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### *behind the* **VERDICT**

## A Rarity, Jeffco Loses Predator Case Change In State Law Is Being Considered

**By Emile Hallez**  
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DENVER — The Jefferson County District Attorney's office recently lost its first Internet-luring sexual-assault case, leading observers to speculate the Colorado legislature will soon close a legal loophole that does not prohibit explicit phone contact between an adult and a child.

"Since 1996 we've prosecuted and charged 224 (people), and I haven't lost one (case) yet ... other than the one that was dismissed at the county-court level," said district attorney investigator Mike Harris. "I had a case where the contact was made in an instant message ... there was talk of very graphic sex on the phone. The judge at the preliminary hearing ... basically ruled that there was not enough to bind it over."

Though the district attorney's office lost the case, *The People v. Alexander Thompson* (07 CR 2510), Harris said he and others are attempting to persuade legislators to change the current Internet sexual exploitation of a child law to add phone contact as a criterion for prosecution. "I just think it's a legality of changing the language," he said. "It's basically the verbiage in the law."

Defense attorney Dan Recht said his client, Thompson, was unwittingly lured into thinking

he was having an Internet conversation with a young teenager. "My client was 19," Recht said. "He was having an Internet chat with someone he thought was (almost) 15. ... It turns out in fact that it was Mike Harris." Thompson soon obtained a phone number for the pretend 14-year-old and dialed it. "They have phone sex and it's recorded. And they arrest him and charge him with Internet luring." The voice on the other end of the phone was Mike Harris' wife.

"She's one of my under covers," Harris said. "Me on the computer and her on the phone" was the team stratagem used to lure Recht's client. Though Thompson engaged in phone sex with Harris, he did not physically meet with her.

"The judge dismissed the case," Recht said. "He thought that phone sex is not a violation of the statute or any other statute. ... My guess is that the district attorney's office will push the legislature so phone sex becomes unlawful."

"It was a valid argument by the defense," Harris said.

"The prosecutors in the metro area, in particular, have been very successful in prosecuting these," Recht said. "My one case is an exception to that," he said of the Jefferson County district attorney's nearly spotless record.

Despite inquiries Harris said he often gets about whether Internet

luring is a form of entrapment, he said the methods used by his department are just as valid as those used in drug-sting operations.

"You have to bring up the subject," Harris said of entrapment. "You suggest the commission of committing the crime." In the luring operations, Harris said the suspects have to make the first move. "In these cases, these guys (the suspects) bring up the subject of committing the crime."

"We have people who ask if we're police ... if we're *Dateline*," he said. "We say 'no.' ... It happens every day in the drug world. ... If you're not adding duress or making them commit a crime, you're not crossing any line."

Despite the nature of Internet luring operations, catching pedophiles before they have a chance to act has its merits, Recht said. "Everybody would agree when a middle-aged pedophile is trying to seduce a young teenager — that should be a crime," he said. "You don't want older men preying on young kids."

What makes matters muddy, he said, is when the age gap between suspects and make-believe victims narrows to the thin line above the legal limit. "There are cases where 19-year-olds get prosecuted for ... sexual communication with someone they believe is almost 15," Recht said. "That raises a philosophical

question about whether or not that should be a felony ... or a crime."

By pretending to be chat-room 14-year-olds, the district attorney's office stays below the legal threshold for Internet sexual exploitation of a child — that charge is invalid if the child in question is at least 15. And the evidence the office gathers in chat rooms and messenger services such as those offered by AOL and Yahoo leads almost exclusively to successful prosecutions.

"I've only went to trial four times. I think that shows how much evidence we gather," Harris said. In the jury trial case, Harris said the jury was out for 20 minutes to deliberate.

"We have the preserved evidence of communications online, we have pictures that were sent, we have recorded phone calls, we have the suspect driving up to meet who he thinks is a child," he said. "In most of the cases investigators are trying to put the pieces of the puzzle together. ... I already have the pieces of the puzzle." Harris said there is "a lot of evidence that people don't want a jury of their peers to see. ... When you show (a picture of) the erect penis of the suspect, which he sent to the alleged child, you can see the disgust in the jury's faces."