

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-059
District Docket No. XIV-03-271E

IN THE MATTER OF
STEPHEN W. THOMPSON
AN ATTORNEY AT LAW

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Decision

Argued: May 15, 2008

Decided: October 21, 2008

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Leonard S. Baker appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter came before us on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's conviction, in the United States District Court for the District of New Jersey ("the district court), of sexual exploitation of a minor, in violation of 18 U.S.C.A. §2251A(a) and (2). The charges arose from a videotape showing respondent

engaged in sexual acts with an adolescent boy.¹ The jury found respondent not guilty, by reason of insanity, of possession of child pornography (18 U.S.C.A. §2252A(a)(5)(B) and (2)). That charge was based on respondent's possession of thousands of images of child pornography.

The OAE recommended respondent's disbarment. We agree with that recommendation. Three members filed a separate dissent, voting for an indeterminate suspension.

Respondent was admitted to the New Jersey bar in 1975. He has no prior discipline. On November 7, 2005, he was temporarily suspended in New Jersey, as a result of his criminal conviction. In re Thompson, 185 N.J. 285 (2005).

In December 2003, a two-count indictment was returned against respondent, charging him with sexual exploitation of a minor (18 U.S.C.A. §2251A(a) and (2)) and possession of child pornography (18 U.S.C.A. §2252A(a)(5)(B) and (2)). After a two-week trial before the Honorable Joseph E. Irenas, U.S.D.J., a jury found respondent guilty of sexual exploitation of a minor.

On April 6, 2006, Judge Irenas sentenced respondent to a ten-year prison term, followed by a three-year supervised release. Respondent was ordered to pay a \$25,000 fine. His

¹ Respondent was a Camden County Superior Court judge at the time of his criminal conduct.

appeal of the conviction was later denied. He is incarcerated at a federal prison in Forrest City, Arkansas.

The relevant facts underlying respondent's conviction are found in a brief filed by the United States Attorney's Office with the United States Court of Appeals for the Third Circuit:

In 2002, the FBI and the Dallas Police Department had begun an investigation of 'Sitekey,' which was a credit card verification site used by people visiting child pornography internet websites. When law enforcement officers subpoenaed Sitekey's business records, they discovered approximately 2000 users nationwide, including approximately 37 in Camden County, New Jersey. One of those individuals was appellant Stephen Thompson, then a superior court judge in Camden County.

Sitekey's records revealed that, in June of 2001, Thompson used one of his credit cards to attempt to gain access to a child pornography internet site called 'boys4ever.com.' Thompson's credit card records and evidence recovered from his computer hard drive showed that he had also purchased videotapes of naked prepubescent boys from a child pornography website called 'Coyoteee.com.'

Senior Investigator Patricia Taulane of the Camden County Prosecutor's Office obtained search warrants, which were executed on April 30, 2003, for Thompson's home in Haddon Township, New Jersey, and for his shore house in Avalon, New Jersey. Inside the master bedroom at Thompson's shore house, law enforcement officers found a mini-DVD video camera and three video cassettes. One of the cassettes was made by Thompson while in Russia in September of 2002.

The video cassette revealed that while in Russia, Thompson was met by an individual named Chris, who provided Thompson with the sexual services of an adolescent boy.² Thompson told Chris to instruct the naked boy to turn around, and Thompson commented that the boy was 'beautiful.' Thompson further instructed Chris to have the boy 'start getting an erection.' Shortly thereafter, Thompson instructed Chris to have the boy bend over and spread his buttocks. *Id.* Thompson told Chris that he could leave the room because '[w]e'll be fine.' *Id.*

While alone in the room with Thompson, the boy achieved an erection through self-stimulation and later masturbated to the point of ejaculation. Thompson, who was likewise naked, climbed into bed with the boy. After touching and caressing the boy, Thompson performed fellatio on him twice. Thompson tried to get the boy to perform oral sex on him, and Thompson also negotiated with the boy to allow Thompson to perform anal sex by penetrating the boy.³ The tape contains additional footage of the boy in very sexually suggestive positions on the bed, with the camera focusing on the boy's penis, testicles, and buttocks.

Inside Thompson's shore house, law enforcement officers also found a locked fireproof safe, which contained, among other things, nine videotapes of child pornography. These videotapes appeared innocent from outward appearance - they contained covers from National Geographic and began with about an hour of National

² The boy, who was never identified, appears to be approximately 13 to 16 years old.

³ Thompson has a functioning semi-rigid penile prosthesis and is able to ejaculate and achieve penetration.

Geographic footage. In each of the videos, however, after the National Geographic footage, there is a five or ten minute gap, followed by numerous clips of child pornography.

In addition to these nine videotapes, the safe also contained two compilation tapes (which contained selected child pornography footage from the nine 'National Geographic' tapes), 57 floppy disks, three zip disks, and an old eight millimeter film - all containing child pornography. These videotapes and computer disks contain graphic images of boys engaging in oral and anal sex with other boys and adult men; young boys being violated with sex toys, fingers, and other objects; boys urinating on other boys.

Thompson's safe also contained a redacted copy of the videotape he had made while in Russia. This copy edited out the pictures and voice of Thompson, leaving only images of the boy masturbating and posing alone. Thompson's safe also contained approximately 300 printed images of child pornography, some child pornography magazines, and several pages of handwritten notes listing various child pornography websites, such as boysforme.com, cuteboys.net, and boysnude.net. The safe also contained some publications from the North American Man Boy Love Association. Also from the shore house, in a separate lock box, Thompson had an additional 14 zipdisks containing approximately 3,000 images of child pornography.

That same day, in a search conducted at Thompson's Haddon Township home, law enforcement officers found another compilation videotape, which contained images of child pornography from three of the 'National Geographic' videotapes described above. In Thompson's bedroom, law enforcement officers found printed information detailing the legal age of

consent throughout the United States and in various countries worldwide. The officers also found handwritten notes listing login names and passwords for various internet websites, such as boykiss.com, boyslolitas.com, and virginboys.com. Also in Thompson's bedroom was a printed text story describing a 13 year-old boy who has oral and anal sex with two younger boys. Finally, law enforcement officers observed a bottle of lubricant (KY jelly) and a box of condoms in Thompson's bedroom dresser drawer.

Law enforcement officers also obtained the consent of Thompson's employer to search the laptop computer that had been issued to him for use in his judicial chambers. Thompson used this computer to arrange with Chris for his sexual escapade in Russia. Thompson also accessed thousands of pictures of child pornography from this laptop computer. In total, Thompson had in excess of 6,000 images of child pornography in his possession.

Analysis of the computer, as well as Thompson's credit card records, revealed that Thompson, while trolling the internet for child pornography, used certain websites and software designed to cover his tracks. For example, Thompson used a website called Anonymizer.com, which is a pay service that allows the user to visit other websites without revealing his internet protocol address.⁴ Thompson used this service over 6,000 times when visiting various internet news groups specializing in child

⁴ The internet assigns a unique internet protocol number (also known as an "IP address") to each computer accessing the internet, which number can be used to trace the accessing computer. [citation omitted.] Anonymizer.com strips that identifying information away.

pornography, such as 'alt.pedophilia.com,' and 'alt.binaries.pictures.boys' [sic]. Thompson also had installed on his home computer in Haddon Township a software program called Evidence Eliminator, which is a program that is marketed towards defeating law enforcement forensic analysis. Evidence Eliminator claims to be able to completely eradicate all information from a computer system.

[USAb at 1 through 7.]⁵

On April 18, 2008, respondent's counsel in this disciplinary matter submitted two psychiatric reports, in mitigation of respondent's actions. Both reports were prepared in conjunction with respondent's defense in the federal criminal matter. One report, dated January 25, 2005, was prepared by psychiatrist Gary Michael Glass, M.D. ("the Glass report"). The second report, dated February 2, 2005, was from Joseph DiGiacomo, M.D., Clinical Professor of Psychiatry at the University of Pennsylvania School of Medicine ("the DiGiacomo report").

The Glass report, in particular, gave a gripping account of respondent's abbreviated three-week tour of duty in Vietnam in 1969, when he was a twenty-three-year old soldier. It ended in respondent's fight for survival in a "spider hole," against a fifteen or sixteen year-old enemy soldier. According to

⁵ "USAb" refers to the U.S. Attorney's January 10, 2007 Brief for Appellee.

Dr. Glass,

[Respondent] and his platoon of about twenty were in combat virtually every day. The prominent day was July 29, 1969. [Respondent] was summoned with other platoon leaders to the Command Post and they were briefed. They were to infiltrate an area and try to rescue or mop up Special Forces troops that were surrounded by North Vietnamese. While this was outside of his area of expertise there were no other options and so the plan went forward. 'We got on line and all hell broke loose. . .I had been in firefights almost daily but this was intense beyond belief.' The company commander was killed almost instantly and the communication system was down. 'I had guys hunker down, I didn't know that five of my twenty were already dead.' As things settled, a 'chopper' landed and brought a Colonel to our assistance. The Colonel, [respondent,] and a few others moved slowly up a berm. When they got to the summit, 'a little kid' popped up and began shooting. [Respondent] feels he was hit in the lower leg and he sprayed the area with his M-16 automatic weapon. He also realized that this same 'kid' appeared to be 'taking a bead' on the Colonel and [respondent] immediately jumped into the spider hole with him. His weapon was out of ammunition and there was no time to reload. He began strangling the 'kid'. [Respondent] recalls looking into his face and realizing he couldn't have been more than fifteen or sixteen years of age. [Respondent] was in good physical shape and was overcoming him but the Colonel tried to assist. He took [respondent's] empty weapon and put it to the head of the enemy but the 'kid' grabbed the rifle and lowered the muzzle. It fired 20 rounds in one or two seconds into [respondent] from his left chest down to his leg. He felt intense pain and then nothing at all. Following this the

Colonel took off his steel hat and 'banged the kid to death.'

[Glass report at 3 to 4.]

Respondent's injuries were extremely severe, resulting in the amputation of his right leg and, later, his right hip joint, the loss of both testicles, and the mutilation of his penis.⁶ Respondent was near death for the first five months of hospitalizations in Saigon and then Japan. Upon his return to the United States, he spent the next three years recovering at Walter Reed Hospital in Washington, D.C. He was finally released from Walter Reed in 1972. For his service, respondent received the Vietnam Service Medal, the Purple Heart, and the Silver Star for gallantry and heroism.

According to Drs. Glass and DiGiacomo, respondent still suffers from a brain disorder, post-traumatic stress disorder ("PTSD"). Dr. DiGiacomo, who has cared for and treated numerous veterans, including Vietnam war veterans, stated that

[s]oon after [respondent] realized the enormity of the penal injury in early 1970, he obtained pictures and a movie of young boys with intact, young, functioning penis [sic]. It is important to remember, the Vietnam traumas in the presence of encephalopathy sets [sic] up an irrational emotional adaptation about his penis, but in the presence of a good functioning mind as

⁶ In later years, respondent underwent a series of surgeries to repair his penis. He regained some use of it.

demonstrated by his work as a superior court judge. The irrational emotional adaptation in the presence of a keen intellect is a form of an intense, self induced brainwashing in an attempt to deal with the realization of his lost penis. The psychoanalytic literature writes about castration anxiety and the need to be reassured of a normal functioning penis. [Respondent] needed to be constantly reassured he once had a functioning penis through observing the pictures and movies of young boys with a functioning penis. From this vantage point, I agree with Dr. Glass that [respondent] suffers from a major mental illness [PTSD], is not psychotic and 'while he is aware of what he is doing, he does not appreciate the nature and quality of his behaviors in this area or the wrongfulness of his actions.'

[DiGiacomo report at 5.]

According to Dr. DiGiacomo, "prior to his release from Walter Reed [in 1972], [respondent] had no homosexual ideas, thoughts or experiences." Both doctors portrayed respondent's obsession as one with young, intact genitals, not an obsession with young boys. The obsession

took place gradually, and began with concerns regarding adolescent males in the early 1970's. 'I would fantasize about having an intact penis. . . mine was so gross['] (tears are in his eyes). The pictures would sometimes lead to masturbation. He confined his fantasy life to pictures until the late 1990's.

[Glass report at 9.]

According to Dr. Glass, when respondent acted out his fantasy in Russia, in 2002, he never intended to commit a crime, and, in fact, took steps to have sex with an adolescent boy in a country where he believed, from his own research, it was legal to do so. Dr. Glass expressed empathy for respondent, stating that, "[u]nfortunately this experience was not successful and he found no significant sexual satisfaction from activity with a young man." Dr. Glass added that respondent later "reviewed [the Russian] video for his own pleasuring [but] his physical appearance was so repulsive to him that he had to remove his image from the tape in order to be stimulated and not upset."

Neither the psychiatric reports nor the cover letter from respondent's counsel suggest that respondent has sought or has been treated for the admittedly obsessive aspect of his mental condition.

Following a review of the record, we determine to grant the OAE's motion for final discipline.

A federal jury found respondent guilty of one count of sexual exploitation of a minor, in violation of 18 U.S.C.A. §2251A(a) and (2). For his crime, respondent was sentenced to ten years in prison, with three years of supervised release thereafter. He was ordered to pay a \$25,000 fine.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's criminal conviction for sexual exploitation of a minor constitutes a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The sanction imposed in disciplinary matters involving the commission of a crime depends on numerous factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46. Discipline is imposed even when the attorney's offense is not related to the practice of law. In re Kinnear, 105 N.J. 391 (1987).

In cases involving sexual misconduct, discipline has ranged from a reprimand to disbarment. Reprimand cases include In re Gilligan, 147 N.J. 268 (1997) (attorney convicted of lewdness when he exposed and fondled his genitals for sexual gratification in front of three individuals, two of whom were children under the age of thirteen) and In re Pierce, 139 N.J.

533 (1995) (attorney convicted of lewdness after he exposed his genitals to a twelve-year old girl).

Attorneys in the following cases were suspended: In re Herman, 108 N.J. 66 (1987) (three-month suspension for attorney who pleaded guilty to second degree sexual assault after he touched the buttocks of a ten-year old boy); In re Ferraiolo, 170 N.J. 600 (2002) (one-year suspension for attorney who pleaded guilty to the third degree offense of attempting to endanger the welfare of a child; the attorney, who had communicated in an internet chat room with someone whom he believed to be a fourteen-year old boy, was arrested after he arranged to meet the "boy" for the purpose of engaging in sexual acts; the "boy" was a law enforcement officer); In re Gernert, 147 N.J. 289 (1997) (one-year suspension for attorney who pleaded guilty to the petty disorderly offense of harassment by offensive touching; the victim was the attorney's teenage client); and In re Ruddy, 130 N.J. 85 (1992) (two-year suspension for attorney who pleaded guilty to four counts of third degree endangering the welfare of a child after he fondled several young boys).

The most serious cases involving sexual misconduct have resulted in disbarment: In re Wright, 152 N.J. 35 (1997) (attorney was convicted of aggravated sexual assault and

endangering the welfare of a child; the attorney did not dispute his daughter's statement that he had digitally penetrated her vaginal areas); In re Palmer, 147 N.J. 312 (1997) (attorney pleaded guilty to seven counts of third degree aggravated criminal sexual contact and one count of fourth degree criminal sexual contact); and In re X, 120 N.J. 459 (1990) (attorney pleaded guilty to three counts of second degree sexual assault; the victims were his three daughters).

Recently, the Court has taken an increasingly harsh view of attorneys engaged in sexual misconduct involving children. In In re Cunningham, 192 N.J. 219 (2007), the Court disbarred an attorney in a case that was factually identical to Ferraiolo (one-year suspension). Both Ferraiolo and Cunningham were convicted of attempted endangering the welfare of a child, in violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:24-4a, by attempting to lure children, who were actually undercover law enforcement officers, into meetings for sex. The only distinguishing factors between the two cases were minor: 1) Ferraiolo completed an arrangement to meet his victim, while Cunningham had only presented an invitation to the "boy" to meet him in New York and 2) Cunningham's target was younger than Ferraiolo's by two years. Noting that the Court was taking an increasingly dim view of pedophiles, a five-member majority of

this Board voted to suspend Cunningham for two years. Three members voted for a one-year suspension, based on the precedent in Ferraiolo. One member voted for disbarment. The Court disbarred Cunningham without rendering a written opinion.

In a very recent case, In re Sosnowski, N.J. (2008), the Court disbarred an attorney who, like Cunningham, possessed numerous pieces of child pornography and also used hidden cameras in a bathroom used by children and in a child's bedroom. Sosnowski spied on children in the home in order to satisfy his deviant interests. The record is not clear whether the camera was recording or simply monitoring the rooms in question. We determined that Sosnowski fit the Court's pronouncement in In re Templeton, 99 N.J. 365, 376 (1985): "disbarment is reserved for the case in which the misconduct of an attorney is so immoral, venal, corrupt or criminal as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession."

Here, respondent's counsel offered for purposes of mitigation, two psychiatric reports used in the federal criminal trial. They set forth, in agonizing detail, respondent's tragic Vietnam saga, as well as his fight to survive and, later, to thrive as an active member of society, all despite overwhelming odds. They also chronicle respondent's decision, first made in

1970, to collect child pornography, which, according to his own psychiatrists, became an obsession.

Respondent's psychiatrists portrayed his obsession as a fascination not with young boys, but with their reproductive parts. They tried to distinguish respondent from pedophiles. Yet, respondent's encounter with the adolescent Russian boy absolutely belies that portrayal.

Moreover, respondent knew that what he was doing was wrong. Although he suffers from PTSD, he is not psychotic and, according to Dr. DiGiacomo, "is aware of what he is doing." At least in latter years, respondent went to great lengths to cover up his habit through elaborate means - videotapes with National Geographic covers and an hour of innocent video, followed by numerous clips of child pornography. He used computer software, such as "Evidence Eliminator" and "Anonymizer," to hide his web-surfing tracts. When using his official New Jersey Judiciary laptop to access thousands of pictures of child pornography, he employed a pay service over 6,000 times to erase incriminating information about his web-browsing. He used the same Judiciary laptop computer to arrange his encounter in Russia.

In September 2002, as a vacationing Camden County Superior Court judge, respondent acted out a shocking sexual fantasy with a Russian boy and then brought home a videotape of the ordeal

for posterity. This determined and calculating attorney and judge also went to great lengths to conceal his illegal activities.

Although respondent deserves great credit for the almost unimaginable personal sacrifice he made for his country as a young soldier, he threw it all away. In our view, the public's confidence in respondent's integrity and moral fitness to practice law will never be restored. We, therefore, recommend his disbarment.

Chair Pashman, and Members Boylan and Wissinger filed a separate dissent, voting for an indeterminate suspension. Members Baugh and Clark did not participate.

We also require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie Frost, Vice-Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

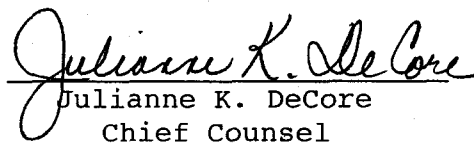
In the Matter of Stephen W. Thompson
Docket No. DRB 08-059

Argued: May 15, 2008

Decided: October 21, 2008

Disposition: Disbar

Members	Disbar	Indeterminate Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost	X					
Baugh						X
Boylan		X				
Clark						X
Doremus	X					
Lolla	X					
Stanton	X					
Wissinger		X				
Total:	4	3				2


Julianne K. DeCore
Chief Counsel