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Edward A. Adams  
Editor and Publisher  
ABA Journal  
321 N. Clark Street  
15<sup>th</sup> Floor  
Chicago, Illinois 60654

Dear Mr. Adams:

I was disappointed to note the Department of Justice's response to the important ABA article on child pornography and the Sentencing Guidelines. The DOJ claims:

"Mr. Hansen's and Mr. Stabenow's arguments, is that the federal government should use the child pornography laws only against known child sex offenders. We simply cannot accept any argument that child pornography trafficking prosecutions are only legitimate in cases involving defendants who have also engaged in other forms of child sexual exploitation."

This straw-man argument misrepresents the issue, grossly distorting my position into one that I would never make, let alone support. The debate within our system is not whether we as a nation should prosecute persons involved with child pornography--we should. Rather, the debate centers on the proper, fair, and empirically sound sentences to be imposed on these offenders. The DOJ may hope that by misrepresenting my argument, and citing the most extreme cases as the norm, this debate will go away. But, the only reason the DOJ responded so swiftly to Mr. Hansen's piece was that the ABA journal touched a nerve rubbed raw by repeated criticism from judges, commissioners, scholars, officials, and concerned members of the public. I trust that anyone who takes the time to read my article will, at the very least, be troubled by the process behind the system.

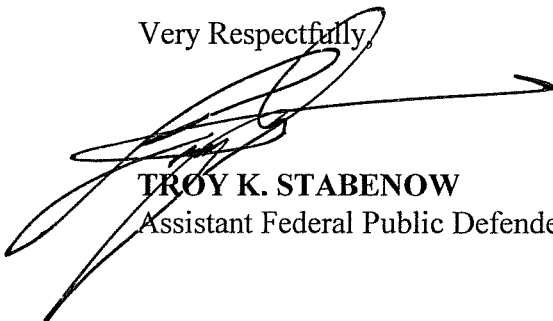
As a parent, a citizen, and a long-time prosecutor for the U.S. Army (Reserves), I have consistently supported appropriate prosecutions and sentences for child pornographers as a path towards fighting child abuse. I simultaneously support the proposition that American justice requires sentences based on empirical research and study, not fear-mongering and hysteria. Child pornography is an emotional issue, and for that reason, the political whims of certain activists and politicians were indulged to a greater extent in the creation of this guideline than in any

other. A review of the Sentencing Guidelines reveals absurd differences - lower punishments for people who attempt to engage children in sex acts than for those who only possessed and swapped pictures. On a broader level, the obvious irrationality of this guideline allows the public an inner-look at the mechanisms behind our entire federal sentencing structure. The understandable zeal with which officials try to protect children leads some to paint any criticism of the sentencing system as an assault on the safety of our children. Support for considered sentencing however does not equate to the endorsement of child exploitation, no matter how much certain officials might like to paint the issue that way. Their argument presumes that we can use the fact of looking at pictures as a proxy for knowing that these defendants are molesters. Their argument also presumes that we can only protect our children by using secret, manipulated sentencing rules. I do not agree with either assumption. We don't have to accept an ends-justify-the-means system. We can fashion a system that protects our children, punishes people for what they have done, and upholds our American ideals of fair, transparent justice.

For now, the sentences many offenders serve have nothing to do with the low threat they actually pose to society. Certain officials can apparently only be satisfied with endlessly-higher sentences, and can only view these offenders as a uniform, faceless group. Officials and politicians with this mentality systematically worked to remove discretion from the hands of judges, and to dictate outcomes to the Sentencing Commission. The people who see the individual offenders, judges, have been repeatedly discouraged from considering the human characteristics of the persons before them. The body which has the means to seriously study sentencing policies and effects, the Sentencing Commission, has been marginalized. It is fitting and proper that judges and commissioners, chosen for their intellect, experience, and wisdom, should be allowed to discuss and establish sentencing rules that carefully weigh society's interests, victims' interests, and the individuality of each defendant. Judges are now speaking. It remains to be seen whether the Commission will break the wall of silence, and if they do, whether they will feel politically able to openly examine the problems of this guideline, or will instead feel constrained to provide a whitewash of the system.

Finally, the DOJ misinterprets my quote in the article as an acknowledgment that child pornography is a "growth industry." They are wrong. After ten years of regularly prosecuting and defending these cases around the world, I firmly believe that, with some exceptions, the vast majority of child pornography use involves barter - some type of picture for picture(s) exchange in which no one makes any money. The growth industry I referred to is the growing number of state and federal politicians and agencies that feed-off public hysteria in order to win votes, look good to the public, and increase their agency budgets. They earn their tough on crime credentials and budgets at the "minor" cost of sentencing thousands of detested, but relatively low-threat, individuals to decades of additional, arbitrarily-imposed years in prison.

Very Respectfully,

A handwritten signature in black ink, appearing to read 'Troy K. Stabenow', with a long horizontal flourish extending to the right.

**TROY K. STABENOW**  
Assistant Federal Public Defender