

TESTIMONY OF GRIER WEEKS
EXECUTIVE DIRECTOR,
NATIONAL ASSOCIATION TO PROTECT CHILDREN
Before the
U.S. HOUSE JUDICIARY COMMITTEE,
SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND SECURITY
On the subject of
CHILD EXPLOITATION RESTITUTION

MARCH 19, 2015

Chairman Goodlatte, Ranking Member Conyers and distinguished members, thank you for the opportunity to testify here today.

I am Grier Weeks, Executive Director of the National Association to Protect Children, also known as PROTECT. We were established in 2002 as a bipartisan, pro-child, anti-crime membership association. We have worked with Congress on the issue of child sexual exploitation since 2006, through hearings and legislation.

We have also been active on the issue of child exploitation and abuse in over a dozen states since 2006, focusing in recent years primarily on securing resources for law enforcement to interdict child exploitation. We began calling for restitution for victims of child sexual exploitation in 2006.¹ We also work with the U.S. Department of Homeland Security and the U.S. Special Operations Command on the H.E.R.O. Child-Rescue Corps program, which trains wounded warriors to enter law enforcement careers combatting child exploitation.

Child pornography², the creation and distribution of crime scene images of child rape and abuse, is a massive black market in the United States. It is a market driven by demand that can only be supplied one way: through the rape and abuse of more children.

Those children—many (if not most of them) toddlers and elementary school students—will not understand that their nightmare isn't over when the assaults stop.

There are somewhere on the order of five million images and videos of child pornography known to law enforcement today.³ Estimates are that over 8,000 victims have been identified.⁴ Virtually all of these children were identified in the normal course of law enforcement investigations, not through any concerted national effort.

The fact is, no one knows—or could know—how many children are actually victims of the child pornography market, because until about two years ago, there was no serious effort even being made to find out.⁵ Now that the ICE Cyber Crimes Center (C3) has established its Project Vic, an effort is materializing, but it has yet to be properly funded.⁶

However, if you ask law enforcement experts for their best estimates of how many child pornography victims there are pictured in known images, their counts tend to be in the tens of thousands. Based on discussions with the most knowledgeable experts, we believe that at least 50,000 victims is a safe estimate.⁷

Please understand that 50,000 victims is only the tip of a much larger iceberg. Law enforcement is drowning in the fight against child sexual exploitation, without the funding to investigate more than two percent of leads or access large parts of the hidden Internet.

To put the full magnitude of this crisis in context, there are over 800,000 “registered sex offenders” in the United States, representing just those who were detected, convicted, tagged and released.⁸ A major study done in 2011 found that 90 percent of them had victims under 18 and 70 percent had victims under age 14—and the average offender age was 44.⁹

So it would be entirely conservative to project that there are well over a million adults preying on children sexually in the U.S. right now, which means *millions* of victims. Every one of those children is in danger of being photographed by a smart phone or digital camera.

In February, the U.S. Senate passed the “Amy and Vicky Child Pornography Victim Restitution Improvement Act” (S. 295), and that legislation is now before the House. If drafted properly—and I am not here as a legal expert—it would be a partial fix to federal law in the wake of the Supreme Court’s *Paroline* decision, allowing victims of child pornography to secure restitution in court. Those like Amy and Vicky, who have transcended their abuse as children and fight today to make predators pay are true heroes, and Congress should give them access to justice.

However, Congress should also be aware that the vast majority of victims will never hire attorneys and go to court for financial restitution. Anecdotal information suggests the total number of plaintiffs who have pursued this route to date is less than a dozen or two. For most child sexual abuse and exploitation survivors, their abuse remains a painful, anxiety-and-trauma-triggering, area of their life. Few are willing to relive it in court proceedings.

Victims should have a right to a remedy through the courts, and the system should work if they decide to exercise it. But they should not be required to do this.

In 2014, PROTECT compiled a report on child pornography victims' access to crime victim compensation funds in all 50 states.¹⁰ Author Susan Nelson found that 44 states and the District of Columbia either do not allow or make it very difficult for these victims to recover their damages from crime victim compensation funds. In New York, victims of frivolous lawsuits are eligible for victim compensation, but victims of child sexual exploitation are not.¹¹

As a result, most adults who learn that perpetrators have been arrested with their images have nowhere outside of court to go for the costly toll of their damages.

The ultimate answer is two-pronged. We do need states to address their barriers to compensation for victims of child sexual exploitation crimes. Federal legislation to

strengthen requirements for participation in the federal Crime Victim Fund, along with model legislation, could hasten state action.

However, this problem will not be solved piecemeal, state-by-state. Essentially every online child pornography crime *is a federal offense*. Federal prosecutions make up a large percentage of all cases nationally. And unlike virtually any other crime on the books, a child sexual exploitation victim in Virginia may have simultaneous perpetrators in 49 other states.

In addition to the multi-state nature of this crime, the greatest legal expertise on child sexual exploitation crimes, prosecution, asset forfeiture and victim restitution is concentrated at the U.S. Department of Justice's Child Exploitation and Obscenity Section (CEOS). A federal approach is clearly warranted.

We support a dedicated, federal crime victim compensation fund at the Justice Department's Office of Victims of Crime. OVC is the natural home for this Fund, as it already oversees the federal Crime Victims Fund.

The Fund should utilize monies from a new special assessment on child sexual exploitation crimes, created by federal statute. Those fines should be as substantial as possible and graduated by seriousness of offense. The statutory language should require collection of this fine before restitution is paid to a single party.

The Fund should be seeded with money from the existing Crime Victims Fund, which reported a staggering balance of \$9 billion as of September 2014, in part due to a Congressionally imposed cap on expenditures.¹² Those initial CVF monies will be more than replaced over time.

Parenthetically, it is important to note that while the proposed Justice for Victims of Trafficking Act of 2015, also before this House, does many good things, its provision for a special assessment and fund for both trafficking and child pornography crimes should be amended so as not to conflict with this new fund, and to prevent diverting monies from child pornography victims to anti-trafficking NGOs. This legislation was drafted in good faith in the absence of a special assessment and fund for child pornography victims and its sponsors have indicated a willingness to amend.

As for the administration of the Fund, it must be set up from the start to be victim-friendly. These crimes will have occurred many years, possibly decades, prior to a claim being made by an adult. The damages—whether to mental and physical health, education or income potential—will not always be distinct and measurable.

Compensation should not be reimbursement-based. Victims should be allowed to use compensation funds for whatever it is they need in life. It would be inhumane to force victims to show up with a shoebox full of receipts that are somehow expected to quantify the damages suffered since they were 8-years-old.

Finally, our goal should not just be restitution for *yesterday's* victims. While we are “making the predators pay,” some portion of the new special assessment, perhaps 50 percent, should be set aside to fund the rescue of *today's* victims by law enforcement.

These funds should go to at least four law enforcement entities on a pro rata basis, determined by the number of child pornography arrests each makes annually: the Internet Crimes Against Children task force program, U.S. Homeland Security Investigations, the FBI and the U.S. Postal Inspections Service. They should be narrowly restricted for use in child exploitation investigation, forensics and prosecution, including training and equipment for same, and recipients of these monies should have to report annually to Congress on how funds were used, including the number of arrests, prosecutions and victims identified, if any. No funds should be diverted to nonprofit corporations or other “service” providers.

If we fail to use some of these funds for law enforcement, we are helping *the strongest fraction* of victims, while consigning the youngest and most endangered to further hell, expecting perhaps that decades from now they might come forward as adults seeking restitution payments.

I hope that yesterday's victims will join us in this call. It would be a noble legacy for them, making them protectors of children today.

Of course, by increasing funding to law enforcement, we will ensure that the Fund will grow bigger, faster. More arrests will lead to more prosecutions and more income in the victim compensation fund for everyone.

PROTECT believes that our most sacred obligation is the protection of children from harm. Thank you for the opportunity to testify, and thank you for making this your priority.

FOOTNOTES

¹ See, “Raising the Stakes for Child Pornography, PROTECT's Exclusive Interview with Andrew Vachss,” February 2006

² I use the term “child pornography” throughout this testimony in an effort to be clear and avoid terms that may not be readily understood. “Child abuse imagery” or “child abuse crime scene recordings” are more accurate descriptions.

³ Although the National Center for Missing and Exploited Children publicizes that it has reviewed over “132 million images and videos” through its Congressionally-funded CVIP program, this includes many known images reviewed thousands of times. The U.S. Sentencing Commission estimated over five million known images and videos in circulation worldwide in a 2012 report. This conforms to anecdotal estimates provided to PROTECT by law enforcement experts.

⁴ A precise number should be available from NCMEC’s Child Victim Identification Program (CVIP), which tracks known victims, as reported by law enforcement or determined by NCMEC.

⁵ By federal statutory authorization, the National Center for Missing and Exploited Children (a private nonprofit corporation) was made a “central repository” for child pornography images and in 2002 established its Child Victim Identification Program (CVIP). Law enforcement submits seized images and videos to CVIP and CVIP tracks known victims, assisting prosecutors in making cases. However, most of these identified victims are discovered in the process of routine law enforcement investigations and reported to NCMEC from the field. NCMEC has not mounted a substantial program to identify the children found in images and videos in its repository, which has become a source of frustration to many in law enforcement. When asked by PROTECT why NCMEC

had not launched a serious victim identification effort of its own, a senior NCMEC official stated that it did not have funding to do so (NCMEC received over \$34 million in federal grants and contracts in 2013). However, after years of deferring to the powerful NCMEC, the ICE Cyber Crime Center began filling the vacuum in recent years with its Project Vic, a program that combines training, technology and investigations to systematically identify child victims.

⁶ Lack of proper funding to the ICE Cyber Crime Center (C3) and programs like its Project Vic is a major reason for the HERO Act of 2015, which would authorize C3 and its component units.

⁷ If estimates of five million known images and videos are roughly correct, that would be an average of 100 images per victim.

⁸ State registry counts compiled by National Center for Missing and Exploited Children, December 2014.

⁹ "Who are the people in your neighborhood? A descriptive analysis of individuals on public sex offender registries." Ackerman, Harris, et al. *International Journal of Law and Psychiatry*, May-June 2011.

¹⁰ "Grading the States: The Need for a Federal System of Compensation to Victims of Child Pornography." National Association to Protect Children. To be published in 2015.

¹¹ N.Y. Exc. Law § 621

¹² OVC website. <http://www.ovc.gov/about/victimsfund.html>