you talked to me before, that it does connect, the actual utilization, viewing, morphing of these kinds of pictures can result in the actions of child abuse, which is what we are all tied to in the old school, the old language. Do we have that, would we be able to present that in a lower court trial?

Mr. ALLEN. I think the answer is that we can make a compelling case about the relationship of child pornography and child molestation. I think building a compelling case about the use of virtual images or morphed images is going to be hard to do in the short run because frankly it is just beginning.

As we said, the court has basically provided a license. Our concern is not with purely virtual images, but with morphed images used to disguise the identify of the child and escape prosecution. I think we are going to be able to build that. I think we are going to see that.

We are getting lots of leads through our Cyber Tipline. We are working closely with the FBI and Customs Service and Postal Service and State and local law enforcement. So, the answer to your question is yes, I think we can and we are obviously committed to being a resource to you and the Committee in any way that we can do that.

Ms. JACKSON LEE. Mr. Walsh, you have lived this on a daily basis in your work as a law enforcement officer. Tell me some of the stories and cases that you have pre-*Ashcroft* with individuals using the Internet, using the computers to stimulate and/or to interact with children in a sexual manner.

Mr. WALSH. Well, we have seen, we are operating an undercover investigation after we took down a child pornography website. We actually, without putting any images up, gave the impression that we could provide that content. We had people sending us e-mail telling us that they wanted bestiality involving children. They wanted torture of pre-teen girls.

We had people who were willing to pay to have sex with children. We would arrange meetings with those people and arrest those people. Just some of the people that come to mind, we arrested a 55-year-old man who owned a horse ranch in Detroit. He traveled to Dallas thinking he was going to have sex with an 8-year-old girl. He sent us child pornography electronically over the Internet before he arrived, you know, to show to the children.

He showed them pictures of himself exposed, thinking that he was actually speaking to the parents who were going to provide these children to him.

Just a few weeks ago we arrested a man at a mall in Dallas. He thought he was meeting a 13-year-old boy for sexual contact.

Ms. JACKSON LEE. And you enticed them by pornography? What did you do?

Mr. WALSH. No, ma'am. We didn't entice them. We went to predicated areas on the Internet where they know teenagers hang out and just posed as a 13-year-old boy from Dallas who was bored on spring break. We struck up a conversation with a man. He started asking questions, "Do you have a girlfriend? Have you ever had sex? Have you ever masturbated?"

Then he pushed the issue and sent pornographic pictures of a prior victim he had and then he said that he would meet us and allow us to have our first sexual experience with him. We met him at a mall and arrested that person. He had rented a hotel room where he thought he was going to take the boy back. He had a digital camera. He had a box of digital discs that he was going to save those pictures to.

So, we have seen it time and time again. This technology has allowed people—

Ms. JACKSON LEE. Can be provoking and can provoke people to act? Is that what you are saying?

Mr. WALSH. Yes, without a doubt, I think.

Ms. JACKSON LEE. Mr. Chairman, if I can just conclude by asking Mr. Heimbach a question, let me just ask you from the Federal position and the *Ashcroft* position, how would you fix what you perceive to be the general concern of the *Ashcroft* decision?

How would you, as law enforcement on the FBI dealing with cyber issues, how would you fix that? What would you think would be the approach to fix that?

Mr. SMITH. If you can do it briefly, it will even be better.

Ms. JACKSON LEE. Now you are intimidating him. He was hesitant, now you have shortened what he was going to say. But anyhow, if you would. Thank you.

Mr. HEIMBACH. It is a difficult question that we all struggle with, the virtual versus real and the real child not being victimized. In going back on some of your original comments, ma'am, I think the record has to be built on actually how virtual or real child pornography is being used as a tool to victimize the children of America and build on that record as you have suggested.

Ms. JACKSON LEE. Thank you. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Ms. Jackson Lee. I would assume that if given more time you would have also said, perhaps narrow the definitions and carve out a smaller universe, something that we were talking about earlier.

Mr. HEIMBACH. Yes, sir.

Mr. SMITH. The gentleman from California, Mr. Schiff, is recognized for any further questions.

Mr. SCHIFF. Mr. Chairman, I don't have any further questions. Thank you.

Mr. SMITH. I thank all the Members for their interest, for their presence. We thank the witnesses for their contributions as well. We stand adjourned.

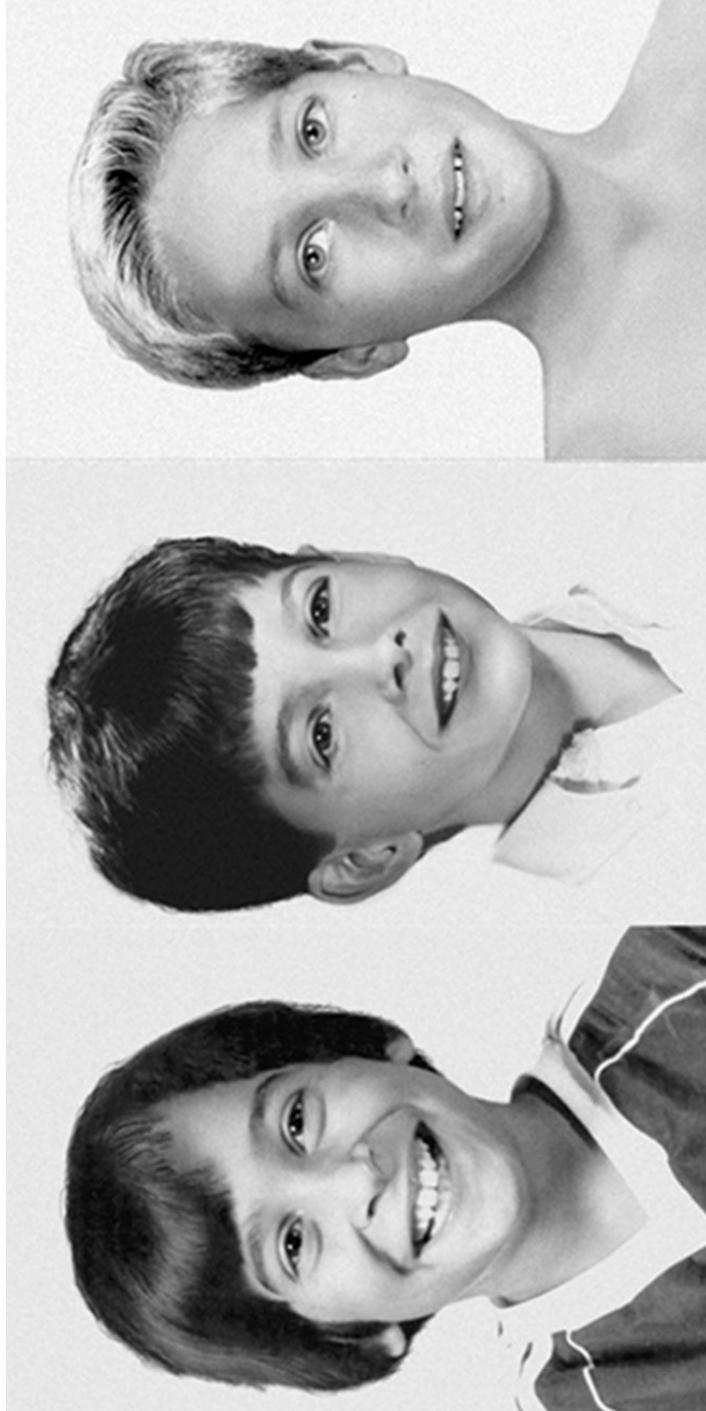
[Whereupon, at 4:01 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

“FIND THE REAL KID” PRESENTATION





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