

Criminal Law—First Circuit Denies Double-Intent Requirement for Internet Enticement of Minors—*United States v. Dwinells*, 508 F.3d 63 (1st Cir. 2007), *cert. denied*, 128 S. Ct. 2961 (2008)

Since the advent of the Internet, Congress, law enforcement officials, and the public have tried to protect children from online sexual predators.¹ In 1996, Congress amended the Telecommunications Act, criminalizing the enticement of minors for sexual activity over the Internet.² In *United States v. Dwinells*,³ the United States Court of Appeals for the First Circuit, as a matter of first impression, considered whether section 2422(b) required a double-intent element: that is, whether the defendant had to possess not only the intent to entice a minor to engage in sexual activity, but also the intent that sexual activity occur.⁴ The First Circuit, joining with all other circuits that have decided this issue, upheld the conviction by interpreting the statute to require only the intent to entice.⁵

Beginning in the spring of 2002, Matthew Dwinells, a forty-year-old man from Lawrence, Massachusetts, engaged in a series of Internet communications

1. See *United States v. Meek*, 366 F.3d 705, 719 (9th Cir. 2004) (noting online undercover officers prevent pedophiles from trolling Internet). See generally Madeline Mercedes Plasencia, *Internet Sexual Predators: Protecting Children in the Global Community*, 4 J. GENDER RACE & JUST. 15 (2000) (exploring domestic and international statutes designed to protect children on Internet); AM. JUR. 2D *Computers and the Internet* § 99 (2007) (detailing federal statutes attempting to protect children from online sexual exploitation). Television journalists and watch-groups also try to keep children safe online. See Chris Hansen, *Catching Potential Internet Sex Predators*, DATELINE NBC, Nov. 10, 2005, <http://www.msnbc.msn.com/id/9927253> (describing undercover *To Catch a Predator* television series appearing on Dateline NBC). The *To Catch a Predator* sting involves volunteer members of Perverted-Justice, a non-profit watchdog organization that imitates teenagers online. *Id.*; see also Opinion, *TV-News Stings Not Best Way to Ensure Justice*, WILKES-BARRE TIMES LEADER, Feb. 1, 2008, at 13A [hereinafter WILKES-BARRE] (detailing national television sting operations).

2. See Telecommunications Act of 1996, Pub. L. No. 104-104, § 508, 110 Stat. 56, 137 (1996) (codified as amended at 18 U.S.C. § 2422(b) (2006)) (adding section 2422(b) and establishing text of statute). The statute prohibits the persuasion, inducement, enticement, or coercion of a minor to engage in sexual activity, or its attempt. See *id.*; see also *United States v. Dhingra*, 371 F.3d 557, 562 (9th Cir. 2004) (describing statute's plain meaning).

3. 508 F.3d 63 (1st Cir. 2007), *cert. denied*, 128 S. Ct. 2961 (2008).

4. *Id.* at 68 (stating double-intent issue is pivotal inquiry under consideration); cf. N.J. STAT. ANN. § 2C:35-5 (West Supp. 2008) (demanding possession with intent to distribute); N.Y. PENAL LAW § 140.30 (McKinney 2007) (requiring double intent for criminal charge).

5. See 508 F.3d at 70, 74 (upholding conviction, noting all circuit courts presented with issue rejected double-intent argument); see also, e.g., *United States v. Brand*, 467 F.3d 179, 202 (2d Cir. 2006) (commenting section 2422(b) conviction only requires intent to entice, not to perform sexual activity), *cert. denied*, 127 S. Ct. 2150 (2007); *United States v. Murrell*, 368 F.3d 1283, 1286 (11th Cir. 2004) (explaining Congress prohibited “persuasion, enticement, inducement, or coercion” of minors); *United States v. Bailey*, 228 F.3d 637, 639 (6th Cir. 2000) (distinguishing intent to entice from intent to act).

with three “teenage girls.”⁶ The “girls” were actually law enforcement officials in two states conducting separate sting operations to catch online predators.⁷ Thinking she was a fourteen-year-old from Ohio, Dwinells messaged “Maria” on numerous occasions about engaging in sexual activity and about the possibility of her visiting him in Massachusetts.⁸ The visit never occurred, but the pair exchanged photographs, and “Maria” sent Dwinells her supposed underwear, which he kept in a drawer in his bedroom.⁹

Additionally, Dwinells spoke with two South Carolina cousins, fourteen-year-old “Paige” and thirteen-year-old “Ashley.”¹⁰ He engaged in explicit sexual conversations with “Paige” and asked for her underwear and photographs.¹¹ They chatted on numerous occasions about visiting each other, and although Dwinells helped “Paige” understand plane and bus schedules to Boston and promised to send her travel money, the trip never materialized.¹² Dwinells also chatted with “Ashley” about visiting him in Boston, assuring her if she were to become pregnant with his child he would make her the beneficiary of his life insurance policy and promising to buy her lingerie in exchange for her mailing him her underwear.¹³ Like “Maria” and “Paige,” “Ashley’s” trip to Boston never occurred.¹⁴ Federal authorities arrested Dwinells in March 2003 after executing a search warrant for his home and finding “Maria’s” pictures in his dresser drawer.¹⁵

In 2004, the government charged Dwinells with three counts of attempted enticement of a minor over the Internet.¹⁶ The jury rejected Dwinells’s

6. 508 F.3d at 65 (reciting facts of case). The communications consisted of real time chatroom dialogues and instant messages. *Id.* at 66.

7. *See id.* at 65-67 (classifying stings as resonating from Ohio and South Carolina). *But see* United States v. Dwinells, No. 04-10010, slip op. at 3 (D. Mass. Mar. 2, 2006) (classifying stings as resonating from Ohio, Virginia), *aff’d*, 508 F.3d 63 (1st Cir. 2007). Two Ohio police detectives played “Maria,” a South Carolina police detective and federal agent both played “Paige,” and the same federal agent played “Ashley.” *See* 508 F.3d at 66-67.

8. *See* United States v. Dwinells, No. 04-10010, slip op. at 3 (D. Mass. Mar. 2, 2006) (describing interactions with Maria), *aff’d*, 508 F.3d 63 (1st Cir. 2007). Dwinells messaged Maria more than 100 times. 508 F.3d at 66. He said that he wanted her to have his child, asked if he could take her virginity, and mentioned buying her expensive gifts. *Id.*

9. 508 F.3d at 66 (explaining Dwinells sent photos of his genitals, Maria sent photo of herself in cheerleading outfit). The police officers staged the photographs. *Id.*

10. *Id.* at 66-67 (commenting Dwinells had “a wandering eye”).

11. *See* United States v. Dwinells, No. 04-10010, slip op. at 4 (D. Mass. Mar. 2, 2006) (noting Dwinells instructed her to masturbate, showed her lingerie catalogue), *aff’d*, 508 F.3d 63 (1st Cir. 2007).

12. *See* United States v. Dwinells, No. 04-10010, slip op. at 4 (D. Mass. Mar. 2, 2006) (describing interactions with “Paige”), *aff’d*, 508 F.3d 63 (1st Cir. 2007). The plans for visitation changed three times. *See* 508 F.3d at 67. Dwinells commented that he would go to jail if caught with “Paige.” *Id.*

13. *See* United States v. Dwinells, No. 04-10010, slip op. at 3 (D. Mass. Mar. 2, 2006) (noting Dwinells’s interactions with “Ashley”), *aff’d*, 508 F.3d 63 (1st Cir. 2007). Dwinells mentioned that if “Ashley” had sex with him it would be rape, but she allayed his fears by consenting. 508 F.3d at 67.

14. 508 F.3d at 67 (describing Dwinells’s failed attempts to meet with girls).

15. *Id.* (observing police found greeting cards, lingerie, and underwear).

16. *See* United States v. Dwinells, No. 04-10010, slip op. at 1 (D. Mass. Mar. 2, 2006) (stating

“fantasy” and entrapment defenses and found him guilty on all three counts.¹⁷ While denying Dwinells’s motion for judgment of acquittal, the district court concluded that mere communication with the supposed minors satisfied the elements of the crime.¹⁸ After sentencing him to fifty-one months in prison for the three violations of section 2422(b), Dwinells appealed his conviction.¹⁹

For more than a decade, sex offenders have used the Internet to entice children into sexual acts, and the government has responded by passing legislation such as section 2242(b) in an attempt to curb such behavior.²⁰ Cases flooded the court system challenging the new charges and the statute itself on a number of grounds.²¹ Some defendants urged that the statute did not apply to them at all.²² Still others claimed entrapment, impossibility, or the “fantasy defense.”²³ The case law on these defenses is lacking, however, because the majority of such cases result in plea bargains.²⁴

A number of decisions stemming from cases that made it to trial involved statutory interpretation of the intent element.²⁵ Defendants argued that the statute is vague and actually requires two separate intent elements: the first

government’s charges), *aff’d*, 508 F.3d 63 (1st Cir. 2007). The government also charged Dwinells with receipt and possession of child pornography; he entered a guilty plea for both. 508 F.3d at 68.

17. See 508 F.3d at 68 (rejecting fantasy defense). Dwinells argued either he knew the girls were adults or thought that their conversations were mutual fantasies and “merely fanciful embellishments in an elaborate game.” 508 F.3d at 67-68; see also Marshall, *infra* note 23 (reporting successful use of fantasy defense at jury trial for Internet enticement case).

18. See *United States v. Dwinells*, No. 04-10010, slip op. at 4 (D. Mass. Mar. 2, 2006) (explaining Dwinells’s conduct amounted to violation of section 2422(b)), *aff’d*, 508 F.3d 63 (1st Cir. 2007).

19. 508 F.3d at 68 (noting Dwinells’s sentence).

20. See Press Release, Office of the Press Sec’y, Fact Sheet: The Adam Walsh Child Protection and Safety Act of 2006 (July 27, 2006), available at <http://www.whitehouse.gov/news/releases/2006/07/20060727-7.html> (highlighting passage of legislation aimed at protecting children from Internet’s dangers including Operation Predator and Project Safe Child); *supra* notes 1-2 and accompanying text (describing response to Internet child predators from Congress and law enforcement).

21. See *United States v. Blazek*, 431 F.3d 1104, 1107 (8th Cir. 2005) (arguing insufficient evidence to charge under statute); see also *infra* notes 22-23 and accompanying text (describing challenges to charges and statute).

22. See, e.g., *United States v. Dhirgra*, 371 F.3d 557, 561 (9th Cir. 2004) (suggesting culpability contingent on minor’s act, not defendant’s); *United States v. Murrell*, 368 F.3d 1283, 1286-87 (11th Cir. 2004) (arguing statute inapplicable because defendant interacted with intermediary); *United States v. Meek*, 366 F.3d 705, 717 (9th Cir. 2004) (surmising adult police officer acting as minor makes statute inapplicable).

23. See *United States v. Brand*, 467 F.3d 179, 207 (2d Cir. 2006) (rejecting defendant’s entrapment defense), *cert. denied*, 127 S. Ct. 2150 (2007); *United States v. Farmer*, 251 F.3d 510, 512 (5th Cir. 2001) (arguing legal impossibility of guilt because minor was adult FBI agent and statute requires child). See generally Matt Marshall, *A Boost for Fantasy Defense*, SAN JOSE MERCURY NEWS, Dec. 17, 1999, at 28A (describing acquittal where defendant used “fantasy defense”). The defendant argued the Internet has a fantasy culture where many people assume false identities. *Id.*

24. See Marshall, *supra* note 23 (noting 95 percent of federal cases involving child Internet solicitations resulted in plea bargains).

25. See, e.g., *United States v. Thomas*, 410 F.3d 1235, 1243 (10th Cir. 2005) (arguing statute requires intent to entice as well as intent to commit sexual activity); *United States v. Dhirgra*, 371 F.3d 557, 561 (9th Cir. 2004) (suggesting statute vague on intent element); *United States v. Bailey*, 228 F.3d 637, 638 (6th Cir. 2000) (insisting if statute did not require intent to commit acts, it would criminalize mere sexual banter).

being an intent to entice a minor for sexual activity and the second, an intent that sexual activity occur.²⁶ Circuit courts have uniformly rejected the double-intent construction defense, although in some cases the defendants in fact intended that the sexual activity occur.²⁷

Congress has amended section 2422(b)'s maximum sentence for convictions three times since 1996.²⁸ The most recent increase occurred in 2006 as part of the Adam Walsh Child Protection and Safety Act, which brought the mandatory minimum for a conviction to five years and the statutory maximum to life imprisonment.²⁹ President Bush lauded the increase and acknowledged that federal laws protecting children on the Internet were stronger as a result.³⁰ In addition to judicial and legislative involvement, public citizens and journalists have also tried to keep children safe online by participating in sting operations and television exposés.³¹

In *United States v. Dwinells*, the First Circuit rejected Dwinells's double-intent argument and affirmed his conviction through statutory comparison, strict statutory interpretation, and deference to other circuit decisions.³² Relying on the text of the statute, the court determined that section 2422(b) requires the defendant to possess the specific intent to persuade, entice, coerce, or induce a minor to commit illegal sexual acts.³³ The First Circuit recognized

26. See *supra* note 5 and accompanying text (describing dual-intent arguments).

27. See, e.g., *United States v. Goetzke*, 494 F.3d 1231, 1236 (9th Cir. 2007) (emphasizing statute criminalizes attempt to persuade); *United States v. Meek*, 366 F.3d 705, 718 (9th Cir. 2004) (mentioning defendant's intent to engage in sexual activity); *United States v. Farner*, 251 F.3d 510, 513 (5th Cir. 2001) (upholding conviction while recognizing defendant's intent to engage in sexual activity); see also *supra* note 5 and accompanying text (listing circuits rejecting double-intent argument).

28. See Bridget M. Boggess, Note, *Attempted Enticement of a Minor: No Place for Pedophiles to Hide Under 18 U.S.C. § 2422(b)*, 72 MO. L. REV. 909, 911 (2007) (describing sentencing guideline changes). The changes in 1998 and 2003 increased the maximum sentence to fifteen and thirty years respectively. *Id.*

29. See Telecommunications Act of 1996, Pub. L. No. 104-104, § 508, 110 Stat. 56, 137 (1996) (codified as amended at 18 U.S.C. § 2422(b) (2006)) (outlining sentencing guidelines); Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 203, 120 Stat. 587, 613 (2006) (codifying sentence length changes to statute).

30. See President George W. Bush, Remarks at the Adam Walsh Child Protection and Safety Act of 2006 Signing (July 27, 2006), available at <http://www.whitehouse.gov/news/releases/2006/07/20060727-6.html> [hereinafter Remarks] (acknowledging need for and purpose of Act). In 2005, 4 percent of children who used the Internet received a sexual solicitation. See Boggess, *supra* note 28, at 909. See generally Plasencia, *supra* note 1, at 17 (describing Internet as forum for sexual predators to validate and accelerate their behavior). The children most at risk are those who live in the suburbs, are between twelve and fifteen years old, and whose parents are frequently not home. See Kimberly Wingteung Seto, Note, *How Should Legislation Deal with Children as the Victims and Perpetrators of Cyberstalking?*, 9 CARDOZO WOMEN'S L.J. 67, 75-76 (2002) (describing pattern of Internet solicitations).

31. See *supra* note 1 and accompanying text (describing government initiatives and journalist sting operations). One *To Catch a Predator* sting caught nineteen men in three days. See Hansen, *supra* note 1.

32. See 508 F.3d at 65, 72 (affirming district court's sentence and rejecting Dwinells's double-intent argument). The First Circuit did not rule on the fantasy defense, instead referring to it as a failed attempt. *Id.* at 68; see also *infra* notes 41-44 and accompanying text (analyzing First Circuit's use of statutory comparison and strict interpretation).

33. See 18 U.S.C. § 2422(b). The statute reads in part, "Whoever . . . knowingly persuades, induces,

that some criminal statutes do require an intent to perform one act in order to criminalize a different act.³⁴ The court also noted, however, that such statutes typically provide for the double-intent element explicitly, whereas section 2422(b) does not.³⁵ Citing the fact that section 2422(b) on its face does not contain the second intent element, the court categorized Dwinells's argument as the exact opposite of what Congress intended when it enacted the statute.³⁶

The First Circuit gave much reverence to the notion that every circuit court that previously dealt with this issue refused to read a double-intent element into the statute.³⁷ Although some of the other cases involved situations where the defendant had also intended to engage in the sexual acts, the First Circuit held that the second intent was not the decisive factor for a section 2422(b) conviction in those situations.³⁸ For this reason, the court rejected Dwinells's argument that a decision to uphold the conviction would result in a circuit split.³⁹ The court also assumed that Congress had stayed abreast of case law interpreting section 2422(b) and that when it amended the statute to increase the prison sentence, it did so with the purpose of conveying the seriousness of the single-intent crime.⁴⁰

The First Circuit used the proper statutory analysis technique.⁴¹ The court

entices, or coerces any individual who has not attained the age of 18 years, to engage in . . . any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be . . . imprisoned" *Id.*; see also 508 F.3d at 68 (interpreting statute based on its plain language).

34. See 508 F.3d at 68 (agreeing various statutes criminalize one act when coupled with intent to engage in different act); see *supra* note 4 (listing statutes requiring double-intent elements).

35. See 508 F.3d at 68-69 (distinguishing section 2422(b) from statutes explicitly providing for second intent); cf. N.J. STAT. ANN. § 2C:35-5 (West Supp. 2008) (mandating possession with intent to distribute); N.Y. PENAL LAW § 140.30 (McKinney 2007) (requiring entry and intent to commit felony within).

36. See Telecommunications Act of 1996, Pub. L. No. 104-104, § 508, 110 Stat. 56, 137 (1996) (codified as amended at 18 U.S.C. § 2422(b) (2006)) (establishing text of statute). The statute's language does not anywhere explicitly mention intent. *Id.*; see also 508 F.3d at 69 (rejecting argument due to clear congressional intent); *United States v. Bailey*, 228 F.3d 637, 639 (6th Cir. 2000) (opining Congress made "clear choice" to criminalize persuasion of minors). See generally Remarks, *supra* note 30 (describing congressional and societal duty to protect children online).

37. See 508 F.3d at 70 (citing other circuits rejecting double-intent argument once presented); *supra* note 5 and accompanying text (articulating all circuits presented with argument rejected it).

38. See 508 F.3d at 70 (stating secondary intent not dispositive for conviction); *United States v. Meek*, 366 F.3d 705, 710 (9th Cir. 2004) (explaining defendant sought sexual encounter). Nevertheless, the Ninth Circuit in *Meek* still upheld the conviction under section 2422(b) without referencing the defendant's intent that the sexual encounter occur. See *United States v. Meek*, 366 F.3d 705, 722 (9th Cir. 2004). Similarly, the Fifth Circuit in *United States v. Farner* decided that the defendant's secondary intent is not dispositive for a section 2422(b) conviction. See *United States v. Farner*, 251 F.3d 510, 513 (5th Cir. 2001) (affirming defendant's section 2422(b) conviction).

39. See 508 F.3d at 70 (referring to circuit-split argument as "gloomy assessment" of case law).

40. 508 F.3d at 69 (explaining Tenth, Eleventh, Sixth, and Eighth Circuits rejected double-intent arguments prior to recent amendment). The First Circuit assumed Congress intended to treat acts falling under section 2422(b) with the "utmost gravity" regardless of whether the defendant intended that the acts actually occurred. *Id.*

41. See *id.* at 68-72 (analyzing statute's plain language using strict interpretation and comparative analysis with similar statutes); see also *United States v. Dhingra*, 371 F.3d 557, 562 (9th Cir. 2004) (applying plain-language interpretation to section 2422(b)); *United States v. Bailey*, 228 F.3d 637, 638-39 (6th Cir. 2000)

clearly distinguished section 2422(b) from other criminal statutes that explicitly require dual intents.⁴² In doing so, it properly recognized that it is common practice for Congress to write in a double-intent requirement when it chooses to require one.⁴³ Furthermore, a strict interpretation of section 2422(b)'s plain language shows that it only requires nothing more than the intent to achieve a minor's consent for sexual conduct.⁴⁴

Additionally, the First Circuit accurately followed all of the other circuits that decided similar cases regarding section 2422(b)'s application.⁴⁵ In all prior cases, the circuit courts upheld the defendants' prison sentences for section 2422(b) violations.⁴⁶ While recognizing that in some cases defendants in the other circuits did in fact intend that the sexual activity occur, the First Circuit properly realized those situations did not affect the deciding court's analysis of section 2422(b).⁴⁷ The court rejected Dwinells's claim that upholding his conviction would create a circuit split as there simply is no circuit split regarding section 2422(b)'s intent requirement.⁴⁸ In fact, had the First Circuit reversed Dwinells's conviction, it would have created a circuit split.⁴⁹ It is likely that circuits having not yet dealt with this issue will follow the First Circuit's reasoning when the time comes.⁵⁰

(commenting section 2422(b) should be analyzed using plain-language technique).

42. See 18 U.S.C. § 2422(b) (2006) (failing to require dual intent); *supra* note 35 and accompanying text (highlighting differences between section 2422(b) and statutes requiring double intent).

43. 508 F.3d at 69 (stating Congress "deliberately refrained" from inserting double intent).

44. See 18 U.S.C. § 2422(b); 508 F.3d at 71 (characterizing section 2422(b)'s language as unambiguous); *United States v. Brand*, 467 F.3d 179, 202 (2d Cir. 2006) (stating section 2422(b) does not require intent that sexual acts occur); *supra* note 41 (discussing statute's plain-language interpretations).

45. See *supra* note 5 (citing cases rejecting double-intent argument); see also, e.g., *United States v. Goetzke*, 494 F.3d 1231, 1235 (9th Cir. 2007) (affirming conviction where defendant intended to attempt to coerce minor); *United States v. Thomas*, 410 F.3d 1235, 1238 (10th Cir. 2005) (upholding section 2422(b) conviction for intent to persuade minor); *United States v. Patten*, 397 F.3d 1100, 1102 (8th Cir. 2005) (affirming conviction where defendant intended to persuade minor for sex in North Dakota parking lot).

46. See *United States v. Brand*, 467 F.3d 179, 182, 207 (2d Cir. 2006) (upholding defendant's five-year sentence), *cert. denied*, 127 S. Ct. 2150 (2007); *United States v. Murrell*, 368 F.3d 1283, 1290 (11th Cir. 2004) (affirming defendant's thirty-three month sentence).

47. See *supra* note 38 and accompanying text (discussing cases where court found but did not require double intent).

48. 508 F.3d at 70 (rejecting Dwinells's circuit-split argument). Dwinells argued that cases like *Meek* and *Farner* create a circuit split because he interpreted both cases as requiring an intent to entice and an intent that sexual activity occur. *Id.* The First Circuit refused to indulge Dwinells in this argument, noting that while dual intent was present in both *Meek* and *Farner*, it was not dispositive. *Id.* Additionally, in *United States v. Thomas*, the Tenth Circuit discussed the *Farner* court's analysis of section 2422(b) and concluded that any language in the decision implying that section 2422(b) required a double intent was dicta. See *United States v. Thomas*, 410 F.3d 1235, 1244 n.3 (10th Cir. 2005).

49. See *supra* notes 5-36 and accompanying text (establishing uniform circuit agreement on double-intent issue).

50. See 508 F.3d at 70 (referring to Ninth Circuit's opinion decided three months prior to *Dwinells*). The First Circuit supported its rejection of the double-intent theory in part on *United States v. Goetzke*. *Id.* In that case, the Ninth Circuit held that section 2422(b) specifically does not require an intent that the sexual act occur. *Id.*; *United States v. Goetzke*, 494 F.3d 1231, 1236 (9th Cir. 2007) (explaining section 2422(b) criminalizes intent to achieve mental states). Unfortunately, if a circuit has not yet decided a similar case, it probably will in

Finally, the First Circuit properly considered the public policy behind the statute.⁵¹ It recognized that Congress increased the minimum sentence three times in the past ten years in a sign of how severe a threat the Internet poses to children.⁵² Aggressively seeking out and arresting individuals like Dwinells, who wish to engage in sexually explicit banter with minors, is a social priority.⁵³ While Congress passes laws to discourage such behavior, ultimately the judiciary interprets and enforces the statutes and considers the reasoning behind their enactments.⁵⁴

The First Circuit in *United States v. Dwinells* decided whether section 2422(b) of the Telecommunications Act requires not only an intent to entice a minor into sexual activity but also an intent that such sexual activity occur. In rejecting Dwinells's arguments, the court correctly considered comparisons with other statutes that require a double-intent element, employed a strict statutory-interpretation technique, and followed case law from other circuits. In addition, the First Circuit properly took into account the public policy behind section 2422(b) as well as congressional amendments to increase sentencing. For these reasons, the First Circuit correctly upheld Dwinells's conviction under section 2422(b).

Alexandra B. Rubin

the future. See Boggess, *supra* note 28, at 909 (describing prevalence of Internet dangers for children). According to a 2006 study by the National Center for Missing and Exploited Children, there are more than "50,000 Internet predators online at any given moment." *Id.*

51. See 508 F.3d at 69 (accounting for public policy behind statutory enactment).

52. *Id.* The First Circuit inferred from the continuous increases that Congress intended to impose "stern punishment" for those violating the statute. *Id.* See generally Plasencia, *supra* note 1, at 18-19 (discussing Internet predators). Common examples of online predators include lawyers, doctors, technology executives, principals, and military officers. *Id.* at 18. "Your average pedophile is not the dirty old man in a trench coat, but a teacher at your local elementary school." *Id.* at 18-19. One journalist sting resulted in the arrest of a rabbi. See Hansen, *supra* note 1 (detailing occupations and marital status of men arrested for Internet solicitations of young children).

53. See *United States v. Meek*, 366 F.3d 705, 719 (observing "extensive" police sting operations to catch predators); see also Hansen, *supra* note 1 (stating material from sting turned over to law enforcement officials). Internet offenders often have a high rate of recidivism. See Hansen, *supra* note 1. In the *Dateline* sting, one man went to the sting house thinking he would meet a child, apologized to the reporter when caught, and the next day, thinking he would meet a different child, met with the same reporter in a restaurant parking lot. See *id.* Not everyone, however, agrees with the tactics involved with such sting operations. See WILKES-BARRE, *supra* note 1 (calling stings "much-hyped," obtrusive, and "legally flimsy").

54. See *United States v. Meek*, 366 F.3d 705, 720 (9th Cir. 2004) (declaring behavior prohibited by section 2422(b) so serious, court will uphold conviction without child involvement). See also Press Release, *supra* note 20 (describing government initiatives protecting children from online predators); *supra* notes 52-53 (noting journalist involvement in stings).