

# The Julie Amero Tragedy

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Along with many others, I have been riveted by the Julie Amero tragedy. I have worked for over a decade on issues of youth risk online and effective Internet use management in schools. Therefore, I feel qualified to evaluate and comment on this case.

I will state unequivocally that, based on this review, I firmly believe that Amero was not only innocent, but that under very difficult circumstances, she demonstrated that she was totally dedicated to seeking to prevent students from viewing inappropriate material. Essentially, it appears that Amero was convicted for doing exactly what she was told by the school. She was specifically told not to turn off the computer. She didn't. She used other methods to protect the students. There is compelling evidence that the actions she took were as effective as could be expected under the circumstances and that the students were not harmed.

## Summary

A comprehensive review of the materials in this case, reveals the following:<sup>1</sup>

- The situation described by Amero is consistent with what is called a “porn trap” or “mouse trap.” When this occurs, the browser is no longer under the control of the user and porn images will simply keep popping up until the computer is turned off.
- Amero had been specifically told not to turn off the computer and probably did not know how. So she turned the computer so that students could not see the images. She could not lock the door when she left the room to get help because she did not have a key.
- Amero went to get help at a break and described the pop-up situation. People who are intentionally accessing inappropriate material do not try to get help. She told the assistant principal after school and described the situation to the principal, Scott Fain, the following day. The school reported the incident to the police just over a week later. Fain did not tell the investigating officer what he knew of Amero's activities on that day or her report to him the following day. He withheld information that would have allowed the officer to determine that Amero's access was not intentional.
- The computer had inadequate security and the browser would not block pop-ups. The district's content filter license had lapsed due to lack of payment. The technology

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<sup>1</sup> In drafting this document I have relied on the police report and information that has been revealed about the case through news articles, with a specific focus on the news articles in the Norwich Bulletin. I also have had some information provided to me by individuals who I perceive are credible regarding testimony in the case. If I did not perceive these individuals to be totally credible and the information accurate, I would not have included it. Eventually, I believe the transcript will be available online.

director, Hartz, did not evaluate whether any malware was on the computer or the pattern of sites that appeared in the history log to determine whether the access was intentional or accidental. Hartz also did not tell the investigating officer that the content filter license had lapsed.

- The police computer crimes expert also did not determine whether there was any malware on the computer. He also testified in court that Amero had to intentionally access the sites for them to appear on the logs. This is totally inaccurate.
- Amero's response to this situation was far from reckless. Of the approximately 60 students who were in the classroom only 10 saw anything. Of those, 6 specifically stated that they tried to look at the computer after being told of the situation by another student. Many students reported that Amero took specific efforts to block their view when she became aware that they were trying to see.
- The situation did not impair the morals of the students. Eight students reported seeing mild erotica. The two students who reported seeing people engaged in sex also reported that there were a bunch of little pictures on the screen. One was a distance from the screen and the other reported that the teacher did not notice him, so he must not have been very close.
- A recent study found that 42% of young people between the ages of 10 and 17 have viewed online pornography, one-third intentionally, two-thirds accidentally. Nine percent of these incidents reportedly occurred at school. There is no research evidence regarding the impact of such viewing.

### **Key Point**

The following point must be made absolutely clear to all school administrators and police officers: There are various forms of "malware" (malicious software) or web site with "porn traps" or "mouse traps" (a web site feature which causes other pornographic sites to pop-up when the user tries to exit and essentially take over control of the browser). Malware and porn traps are lurking on the Internet just waiting for someone – adult or child – to make a mistake that will result in the display of objectionable material.

Because of the presence of this malware and porn traps, there are three essential strategies that **MUST** be followed by schools (and by parents) to address the high likelihood of accidental access:

- **Technical security.** Computers need effective firewalls, security software to protect against all forms of malware, and a browser that limits pop-ups. Filtering software can provide some protection (while presenting other concerns). But it is likely less effective against the malware and porn traps because these devices will frequently lead to access to sites with URLs that have not yet been found by the filtering company. Peer-to-peer networking software should never be installed on any computer that a child has access to because this can be a source of pornography and malware. It is critically important that everyone understands that none of these technologies will provide 100% protection.
- **Education.** All Internet users – adults and children – must understand how to avoid accidental access and exactly what to do if they get "porn trapped." Unfortunately, the

false security that is grounded in reliance on fallible filtering software has resulted in a failure to teach these strategies.

- Appropriate investigation. Everyone – adult or child – who is accused of intentionally accessing such material deserves the presumption of innocence because accidental access is clearly highly possible. The determination of whether such access was accidental or intentional must involve a full analysis of the situation, especially what the individual was doing before the incident and how that person responded, as well as an analysis of the computer itself to determine the presence of malware and a review of the logs to determine whether the pattern of access appeared to be planned or was random.

In a nutshell, it is quite evident in the case of Julie Amero, that the district's technical security was woefully and sorely lacking, Amero had not been provided with appropriate instructions on use of the computer and actions to take if inappropriate materials appear on the screen and was doing exactly what she had been told to do, and the investigation was not only inadequate – it was thoroughly and unconscionably mishandled.

### **Concern of Teachers**

At any time, students could intentionally or accidentally access a site with pornography or a teacher may accidentally access a site with pornography when a student is present. The technology protections will fail. Despite the best efforts of teachers, some students will see inappropriate material in school -- guaranteed. Under the Amero precedent, any teacher who is responsible for the supervision of a student who views such material could be held criminally responsible.

### **Professional Background**

To buttress the credibility of the statements made in this document, I will provide an overview of my professional background. I have degrees in elementary and special education (B.S. 1975 U. of Utah and M.S. 1977 U. of Oregon) and taught "at risk" students. I graduated from Willamette University College of Law in 1982. After law school was a law clerk for a trial judge and then set up practice in the area of computer and technology law. I returned to the education field in 1990 to assist schools in integrating new technology. In 1995, I published *A Legal and Ethical Analysis of K-12 Internet Use Policies* online. This document was later published in the *BYU Education and Law Journal*. My work provided the basis for the Internet use policies for many school districts across the country.

My work since 1995 has been focused most specifically on issues pertaining to youth risk online and effective management of Internet in school. In 2000, I testified to the Children's Online Protection Act Commission on educational strategies to address youth access to pornography. Later that same year, I presented similar testimony to the National Academy of Sciences committee that produced the report, *Youth, Pornography and the Internet*. I was also an expert reviewer for that report.

In 2004, I self-published a book for schools entitled *Safe and Responsible Use of the Internet: A Guide for Educators*. This material is now available on my web site. In 2006, I self-published a book entitled *Cyberbullying and Cyberthreats: Responding to the Challenge of Online Social Cruelty, Threats, and Distress*. The new edition of this book (with a slight change in title) was published by Research Press in January 2007. This book contains a chapter on effective

Internet use management in schools. Also in January 2007, I presented to the National School Board Association Leadership Council on these concerns.

My other new book, *Cyber-Safe Kids, Cyber-Savvy Teens: Helping Young People Learn to Use the Internet Safely and Responsibly*, will be published in mid-March 2007. The Honorable Dick Thornburgh, Former U.S. Attorney General who was also chair of the National Academy of Sciences Committee that produced *Youth Pornography and the Internet* has provided the following endorsement for this book:

“Willard blends the perspectives of a wise parent and a serious scholar about issues related to Internet behavior and safety. . . . Pick up the book, open to any random page, and you will find on that page or nearby a wealth of helpful advice and useful commentary on the cyberreality facing our children and on how to deal with any of the issues she’s identified.”

Further, I am a mother of three children – a son age 15, a daughter age 13, and a son age 11.

In sum, I have background in education and law, extensive involvement in effective Internet use management in schools, and a strong dedication to the well-being of children and teens online. Therefore, I feel highly qualified to issue an opinion on this case.

### **Legal Issues**

Amero was charged with four counts of Risk of Injury to a Minor, in violation of Connecticut General Statute 53-21a-1. I do not know the specific instructions provided to the jury, but the standard jury instructions for this statute are available online.<sup>2</sup>

Editing slightly from this page to fit the circumstances of this case, it is likely that the instruction provided to the jury were something like this:<sup>3</sup>

The defendant is charged with a violation of § 53-21 (a)(1) of the Penal Code, which, insofar as it pertains to this case, provides as follows: "Any person who . . . willfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that the morals of such child are likely to be impaired . . . shall be" punished. The intent of the statute is to protect the morals and well-being of children.

To find the defendant guilty of willfully or unlawfully causing or permitting any child under sixteen years to be placed in such a situation that the morals of such child are likely to be impaired, the state must prove the following elements beyond a reasonable doubt: (1) that at the time of the incident, the alleged victim was under the age of sixteen years; and (2) that the defendant willfully or unlawfully caused or permitted the victim to be placed in a situation that endangered the child's life or limb, or was likely to impair his morals.

The conduct to be punished must involve a child under the age of sixteen years. The statute also requires willfulness or unlawfulness in causing or permitting the child to be placed in a situation that his morals are likely to be impaired. This is the conduct of a

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<sup>2</sup> <http://www.jud.ct.gov/CriminalJury/7-9.html>.

<sup>3</sup> I also fixed the misspelling of the word “willful.”

person that is deliberately indifferent to, acquiesces in, or creates a situation inimical to the child's moral or physical welfare.

"Willfully" means intentionally or deliberately. "Unlawfully" means without legal right or justification. Causing or permitting a situation to arise within the meaning of this statute requires conduct on the part of the defendant that brings about or permits that situation to arise when the defendant had such control or right of control over the child that the defendant might have reasonably prevented it. Under this provision, the state must prove that the child's morals were likely to be impaired. "Likely" means in all probability or probably. As used here, "morals" means good morals, living, acting and thinking in accordance with those principles and precepts that are commonly accepted among us as right and decent.

### **Versions of the Incident**

I thought it would be helpful to outline the various perspectives of this incident.

#### The Story according to the School District and the Prosecutor

On October 19, 2004, while substituting in a classroom in Kelly Middle School, Amero spent the entire day surfing the Internet looking at pornography sites. During the course of the day, students were exposed to this material. As a result of Amero's intentional and reckless actions, the morals of these children were impaired.

#### The Story According to Amero

When Amero arrived in the classroom, a teacher logged her into the computer. Amero left the room to use the restroom and when she returned, two students were using the teacher computer and she told them to get off. As the students were coming into the classroom, Amero noticed that pornographic images were appearing on the screen. She had been specifically told not to turn off the computer and did not know how.

She turned the screen so that students would not be able to see and, while the students were working, tried to get the images to go away. But whenever she closed a window, other opened. During the first period, there was a sign language assistant in the classroom. She tried to get this woman to watch over the class, so she could go and get help, but this woman refused.

At lunch, when she was finally able to leave the classroom, she ran to the teacher's lounge and requested help. She did not lock the door when she left because she did not have the key. She was told that pop-ups happen all the time and not to worry. She quickly returned to the classroom. No help arrived. She told the assistant principal about the problem after school and the principal the following day.

### **Why So Many People Are Angry or Concerned About this Conviction**

To say that many are outraged by this situation would be an understatement. It is important to determine what reported facts about this case are causing such outrage.

#### Defies Logic

On the face of this, the school officials and prosecution maintain that a 40-year-old female teacher spent the entire day surfing porn sites in a classroom filled with students. That a teacher would engage in this described activity defies all logic.

It is well-known, but not publicly discussed, that school districts do have problems with staff who intentionally access or attempt to access pornography. However, the individual involved is almost always male. Such intentional access or attempted access almost always occurs after school hours, or possible at lunch time, always behind a closed door, and never in front of students.

The penalties to a school staff member involved in such activity are significant. Loss of employment is a common result. If the individual is a teacher, there is a high risk of loss of teaching license. It is highly unlikely that a school staff member would intentionally engage in this activity in front of students, because the risks of detection would be extremely high, and the consequences significant.

### Porn Trap

Many people who are familiar with the Internet immediately recognize that what Amero reported was happening with the computer is exactly what occurs when malware or a porn trap has infected the computer. Based on this understanding, it is absolutely clear that emergence of pornographic material on the computer was not intentional.

### Common Occurrence

This situation Amero was facing is a very common experience for teachers and students in school. Accidental access to pornographic material happens. Interestingly, under Section 230 of the Computer Decency Act, educational institutions cannot be held civilly liable for any harm caused by material that comes through the Internet. So as we can't hold the school district financially liable, let's just arrest the teachers.

As well stated by Andy Carvin in his blog:<sup>4</sup>

Mainstream media has finally started covering the case of Julie Amero, the substitute teacher who was found guilty of child endangerment because her students saw a flood of adult-oriented pop-up ads flood her computer screen. And the news coverage is causing a lot of educators to say to themselves in horror: It could have been me.

(Note: There is an error in Carvin's blog. The students did not see a flood of adult-oriented pop-ups. Amero prevented this from happening. But based on the news coverage this is what many people think happened.)

### Computer Security Perspective

Computer security professionals have weighed in on this case. Unfortunately, the testimony of Amero's expert witness was not introduced because her defense attorney had failed to provide a copy of the expert report to the prosecutor. The expert has discussed his findings publicly.

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<sup>4</sup>[http://www.pbs.org/teachersource/learning.now/2007/02/the\\_julie\\_amero\\_in\\_all\\_of\\_us.html](http://www.pbs.org/teachersource/learning.now/2007/02/the_julie_amero_in_all_of_us.html).

Computer security professionals have been reviewing the testimony and comments made by the prosecutor's two technical witnesses – the police computer crimes officer and the district technology coordinator.

Several facts have been established (I am not a computer security expert, so I am trying to summarize in lay person's terms what has been ascertained):

- The computer used by Amero lacked effective security protection. Further, as evidence of how badly the district's Internet system was being maintained, the district's license for the content filter had lapsed due to failure to pay the license fee.
- There were various forms of malware on the computer.
- It appears that site that had been accessed by the students had a link that led to a "porn trap."
- The browser installed on the computer would not have prevented or limited these sites from popping up. Other browsers do a better job blocking such material.
- The pattern of how these sites appeared in the log provided no indication of intentional access and every indication that the browser had been "porn trapped."

But more evidence has emerged that has heightened the outrage among computer security professionals.

As reported in the Norwich Bulletin, under questioning from Amero's defense attorney, the computer crimes police officer, Lounsbury, admitted there was no search made for adware, which can generate pop-up advertisements.<sup>5</sup> This is evidence of a totally inadequate investigation.

Of greatest concern is the information reported another article:<sup>6</sup>

"On a projected image of the list of Web sites visited while Amero was working, Lounsbury pointed out several highlighted links. "You have to physically click on it to get to those sites," Smith said. "I think the evidence is overwhelming that she did intend to access those Web sites."

As I have already stated, I am not a computer security expert, but even I know this statement is inaccurate. All sites that are accessed either intentionally or because malware or a porn trap has caused them to be accessed will appear in the log.

Of further concern, comments made publicly by school officials are viewed as being totally inaccurate and, quite frankly, appear to be deceitful. For example, from a New York Times article:<sup>7</sup>

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<sup>5</sup><http://www.norwichbulletin.com/apps/pbcs.dll/article?AID=/20070105/NEWS01/701050311>

<sup>9</sup><http://www.norwichbulletin.com/apps/pbcs.dll/article?AID=/20070106/NEWS01/701060312/1002/NEWS17>

<sup>7</sup><http://www.nytimes.com/2007/02/14/nyregion/14teacher.html?ei=5090&en=9e18a05a5f2e2de3&ex=1329109200&adxnnl=1&partner=rssuserland&emc=rss&adxnnlx=1172071801-oxfF5RLebhkoqXWwYjA+cA&pagewanted=all>

In an interview, Pam Aubin, superintendent of the Norwich schools, said that Mr. Hartz had ordered an upgrade, but that the supplier had sent it to the wrong e-mail address, using "B" for Bob rather than "R" for Robert in Mr. Hartz's name.

The supplier would have had Mr. Hartz's correct email address in its directory customers and would have been using this address for all communications. If an email had bounced, which is unlikely, the supplier would have noticed and taken corrective action.

This from a Norwich Bulletin article on January 23, 2007:<sup>8</sup>

At Tuesday's school board meeting, Information Services Director Bob Hartz sought to calm the public furor over Julie Amero's Jan. 5 conviction for exposing Kelly Middle School students to sexually graphic Web sites in 2004.

Despite the Internet's 4.2 million pornography Web sites, according to familysafemedia.com, Hartz said Norwich's filtering software failed to stop school computer users from accessing inappropriate Web sites just six times since 1998.

"It's going to be impossible to block every objectionable Web site out there, but we do a pretty good job," Hartz said. "Since (Norwich switched to a new filtering system) in September of 2005, I haven't heard one report of a person getting to an inappropriate Web site."

The following is an analysis of this comment by two educational technology professionals:

From Joel VerDuin, Director, Information Services, Wausau School District, WI:

We are a school district of approximately 8600 students located in an urban area in north central Wisconsin. We have approximately 3800 computers, all of which must use our proxy server to access the Internet. The proxy server also acts as our web filter.

Our web filtering product will record all web access. The statistics provided by the product tells us which site attempts were blocked, but will not provide the opposite - which sites were accessed that SHOULD have been blocked.

When examining inappropriate use, we use the log files from the proxy server instead of summary statistics as the log file records all web access regardless of the appropriateness. On a usual day, this log file contains approximately 1.5 million entries for our 3800 computers.

In my experience, a filtering product is incapable of documenting pages that "slip through" as they do so due to the very nature of the reason the filter does not block them - it is simply not aware of the sites.

From Art Wolinski, Technology Director of the Online Internet Institute:

At best this is inaccurate. At worst it is intentionally misleading and irresponsible. Unless he was scanning and checking firewall logs regularly, he would have absolutely no idea

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<sup>8</sup> <http://www.norwichbulletin.com/apps/pbcs.dll/article?AID=200770123034>



how many times accidental access went unreported or how many times intentional access was made.

I used to periodically scan our firewall logs looking for "leaks", over blocking, and for intentional access. I would inevitably find all three anytime I scanned.

### **Why Didn't She Turn Off the Computer?**

People who still have questions about this incident generally ask one question: "Why didn't she turn off the computer?" Amero stated that she was specifically told not to turn off the computer and she did not know how. Amero has stated that she was a "computer neophyte" and there is no information to contradict this. Based on my experience working with schools I understand the common practices and based on my experience with "computer neophytes" I believe I have a pretty good understanding of how one might behave in similar circumstances.

Substitute teachers are almost always specifically told not to turn off the computer because they do not have a user account on the district system. Generally, another staff member must log the substitute teacher in. A substitute teacher must have access to the computer to record data such as student attendance.

Amero's actions in this case are very compatible with the actions taken by people who do not have much computer experience. Computer neophytes generally do not know specifically how to turn off a computer. (Actually, I am a Mac user. I do not know how to turn off a PC. I probably could figure this out, but only because I am an experienced computer user.) Neophytes frequently do not know the difference between a button on a monitor or a button on the computer itself. They certainly do not know how to force quit a browser. Most significantly, neophytes are very fearful that if they do something wrong, they will damage the computer or all of the data on that computer.

So, put yourself in Amero's situation: You notice pornographic images coming onto the computer screen at the same time students are coming into the classroom. You can't leave the classroom to get help until there is a break. You have been told not to turn the computer off and do not know how. You have no idea what is happening and the futility of trying to click the links off. You do not have anything that could be thrown over the computer, like a coat. What would you do?

Perhaps you would position the computer screen so the students could not see, block any student from looking at the screen if the student approached your desk, and try to get rid of the images.

This is exactly what Amero did. And this is what the prosecutor argued and the jury found met the standard of: "conduct of a person that is deliberately indifferent to, acquiesces in, or creates a situation inimical to the child's moral welfare."

### **Police Investigation**

I have reviewed a copy of the police investigation report. This report should contain the material that justifies the arrest. While the incident occurred on October 19, 2004, the investigation was not initiated until October 27. I was most interested in three questions:

- Was the investigation done in a comprehensive and effective manner?
- Did the information provided in the report support the perspective of the school district and police that Amero intentionally tried to access these sites?
- What actions, if any, appeared to create a situation of concern regarding the well-being of the students?

### Investigation at School

The police investigation at school is most noteworthy because of what was left out – interviews with staff members. The reason it is exceptionally important to interview staff is that if a staff member has had difficulties with a malware or porn trap incident, the staff member will almost certainly make a report of the incident. If the access was intentional, no report would be made.

When the officer interviewed Principal Fain at school on the day the investigation was initiated, October 27, Fain did not make any mention of what the staff understanding of the incident was, nor did the officer interview any school staff member other than Fain and Napp, the teacher for whom Amero was substituting.

(Please understand that I would not make the following statement if I did not thoroughly trust the credibility of the source.)

It is my understanding that Fain testified at trial that he had a meeting with Amero the day after the incident and that she had reported the problems with the pop-up pornography sites and the student access prior to class. He also reportedly testified that his assistant principal had also made him aware of the incident and there was an indication that he was aware that Amero had spoken with other staff members. Also at the trial, Merja Lehtinen, an ESL teacher, reportedly testified that Amero had run to the lunch room, was very upset about the situation of pornographic images that were popping up and her inability to get them to stop and that she requested help from the four staff members who were in the lunchroom.

This raises a very significant concern. Why did the principal not tell the investigating officer about Amero's communications with staff on the day of the incident and with him the following day? Why did he not tell the officer what Amero had told him about this incident? I believe that if he had told the officer, the officer would have interviewed the staff members (the fact that the officer did not do so is further evidence that he had not been told) and would have discovered the truth of this incident. And no arrest would have been made.

Let's be perfectly clear about this: The school district contacted the police alleging that Amero had committed a crime. If Principal Fain had knowledge of the event that he failed to share with the investigating officer – exculpatory information, information that provided strong reason to believe that Amero was not guilty of intentionally accessing these inappropriate sites and made best efforts to address the situation this is a very serious concern.

### Evaluation of the Computer

Whenever it appears that someone has accessed online pornography and faces a disciplinary consequence, it is essential that the investigation include a review of the files on the computer to determine whether any malware is present. The following process of evaluation was recommended by Joel VerDuin , Director, Information Services, Wausau School District, WI.

If a staff member has been suspected of this type of behavior, here are the general steps taken in my district.

1) The PC would be removed from the room. The hard drive would be imaged so that we are working off of a copy and do not harm the original during investigatory steps.

2) I would examine the machine for any evidence of "unusual" software - spyware, adware, ... These programs almost always leave signature traces in the registry, list of services or the start up menu. I'd run the browser and walk through some normal browsing activities. Spyware /Adware will usually show signs during about 15 to 20 minutes of use through pop-ups or page redirections.

3) I would examine logfiles of Internet traffic. Ours exist on our proxy/filter server so it is not possible for individual staff members to alter/delete them. When looking at them, it is usually really easy to tell if someone intentionally did something. A perfect example, a Google search that a user types in will have a q=\_\_\_\_\_ at the end with the string of characters typed. If this is seen in the log file, it is a pretty good sign that a person specifically searched for something.

Another good sign one way or the other is length of time between page loads and evidence of someone clicking on a link. A log file will show all components of the page loading. When it is done, it is pretty easy to tell if someone clicked on a specific link.

I usually retrace what I am seeing in a log and see if it can happen by selecting links. If it is spyware, usually it moves quickly from one page to another and does not use any links on a given page.

The following is the text from the report by Robert Hartz sent to Scott Fain, dated October 21, on his analysis of the computer.

Matthew Napp and I investigated the logs kept on his computer to determine Internet usage from that computer on October 19, a day when he was not in his classroom. What they show is:

- From approximately 8:38am until 2:46pm the Internet was accessed constantly.
- There are a few breaks in the Internet usage of ten or fifteen minutes during the day, come corresponding to class change times, some not. There is also a break of appropriately thirty minutes during the luncheon hours.
- Scanning the log showed Mr. Napp and I that the sites visited ranged from AOL email (probably checking a personal email account) to a travel site (Orbitz) to a hairstyle site.
- But most disturbing were what sites were visited, from what computer they were visited and at what time. We cannot say who was using the computer at the time. But we do know someone was on that computer virtually all day.

I have retrieved the Firewall logs to gather additional information if necessary. However, the logs will not tell us much more than we have already learned. I will be investigating why the NPS Firewall did not block access to these sites and will keep you informed.

As is quite evident from a comparison of the approach recommended by a district technology director as compared to the analysis conducted by Hartz, the initial analysis of the computer evidence in this case was woefully insufficient. He failed to check for malware on the computer and he did not evaluate the pattern of access to determine whether it appeared random or planned.

#### Investigation Related to the Lapse of Filter License.

As noted above, Hartz expressed concern that the firewall/filter did not block access to the sites. As was revealed in trial, Hartz discovered that the license for the filter had not been properly renewed and therefore the filter had not been updated. It is highly likely that Hartz discovered the failure to update the license very shortly after he wrote this memo and rectified the situation.

(This is not to say that if the filter had not lapsed, this situation would not have occurred. No content filter, even if properly maintained, can fully protect against an incident such as occurred in this case.)

Hartz met with the officer on October 27. He provided the officer with the logs showing the sites that had been accessed. But he failed to tell the officer that the district's filter's license had expired.

#### **Amero's Actions As Reported by the Students**

The prosecutor had the obligation to prove that Amero's actions were deliberately indifferent to, acquiescing in, or creating a situation inimical to the child's moral welfare. The student reports provide the best evidence of whether or not her actions were in accord with this standard. (To protect the student identities I am using the numbers provided in the police report.)

Principal Fain reported to the officer that he had interviewed approximately 60 students who had been in Amero's class that day. Of these, 10 students told Fain that they had seen some inappropriate material. The officer interviewed 11 students, ten of whom told him that they had seen some inappropriate material. The other student had apparently tried to look at the screen but did not see anything. A closer analysis of the student reports, reveal some significantly important information.

It was reported that at the trial, six students testified. But Amero was only charged with four counts. I do not know which students testified and which were the ones who were the basis of the charges.

#### Intentional Access

Many of the students reported that they were aware that inappropriate material was appearing on Ameros' computer and decided to try to look for themselves. Here are some comments written by the students:

Student 8: "I heard (Student 3) tell (Student 4) the teacher was looking at porn. I turned my head to look at the computer screen but I couldn't see what was on the screen. I wanted to see what was on the screen so I walked toward the teacher to ask her a question."

Student 7: "I went over to ask her a question about my homework. .... Before I went over to the teacher I heard she was looking at porn on the computer. I heard from (Student 2) and (unknown)."

Student 2: "I had to throw something away in the garbage, which is right next to the teacher's computer. ... Before I went up there, Student 3 told me the teacher was looking at porn. I walked up to see what was on the computer. I crumpled a piece of paper and put it in the trash can next to where the teacher was sitting."

While some students did not specifically state an intention of walking to the teacher desk for the purpose of looking at the screen, it is relatively apparent when reading the reports together that there was a sharing of information about what the teacher was doing, followed by an effort to look at the computer. For example, Student 9 reported that he saw Student 1 walk up to the desk and the teacher block his view of the computer. Witness 3 reported that Student 1 told him he had seen pornography. Student 9 reported that shortly after Student 1 had walked to the computer, Witness 3 did. Witness reported telling Student 1 about the pornography. Student 1 reported that he walked to her desk because "I had to get my papers."

Of the eleven students, six indicated that they looked at the screen after another student told them that the teacher was looking at pornography. One additional student did not report that a student had told him, but another student reported that he had told this student. Only four students did not specifically report that they had heard about the concern from other students prior to making an attempt to see the material. But for two of them, their reasons for why they needed to walk up to the desk sounded very similar to the excuses provided by other students.

#### Amero Blocked Access

Many students reported that if they or another student walked up and tried to look, Amero made specific efforts to block their view. Here from the student reports:

Student 1: "She saw me looking at the screen and she reached over and pushed my face away. ... My friend ... went up to the teacher's desk a little bit later. The sub told him, 'don't look, don't look.'

Student 8: The teacher noticed me and clicked off the screen."

Student 10: "When she realized I was coming over she shifted her body to block the screen."

Student 7: "The teacher turned the screen away from me toward the wall."

Witness 3: "She clicked off the monitor."

One student reported:

Student 2: The teacher didn't notice that I saw this."

It appears that three students in one class were in a corner of the room that allowed them to see the computer screen at an angle and that Amero apparently did not realize that they could see the screen. I have seen a drawing of the classroom and based on my experience in class arrangements, it appears to me that these students were at least 10 – 15 feet away from the screen, if not further.

Of the eleven students, five reported that the Amero took specific actions to block their view, one who walked up to the desk reported specifically that the teacher did not notice him, three were sitting at desks and Amero likely did not know they could see, and two students who did walk up to the desk did not report whether Amero noticed them or any protection action.

### **Impairing the Morals of the Students**

The prosecutor also had to prove that prove that the student's morals were likely to be impaired. "Likely" means in all probability or probably. "Morals" means good morals, living, acting and thinking in accordance with those principles and precepts that are commonly accepted among us as right and decent.

### What Did The Students See

The first consideration is an analysis of what the students saw. Of the eleven students, only two described material that was something other than mild erotica. One did not see anything.

Of the eight students who walked up to the desk, six reported what was, essentially, brief glimpses of mild erotica material. The descriptions included: "two women with bathing suits," a photo of a naked woman, "nude men," "two naked girls," "small boxes which had women in them ... naked," "two naked women ... they were anime." One student who walked up to the desk did not see anything.

The eighth student who walked up to the desk. Student 2, reported as follows:

I looked over at the computer and saw pictures of naked men and women. There was a bunch of little pictures on the screen. The men and women were together in the pictures that I saw. It looked like pictures of people having sex. There were a bunch of pictures. I remember there was one of two women and one guy. The girl was giving the guy head. The other girl was just standing there in the background. She was on her hands and knees. The teacher didn't notice that I saw this."

This report has some interesting features. He was far enough away that he reports that the "teacher didn't notice." He indicated there were a "bunch of little pictures." And yet he was able to describe one of these images in relatively graphic language – language that raises the suspicion that this might not have been his first exposure to this kind of material.

Two of the three other students, who were at a desk which was likely about 10 – 15 feet away also reported seeing only mild erotica: "pictures of naked women from the waist up" and "bunch of little pictures on the computer screen ... they were of naked people. I really couldn't get a good look at the pictures, but I could tell they were naked people."

Student 3, who was reportedly sitting right next to the student who “couldn’t get a good look,” reported significantly more detail:

I saw girls with their legs open. The teacher was scrolling down and there were little pictures of people. She scrolled down and clicked on a video that kept repeating things. I could see a girl and boy having sex. They were lying down. That kept repeating.

This report is interesting considering the student was at some distance, next to a student who “couldn’t get a good look.”

Of the eleven students, one saw nothing, eight saw what could be characterized as mild erotica. Two students reported seeing more concerning material, one who intentionally walked up to try to see what was on the screen and one who was sitting at a desk. Both reported that the pictures were “little” and they were in a position that Amero did not notice that they were looking.

At the trial, Prosecutor Smith reportedly showed the jury large images of the sites that were in the computer log. This was prior to the time that any students testified. It is unknown how it is that Smith was allowed to show these, clearly inflammatory, images to the jury when he had failed to establish that the images were the ones that had been seen by the students or were similar to ones that had been seen by the students.

What is clear from the student reports is:

- There were approximately 60 students who potentially could have seen inappropriate material.
- Of these students, only ten reported seeing any inappropriate material. Eight of these reported seeing only mild erotica. Only two reported seeing material that went beyond mild erotica but their reports raise concerns of credibility because they both reported seeing only “little” images and that they were sufficiently far away from the computer that Amero did not detect that they were looking at the screen.
- For those eight students who walked up to the desk, the exposure was very brief. In most cases, Amero took specific actions to block their view. For the three who saw from their position sitting at their desks, the exposure was at a significant distance.

Rather than a conviction, my personal opinion is that Amero should receive a medal for a job very well done under very difficult circumstances.

#### Student Reaction to the Exposure

If the experience did indeed cause concerns, it is highly likely that this would be evident in the student reports made within two weeks of the incident. None of the student reports appear to reflect any degree of concern about witnessing these images. There were no indications of emotional trauma from the experience reported – whatsoever. In fact, the general feeling one gets from reading the reports is that this is an incident that caused great hilarity within the student population – a teacher using a computer in school that is delivering pop-up pornography sites.

#### Common Experience and No Evidence Regarding Harmful Impact

Recall from the instructions, the prosecutor had to prove beyond a reasonable doubt that the exposure had impaired or was likely to impair the morals of these students. I have seen no report indicating any testimony presented addressing the issue of whether the students' morals were impaired or probably impaired by this experience.

Coincidentally, in August 2006, the Crimes Against Children Research Center issued a report that investigated the issue of youth access to online pornography.<sup>9</sup> The researchers surveyed 1,500 youth between the ages of 10 and 17. This study revealed that 42 percent of youth reported being exposed to online pornography in the 12 months prior to being asked. Of that group, 66 percent said this was not intentional. The unintentional access reportedly occurred because of misspelled Web addresses, pop-up advertisements, or spam e-mails. The remaining reported access was intentional.

The kind of material the youth reported seeing was:<sup>10</sup>

- Most youth (86%) saw images of naked people and more than half saw more explicit pictures.
- In 37% of incidents youth saw pictures of "people having sex."
- In 13% of incidents youth saw pictures of "sexual things that were violent."
- In 10% they saw pictures of "sexual things that involved animals or other strange things" 23 (deviant images).
- Overall in 57% of incidents youth saw pictures of "people having sex" or violent or deviant images. (Some youth saw more than one type of more explicit image.)

The researchers further outlined the ways in which unintentional access occurred. Among the ways, they discussed the a situation that is identical to the situation described by Amero:<sup>11</sup>

"In addition pornography sites are sometimes "mousetrapped" or programmed to make them difficult to exit. Clicking an exit button takes viewers into another sexually explicit site instead of allowing them to leave. In (this study), 18% of youth with unwanted exposures while surfing online said they were brought to another sex site when they tried exiting the first site they were in. This happened in 15% of distressing incidents."

What was the impact of the disclosure? The researchers stated:<sup>12</sup>

"Exposure to unwanted sexual material is not necessarily upsetting. To quantify upsetting incidents, we designated a category of distressing exposures to sexual material, which left youth feeling very or extremely upset. Nine (9) percent of youth Internet users ... said they had a distressing exposure to unwanted sexual pictures on the Internet in the past year."

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<sup>9</sup> Wolak, J., Mitchell, K., & Finkelhor, D. (2006). Online victimization of youth: Five years later. National Center for Missing & Exploited Children Bulletin - #07-06-025. Alexandria, VA.  
[http://www.unh.edu/ccrc/second\\_youth\\_internet\\_safety-publications.html](http://www.unh.edu/ccrc/second_youth_internet_safety-publications.html).

<sup>10</sup> Id. page 30.

<sup>11</sup> Id. page 32.

<sup>12</sup> Id. page 29.



Note that in 57% of the incidents, the youth reported seeing people having sex, or violent or deviant images. But only 9% reported that this exposure was distressing. Two of the students in the Amero case reported seeing “little” pictures that involved people having sex. Their reports made very shortly after the event indicate no distress whatsoever at viewing this material. The report of one student used terminology that created a strong impression that prior exposure to this kind of material had already occurred.

Where did the exposures occur?<sup>13</sup>

More than three-quarters of the unwanted exposures (79%) happened at home. Nine (9) percent happened at school, 5% happened at friends’ homes, and 5% happened in other places including libraries.

What are the research findings regarding the impact of such exposure on youth?<sup>14</sup>

In 2000, when the findings of the first Youth Internet Safety Survey were released, we noted there had been virtually no research about the impact on youth of viewing pornography, either voluntarily or -- more relevant — involuntarily. There is still no research that sheds light on whether, how, or under what circumstances involuntary exposure to pornography may trigger adverse responses in youth.

Given the state of research insight on the impact of exposure, the prosecutor would undoubtedly had great difficulty proving beyond a reasonable doubt that the children’s morals were likely impaired by this situation. I do not actually believe that he even made an attempt to do so. I believe that a motion for a judgment of acquittal should have been granted at the close of the prosecutor’s case due to the failure to prove this element of the crime.

Let’s consider this situation from some other perspectives.

When I present lectures on youth risk online issues I try to put some issues in perspective. Frequently, I will ask the men in the audience to raise their hand if they did not look at pornography when they were teens. Invariably, no one raises a hand. So if virtually all men were exposed to pornography when teens, does this mean that all men have impaired morals? (To ensure equality I also ask how many women have not read a romance novel.)

If 42% of young people have seen online pornography, some far worse than what the students in this case saw, then our country must have an overwhelmingly high number of minors with impaired morals. And this also must mean that many adults who should have been supervising these young people have failed in their responsibilities. Does this country have sufficient prison space and foster care resources to imprison all of the adults who were responsible for such exposure?

### **Why Has this Happened?**

The question on many people’s minds is why was Amero arrested and convicted. Clearly, there are many issues that an analysis of this case revealed that raise concern:

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<sup>13</sup> Id. page 31.

<sup>14</sup> Id page 35.

- The inadequacy of the investigation done on the computer by both the district technology director and the computer crimes officer.
- The failure of the school officials to provide information to the investigating officer about Amero's communications and actions on the day of the incident and the day following.
- The computer crime officer's inaccurate testimony.
- The display of inflammatory images of the sites that were accessed that day when there was no foundation laid that these were the sites that were actually seen or similar to those seen by the students.
- The failure of Amero's defense attorney to provide the expert report to the prosecutor in a timely manner which led to the exclusion of that evidence. Also, based on the fact that I was able to easily discover through an analysis of the student reports that Amero was anything but indifferent to the potential of harm, that in most cases whenever she was aware that a student was attempting to look at the screen she made specific efforts to block their access, Most of the students did saw only mild erotica and the two students who reported seeing anything more also reported that the images were "little," and that none of the students reports gave any indication whatsoever of any harm, I have concerns about the adequacy of the defense attorney handling of Amero's case.

But I believe that the underlying issue is that of fear. Especially in the last year there has been an overwhelming increase in the level of fear-mongering about young people and the Internet. I believe such fear-mongering has reached the level that it is clearly interfering with proactive efforts to address the very real, but manageable, concerns about young people online.

Frequently, politicians and the media are engaging in activities that are unreasonably exacerbating the fear. Politicians want to present an image to the electorate that they are "protecting children online" and frequently call for legislation that will do no such thing. While some media sources are reporting responsibly on the concerns, others are sensationalizing the issues.

The fear-mongering is interfering with efforts to effectively educate young people about the risks. When they hear the message that all online strangers are dangerous and they know otherwise, they realize that adults simply don't understand the Internet and are fearful about what they do not understand.

The fear-mongering is also undermining efforts to encourage young people to report to an adult if they have encountered a difficult situation online. Many young people are not reporting to adults when they have become involved in a difficult situation because they fear adults will overreact, blame them, and cut off their online access. If a teen reports to a parent that he or she accidentally accessed pornography, how many parents will act in the manner evident in the Amero case: assume that the access was intentional, fail to conduct an effective evaluation of the circumstances, and punish the teen?

And, in my opinion, the fear-mongering has resulted in the conviction of a woman whose computer was porn trapped and who clearly was trying her absolute best to protect the students who were under her care.

I call upon the responsible officials in the State of Connecticut to promptly remedy this unconscionable tragedy.