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### Prosecution of Child Pornography—The One-Eyed Judge by Michael A. Ponsor: A Book Review

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PROSECUTION OF CHILD PORNOGRAPHY—*THE ONE-EYED JUDGE* BY MICHAEL A. PONSOR: A BOOK REVIEW

Beth D. Cohen & Pat Newcombe\*

*“[C]aring for our children. It’s our first job. If we don’t get that right, we don’t get anything right. That’s how, as a society, we will be judged.”*<sup>1</sup>

The safeguarding and protection of children in society is crucial. Yet, children remain a vulnerable population; they are abused, neglected, trafficked, and exploited in numerous ways.<sup>2</sup> In his new book, *The One-Eyed Judge*, Michael Ponsor, Senior United States District Court Judge for the District of Massachusetts, Western Division, who has presided over numerous child pornography cases, explores the complexities and legal implications of child pornography and exploitation.<sup>3</sup>

Child pornography is an increasingly pervasive global issue, and the United States is one of the largest producers and consumers of this content.<sup>4</sup> Before the Internet and advanced digital technology, “[c]hild

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1. *Transcript: President Obama at Sandy Hook Prayer Vigil*, NAT’L PUB. RADIO (Dec. 16, 2012, 10:39 PM), <https://www.npr.org/2012/12/16/167412995/transcript-president-obama-at-sandy-hook-prayer-vigil> [<https://perma.cc/B5WJ-HR5U>] [hereinafter *Transcript: President Obama*].

2. See *Child Abuse Statistics & Facts*, CHILDHELP, <https://www.childhelp.org/child-abuse-statistics/> [<https://perma.cc/55L6-JKBW>]; *Child Trafficking*, UNICEF (Mar. 22, 2011), [https://www.unicef.org/protection/57929\\_58005.html](https://www.unicef.org/protection/57929_58005.html) [<https://perma.cc/JA6Y-3VS8>]; *Child Trafficking and Exploitation*, CENTER FOR THE HUMAN RIGHTS OF CHILDREN, <https://www.luc.edu/chrc/childtraffickingandexploitation/> [<https://perma.cc/44PQ-JNY8>].

3. See generally MICHAEL PONSOR, *THE ONE-EYED JUDGE: A NOVEL* (2017) (The Author’s Note preceding the book includes that the novel “draws from [his] experience with these cases in federal court.”). This novel is the second of the author’s novels featuring Judge David S. Norcross.

4. *Child Pornography is Sexual Abuse Material*, THORN, <https://www.wearethorn.org/child-pornography-and-abuse-statistics/> [<https://perma.cc/R2VK-FPM7>].

pornography was only available through physical images in print and obtained through the mail, and may have reached a few thousand people.”<sup>5</sup> In recent years, however, there has been a seismic shift in the production, dissemination, and consumption of child pornography.<sup>6</sup> The content is now readily accessible, easily reaching millions of individuals.<sup>7</sup>

With the ease of computers, individuals can access and disseminate these images via websites, email, instant messaging, chat rooms, newsgroups, bulletin boards, peer-to-peer networks, and social networking sites.<sup>8</sup> Additionally, the Internet has made it significantly easier for child pornography offenders to communicate with each other about their common interest.<sup>9</sup> These online forums have the effect of normalizing the offenders’ illegal behavior and desensitizing them from the harm that it wreaks on minors.<sup>10</sup>

Correspondingly, federal prosecution of child pornography offenses has been increasing over the years.<sup>11</sup> Federal law “defines child pornography as any visual depiction of sexually explicit conduct involving a minor” (individuals less than eighteen years old).<sup>12</sup> “Notably, the legal definition of sexually explicit conduct does not

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5. Victoria Ratcliffe, *The Internet and Access to Child Pornography: A New (Techie) Generation of Defendants Requires a New (Individualized) Application of the Federal Sentencing Guidelines*, 32 SYRACUSE SCI. & TECH. L. REP. 103, 112 (2015).

6. Neal Kumar Katyal, *Criminal Law in Cyberspace*, 149 U. PA. L. REV. 1003, 1028 (2001).

7. *Id.*

8. *Child Pornography*, DEP’T OF JUSTICE (July 25, 2017), <https://www.justice.gov/criminal-ceos/child-pornography> [<https://perma.cc/6YME-GQ74>].

9. *Id.*

10. *Id.*

11. UNITED STATES SENTENCING COMM’N, REPORT TO CONGRESS: FEDERAL CHILD PORNOGRAPHY OFFENSES ii n.5 (2012), [https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/sex-offense-topics/201212-federal-child-pornography-offenses/Executive\\_Summary.pdf](https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/sex-offense-topics/201212-federal-child-pornography-offenses/Executive_Summary.pdf) [<https://perma.cc/BE6W-U4ZF>]. “Child pornography offenses are serious crimes that now make up an increasing proportion of the federal caseload.” Judge Patti B. Saris, Chairwoman, United States Sentencing Comm’n, Introductory Address for the Panels on Child Pornography (Feb. 15, 2012), [https://www.ussc.gov/sites/default/files/Transcript\\_4.pdf](https://www.ussc.gov/sites/default/files/Transcript_4.pdf) [<https://perma.cc/4L63-SYUV>].

12. 18 U.S.C. § 2256 (2012). Whether state law provides that a child is of age to be able to consent to sexual activity is irrelevant; all images of a minor under 18 years of age who engages in sexually explicit acts is illegal. *Citizen’s Guide to U.S. Federal Law on Child Pornography*, DEP’T OF JUST. (Dec. 12, 2017), <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-child-pornography> [<https://perma.cc/3XEL-FF8F>] [hereinafter *Citizen’s Guide*].

require that an image depict a child engaging in sexual activity.”<sup>13</sup> For example, an image of a naked child that is sexually suggestive may constitute illegal child pornography.<sup>14</sup> “Federal law prohibits the production, distribution, reception, and possession of an image of child pornography using or affecting any means or facility of interstate or foreign commerce.”<sup>15</sup> Accordingly, the U.S. mail or common carriers may not be used to move child pornography across state or international borders.<sup>16</sup> Therefore, federal jurisdiction is almost always implicated when a child pornography offense involves use of the Internet.<sup>17</sup>

It is a serious crime to violate the federal child pornography laws, and those convicted confront hefty statutory penalties.<sup>18</sup> The majority of offenders in non-production cases are first-time offenders.<sup>19</sup> A first-time offender without a prior criminal record who is convicted of *receipt* of child pornography today confronts a minimum mandatory sentence of five years in prison.<sup>20</sup> In fact, sentences for these offenses have drastically increased over time<sup>21</sup> due to the mandatory minimum sentences imposed by the federal legislature and more stringent penalties recommended by the U.S. Sentencing Commission.<sup>22</sup>

The present child pornography sentencing guidelines<sup>23</sup> have been

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13. *Id.*

14. *Id.*

15. *Citizen’s Guide*, *supra* note 12.

16. *Id.*

17. *Id.* “Even if the child pornography image itself did not travel across state or international borders, federal law may be implicated if the materials, such as the computer used to download the image or the CD-ROM used to store the image, originated or previously traveled in interstate or foreign commerce.” *Id.*

18. *See* 18 U.S.C. §§ 2251–60 (2012).

19. *See* FAMILIES AGAINST MANDATORY MINIMUMS, AN INTRODUCTION TO CHILD PORNOGRAPHY SENTENCING (2013), <http://famm.org/wp-content/uploads/2013/09/FS-Intro-to-Child-Porn-8.22.13-fixed.pdf> [<https://perma.cc/K382-A7NJ>].

20. 18 U.S.C.A. § 2252 (b)(1); *see* Ratcliffe, *supra* note 5, at 121, 132–33.

21. *Id.* at 123 (“The average sentence for child pornography defendants in 1997 was 20.59 months, or one and one half years imprisonment. By 2010, after Congress passed its sentencing enhancements, the average sentence increased dramatically to 118 months, or nearly ten years imprisonment; that is a 500 percent increase in sentence length.”).

22. *See generally* U.S. SENTENCING COMM’N, THE HISTORY OF THE CHILD PORNOGRAPHY GUIDELINES (2009), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/sex-offenses/20091030\\_History\\_Child\\_Pornography\\_Guidelines.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/sex-offenses/20091030_History_Child_Pornography_Guidelines.pdf) [<https://perma.cc/56L3-KCES>] (providing a history of the child pornography guidelines since their 1987 promulgation).

23. The guidelines are advisory, not mandatory, but district courts must consult them and consider them when sentencing. *United States v. Booker*, 543 U.S. 220, 264 (2005). Generally, “courts may vary [from Guidelines ranges] based solely on policy

widely denounced for the resulting inconsistent and “disparate sentences among similarly situated defendants.”<sup>24</sup> In fact, many U.S. judges criticize these guidelines for their harsh outcomes,<sup>25</sup> and seventy percent of judges find these guidelines are too severe for those offenses that do not involve the production of child pornography.<sup>26</sup> To understand the criticism, the harshness of the penalties must be viewed in relative terms. For example, it has been noted that “offenders who possess and distribute child pornography can go to prison for longer than those who actually rape or sexually abuse a child.”<sup>27</sup>

According to [Deirdre] von Dornum [a former federal defender, now assistant dean at N.Y.U. Law School], the average sentence for a

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considerations. . . .” *Kimbrough v. United States*, 552 U.S. 85, 101 (2007) (quoting Brief for United States at 16, *Kimrough v. United States*, 552 U.S. 85, 101 (2007) (No. 06-6330)).

24. Stephen L. Bacon, *A Distinction Without a Difference: “Receipt” and “Possession” of Child Pornography and the Double Jeopardy Problem*, 65 U. MIAMI L. REV. 1027, 1028 (2011).

25. *Id.*; see generally U.S. SENTENCING COMM’N, RESULTS OF SURVEY OF UNITED STATES DISTRICT JUDGES JANUARY 2010 THROUGH MARCH 2010 (2010) [hereinafter RESULTS OF SURVEY], [https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/20100608\\_Judge\\_Survey.pdf](https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/20100608_Judge_Survey.pdf) [<https://perma.cc/WTV2-U4WQ>] (Comprehensive survey of federal judges regarding views on federal sentencing in general, including child pornography). Oppositely, prosecutors and child advocacy groups regard severe penalties to be crucial in the protection of minors who are sexually exploited during pornography production and repeatedly when the images are viewed. See generally Audrey Rogers, *Child Pornography’s Forgotten Victims*, 28 PACE L. REV. 847 (2008) (discussing that child pornography is not a victimless crime). Supporters of harsh punishment point to a correlation between child pornography and contact offenses, contending that offenders guilty of *possession* and distribution of child pornography via the Internet are more inclined to sexually assault children subsequently. Mark Hansen, *A Reluctant Rebellion*, 95 A.B.A. J. 54, 59 (2009); see also Michael L. Bourke & Andres E. Hernandez, *The ‘Butner Study’ Redux: A Report of the Incidence of Hands-on Child Victimization by Child Pornography Offenders*, 24 J. FAM. VIOLENCE 183, 187–88 (2008) (finding that non-contact child pornography offenders regularly carried out child sexual abuse). However, many judges defend sentences that are below the Guidelines precisely because they do not believe there is correlation between child pornography and contact offenses. See Amir Efrati, *Judges Trim Jail Time for Child Porn*, WALL ST. J., Jan. 20, 2010, at 1, PROQUEST, Doc. No. 399150717. There is support for both perspectives. See Hanna Roos, *Trading the Sexual Child: Child Pornography and the Commodification of Children in Society*, 23 TEX. J. WOMEN & L. 131, 141 (2014) (noting that individuals who *possess* or look at child pornography are not all child abusers).

26. Roos, *supra* note 25, at 140–41; see RESULTS OF SURVEY, *supra* note 25 (survey reports that seventy percent of judges surveyed find the guidelines too severe for possession of child pornography and sixty-nine percent of judges surveyed find the guidelines too severe for receipt of child pornography).

27. Jacquelyn Martin, *Debate Rages Over Severity of Child-Porn Sentences*, USA TODAY (Apr. 29, 2012, 1:05 PM), <https://usatoday30.usatoday.com/news/nation/story/2012-04-29/child-porn-sentencing/54627418/1> [<https://perma.cc/8AD7-RF7W>].

federal child pornography offense in 2010 was higher than for all other offenses except murder and kidnapping. Indeed, the average was about six months higher than for sexual abuse offenders.<sup>28</sup>

However, the abhorrent nature of child pornography and the justification of deterrence has served as a rationale for these severe penalties.

Additionally, because the guidelines “mechanically appl[y]” enhancements to determine punishment, some commentators view this as an elimination of the consideration of any mitigating circumstances.<sup>29</sup> These commentators suggest that each sentence should recognize individual personal characteristics, circumstances surrounding the conduct, and the degree of culpability.<sup>30</sup> “Three Justice Department experts said the sentencing guidelines for child pornography should be revised. . . .”<sup>31</sup> “to help the courts do a better job of differentiating among offenders and determining appropriate punishment.”<sup>32</sup> One federal judge has stated, “the guidelines should be revised to help judges better identify which offenders are at greatest risk of committing future sexual abuse of children.”<sup>33</sup> In Ponsor’s novel, *The One-Eyed Judge*, he grapples with all of these issues as he has on the bench. The novel provides the reader with an appreciation of the difficulties judges face when trying to balance individual circumstances with sentencing mandates, especially in such challenging and highly charged cases.

One of the difficulties illustrated in the novel is that mandatory minimum sentences for child pornography offenses can have unanticipated results. For example, lengthy mandatory sentences could be given to:

A high-school boy over age 18 who engages in “sexting” photos of his naked, underage girlfriend to others via his cell phone (child pornography production and distribution) . . . [.]

A 22 year-old man who makes a home video of consensual sex with his 17-year-old girlfriend and downloads it to his computer, with his girlfriend’s knowledge and with no intent to share the video with others (child pornography production)[.]

Visiting a website and downloading images of child pornography

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28. *Id.*

29. Ratcliffe, *supra* note 5, at 108.

30. *Id.*

31. MICHAEL PONSOR, *THE ONE-EYED JUDGE: A NOVEL* (2017).

32. Martin, *supra* note 27.

33. *Id.*

(child pornography *possession* or *receipt*).<sup>34</sup>

The federal statutory mandatory minimum sentences for child pornography offenses present a problematic issue that arises from a discrepancy in the statutory language: 18 U.S.C. § 2252 dictates a mandatory five-year minimum sentence when an individual is convicted of *receiving* child pornography, but a conviction for *possessing* child pornography imposes no mandatory minimum sentence.<sup>35</sup> From the charge through the sentencing, this “distinction without a difference” between *receipt* and *possession*<sup>36</sup> adds a layer of complexity in child pornography cases.

The novel explores the vexing question of whether it is rational to punish the *receipt* of child pornography more harshly than the *possession* because, in reality, one cannot *receive* child pornography without *possessing* it, and vice versa.<sup>37</sup> This dilemma excludes the more unusual occurrence when the *possessor* is also the producer.<sup>38</sup> The only real distinction between prosecuting *receipt* of child pornography and *possession* of child pornography is that the prosecution of *receipt* requires the government to show “how” the individual procured the images, in addition to proving that the individual had “knowing” *possession* of the material.<sup>39</sup> However, given the proliferation of pornography on the Internet, and the fact that most individuals charged *receive* and store child pornography using the Internet,<sup>40</sup> computer

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34. *Child Pornography Sentences*, FAMM, (emphasis added), <http://famm.org/affected-families/child-pornography-sentences/> [<https://perma.cc/4VGR-NJ3X>].

35. *See* 18 U.S.C. § 2252 (2012).

36. *See generally* Bacon, *supra* note 24, at 1057 (quoting *United States v. Szymanski*, No. 08-CR-417, 2009 WL 1212252, at \*4); *id.* at 1030 (examining the “paradox found in 18 U.S.C. § 2252” that “has significant ramifications for sentencing in the vast majority of federal child pornography cases”).

37. *See id.* at 1030.

38. *See* *United States v. Richardson*, 238 F.3d 837, 839 (7th Cir. 2001). In examining the evolution of child pornography laws, the distinction between *receipt* and *possession* stemmed from the fact that “*possession* was not initially [provided for under the law], and *receipt* was originally [considered to be] part of the commercial trade.” Audrey Rogers, *From Peer-to-Peer Networks to Cloud Computing: How Technology is Redefining Child Pornography Laws*, 87 ST. JOHN’S L. REV. 1013, 1037 (2013) (emphasis added).

39. *Compare* 18 U.S.C. § 2252(a)(2), *with* 18 U.S.C. § 2252(a)(4).

40. In fiscal year 2006, ninety-seven percent of convicted child pornography offenders used a computer. MARK MOTIVANS & TRACEY KYCKELHAHN, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: FEDERAL PROSECUTION OF CHILD SEX EXPLOITATION OFFENDERS 6 (2006), <https://www.bjs.gov/content/pub/pdf/fpcseo06.pdf> [<https://perma.cc/4ZJL-82PE>].

evidence can be retrieved to identify exactly when *receipt* occurred.<sup>41</sup> Therefore, prosecution for both *receipt* and/or *possession* is generally available.<sup>42</sup> Indeed, most individuals face charges of *receipt* and/or *possession* of child pornography under 18 U.S.C. § 2252—at the prosecutor’s discretion.<sup>43</sup> This broad prosecutorial discretion basically functions to deprive the judiciary of the authority to determine a sentence that considers the individual circumstances.<sup>44</sup> This leaves prosecutors to essentially determine the sentencing outcomes for an increasing number of child pornography defendants.<sup>45</sup> This thorny issue has had serious consequences on child pornography sentencing, and is one of the underlying issues throughout *The One-Eyed Judge*.

*The One-Eyed Judge* is a fictional account of a child pornography case seen from the perspective of the presiding judge.<sup>46</sup> Set in western Massachusetts, the plot emerges through the eyes of the arresting police officer, the judge’s law clerks and colleagues, the defense attorney, the prosecutor, the witnesses, and the defendant himself. Most importantly, the book presents the viewpoint of the judge on the bench, caught up in the cross currents of his personal life, and facing the near impossible task of giving both the defense and the prosecution a fair trial.

The Author’s Note reveals Judge Ponsor’s familiarity with child pornography:

For more than thirty years, my position as a federal judge has placed me within a small cohort of people permitted to view child pornography legally—provided, of course, that the viewing occurs only in the context of a criminal prosecution. I wish I had never had this dubious privilege. The heartbreaking images one is required to examine linger in the mind, offering evidence of our species at its

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41. Bacon, *supra* note 24, at 1041–42.

42. *Id.*

43. In 2007, “only 5 percent of all child porn defendants . . . [were] charged with production.” Hansen, *supra* note 25, at 57.

44. *United States v. Norris*, 159 F.3d 926, 930 n.4 (5th Cir. 1998) (“A prosecutor can . . . manipulate the severity of a sentence by deciding whether to charge the defendant with *receiving* or *possessing* child pornography—a result at apparent odds with the policy goals of the sentencing guidelines.”) (emphasis added); Benjamin Weiser, *A Judge’s Struggle to Avoid Imposing a Penalty He Hated*, N.Y. TIMES, Jan. 13, 2004, at A1, PROQUEST, Doc. No. 432662157.

45. Benjamin Weiser, *A Judge’s Struggle to Avoid Imposing a Penalty He Hated*, N.Y. TIMES, Jan. 13, 2004, at A1, PROQUEST, Doc. No. 432662157 (discussing one judge’s attempt to avoid a 10-year mandatory sentence to an 18-year-old defendant, who used file-sharing computer software to allow people to exchange images, including one disturbing photo of a toddler—to no avail.”).

46. *See generally* PONSOR, *supra* note 3.



worst.

Defendants charged with these offenses vary greatly. They include vicious, unrepentant predators; outwardly upstanding citizens, otherwise law-abiding, drawn to a repulsive late-night obsession; pathetic loners, sometimes victims of abuse themselves; and teenagers or students trolling the Internet out of morbid curiosity. . . .

. . . .

I must beg pardon if this story leads readers down some of the darker passages that judges routinely travel. It is not easy to write or to read about child sexual abuse. It is not easy to talk or even to think about it. On the other hand, we are learning that silence is false consolation and does little to help.<sup>47</sup>

Judge Ponsor addresses this controversial legal issue in *The One-Eyed Judge*,<sup>48</sup> the second book in the Judge Norcross series.<sup>49</sup> This novel depicts a realistic account of an FBI agent and Attorney General's experience in investigating and prosecuting a child pornography case in the federal system. The power of prosecutors and the lack of judges' discretion are themes explored in this fast-paced novel that is part legal thriller, mystery, courtroom procedural, and family drama. The reader views the story through the unique perspective of Judge David S. Norcross, the protagonist, a U.S. District Court judge presiding over the defendant's trial. Judge Ponsor's years of experience as a federal district court judge are brought to bear in one of the most disturbing types of cases our legal system encounters, allowing the reader a rare entrée into a judge's mind, and one that fiction seldom provides.

The novel centers on the case against Sidney Cranmer, an eccentric but esteemed English Literature professor at Amherst College. Some troubling and suggestive chat room remarks point to Cranmer's computer, leading to an FBI sting. The book begins with Cranmer's arrest, when a DVD containing child pornography is delivered to his house. Cranmer's home is entered and searched by FBI agents, instantly turning his life upside down. The elderly professor is arrested before he even has an opportunity to examine the DVD. Although Cranmer contends that he does not remember ordering the illegal DVD at issue, additional child pornography is found on his home computer. Cranmer appears muddled and frightened upon arrest for this offense. He is a seventy-year-old man grieving the recent death of his mother,

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47. *Id.* at 395–96 (2017).

48. *See generally id.*

49. *See* MICHAEL PONSOR, *THE HANGING JUDGE* (2013) (this is the first novel by Ponsor and launches the Judge Norcross series).

emotionally ill-equipped to effectively aid in his own defense.

In the novel, Ponsor adds some interesting historical perspective on society's changing view of pornography. Cranmer's academic focus is Lewis Carroll—the author of *Alice in Wonderland*—who was known to be obsessed with young girls, and who took photos of naked girls in suggestive poses.<sup>50</sup> All of this does not help Cranmer's defense, including the fact that he admits he's watched porn—"Who hasn't," he fairly asks.<sup>51</sup> Cranmer's fate appears sealed, but he maintains his innocence in spite of the devastating evidence.

The case is assigned to Judge Norcross, whose girlfriend, Claire Lindemann, is a colleague and friend of Cranmer's. Lindemann believes Cranmer is innocent of these charges, and this impacts the developing relationship between Norcross and Lindemann. It soon becomes evident that Judge Norcross's personal life would have been easier if he had recused himself from this case, as Lindemann becomes personally embroiled in the matter, creating tension. Meanwhile, adding to the family drama, Norcross's life is up-ended when his brother is severely injured in a plane crash and he must take on the care of his two young

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50. Amy Leal, *Lewis Carroll's Little Girls*, CHRON. HIGHER EDUC. (Nov. 2, 2007), <http://www.chronicle.com/article/lewis-carrolls-little-girls/27813> [https://perma.cc/T55T-J6R9].

51. The statistics regarding pornography *in general* are staggering, as are the complex and controversial issues surrounding the legal, moral, social, health, and safety implications of pornography. According to one of the most popular hardcore porn websites today, Pornhub, "[l]ast year alone, 91,980,225,000 [pornographic] videos were watched on Pornhub. That's 12.5 videos for every person on the planet." *How Many People Are Watching Porn Right Now? (Hint: It's A Lot.)*, FIGHT THE NEW DRUG (Sept. 11, 2017) (emphasis added), <http://fightthenewdrug.org/by-the-numbers-see-how-many-people-are-watching-porn-today> [https://perma.cc/X7B5-PHAH]. An April 11, 2016 *Time* magazine story "highlights the growing pornography industry and consumption among young people—46% of men and 16% of women ages 18 to 39 intentionally view pornography in any given week." *New Cover Story in TIME Magazine Highlights Porn Epidemic*, FIGHT THE NEW DRUG (April 12, 2016) <http://fightthenewdrug.org/new-cover-story-in-time-magazine-highlights-porn-epidemic/> [https://perma.cc/L5U2-Z9KP]. "The societal costs of pornography are staggering. The financial cost to business productivity in the U.S. alone is estimated at \$16.9 [b]illion annually; but the human toll, particularly among our youth and in our families, is far greater." *Internet Pornography by the Numbers; a Significant Threat to Society*, WEBROOT, <https://www.webroot.com/us/en/home/resources/tips/digital-family-life/internet-pornography-by-the-numbers> [https://perma.cc/RW3U-LFY3]. "Pornography hurts adults, children, couples, families, and society. Among adolescents, pornography hinders the development of a healthy sexuality, and among adults, it distorts sexual attitudes and social realities. In families, pornography use leads to marital dissatisfaction, infidelity, separation, and divorce." *Id.* But see Conor Friedersdorf, *Is Porn Culture to be Feared?*, ATLANTIC (Apr. 7, 2016) <https://www.theatlantic.com/politics/archive/2016/04/porn-culture/477099/> [https://perma.cc/PA36-HGB3] (hypothesizing that "the rise of streaming, hi-def pornography . . . has coincided with steep declines in rape and spousal abuse.").

nieces. Norcross feels ill prepared to handle this new responsibility that demands a great deal of his time and attention. This adds additional tension to the judge's relationship with Lindemann.

As the story develops, the case against Professor Cranmer—which at first seems like a slam-dunk—becomes more complex. Cranmer's bright student research intern, Elizabeth Spencer, who was present during the FBI raid and arrest, begins uncovering evidence that may help clear Cranmer of the charges. The reader sees, through her eyes, Cranmer's deep anguish and how quickly so many lives can be damaged in child pornography cases.

The subject matter of child pornography is harrowing and not easy to read about. Most disturbing is the age of some of these children—some of whom are just toddlers. However, the author, sensitive to the abhorrent nature of the crime, does not sensationalize the topic of child pornography; he handles a subject that could be exploited, as he handled the cases as a judge, with great skill and sensitivity. The author is able to inform the reader about this extensive and wide-ranging social problem by examining the judicial system that tries offenders. He succeeds in taking the reader up to the bench to experience the moral pressures and struggles in the complex legal landscape of child pornography cases. The reader gets a sense of how challenging it is to apply the law fairly in such a complicated case.

The novel is effective at conveying how sexual deviants operate and get ensnared into networks of child predators. The ease of using the Internet for these crimes has added a level of complexity that is not easily addressed by the current laws. In fact, like other areas of the law where technology has outpaced changes to the law, the many layers of child pornography create serious problems that are not easily handled by our legal system.

As the main plot of Cranmer's case unfolds, there are other storylines that evolve and intersect to enrich the narrative. The book includes twists and turns as well as cleverly dropped hints and red herrings that allow the reader to be part investigator along the way. This seems very natural in the novel, as the setting is a small town where it seems everyone knows everyone else and people's lives often intersect. In addition to the child pornography issue, the book includes a focus on a local problem with a serial sexual predator who targets unsuspecting children in Internet chat rooms. An FBI sting is set up in order to capture the individual. The reader comes to understand how child predators lurk on the Internet to find their victims.

Throughout this novel, the reader senses many of the hidden

dangers facing children and families. This is not surprising, as Norcross's perspective is tainted with all that he has seen from his view on the bench—the horrible and violent crimes. Thus, he doubts that he will ever marry again and bring children into this unsafe and threatening world.

Norcross, however, becomes intimately acquainted with what being a parent feels like while he serves as guardian for his two grieving nieces, one just seven-years-old and the other a teenager. Norcross, a widower, grapples with the risks and vulnerability that accompanies marriage and parenting. Meanwhile, although he is loving and attentive to his family, the reader feels the tension between the Judge's perspective and Lindemann's desire to have children of her own. "Someone once described the joy and anxiety of parenthood as the equivalent of having your heart outside of your body all the time, walking around[,]”<sup>52</sup> and it is this fear that brings an undercurrent of darkness to the book, which is palpable and disturbing.

The other relational and family tensions that are explored throughout the novel include an underlying story of the impact of revenge porn and retaliation among college students. This is a timely topic that needs further discussion and exploration.<sup>53</sup> In the book, Spencer—Cranmer's intern—deals with a boyfriend who posts a sexual video online that she intended to be private. This leads to a graphic spectacle when she retaliates against him. Reading this with the awareness that the posting of private sex images is sadly not an uncommon occurrence in today's society<sup>54</sup>—one that leaves many feeling helpless—the book conveys the deep and troubling emotional impact on the individuals.

One of the most thought-provoking parts of the book is the intricate and authentic narrative of a federal criminal prosecution from an insider's perspective. Most often, legal thrillers are written from the attorney's viewpoint. Here, the reader is educated and informed from the other side of the bench and privy to the judge's thinking, conduct,

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52. *Transcript: President Obama, supra* note 1.

53. See *We Need National Legislation to Combat Revenge Porn*, WASH. POST (Aug. 20, 2016), [https://www.washingtonpost.com/opinions/we-need-national-legislation-to-combat-revenge-porn/2016/08/19/5e5e028a-5fdd-11e6-8e45-477372e89d78\\_story.html?utm\\_term=.898f92fdb505](https://www.washingtonpost.com/opinions/we-need-national-legislation-to-combat-revenge-porn/2016/08/19/5e5e028a-5fdd-11e6-8e45-477372e89d78_story.html?utm_term=.898f92fdb505) [<https://perma.cc/JR72-FUFK>].

54. See Lori Janjigian, *Nearly 10 Million Americans Are Victims of Revenge Porn, Study Finds*, BUSINESS INSIDER (Dec. 13, 2016, 5:03 PM), <http://www.businessinsider.com/revenge-porn-study-nearly-10-million-americans-are-victims-2016-12> [<https://perma.cc/2UG4-DR3R>].

and discussions. In fact, the narrative serves to humanize judges. With his experience presiding over numerous child pornography cases, Judge Ponsor shares his insights and observations of the tension between the lurid aspects of exploiting children and the responsibility to ensure a fair trial. While this is a novel, and there are some liberties taken, the author attentively details important matters of the current legal system. This credible tale portrays our imperfect system of justice in a genuine way. The characters—the attorneys and investigators—are realistically depicted and vary in their perspectives as well as their humanity.

The narrative feels as distressing as it feels real. For the prosecutor, it is his first solo case as chief prosecutor. Cranmer engages a top-rated defense attorney. The reader sees how inevitable it is that serious inequities are present in a system that depends on independence among police, investigators, prosecutors, defense attorneys, and judges. The book explores issues including the intersection between the police and the prosecutor, the ethical boundaries of the prosecutor, and the relationship between defense attorneys and law enforcement.

Most notably, the novel explores the controversial issue of mandatory sentencing guidelines and the impact on the independence of the judiciary. Our criminal justice system does not exist in a perfect world, notwithstanding the many thoughtful, intelligent individuals who are dedicated to striving to ensure justice. The law is harsh and exacting regarding child pornography materials and there is great disparity between sentences if the prosecutor decides to charge a defendant with *possession* of child pornography (no mandatory minimum sentence), or with *receipt* of child pornography (mandatory minimum five years).<sup>55</sup> Although there is no intimation that Cranmer may have physically victimized a child, and no substantial proof that he was the individual responsible for the repugnant chat room comments, he is an example of an individual with no previous legal troubles, held in high regard professionally, faced with proving his innocence.

The novel provides invaluable insight into the procedural aspects of a court case and the inner workings of the court in chambers. These insights, as well as the inclusion of pretrial motions, are absorbing, regardless of the pursuit of Cranmer's guilt. The reader gains a perspective of the legal system and the impact of the laws through the lens of the presiding judge. These insights transcend the view of the judge because the book also explores the relationship between the

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55. 18 U.S.C. § 2252 (2012).

defendant and his attorney. The reader is privy to discussions about discovery, plea bargaining possibilities, and motions practice. The book also explores what the defense attorney thinks about her client's guilt in this case, opening up the larger issue of what defense attorneys grapple with when representing individuals charged with heinous crimes. Additionally, the book provides insight into how the FBI agent and the novice prosecutor work together, and their internal motivations and struggles with regard to the ethical implications of their actions.

*The One-Eyed Judge* is a compelling story. The book is not only gripping, but also educates the reader and challenges many of the preconceived notions and views regarding child pornography. The law is complicated. People are complicated. The system of justice is complicated. Yet despite these many layers, Ponsor's book teaches the reader much about the legal system and the inherent tensions between the ideals and the realities. The novel shows our legal system as an imperfect one, but one dependent upon individuals and the checks and balances built into the system.