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Description: Summary Report for Judge/Magistrate, SSN, 1985

Date Redacted: 12/21/2017

SUMMARY REPORT FOR JUDGE/MAGISTRATE

District ED/KY	Judge/Magistrate James Cook
Unit/Location Lexington	Charge(s) (Show Title/Section and Name for each) 18:2252(a)(1) - Activities relating to material involving the sexual exploitation of minors
Docket Number (Year-Sequence No-Deft. No.) 85-5089M	

Check if Verified

DEFENDANT

Name JOHNSON, Charles Franklin		Employment/School Partner in clothing store		
Address 205 Lakeview Heights Dr. Pikeville, KY 41501		Address Johnson Clothing Store Pikeville, KY 41501 (606-437-6500)		
Telephone No. [REDACTED]	Time in Community Life	Social Security Number [REDACTED]	Weekly Income \$250	Time in Empl./School 24 mos.

DEFENDANT HISTORY

1. Family Ties 2. Financial Resources 3. Health 4. Prior Record/Record of Appearance 5. Comments

FAMILY TIES: The defendant is a 36 year old married father of two boys and a college graduate who has been a life-time resident of Eastern Kentucky. His father, B.F. Johnson, is a prominent and well-respected member of the Pikeville, Kentucky, community. The defendant operates and is a partner for profits with his father in a clothing store known as Johnson Clothing Store, Pikeville, Kentucky. The defendant lives with his wife, Robbie, and two boys, ages 6 and 4, in Pikeville. His wife is a teacher of nursing at Mayo Vocational School, Paintsville, Kentucky.

FINANCIAL RESOURCES: The defendant currently rents his home located in Pikeville for \$400 per month. He owns three automobiles (1980 Honda, 1980 Oudi, and a 1976 Mercury, all of which are financed through the Citizens Bank of Pikeville, Kentucky. The defendant also owes several demand notes to the Citizens Bank which he estimates a total of \$11,000. He owes Mastercard approximately \$700. He has less than \$500 in a checking account and earns a salary of \$350 a week (net (\$250) from his operation of the Johnson Clothing Store. Although the defendant has few assets of his own, the defendant's father is financially secure and will provide whatever financial support that is required.

HEALTH: The defendant does have a problem with high fat content in his blood and takes medication for this problem (Lupid 300 mg.). His medication was recently reduced to 1 pill a day from two and this situation is under control. No other health problems known.

PRIOR RECORD/RECORD OF APPEARANCES: The defendant has no known prior record or history of failure to appear.

COMMENTS: We understand that the defendant's father will be in Lexington with cash to post whatever surety bond that is set.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CRIMINAL NO. 85-11

UNITED STATES OF AMERICA

PLAINTIFF

VS.

MOTION TO FILE SENTENCING MEMORANDUM
AND MOTION TO SEAL

CHARLES FRANK JOHNSON

DEFENDANTS

* * * * *

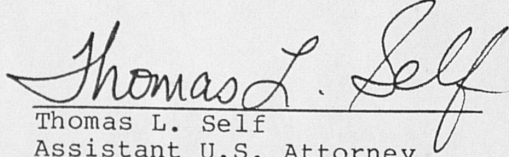
Comes now the United States of America, by and through counsel, and hereby moves the Court to allow the enclosed Sentencing Memorandum to be filed with the Court as part of the Pre-Sentence Report, pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, and that the Sentencing Memorandum filed herewith not be disclosed except as provided under Rule 32(c)(3) of the Federal Rules of Criminal Procedure.

The United States further moves the Court to place under seal the enclosed copies of certain magazines, marked Exhibit A, due to the explicit nature thereof, and that said magazines be maintained under seal of the Court after the Court has had the opportunity to examine them.

Respectfully submitted,

LOUIS DEFALAISE
UNITED STATES ATTORNEY

By:


Thomas L. Self
Assistant U.S. Attorney

ORDER

IT IS SO ORDERED.

DATE:

G. WIX UNTHANK
U.S. DISTRICT JUDGE

CERTIFICATE

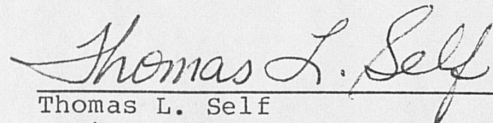
I hereby certify that a true copy of the foregoing Motion was served by mailing a copy to the following:

Honorable Burl McCoy
McCoy, Baker, & Newcomer
134 N. Limestone St., Suite 100
Lexington, KY 40507

and hand-delivering a copy to:

Honorable Bernard Pafunda
P.O. Box 1199
Pikeville, KY 41501

on this the 29th day of July, 1985.



Thomas L. Self
Assistant U.S. Attorney
P.O. Box 1490
Lexington, KY 40591
(606) 233-2661

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CRIMINAL NO. 85-11

UNITED STATES OF AMERICA

PLAINTIFF

VS.

SENTENCING MEMORANDUM

CHARLES FRANK JOHNSON

DEFENDANTS

* * * * *

The United States of America, by and through the undersigned counsel, submits this memorandum to assist the Court in conducting the sentencing proceedings in this case. This memorandum seeks to provide the Court with pertinent information about the acts to which the defendant has pled guilty in the information filed in this case, as well as pertinent information about the broader context of those acts, in an effort to assist the Court in deciding upon the appropriate sentence to assign the defendant within the range permissible for the Court, based on the information pled to.

The basic rule is that the sentencing judge can receive virtually any type of accurate, trustworthy information in order to arrive at an appropriate sentence. This principle has been reduced to statutory form by Congress:

No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a Court of the United States may receive and consider for the purpose of imposing an appropriate sentence. 18, U.S.C., §3377.

The United States Supreme Court has endorsed this principle in describing the discretion a Federal District Judge has in imposing sentence and in receiving information relevant to sentencing:

[A] trial judge in the federal judicial system has wide discretion in determining what sentence to impose. It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come. . . [A] sentence imposed by a federal district judge, if within statutory limits, is generally not subject to review. United States v. Tucker, 404 U.S. 443, 446 (1972).

NATURE OF THE CHARGES PLED TO

The defendant has entered a plea of guilty to a single count felony information charging him with violating 18, United States Code, Section 2252. The information charges that on or about May 18, 1985, he knowingly mailed from Pikeville, Kentucky to Newport, Kentucky, two video tapes, two magazines and illustrated advertisements containing visual depictions of minor children engaged in sexually explicit conduct.

Title 18, United States Code, Section 2252, provides in part that:

"An person who knowingly . . . mails any visual depiction, if the producing of such visual depiction involves the use of minor [sic] engaging in sexually explicit conduct; and such visual depiction is of such conduct; . . . shall be fined not more than \$100,000, or imprisoned not more than 10 years, or both. . . ."

Section 2255 provides certain definitions of the terms used in Section 2252 to include that "minor" means any person under

the age of eighteen and that "sexually explicit conduct" means actual or simulated sexual intercourse, masturbation, and lascivious exhibition of the genitals or pubic area.

In addition to the penalties provided in Title 18, United States Code, Section 2252, Congress in October 1984, passed new legislation providing that the maximum fine, as applied to this case, can now be \$250,000 and mandates a \$50.00 assessment. See Title 18, United States Code, Section 3571(b) and Title 18, United States Code, Section 3013(a)(2)(A).

Child Pornography - Outside the First Amendment

The United States Supreme Court has expressly held that the need of society and its children for protection from child pornography is so compelling that any competing First Amendment interest is secondary. United States v. Ferber, 458 U.S. 747 (1982). In sum, the Court held that child pornography is, like obscenity, outside the protection of the First Amendment, whether or not the materials are legally obscene. Id. at 763. (In Ferber, the materials depicted boys masturbating.) This decision is responsible for the change in federal child pornography laws two years later (See below).

The Ferber Court began by recognizing that "In recent years, the exploitive use of children in the production of pornography has become a serious national problem." Id. at 747. The Court upheld a New York statute that prohibited the dissemination of material which shows children engaged in sexual conduct, regardless of whether such material is obscene. In so holding, the Court noted that "It is evident beyond the need for

elaboration that a state's interest in 'safeguarding the physical and psychological well-being of a minor' is compelling." Id. at 756-7 (citing Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 607 (1982)). The Court acknowledged that the distribution of child pornography is intrinsically related to the sexual abuse of children in at least two ways: the materials are a permanent record of the abuse, and the harm to the child is exacerbated by their circulation; and the distribution network must be closed if the production of such materials is to be effectively controlled. Id. at 761. Thus, each link in the chain is crucial and a profit motive is an aggravating factor.

Federal Child Pornography Law

Since 1978, the production or mailing of child pornography has been prohibited. The 1978 law defined a "child" as a person under sixteen. The mailing statute required a proof of obscenity and a commercial purpose. Id. Title 18, United States Code, Section 2252 (1978 ed.).

As a reponse to the Ferber decision by the Supreme Court, as well as to a growing presence of and concern about child pornography, Congress amended the law, effective May 21, 1984. The age of minors was changed to persons under eighteen, in order to facilitate prosecutions of pictures of young adolescents, whose age may not be clearly determinable as under sixteen from the pictures. Congress deleted the obscenity requirements as per the Ferber ruling, and the commercial purpose requirement was also eliminated. The notes accompanying the new statute, citing Congressional reports, state that the new law

resulted from Congress' findings that a) child pornography had developed into a nationwide, lucrative business, that b) many runaways and homeless youths are exploited in the production and distribution of pornographic materials, and c) such use of children "is harmful to the physiological, emotional, and mental health of the individual child and to society" (98 Stat. 204 (Sec. 2 of Publ.L. 98-292, May 21, 1984)).

ATTACHMENT - UNDER SEAL

The information to which the defendant has pled guilty charges him with mailing two video tapes, two magazines and illustrated advertisements containing what is commonly referred to as child pornography. The two video tapes consist of various scenes of adults and children as well as children engaging in various sexually explicit conduct including sexual intercourse, oral-genital relations, masturbation and lascivious exhibition of the genitals along with visual depictions of bestiality involving adults and animals. The two magazines are entitled "Lolita Special 1" and "Lolita - Colour Special". The United States is filing separately herewith, as Exhibit A, along with a Motion to Seal, copies of these two magazines. They are filed under seal to avoid publishing in the Court's open file, the obscene nature of the pictures depicted therein. They do, however, as stated in the information, consist of minor children, obviously under the age of eighteen, engaged in sexually explicit conduct with adults and with other children. These photographs are being filed with the Court to illustrate the nature

of the material which the defendant was sending via the United States mails.

These two magazines are filed with the Court with the knowledge that no verbal description can adequately substitute for a viewing of the pictures themselves. It is imperative that the Court view them in order to accurately and fully understand the nature of the obscenity involved in this case, in determining the appropriate sentence for the defendant.

PLEA AGREEMENT

The defendant's plea of guilty to the felony information was the result of a plea agreement between the defendant and the United States. In return for his plea of guilty to a single count of violating Title 18, United States Code, Section 2252, the United States agreed not to prosecute him for other similar acts discovered during the course of the investigation. In addition, the defendant agreed to forfeit all pornographic materials seized in the search conducted on June 6, 1985, as well as a video tape machine owned by the defendant. The defendant also agreed not to mail, trade, barter, sell, or produce any child pornography or obscene materials in the future. No agreement was made regarding the appropriate sentence which the Court may impose nor was the United States precluded from providing the Court, as it is doing herein, with a full statement of the defendant's activities relating to child pornography.

DEFENDANT'S ACTIVITIES

On May 11, 1984, Postal Inspectors in San Diego, California, executed a search warrant on a pornography dealer. A large quantity of child pornography was discovered, including movies, video cassettes and correspondence. Among the child pornography material was a manila folder labelled "Trades", which contained a list of names and addresses of child pornography dealers, traders and hobbyists. One of the names was C.F.J., c/o Clark's Newstand, Main Street, Pikeville, KY 41501. Information from the Pikeville Post Office disclosed C.F.J. to be the defendant, Charles Frank Johnson. The Post Office also advised the Postal Inspection Service that Johnson had rented Post Office Box 1524, Pikeville, Kentucky on May 31, 1984, using the alias of Mr. Camo; that he received approximately one letter daily; and that he was the operator of Johnson's Clothing Store in Pikeville.

The Postal Inspection Service, in an effort to identify and apprehend pedophiles, set up a fictitious club and mailed out membership applications to people like the defendant whose names have been discovered in the files or on mailing lists of child pornographers. Johnson was furnished such an application and he responded and indicated thereto by listing his sexual preferences to be pedophilia, pre-teen sex, masturbation, lesbian sex, transsexuals, and transvestism. He also indicated it was his opinion the best age to have a first sexual experience was between 9 and 15. The application was dated March 3, 1985.

Other efforts made by Postal Inspectors to detect pedophiles include running ads in adult publications designed to appeal to individuals whose sexual preferences are juveniles.

These ads solicit correspondence from suppliers of pre-teen sex materials such as video cassettes, photos, films and magazines. Inspectors John Ruberti, Chicago, Illinois, Gary Kinney, Detroit, Michigan, and Ray Smith, Buffalo, New York, all had similar ads running in various adult publications. In October and November 1984, under other names, each received a letter from defendant Johnson offering to trade or buy "Lolita" VHS or Beta video cassettes or any other "Lolita" material. Johnson did not use his true name and address, rather all correspondence bore the return address of Mr. Camo or M.C. at Post Office Box 1524, Pikeville, Kentucky. Numerous letters passed between the three inspectors and Johnson thru May 1985. Ultimately the following material was received by the inspectors from Johnson by mail.

<u>Date of Mailing</u>	<u>Type of Material</u>
On May 26, 1985	A VHS tape depicting prepubescent males and females in various sex acts with adults.
On March 14, 1985	A magazine entitled "Naughty Horny Imps" depicting pre-teen females in sex with adult males.
On April 20, 1985	Two magazines, "6-16" depicting nude teen and pre-teen males and females and a foreign language publication featuring 54 pages of glossy color photos of nude teen and pre-teen females.
On May 10, 1985	A VHS tape depicting pre-teen females in various sex acts with adults.

Throughout his correspondence, Johnson indicates he is a collector and not a dealer and expects to receive, in trade, the

same type and quality "Lolita" material he provided. No pornographic material of any type was ever furnished by any of the inspectors.

Detective Bob Scott of the Kentucky State Police, while working with the Postal Inspection Service, also corresponded with Johnson, under an assumed name, indicating he, too, liked "Lolita" material. On May 18, 1985, he received a small parcel in Newport, Kentucky from Johnson. The parcel contained two Beta tapes similar to those received by Ruberti and Kinney. Also enclosed were two magazines, one entitled "Lolita Special 1" depicting prepubescent females and one male engaged in various sex acts with each other and/or an adult male; the second, entitled "Lolita Colour Special" depicted a prepubescent female engaged in various sex acts with an adult male. These formed the basis for the information herein and copies of which are filed as Exhibit A.

On the basis of these mailings, a federal search warrant was executed on Johnson in his clothing store in Pikeville on June 6, 1985 by Kentucky State Police Detectives and Postal Inspectors. The store was targeted because Johnson was observed picking his mail up at Post Office Box 1524 and taking it directly to his store. At the outset of the search, Johnson was arrested, given copies of the arrest and search warrants and Mirandaized. Johnson immediately was advised of the purposes of the search. He stated there was no child pornography material at the store. He stated he kept it all in the trunk of his car at his residence. He executed a Voluntary Consent Search Form

and took the search team to his car. Material recovered from the trunk of the vehicle included approximately 12 video tapes, two of which were explicit child pornography and one of which depicted explicit bestiality, i.e. sex between adults females and pigs, horses and ponies. The remainder of the tapes were adult XXX commercial and homemade tapes.

Johnson was interviewed in his residence while his car was being searched. He was again Mirandized and stated he was willing to be interviewed. He stated he believed his sexual preferences for "Lolita" material was the result of his preoccupation with adult pornography earlier in his life. Numerous hard-core adult magazines were also found in the car trunk. He stated he believed his fascination with pornography simply escalated to the point where adult material had minimal appeal and he became fixated on teen and pre-teen females as sexually desirable. He said he would often wait until his wife went to sleep at nite, get out of bed and watch the same video tapes of pre-teen sex over and over again, sometimes for hours. His remarks to Detective Scott included "I just can't get enough of it."

Johnson realized his obsession with child pornography was hazardous. Indeed, his correspondence reflected his concern with "being found out"; and the pains he took in packaging his material for mailing to the point of instructing his correspondents to place "legitimate" magazine covers over the Lolita material before mailing, should damage occur in shipment. He also instructed them to destroy his letters and save only his address. His use of the Mr. Camo alias also reflects his concern with discovery.

Johnson stated none of his family, including his wife, were involved in his child pornography activities, nor were any of them aware of his interests or collection. He also denied that the proprietor of Clark's Newstand was involved. Johnson stated he was close friends with the owner of Clark's who allowed Johnson to use his mailing address on several occasions, simply as an accomodation. Johnson also repeatedly denied ever having or attempting to have any sexual relationships with minors. None of the child pornography materials mailed by Johnson or found during the search appeared to have been made by him. He provided eleven names and partial addresses of his sources of pedophilic material including commercial and private sources. He compiled the list from memory, stating he destroyed his written mailing list the previous Saturday because he was concerned with discovery and intended to eliminate child pornography as his hobby.

CONCLUSION

Child pornography is a social toxin which represents a permanent record of child abuse, pure and simple. While the defendant herein was not engaged in the producing or marketing of child pornography, he was making it available to others whose interests, he thought, were like his. Without customers like Johnson, child pornographers would have no business to engage in.

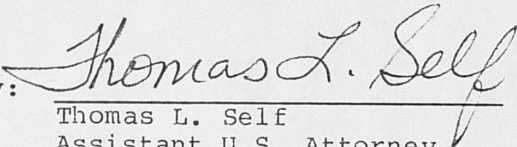
The government urges the Court to treat this case as the important case it is, from a deterrent as well as a punishment point of view. The materials which are the subject of the

charge pled to are, literally, a permanent record of child molestation by others for profit. The message needs to go out that this society will no longer tolerate the exploitation of our adolescents and children for monetary gain or personal gratification and that it will protect the right of parents to raise youngsters without the fear of this sort of exploitation.

The government asks that the defendant be treated as a distributor of a social toxin and that other persons be put on notice that the distribution, trading, mailing or selling of such materials is done at the risk of federal prosecution with substantial penalties. The victims and society deserve no less.

Respectfully submitted,

LOUIS DEFALAISE
UNITED STATES ATTORNEY

By: 
Thomas L. Self
Assistant U.S. Attorney

CERTIFICATE

I hereby certify that a true copy of the foregoing Sentencing Memorandum was served by mailing a copy to the following:

Honorable Burl McCoy
McCoy, Baker, & Newcomer
134 N. Limestone St., Suite 100
Lexington, KY 40507

and hand-delivering a copy to:

Honorable Bernard Pafunda
P.O. Box 1199
Pikeville, KY 41501

on this the 29th day of July, 1985.

Thomas L. Self

Thomas L. Self
Assistant U.S. Attorney
P.O. Box 1490
Lexington, KY 40591
(606) 233-2661

October 9, 1985

Honorable G. Wix Unthank
United States District Court
Eastern District of Kentucky
Pikeville, Kentucky 41501

RE: JOHNSON, Charles Frank
Reg. No. 01846-032
Docket No. 85-11

Dear Judge Unthank:

We are enclosing two copies of the Classification Study prepared by our staff at the Federal Correctional Institution, Butner, North Carolina on Charles Frank Johnson. He was sentenced on August 1, 1985 to a period of study and observation pursuant to the provisions of Title 18, United States Code, Section 4205(c) for Knowingly Mailing and Causing to be Mailed via United States Postal Service, Unmailable Material Involving Sexual Exploitation of Minors. Mr. Johnson is now ready to return to court for final sentencing. The issues of concern to the court are addressed in the Staff Summary section of this report.

Mr. Johnson is physically healthy, of average intelligence showing no evidence of major mental illness. He is diagnosed as having Adult Antisocial Behavior and a Psychosexual Disorder. He is viewed as being moderately depressed and is only beginning to acknowledge the negative impact his behavior is having on his life. There is no indication at this time that he presents a threat to the safety of others. He could benefit from an extended program of psychotherapy on an outpatient basis either as a condition of probation or while confined in an institution.

We appreciate the opportunity to assist the court in this matter. If we may be of further assistance or provide additional information, please do not hesitate to contact us.

Sincerely,

G. R. McCune
Regional Director

Enclosures
cc: Charles S. Webb, Chief U.S. Probation Officer
W/Attachments

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS
FCI-Butner, N.C.

STAFF SUMMARY
CLASSIFICATION STUDY

Name: JOHNSON, Charles Frank Register Number: 01846-032

Date: 09-27-85

CURRENT OFFENSE AND PRIOR RECORD: Mr. Johnson was admitted to the Mental Health Division of FCI-Butner, North Carolina on 08-05-85 for a period of study and observation. Mr. Johnson pled guilty to Knowingly Mailing and Causing to be Mailed via the United States Postal Service, Unmailable Material Involving Sexual Exploitation of Minors. While he admits his guilt, Mr. Johnson states that he did not realize the extent of his criminal behavior and does not view himself as harming anyone. He expresses no remorse for the offense, but is sorry for the effect it has had on his family and himself. He appears to have a clear ability to recognize right from wrong. Mr. Johnson has no prior criminal history.

CAUSAL FACTORS: Mr. Johnson was raised in a middle class family situation. He resided in his parents' home with two younger brothers throughout his youth, with the exception of a period of time in which he lived with his grandmother due to marital problems of his parents. As a young child Mr. Johnson was exposed to pornographic magazines. While living with his grandparents, Mr. Johnson states he shared a bedroom with a teenaged uncle. The uncle and a male cousin showed him how to masturbate and talked him into engaging in oral and anal sex. Mr. Johnson never spoke with anyone about these sexual interactions until his arrest, but claims they caused him to question his own sexual preference as a teenager.

Mr. Johnson was married in 1972 and has two children. As a consequence of the instant offense and the revelation of his preoccupation with pornography, Mr. Johnson and his wife have divorced. Apparently, his involvement in the instant offense may be at least partly the result of his sexual experiences as a child and his continuing self doubt of his own sexuality.

ASSETS AND LIABILITIES: Mr. Johnson is a physically healthy male of average intelligence. There is no evidence of physical disabilities which would have a direct effect on Mr. Johnson's involvement in the instant offense.

Clinical evaluation and psychological testing reveal Mr. Johnson to be functioning without any major psychiatric problems. He is viewed as having a type of psychosexual disorder. It is our opinion that he could benefit from required psychotherapy on a regular basis. This could be conducted in the community or within an institutional setting. The degree of success with psychotherapy would depend on Mr. Johnson's motivation and willingness to confront the past events in his life and to review in detail his current problems. Due to his current state of depression, he should be monitored for an increase in depressive symptoms.

We do not view Mr. Johnson as a direct threat or danger in the community. It appears that the publicity of his crime, his family support and regular therapy would all serve as deterrents to similar behavior in the future.

RESOURCES: Based on available information Mr. Johnson's resources appear to be adequate. He has the support of his parents and siblings, and from all indications can resume employment with his father. He does have some financial problems and will

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS

Page 2 of 2

FCI-Butner, N.C.

STAFF SUMMARY
CLASSIFICATION STUDY

Name: JOHNSON, Charles Frank

Register Number: 01846-032

Date: 09-27-85

have to adjust to his recent divorce. Psychotherapy on an outpatient basis could be administered in the community should he be given a term of probation. If sentenced to a term of confinement he would benefit from regular psychotherapy as provided by any facility within the Bureau of Prisons.

Ruth Yancey
Ruth Yancey, Case Manager
Mental Health Division

Reviewed by: W.S. Willingham
W. S. Willingham, Unit Manager
Mental Health Division
FCI-Butner, North Carolina

/dw

FORENSIC EVALUATION

NAME: JOHNSON, Charles Frank
REGISTER NUMBER: 01846-032
DOCKET NUMBER: 85-11
DATE OF BIRTH: 06-13-52
DATE OF REPORT: 09-27-85

REFERRAL INFORMATION: Mr. Charles Frank Johnson is a 33-year old, White, divorced male, who was admitted to the Mental Health Division of the Federal Correctional Institution in Butner, North Carolina on 08-05-85. The purpose of this placement was to undergo a psychiatric evaluation pursuant to the provisions of Title 18, U.S. Code, Section 4205(d). On 08-01-85, Mr. Johnson appeared in the U.S. District Court for the Eastern District of Kentucky and was sentenced to a term of 10 years for the purposes of undergoing a study as described above. He voluntarily surrendered to the U.S. Marshals and was subsequently transported to this facility. Mr. Johnson pled guilty to Knowingly Mailing and Causing to be Mailed via the U.S. Postal Service, Unmailable Material Involving Sexual Exploitation of Minors, in violation of Title 18, Section 2252 of the U.S. Code.

The court requested that in addition to the standard evaluation which should be conducted in part by a psychiatrist, that the report address the following issues: whether Mr. Johnson possesses an emotional disorder which would related to the offense behavior; is he a threat or danger to the community; and does he possess any physical or mental disabilities.

During the evaluation period which lasted from the date of admission until the time of this dictation, Mr. Johnson was seen regularly by Dr. Sally Johnson, Director of Forensic Services and Clinical Research, and Mr. Christopher Clougherty, Psychology Intern. He was also seen by other members of the Mental Health Team assigned to his case and was observed on the unit by many members of the Mental Health staff, including our Correctional Officers. The observations and comments of various Mental Health staff were considered prior to this dictation.

Collateral information available for our review included a copy of the letter dated 08-02-85 from Patricia J. Meridith, U.S. Probation Officer from the Eastern District of Kentucky to Mr. Edward Miller, Community Programs Manager (this outlined specific questions of the court); a copy of the Presentence Investigation prepared by Patricia J. Meridith dated 08-05-85; and copies of the reports prepared by Bill L. Jett, Licensed Social Worker in Lexington, Kentucky, John P. Magregor, Ph.D., Licensed Psychologist in Winchester, Kentucky, and Dr. Frank R. Bowers, M.D., a Psychiatrist in Lexington, Kentucky. The latter information included a progress note dated 07-18-85 prepared by Dr. Bowers and a copy of the scoring of the Minnesota Multiphasic Personality Inventory completed by Mr. Johnson prior to this admission.

In addition to the clinical interviews conducted primarily by Dr. Johnson and Mr. Clougherty, Mr. Johnson also completed the following psychological tests, administered by Mr. Clougherty:

Minnesota Multiphasic Personality Inventory (08-07-85);
Millon Clinical Multiaxial Inventory (08-09-85);
Rorschach's Projective Technique (08-10-85);
Wechsler Adult Intelligence Scale - Revised (08-10-85);
Bender-Gestalt Test (09-25-85).

The results of the psychological testing will be summarized in detail later in this report.

The background information outlined below is a composite of that obtained directly from Mr. Johnson and from the collateral information outlined above. Mr. Johnson was viewed to be a fairly reliable historian, although some conflicting information was obtained directly from him as compared to the collateral information.

FINDINGS:

BACKGROUND INFORMATION: Mr. Charles Frank Johnson was born 06-13-52 in Pikeville, Kentucky to B. J. and Betty Johnson. He is the oldest of three sons born to his parents and his brothers are aged 29 and 24.

Mr. Johnson's father worked in the coal business and more recently has been involved with him in running a clothing store. His mother is primarily a housewife.

Mr. Johnson does not provide a significant amount of detail about his early life. He references some marital difficulty between his parents and during that time he lived with his grandmother. Apparently his grandmother had married for a second time and he states that his grandfather had a number of pornographic magazines to which he had access. Allegedly, while staying with his grandmother, he became sexually involved with a teenage cousin and a teenage uncle. He admits to being involved in both oral and anal sex, stating that to some degree it was in response to his relatives' encouragement and he was "paid" for his actions with things such as baseballs. He does not describe the experiences as particularly negative and states he felt it was not outside of the norm at the time it was occurring. Later he references that he began to wonder if he was homosexual and feels that he may have overly involved himself in traditional male activities such as sports in order to prove to himself that he was not homosexual. He states that he concluded fairly early on that he was not homosexual and clearly views himself as heterosexual at present. He describes some sexual experiences with girls throughout his adolescence, but has not provided any significant details. He states that until the time of his current arrest he did not discuss his sexual interactions with anyone. He states that at present his family, previous evaluators and his attorneys are aware of his sexual experiences, but his family is not fully aware of the identity of the people with whom he was involved.

Mr. Johnson feels that he was encouraged to set goals too high while growing up. He graduated from high school after receiving a number of letters in various sports. He entered college at Eastern Kentucky University, Richmond, Kentucky in 1970, graduating with a Bachelor of Arts Degree in Business (1975). Mr. Johnson worked in a bank for about three years as a teller, then became involved in the coal business in one capacity or another for several years. In 1980 he began selling clothing and the business progressed to the point where he opened a store with his father. At the time of his arrest Mr. Johnson was working at that job but states the business was not going well and he was having significant financial problems.

Mr. Johnson has no military history.

Mr. Johnson is recently divorced. The divorce apparently became final during this evaluation period. He married Robbie Newsom in 1978. Two children were born to their union, Ian, age six and Benjamin, age four. The children are in the custody of

their mother at this time. Apparently Mr. Johnson's exwife is living with her parents in Pikeville. Mr. Johnson states that his exwife is a psychiatric nurse and also teaches nursing.

Mr. Johnson indicates that although the major strain on his marital relationship was his current legal situation, marital problems existed prior to that time. He indicates they experienced significant financial problems, although his wife was not fully aware of them. He felt pressured to succeed. He admitted to borrowing about \$10,000.00 over the last several years without telling his wife and states he will assume the burden for that debt. He denies that either he or his wife were involved in other relationships. He had a vasectomy after the birth of their second child. Approximately one month later he developed a herpes infection and has some concern as to the future significance of that problem.

Mr. Johnson apparently has no previous criminal record. Prior to the current charges, he had no history of seeking psychiatric counseling or treatment. Following his arrest in early June of this year, Mr. Johnson underwent a forensic evaluation with Bill Jett, Licensed Clinical Social Worker in Lexington, Kentucky. The evaluation included a psychiatric and psychological consult. The reports from those evaluations were available to us prior to this dictation. Overall, that evaluation is consistent with what we have observed during this evaluation period.

In regard to his charged offense, Mr. Johnson admitted to having magazines and video tapes depicting sexual behavior of adults and children. Initially, he said he acquired the tapes and magazines depicting children in sexual acts because of the curiosity he retained about his own earlier sexual experiences. Later he denied paying any special attention to those particular tapes or magazines and denied that he became sexually aroused as a result of viewing the pornographic material involving children. His explanations of his motivation for this behavior is somewhat vague and in all likelihood is not complete. His first exposure to pornographic material was at the age of eight or nine and his interest in pornography continued and increased as he got older. He denies that his exwife was aware of his collection of video tapes and magazines, indicating that he kept them in the trunk of his car. He also describes viewing them when his wife and children were not at home. He admits that he would have been embarrassed had his wife found him watching them or masturbating while watching them. He admits knowing there was something illegal about his actions, but denies knowing the extent of legal problems in which he could become involved. Mr. Johnson describes frequently watching sections of all the tapes but he would not spend more than one hour viewing the tapes in one day. He does view himself as exercising poor judgment in sending the magazines and tapes through the mail. He describes himself as being "addicted" to the pornographic material and admits being very possessive of his collection. He reports an increased interest in pornography over the years and the variety of tapes he has acquired expanded as he got older. He denies ever fantasizing about sexual interactions with children. He described himself as primarily interested in viewing women on the tapes, and stated he was sexually aroused by any female who showed physical development. Apparently this included some children but no prepubital children. He references convincing his exwife to make a video tape of the two of them. He expresses concern that the police have this tape and have not returned it or destroyed it at this point in time. (It should be noted that he considers the police having this tape as a primary reason for the dissolution of his marriage.) Mr. Johnson expresses his belief that as the result of the trauma of his current legal problems, he feels he could avoid attempting to acquire or view pornographic video tapes in the future.

Mr. Johnson describes that his parents have provided significant support since his arrest. He is frustrated and disappointed about what he views as a lack of support from his exwife. He expresses specific concern about her limiting his interaction with his children in the future. Still he generally expresses a belief that he could be reintegrated back into the community because of the degree of support that exists for him there.

COURSE IN INSTITUTION: Following admission to this facility on 08-05-85, Mr. Johnson underwent a routine physical exam and laboratory studies. Medical history was positive for smoking two packs of cigarettes a day for 15 years, social use of alcohol, the usual childhood illnesses, an appendectomy at age nine, and a previous diagnosis of genital herpes. He admitted having several episodes of sleep walking in the distant past. He wears glasses and was noted to be right-handed. He denied any known allergies. At the time of admission Mr. Johnson was taking Serax to assist him in sleeping. Physical exam conducted on 08-14-85 showed him to be 71 3/4 inches tall and weigh 172 pounds. His vital signs were within normal limits, with blood pressure of 112/70. He was found to be a healthy male with mild scoliosis to the left and a sprained left ankle which appeared to be healing well. Laboratory studies including chemistry profile, complete blood count, thyroid studies, urinalysis, audiogram, chest x-ray, and screening for tuberculosis were completed. All of the results were either negative or within normal limits. On 09-03-85 he was evaluated after a baseball injury. It was noted he had an abrasion to his right elbow, but no other injury was noted. On 08-09-85 he had been evaluated for further injury to his left ankle. At that time the ankle was wrapped in an ace bandage and ice was applied.

Mr. Johnson's Serax was discontinued upon admission. Subsequently, he was prescribed Dalmane on several occasions to assist his sleep. This was discontinued later in September when he felt he was sleeping better without the medication. No other psychotropic medication was prescribed.

Shortly after admission Mr. Johnson was released to the open population and has functioned there without any disciplinary problems. He was cooperative with the evaluation and was on time for his appointments. He appeared to get along well with the other patients/inmates on the unit. He spent time involved in sports activities including tennis and baseball.

Mr. Johnson expressed his understanding that the Judge had sent him here for psychiatric evaluation and he felt the Judge's primary concern was to receive feedback as to whether he should be viewed as a threat to the community. Mr. Johnson expressed his own view that he was not a threat to anyone. He viewed his behavior as a private situation. He did not view himself as harming anyone else and did not express any particular feelings concerning the children who may have been involved in the tapes. Overtly, he expressed his view that his sexual interests were within the normal realm. He admitted that his sexual relationship with his wife had deteriorated due a number of factors. He mentioned fatigue and financial stress as two primary problems. Late in the interview he described a problem with delayed ejaculation when sexually active with his wife and stated his wife became tired and frustrated with the situation. He admitted to being able to ejaculate much more quickly when he masturbated while watching pornographic tapes than when he was sexually active with his wife.

Mental status examination remained fairly consistent throughout the evaluation period. Mr. Johnson appeared as a well groomed, White male, who was oriented to

person, place, time and situation. His speech was coherent and relevant. No loosening of associations was noted. No hallucinatory experiences were expressed. No suicidal or homicidal ideation was evident. Mr. Johnson's mood appeared moderately anxious and depressed. On several occasions during the evaluation Mr. Johnson began to cry. He expressed anger and frustration about his situation and was upset over the dissolution of his marriage. He did not appear to be trying to conceal information, but at times appeared worried about the possible effect the evaluation reports might have on his future. Clinically, Mr. Johnson appeared to be of average intelligence. His general information was fair. Historically, it appeared that his judgment was not always good, but during day-to-day behavior in the unit he appeared to exercise fair judgment.

Mr. Johnson experienced some disturbance with sleep. He indicated a long history of chronic problems with insomnia, frequently awakening during the night. At those times he would smoke a cigarette and then return to sleep. His appetite appeared to be fair with no significant weight loss noted. As previously mentioned, he experienced some crying spells. He maintained contact with his parents and stated he wrote to his wife on several occasions. He was unable to obtain any contact with his children and this appeared to be upsetting for him.

Psychological testing was completed and was fairly consistent with clinical observation. The results are outlined below.

INTELLECTUAL/COGNITIVE FUNCTIONING: Mr. Johnson obtained a Verbal I.Q. of 96, a Performance I.Q. of 98, and a Full-Scale I.Q. of 91. This score places him in the Average to Low Average range of intellectual functioning. On this administration Mr. Johnson appeared very anxious. He seemed very tentative with resultant difficulty on verbal items and in some cases may not have answered the questions for full credit due to his anxiety. On the timed tasks his psychomotor speed seemed to slow appreciably.

On the Verbal subtests Mr. Johnson scored in the above average range for knowledge of cultural information, problem solving and judgment. His vocabulary, arithmetic computation and abstract reasoning were in the average range. Attention and concentration were in the below average range. The Performance subtests indicated an average range score in analysis of missing elements. Below average scores were found in logical sequencing involving social situations, psychomotor speed involving a copying task, and in analysis and synthesis of part/whole relationships. Of note is the eight point discrepancy between verbal and performance skills. It is the opinion of the examiner that the differences in scores may most likely be attributable to anxiety and depression evident in Mr. Johnson during the evaluation. The Bender-Gestalt did not reveal any particular difficulties with visual-motor impairment or show any signs of organicity.

PERSONALITY ASSESSMENT: Mr. Johnson completed the MMPI in what seems to be a very defensive manner. Individuals with a profile similar to Mr. Johnson's are often attempting to present themselves in the best possible light. Moreover, these individuals see the world very simplistically as either good or bad. Although this profile indicates a defensive posture on Mr. Johnson's part, the examiner feels the MMPI is essentially valid. Individuals with this profile appear mildly depressed, insecure and worry a lot. Their self confidence is low and they perceive their world in an immature fashion. Often these individuals are narcissistic and self-indulgent, with little insight into their behavior. They depend on others for attention and sympathy, yet they resent demands being placed on them. They have great difficulty

incorporating the values and standards of society into their own belief system and exhibit poor interpersonal skills. They are suspicious of others' motivations and will avoid deep emotional involvement due to a fear of rejection. These individuals may be especially uncomfortable around members of the opposite sex and have a great deal of repressed hostility and anger toward their parents for their difficulties. They will deny serious psychological problems and will rationalize and externalize blame for their behavior. It appears from clinical interview and other test data that Mr. Johnson does possess these characteristics.

Mr. Johnson's Millon yielded an essentially valid profile. Individuals with this profile typically show evidence of significant personality dysfunction. Their responses to the items often indicate a wish fulfillment and not reality. In other words, Mr. Johnson has responded to the items as he wishes things to be, not as they really are. It is also possible that he was attempting to present himself in the best possible light for fear of what the examiner might uncover about his personality. Mr. Johnson's profile reveals that his behavior appears to be guided by a fear of public humiliation and a need to be rigid and over compliant to social conventions, values and beliefs. Individuals with this profile often seek out people with authority, power, and control, and in order to avoid condemnation from them, they maintain an image of subservience and dependency by acting weak, overly respectful and ingratiating. This style of interaction belies a great deal of hostility and rebelliousness in the individual toward authority figures. By following the rules and guidelines of people in authority, they hope to avoid their intense feelings of rage and rebelliousness. Because of their feelings of insecurity, inferiority and lack of self-confidence, they fear that any assertiveness on their part would endanger the acceptance by others that they so desperately seek.

Projective testing using the Rorschach Projective Technique indicated that Mr. Johnson relies on his inner resources and imagination to deal with his needs. In other words, he processes feedback internally, rather than involving others or external forces or information in his problem solving approaches. Unfortunately, it appears that Mr. Johnson is often unable to cope sufficiently because of a lack of psychological mindedness, affective interference (particularly of anger), a negative self evaluation, and confusion in organizing his thinking when under stress. Because of his reliance on his own resources, he often experiences great difficulty in reaching out for help when in distress. Mr. Johnson displays an intense self focus that tends to be very negative, particularly in areas of anger and hostility. He may, at times, be unable to empathize with others or to comprehend the rationale for social conventions. It was also apparent on this administration that Mr. Johnson possibly has some continuing confusion over his sexual identity.

Mr. Johnson does not feel confident about his coping skills and ability to relate to others. This results in anxiety, little investment in interpersonal relationships and increasingly negative self evaluations.

Mr. Johnson is generally able to efficiently organize his perceptions, indicating no problems with reality testing. However, there does exist the possibility that he could act out impulsively. Mr. Johnson's significant defensiveness, negative self evaluation, confusion over his sexual identity, immature psychosexual development, egocentric and negative self focus, and apparent inability to reach out to others for help when under stress, all indicate this. Unfortunately, it is difficult to determine what form the acting out behavior might take.

IMPRESSIONS: Diagnostically, according to DSM III, we view Mr. Johnson as follows:

- Axis I: 1) Adult Antisocial Behavior, Code V71.01
2) Marital Problems, Code V61.10
3) Psychosexual Disorder, not elsewhere classified, Code 302.89

Axis II: No Diagnosis

Axis III: No significant medical problems at present.

At this point in time it appears that Mr. Johnson's legal, marital and psychosexual problems are all intertwined. He gives a history of sexual involvement and possibly abuse as a child by teenage relatives. The impact of those experiences are not entirely clear. It is quite possible that despite Mr. Johnson's perception that he tolerated these experiences well, and actually found them pleasurable, they may have had a significant impact on his psychosexual development. His marital situation, although on the surface appearing quite typical, was troubled by several problems. Nonetheless, it is quite likely that the recent divorce was, to a great part, related to his current legal problems and it is quite possible that without the surfacing of this problem at this time, his marriage would have continued for the foreseeable future.

The evaluation indicates that Mr. Johnson is only beginning to obtain some insight into the abnormal aspects of his behavior. He appears moderately anxious and depressed at present and yet for part of the evaluation period, tended to minimize the severity of his problems. Recently it appears that he is being forced to come to grips with the major impact this behavior has had on his life. He still expresses the feeling of being "trapped" in the situation, but is beginning to realize he was utilizing poor judgment during the course of his involvement with the pornographic material.

Testing information indicates Mr. Johnson has difficulty coping with stress, controlling his impulses at times, and may entertain sexual fantasies to which he has not admitted.

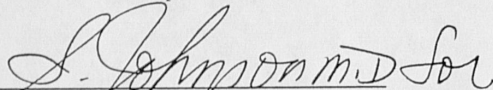
In response to specific questions of the court the following information is provided.

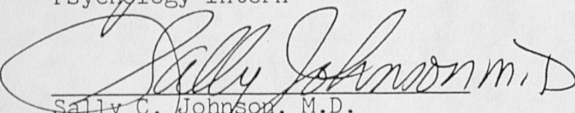
Mr. Johnson does not possess a major psychiatric diagnosis. There is no evidence historically or on clinical evaluation and testing that would support the presence of a psychotic disorder, major affective disorder, or any type of organic brain disorder. It is evident that Mr. Johnson shows some degree of immaturity in his psychosexual development. He admits to sexual involvement with two older teenage male relatives while growing up. The exact role these childhood sexual experiences have played in his current behavior is not clear. It is possible that his interest in child pornography had some roots in his curiosity about his own experiences. It may also be in part motivated by an increasing interest in all types of pornography. Mr. Johnson has experienced some sexual problems such as delayed ejaculation. In all likelihood, many of his situational problems such as his marital, financial, and other interpersonal problems may all have created a significant amount of stress in his life. It appears he found some type of an outlet in collecting and viewing the pornographic materials. It appears that he maintained an awareness of the lack of acceptance of this behavior in the community and to some degree, the criminal nature of the behavior. He kept the activity from his family's awareness, obtained a separate mail box, and used an altered name to receive the materials.

It is not our impression that at this point in time Mr. Johnson presents a direct threat or danger to his community. We have no information to support that he has ever been sexually involved with children or at present has any intention of attempting to do so. He has not been involved in other criminal behavior. Although he does not possess a great degree of insight into his situation at this time, he appears amenable to being involved in treatment. The fact that his behavior has now become public knowledge to the community may also act as a strong deterrent against future problems in this area.

Mr. Johnson does not currently possess any significant physical disabilities. He is of average intelligence and shows no major psychiatric disorder.

In regard to the issue of treatment, it is our impression that Mr. Johnson may well benefit by an extended course of psychotherapy. Although at some point group psychotherapy may be beneficial, at present he would need to work through a number of issues individually. It is not our impression that he would require inpatient psychiatric hospitalization, although it would be to his benefit to be required to attend his outpatient sessions. The latter would help discourage him from rationalizing his behavior to the degree that he felt that he did not have any problem in the near future. Ongoing psychotherapy would undoubtedly be helpful to him in dealing with his recent divorce, reestablishing relationships with his children and in dealing with the problems he will face when he returns to the community. As previously noted, he is viewed as being moderately depressed. Whether or not he will require antidepressant medication will be best decided following resolution of his legal situation and reassessment of his level of depression at that time. It appears that he has enough support in the community to enable him to function on probation if that should be determined by the court.


Christopher H. Clougherty, M.A.
Psychology Intern


Sally C. Johnson, M.D.
Director of Forensic Services and
Clinical Research
Mental Health Division
FCI-Butner, North Carolina

/dw

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PROBATION OFFICE

CHARLES S. WEBB
CHIEF PROBATION OFFICER

P. O. BOX 201
333 U. S. COURTHOUSE
LEXINGTON 40584
606-233-2646
FTS: 355-2646

Pikeville, Kentucky 41501
July 31, 1986

GARY M. DAVIS
PROBATION OFFICER

P. O. BOX 10
119 FEDERAL BUILDING
PIKEVILLE 41501
606-437-6320

Hon. G. Wix Unthank, Judge
United States District Court
Post Office Box 278
Pikeville, Kentucky 41501

Re: Johnson, Charles Frank
Probationer
Pikeville Dkt. No. 85-11-1

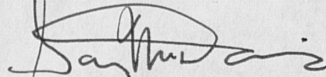
Dear Judge Unthank:

Charles Frank Johnson, probationer, has been under supervision of this office pursuant to your Order of October 24, 1985.

As a special condition of Mr. Johnson's probation requiring mental health aftercare, he has received counseling at the Mountain Comprehensive Care Center, Prestonsburg, Kentucky. On July 24, 1986, Mary Jane Goff, Mr. Johnson's Case Worker, wrote us a letter indicating that, in her opinion, Mr. Johnson is not an appropriate subject for further psychiatric treatment at this time. I am enclosing a copy of Ms. Goff's letter for your review.

Based upon Ms. Goff's recommendation, I am going to drop the requirement that Mr. Johnson is to receive mental health aftercare. I hope this will meet with the Court's approval. Please let me know if you have any question regarding this.

Respectfully,



Gary M. Davis
U. S. Probation Officer

GMD:icr

cc: CUSPO Charles S. Webb
Lexington, Kentucky

Enclosure

Mountain Comprehensive Care Center

18 South Front Avenue
Prestonsburg, Kentucky 41653

(606) 886-8572

July 24, 1986

Mr. Gary M. Davis
P.O. Box 10
119 Federal Building
Pikeville, KY 41501

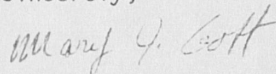
Dear Mr. Davis:

After having seen Mr. Frank Johnson over a period of several months and after reviewing several psychiatric and psychological evaluations done by a private psychiatrist, a Ph.D. psychologist, a Licensed Clinical Social Worker, and professionals within the Federal Penal System, it is my opinion that Mr. Johnson is not an appropriate subject for further psychiatric treatment at this time.

I have discussed this with Mr. Johnson, and he feels that he does not need further treatment and that he has good control of his life at the present time. Therefore, his chart will be terminated with the understanding that he can return for treatment any time he feels he needs to do so.

If our agency may be of further service, please feel free to contact us.

Sincerely,



Mary Jane Goff, MSW

MJG:rm