

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

UNITED STATES OF AMERICA )  
)  
)  
v. ) Criminal No. 5:08CR00030  
)  
CLIFTON THOMAS TALLEY )

**MOTION FOR UPWARD DEPARTURE OR VARIANCE**

COMES NOW the United States, by counsel, Nancy S. Healey, Assistant U.S. Attorney for the Western District of Virginia, and respectfully moves this Court to impose a sentence above the Guidelines range of 120 months, either as a result of a variance, in accordance with the recommendations and analysis in the defendant's Presentence Report (PSR), or as a departure because of the likelihood that the defendant will commit other crimes and because of the defendant's prior criminal history.

This is the defendant's third federal prosecution for child pornography offenses. As this Court is now well aware, the investigation of the present offenses began on July 5, 2008, when the defendant was violating his supervision on his second prosecution by possessing and using a laptop computer at the Staunton Public Library to access the Internet and view apparent child pornography. In post-arrest statements, the defendant acknowledged having accessed the Internet to surf pornographic

sites (including sites portraying minors) on multiple other occasions. His illegal behavior, all of which occurred while he was under supervision, remained undetected until the day of his arrest. The defendant's laptop computer revealed numerous child pornography images. A disk recovered from the defendant's home on July 7, 2008, revealed numerous additional child pornography images, some of which depicted very young children and some of which constituted hard core child pornography. A Child Victim Identification Program report identified 247 of the images on the disk as depicting identified minors. The images on the disk are set forth in more than 90 separately named folders and subfolders, each of which contain numerous pornographic images. While some of the images may not contain images of minors, a substantial number of images do depict clear child pornography. Other images portray males who might be minors but who also may be young adults. Nearly all (if not all) of the images on the disk were pornographic or "erotica." Names of some folders suggest that the disk had been added to as recently as the month prior to the defendant's arrest.

The defendant's PSR sets forth the relevant criminal history of the defendant, all of which focuses on the defendant's sexual interest in children. As set forth therein, the defendant was sentenced to a 60-day sentence for his first prosecution in 1997. The relatively short sentence was the result of a significant departure on the basis of a motion filed pursuant USSG §5K1.1, down

from the otherwise applicable range of 27-33 months. Despite the defendant's large break, he violated his supervised release in committing the offenses that resulted in his second substantive prosecution. He received a 12-month sentence for his violation of supervised release.

The second prosecution involved not only the distribution and possession of child pornography, but also disturbing "chat" with an undercover officer posing as a 14-year old boy in 2001. Attached to this motion is the statement of facts filed at the time of the guilty plea for this case. See Attachment 1. As set forth in Attachment 1 (and in part in the PSR), the defendant, using the screen name "BoysRHot" engaged in a graphic, sexually explicit dialogue with the purported minor about his (the defendant's) developmental preference; asked about the purported minor's sexual development and experiences; and talked about taking naked pictures of the purported minor. He also asked the purported minor if the purported minor could talk on the telephone. See Attachment 1, pp. 2-4. The defendant sent image files to the undercover during the chat, at least one of which depicted a clearly minor male, completely naked and exposing his genitals. See Attachment 1, pp. 4-6. A search warrant that was thereafter executed at the defendant's residence resulted in the seizure of a computer with thousands of image and movie files of child pornography. *Id.* at pp. 6-7. He was sentenced to the statutory minimum of five years

of imprisonment (which was higher than the otherwise applicable guidelines range).<sup>1</sup> Defendant was a registered sex offender and on supervised release at the time of these offenses.

The present offenses in 2008 likewise occurred while the defendant was a registered sex offender and on federal supervision. Defendant's taped statement at the Staunton Police Department included a statement by the defendant suggesting that the defendant would have gone to meet the child from the 2001 chat if the child had not been an officer. (He later made a statement during the same interview suggesting that he would not have met the purported child).

All of the above clearly indicates that the defendant will continue to violate the law. He has not been deterred by prior prosecutions, the fact that he is a registered sex offender, and the fact that he was on supervision. Moreover, the defendant has made statements concerning plans to abscond from supervised release in 2006. See PSR ¶36.

The defendant's advisory guideline range in this case is the statutory minimum of 120 months since the otherwise applicable range is lower than the statutory minimum. His required sentence on each count must be a sentence between 120 months and 240 months. A sentence of 120 months would be the required minimum sentence for

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<sup>1</sup> Certain enhancements, such as number of images, were not in existence at the time of the 2001 offenses.

a second time offender without any violations of supervision. See 18 U.S.C. § 2252A(b)(2). Surely, an offender with the defendant's past history of crimes and violations, who explicitly stated that he wished to abscond from supervised release, presents a very significant risk of future crimes and merits a higher sentence than the statutory minimum. As stated in the PSR, the defendant has demonstrated that he has "no respect for the law" and a higher sentence is necessary to afford adequate deterrence and protect the public from further crimes of the defendant - crimes which exploit children. See PSR ¶67. In other words, a reasonable sentence in this case is a sentence above 120 months. Moreover, besides being potentially justifiable as a departure under USSG §4A1.3, a higher sentence surely constitutes an appropriate variance post-*Booker* in light of not only the defendant's pattern of criminal behavior, but also the seriousness of his crimes.

When Congress enacted the *Child Pornography Prevention Act of 1996*, it found that the mere existence of pornographic materials containing children, as well as their distribution, "creates the potential from many types of harm in the community and presents a clear and present danger to all children; and it inflames the desires of child molesters, pedophiles, and child pornographers who prey on children" which leads to the abuse and exploitation of children as creation and production of additional pornographic material is needed. S. Rep. No. 104-358, § 2 (10)(A)(B).

Likewise, the United States Supreme Court found that child pornography laws aim to protect the children themselves from sexual exploitation and abuse. New York v. Ferber, 458 U.S. 747, 757 (1982).

In passing the PROTECT Act of 2003, Congress undertook its lawful duty to protect the psychological, emotional, and physical development of the nation's children. As the Supreme Court has stated, "A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens." Ferber, 458 U.S. at 757. Therefore, the Supreme Court has declared that it "will generally sustain legislation aimed at protecting the physical and emotional well-being of children even when the laws . . . operate in sensitive areas." Id.

This was not the first time Congress recognized the damaging social effects that child pornography is having on society's children. In the *Child Pornography Prevention Act of 1996*, Congress recognized that the production of child pornography "is a form of sexual abuse which can result in physical or psychological harm, or both, to the children involved" since it creates a permanent record of the child's abuse, allowing for continued victimization of that child. S. Rep. 104-358 § 2 (1)(2) (1996). The "use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child" used in the production of the pornographic material.

Osborne v. Ohio, 495 U.S. 103, 109. "The 'victimization' of the children involved does not end when the camera is put away." United States v. Norris, 159 F.3d 926, 929 (5th Cir. 1998). The consumer of sexual images causes children of pornographic abuse to suffer in various ways: (1) the abuse is perpetuated through dissemination, (2) the existence of the image is an invasion of the child's privacy, and (3) the demand for the creation of more images is created by the consumer. Norris, 159 F.3d at 929-30. Additionally, viewing and collecting these images, which depict children involved in sexual acts, contributes indirectly to the harm inflicted on that child by creating a demand for more of the images. These viewers contribute to the cycle of abuse and are in part responsible for the psychological and physical harm of the children used to produce the images. United States v. Yeaple, 605 F. Supp. 85, 86 (M.D. Pa. 1985); see also Ferber, 458 U.S. at 759. The Adam Walsh Act, which went into effect on July 27, 2006, reaffirmed the justification for strict laws in this area, strengthened the tools necessary to combat these serious crimes, and reaffirmed the view that offenders deserve serious punishment.

In light of the above, the United States requests that this

Court fashion a punishment that includes a prison sentence above the statutory minimum to be followed by lifetime supervision.

Respectfully submitted,

JULIA C. DUDLEY  
United States Attorney

s/ Nancy S. Healey  
Nancy S. Healey  
Assistant United States Attorney  
Virginia Bar No. 39447

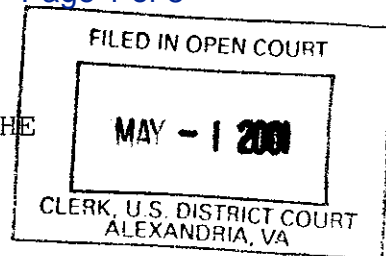
CERTIFICATE

I hereby certify that on March 30, 2009, I electronically filed the forgoing with the Clerk of the Court using CM/ECF system which will send notification of such filing to Andrea Harris, Assistant Public Defender, counsel for the defendant.

Respectfully submitted,

JULIA C. DUDLEY  
UNITED STATES ATTORNEY

s/ Nancy S. Healey  
Nancy S. Healey  
Assistant United States Attorney



IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 01-160-A
	)	
CLIFTON T. TALLEY,	)	
	)	
Defendant.	)	

STATEMENT OF FACTS

Had this matter gone to trial, the United States would have proven the following beyond a reasonable doubt through witnesses, testimony, and other competent and admissible evidence.

On March 05, 2001, at approximately 15:40, Alexis J. Vlahos, a Special Agent with the FBI Baltimore Division, assigned to the Innocent Images Task Force, logged onto the Internet Relay Chat (IRC) server group known as astro.ga.us.dal.net. While in an undercover capacity posing as a 14 year old boy, SA Vlahos (hereinafter identified as an undercover agent "UCA") entered a channel named #0!!!!!!!littleboysexchat. While monitoring this channel, the defendant, CLIFTON T. TALLEY, using the screen name "BoysRHot", initiated an instant message chat session with the UCA.

The following provides a complete transcript of that chat

CS

conversation:

Session Start: Mon Mar 05 16:04:43 2001  
[16:04] Session Ident: BoysRHot  
(msr@adsl-141-156-45-193.bellatlantic.net)  
[16:04] <BoysRHot> pedo m 45 VA  
[16:05] <UCA> hi how r u  
[16:05] <UCA> :)  
[16:06] <BoysRHot> fine happy to see yung teens on baord  
[16:06] <UCA> cool  
[16:06] <UCA> :))  
[16:06] <BoysRHot> like a boy with beginning pubes and cum  
[16:07] <UCA> huh  
[16:08] <BoysRHot> i like a teen boy not too hairy just a few pubes above his cock and who can deliver some thick cum cream  
[16:08] <UCA> cool  
[16:09] <BoysRHot> r u hairy  
[16:09] <UCA> not really  
[16:09] <BoysRHot> do you have a full bush  
[16:09] <UCA> no  
[16:09] <BoysRHot> how does your pube patch grow / look like  
[16:10] <UCA> huh  
[16:10] <BoysRHot> does it grow on both sides and bare in the middle or does it grow all across the top  
[16:10] <UCA> kinda growing all over  
[16:11] <BoysRHot> like this boy's?  
[16:12] <UCA> hang on a sec let me look  
[16:12] <BoysRHot> ok  
[16:12] <UCA> cool pic, kinda like that but don't have that much  
[16:13] <UCA> :)  
[16:14] <BoysRHot> how about this boy's?  
[16:15] <UCA> cool yeah more like that but i have dark hair  
[16:16] <UCA> :)  
[16:16] <BoysRHot> oh like this  
[16:17] \*\*\* CT-Dad is on IRC  
[16:17] <UCA> yeah that color but don't have that much  
[16:17] <UCA> :)  
[16:18] <BoysRHot> what r ur stats ht wt hair eyes cock size cut/uncut etc  
[16:18] <UCA> I'm 5 5 125 dark brown hair greenish i's u?  
[16:18] <BoysRHot> 6.1 190 br br smooth 7cut  
[16:18] <UCA> cool  
[16:19] <BoysRHot> have you had pics made of you  
[16:19] <UCA> mom wont let me put pics on puter :(((  
[16:20] <BoysRHot> could i do a pic shoot of u  
[16:20] \*\*\* Leg\_Lover has left IRC

[16:20] <UCA> do u pics  
[16:20] <BoysRHot> yes and vids  
[16:20] <UCA> cool what kinda pics and vids u take  
[16:21] \*\*\* CT-Dad has left IRC  
[16:21] <UCA> :)  
[16:22] <BoysRHot> pic of boys posing in their natural state  
of affairs  
[16:22] <UCA> cool  
[16:23] <UCA> i never did those tyep of pics b 4  
[16:23] <BoysRHot> u sound like you have the body for it  
[16:24] <UCA> really ???????  
[16:25] <UCA> u r so coool for saying so  
[16:26] <BoysRHot> i luv bodies like these  
[16:26] <UCA> :))))))  
[16:27] <UCA> u take those pics???  
[16:27] <BoysRHot> yes  
[16:27] <UCA> u are really good at it  
[16:27] <BoysRHot> the boys are natural  
[16:28] <UCA> what u mean natural  
[16:29] \*\*\* Michelle34 has left IRC  
[16:29] <BoysRHot> natural uncuts hanging soft  
[16:29] <UCA> oh ic  
[16:30] <UCA> yup but u take great pics  
[16:30] <BoysRHot> i like em almost ahirless like this  
[16:30] <BoysRHot> 14 yr old boys make good nude models  
[16:31] <UCA> wow reallllly  
[16:32] <BoysRHot> could i take some off you  
[16:32] <BoysRHot> of u  
[16:32] <UCA> wow u would want to do that ?????  
[16:33] <BoysRHot> yes i want some dark haired cocks  
[16:33] <UCA> it ok that i never done anything like that b 4  
[16:34] <BoysRHot> all you have to do is get naked and act  
natural boy hard  
[16:34] <UCA> what u mean natureal boy hard  
[16:35] <BoysRHot> pose like this  
[16:36] <UCA> guess i can do that, kinda like a real model  
[16:36] <BoysRHot> do you make cum  
[16:36] <UCA> what u mean make it  
[16:37] <BoysRHot> shot cum juice all over your dick rubbing  
it in on your balls and cock shaft, ur own sperm milk cum  
[16:37] <UCA> oh yeah i done that  
[16:38] <BoysRHot> like this way  
[16:39] <UCA> not sure if that way but i done it  
[16:39] \*\*\* will2- has left IRC  
[16:39] <UCA> u take these pics professionally  
[16:39] <BoysRHot> can u show your manhood this way  
[16:40] <UCA> u want me to do it that way  
[16:41] <BoysRHot> yes if u can

[16:42] <UCA> wow guess i can try  
[16:42] <UCA> kinda nervous that never took pics like that b  
4  
[16:42] <BoysRHot> can u talk on the telephone  
[16:42] <UCA> not right now mom is home  
[16:43] <BoysRHot> does she know you are gay  
[16:43] <UCA> gooooooooood no!!!!!!  
[16:43] <BoysRHot> r u  
[16:44] <UCA> don reallly know for sure,  
[16:44] <UCA> that ok  
[16:44] <BoysRHot> sure best to play in all fields I say  
[16:44] <BoysRHot> you might like girl pussy later  
[16:44] <UCA> lol  
[16:44] <BoysRHot> have you felt a man's cock and balls  
[16:44] <UCA> nope :(  
[16:44] <BoysRHot> other boys'  
[16:45] <UCA> nope, havent done much  
[16:45] <BoysRHot> would you allow a man to suck you  
[16:45] <UCA> that would nt hurt would it  
[16:46] <BoysRHot> no it would feel good  
[16:46] <UCA> coool that guess it b ok  
[16:46] <UCA> i don't know anyone who has done that  
[16:47] <BoysRHot> hehe listen to this  
[16:49] <UCA> wow what was that  
[16:49] \*\*\* Michelle34 is on IRC  
Session Close: Mon Mar 05 16:59:49 2001

10. Over the course of the chat session, TALLEY, using the BoysRHot screen name, sent the UCA 12 image files. At least 1 of the 12 image files, depicts a clearly minor male, completely naked and exposing his genitals. The UCA observed that three of the other 11 images depict two different young males posing with erections. The following is a list of the images that the defendant ("BoysRHot") sent to the UCA:

JESSIE157.JPG

IPO085.JPG

27.JPG

41.JPG

47.JPG

KAI+06.JPG

BASTI-7.JPG

HOTBOYS10.JPG

HOTBOYS16.JPG

HOTBOYS17.JPG

STIUDIOSHOOT\_A.JPG

STIUDIOSHOOT\_B.JPG

The image file titled JESSIE157.JPG depicted a completely naked male, approximately 14 years old, sitting down and looking at his erect penis. The same child is depicted in computer image file 12JESS\_W.JPG recovered from the defendant's mIRC download folder on TALLEY's computer. The child has been identified as "Jessie" who was photographed by someone other than the defendant in Kentucky within the last two years. The boy was born in November 1985.

The image files titled STIUDIOSHOOT\_A.JPG, and STIUDIOSHOOT\_B.JPG depicted two nude, minor males posing with exposed genitals. The images were viewed by a pediatrician at the Armed Forces Center for Child Protection, National Naval Medical Center, Bethesda, Maryland. The pediatrician, after evaluating the images, was able to scientifically confirm that

one of the two boys was under 18 years old. The pediatrician opined that many of the remaining images had the facial and body characteristics of minor adolescents.

In addition to the twelve image files, BoysRHot transmitted an audio (wave) file to the UCA. The wave file was approximately 30 seconds long and consisted of a boy being interviewed about having sexual contact with a male.

During the online session, the UCA queried the IRC server which indicated that BoysRHot was using a Bell Atlantic (now known officially as Verizon Internet Services, Inc.) ADSL connection and was assigned the IP address 141.156.45.193.

During the online session, the UCA was located in Maryland and the defendant, CLIFTON T. TALLEY, was located in Annandale, Virginia, in the Eastern District of Virginia, while the UCA was dialed into DALNET through the astro.ga.us.dal.net system, a Georgia DALnet IRC server, and TALLEY ("BoysRHot") was dialed into DALNET using elysium.ga.us.dal.net, a Georgia DALnet IRC server thus resulting in the images traveling in interstate commerce.

CLIFTON T. TALLEY is a registered sex offender who is currently on supervised release resulting from a March 6, 1998 federal conviction in Alexandria, Virginia for receipt of child pornography.

On April 10, 2001, FBI agents executed a federal search

warrant at TALLEY's residence in Annandale, Virginia and seized the defendant's computer system. A subsequent forensic examination of the contents of the defendant's computer revealed thousands of image files of child pornography. The child pornography computer image files included both still images as well as video image files ranging up to 100 megabytes in size. The computer image files depicted minor teenage and prepubescent children engaging in fondling, masturbation, fellatio, sexual intercourse and simulated sexual intercourse, sadistic and masochistic conduct, and the lascivious exhibition of the genitals and pubic areas. The computer image files included the following:

A=4.JPG is an image file of a nude, adult male performing fellatio on a nude, prepubescent male;

KUZIA002.JPG is an image file of a nude, prepubescent male posing with exposed genitals and holding a whip;

RBTS STICK.MPG is a video file (including audio) of two nude, prepubescent males with exposed genitals. One of the children has his hands tied behind his back while the other boy, who masturbates while beating the bound child with a stick. The video which bears the identification of a Moscow Website known as Blue Orchid.

All of the child pornography images and videos distributed by the defendant had been shipped or transported in interstate or

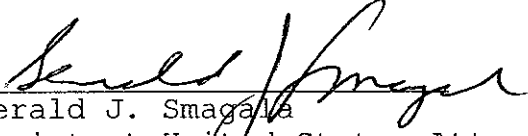
foreign commerce by various means, including by computer transmission, and were stored on materials that had traveled in interstate commerce.

In all instances described above, the defendant, CLIFTON T. TALLEY, acted knowingly and willfully and not by accident or mistake.

Respectfully submitted,


KENNETH E. MELSON  
UNITED STATES ATTORNEY


By:

  
Gerald J. Smagala  
Assistant United States Attorney

SEEN AND AGREED

  
CLIFTON T. TALLEY  
Defendant

  
Nicholas A. Balland, Esquire  
Counsel for Defendant

A TRUE COPY, TESTE:  
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BY   
DEPUTY CLERK