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## Study, attorneys note inconsistent sentences in child pornography cases

By CHRISTIAN NOLAN

**T**he arrests and convictions are in the news every week, and often the details make us cringe. In most cases, the bottom line is that some guy has been caught with child pornography on his computer.

Just last week, David Besaw, of Newington, was sentenced to 32 months in prison by U.S. District Judge Stefan Underhill for possessing child porn. Earlier in the year, Kevin Davis, of Putnam, was sentenced to just under four years by Chief U.S. District Judge Alvin Thompson for possessing the graphic sexual images involving children.

In April, Judge Vanessa Bryant sentenced William Golia, of New Haven, to five years in prison for the same crime. A month earlier, Judge Janet Bond Arterton sentenced an Old Saybrook man, Joseph Rock, to 6 ½ years behind bars for child porn possession.

And last year, Judge Robert Chatigny sentenced Roger Chapell of Manchester to 14 months for possessing the child porn.

This is but a small sampling, but it makes two things clear: Child porn convictions are distressingly common. And sentences are not very consistent.

Such sentencing disparities – especially when it comes to child porn and white-collar financial crimes – have prompted the U.S. Department of Justice to call for “a comprehensive review” in its most recent report to the

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U.S. Sentencing Commission.

In the five years since the U.S. Supreme Court struck down mandatory federal sentencing guidelines, the Justice Department said prosecutors’ experiences and data “suggest that federal sentencing practice is fragmenting into at least two distinct and very different sentencing regimes.” To put it simply, those regimes consist of judges that adhere to the discretionary sentencing guidelines and those who tend to go their own way.

If left unaddressed, the Justice

Department said in its report, the two regimes “will lead to unwarranted sentencing disparities, disrespect for federal courts and sentencing uncertainty that could lead to more crime.”

### Different Images

Longtime New Haven defense attorney William F. Dow III, of Jacobs, Grudberg, Belt, Dow & Katz, handles many of the child porn cases. He’s noticed sentencing disparities in Connecticut, and said it may reflect a change in thinking on the part of some judges.

“I think what’s happened is judges have realized that looking at child porn does not equate to an action of molesting children,” said Dow. “There’s no direct connection between someone looking at child porn and going out and taking advantage of children in a sexual way. I think it’s recognized more as an emotional or mental health issue and I think judges are more receptive to arguments addressed to those aspects to the problems.”

To be sure, all federal child porn cases are not alike. At the low end is possession of child pornography, where the sentencing guidelines are voluntary and judges’ discretion most often comes into play.

For more serious charges, Congress has instituted mandatory minimum sentences, which were not affected by the 2005 Supreme Court ruling. And so receipt of child porn (where the defendant is caught in the act of

acquiring the images, usually through an Internet download) has a mandatory minimum sentence of five years. The mandatory minimum for distribution is 10 years, and manufacturing it brings an automatic 15-year sentence.

But in cases where judges have options, Hartford attorney M. Hatcher "Reese" Norris, of Butler, Norris & Gold, said there's often a good reason why one child porn defendant is sentenced more harshly than another.

"Some of the sentences may have involved a different number of images and different types of images...sadoomasochistic...that obviously has an impact... so it's hard to put them all in one category," explained Norris.

Defense attorney K. Murray Smith, of Pattis & Smith in Bethany, said he would like to see judges have even more discretion in cases where mandatory minimums now apply.

Smith compared the debate over child pornography sentencing to that surrounding the crack cocaine sentencing guidelines enacted in the 1980s.

Back then, laws called for giving longer sentences to those convicted of crack possession than those who had powdered cocaine. Many judges began to question the logic. In 2007, the U.S. Sentencing Commission reduced the federal sentencing guidelines for crack cocaine offenses.

Smith said he's seen defendants get longer prison terms for child pornography than violent crimes. "If you're not directly involved somehow in producing this stuff...five years for simply possessing, sometimes for a small number of images...phew. Boy that is a harsh, harsh sentence," said Smith. "What it does to [the defendant's] reputation, their families it tears them apart."

Not everyone is pleased that judges are increasingly using their own

discretion. Although the U.S. Attorney's Office in Connecticut did not respond to requests for comment on this article, some of its prosecutors have formally objected to some of the recent sentences.

In March, Assistant U.S. Attorney Peter Jongbloed objected when Judge Underhill sentenced Michael Anderson of Morris to three years in prison for possessing child pornography. Jongbloed sought the sentencing guideline range of 6 ½ to about 8 years.

"The guideline sentences are certainly astronomically high and just way out of proportion to the criminal charge," said Dow. "That's not to say this is pleasant stuff or children aren't being exploited but child pornography standing alone is a disquieting quest that is inevitably pursued by people who have some emotional or mental health deficits."

Dow described the typical child pornography defendant as "sad sacks, lonely and despondent people."

### **One-Man Crusade**

A U.S. district judge in Brooklyn, Jack B. Weinstein, is on a personal crusade to see the sentencing structure for child pornography come down. He describes the mandatory minimums as "unnecessarily harsh and cruel."

Weinstein has twice recently thrown out convictions that carried a mandatory five-year minimum sentence; he now tells jurors, before they deliberate, what the sentencing range will be for defendants found guilty. Weinstein started this policy after one jury acknowledged it would not have voted to convict if it knew the defendant would go to jail for five years. When that happened, Weinstein, 88, ordered a new trial. Prosecutors have appealed his actions in these cases.

The issue of discretionary sentencing has been in the political spotlight in Connecticut, where Judge Chatigny

has been accused by some conservatives of handing out light sentences in sex crime cases. This came to light after Chatigny was nominated for the 2nd Circuit Court of Appeals.

"More and more, we are receiving reports from our prosecutors that, in many federal courts, a defendant's sentence will largely be determined by the judicial assignment of the case; i.e., which judge in the courthouse will conduct the sentencing," said Jonathan Wroblewski, director of the Criminal Division's office of policy and legislation, in the Justice Department report.

Norris said lawyers aren't sitting around strategizing as to how to get on a certain judge's docket in the federal child pornography cases because one is perceived as so much more lenient than another.

But Dow admitted: "Yes, a particular judge can make a difference in terms of sentence," but said that's the case with all sorts of crimes, and not just child pornography. ■