

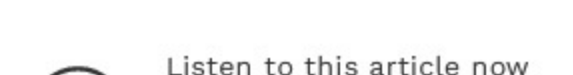
Hot Springs business owner sentenced to 5 years for attempting to receive child pornography

Shalom Baer Gee Apr 20, 2023 Updated Apr 21, 2023 2



The Federal Courthouse in Rapid City.
Adam Fondren, Journal Staff

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A Hot Springs business owner was sentenced to five years in federal prison, followed by five years of supervised release, on Thursday for attempted receipt of child pornography.

U.S. District Judge Jeffrey Viken sentenced Brian (((Spitzer))), 49, to the mandatory minimum of five years.

(((Spitzer))), the owner of (((Spitzer))) Construction in Hot Springs, was arrested in January 2021 after communicating with two different undercover agents posing as teenage girls.

According to the factual basis statement (((Spitzer))) signed when he pleaded guilty in December 2022, he replied to a Craigslist post by Homeland Security Investigations Special Agent Richie (((Berger))) who was pretending to be a 15-year-old named "Christy" on Aug. 9, 2020.

(((Spitzer))) and (((Berger))) messaged for three days. During the interactions, (((Spitzer))) asked the underage persona about her sexual experience and told her, "I also have a kink for younger women." (((Spitzer))) ended the interactions on Aug. 12, 2020, saying, "I don't have time for juvenile attitude."

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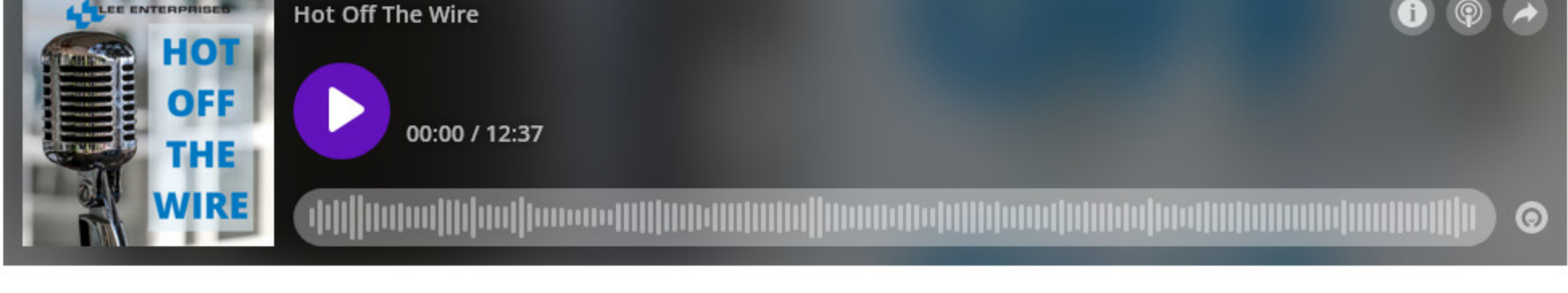
About two weeks later, "Jenna," Pennington County Sheriff's Investigator Jesse Fagerland, started a conversation with (((Spitzer))) by texting him at the number he used to communicate with "Christy."

In the course of about a week, (((Spitzer))) and "Jenna" communicated. During those conversations, (((Spitzer))) told her 14 wasn't too young and asked for nude photos. He also offered to buy her a cellphone in exchange for sex.

After law enforcement issued a search warrant on (((Spitzer)))'s office and home in September 2020, he was arrested several months later and charged with attempted sexual exploitation of a minor, attempted enticement of a minor using the internet, and attempted receipt of child pornography.

In November 2022, the government added a transportation of obscene matters charge to the indictment. The next month, (((Spitzer))) agreed to a plea deal and pleaded guilty to attempted receipt of child pornography, which carries a minimum sentence of five years in prison and a maximum sentence of 20 years.

At (((Spitzer)))'s sentencing on Thursday, Ellery Grey, his defense attorney, asked the judge to consider the statutory minimum. Assistant U.S. Attorney Kelsey Blair asked the court to vary above the federal sentencing guideline and sentence (((Spitzer))) to seven years in prison.



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Blair said the fact (((Spitzer))) spoke with two different undercover agents, and the fact that a message to the first agent saying, "most go no (expletive) way, your too old, old enough to be my grandpa," indicated the conversations were not (((Spitzer)))'s first.

Viken said (((Spitzer)))'s letter to the court ahead of sentencing showed a lot of "understanding" of his actions and a desire to change.

Blair said (((Spitzer)))'s comments were "wrought in self pity" and focused on how he'll be remembered.

(((Spitzer))) did not speak at the sentencing. Grey said his client chose to rely on the letter he sent the court, and said the five-year minimum was "really enough punishment."

Viken noted the support (((Spitzer))) had from multiple people who wrote letters to the judge, which were "consistent." The letters called him a "successful businessman," "good person with a good heart," and noted his involvement in the community.

Blair said that involvement included working with the Boys and Girls Club and involvement with the Miss South Dakota pageant, and that the government's position is (((Spitzer))) is a danger to the community.

Viken said a doctor's psycho-sexual evaluation of (((Spitzer))) noted he is at low risk of re-offending.

"The key is psychotherapy and sex offender treatment," Viken said. "This is a treatable situation and can be handled in that way."

The court required (((Spitzer))) to undergo sex offender treatment when he is placed on supervised release. Viken also ordered (((Spitzer))) to pay a routine \$100 assessment to the Federal Crime Victims Fund, an amount required for each felony federal conviction. He will also have to pay a \$5,000 assessment under the Victims of Trafficking and Violence Protection Act.

In many cases, the \$5,000 assessment is waived due to defendants lacking the financial resources, but Grey said his client has the ability to pay it and intends to do so within 30 days.



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— Contact Shalom Baer Gee at sgee@rapidcityjournal.com —

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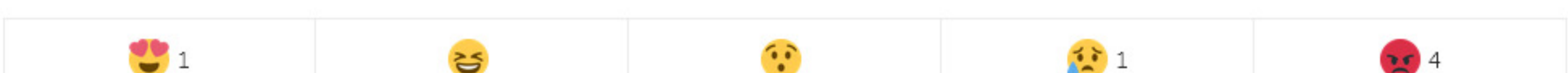
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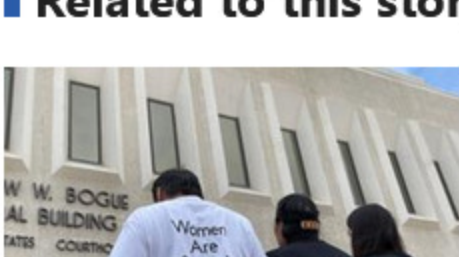
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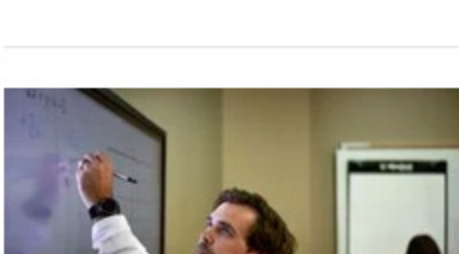
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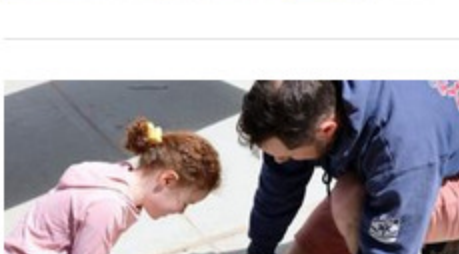
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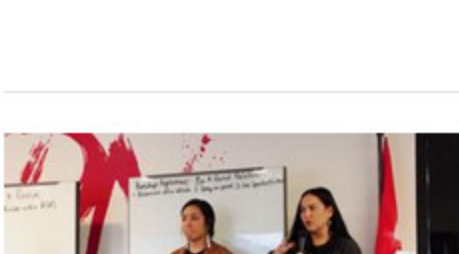
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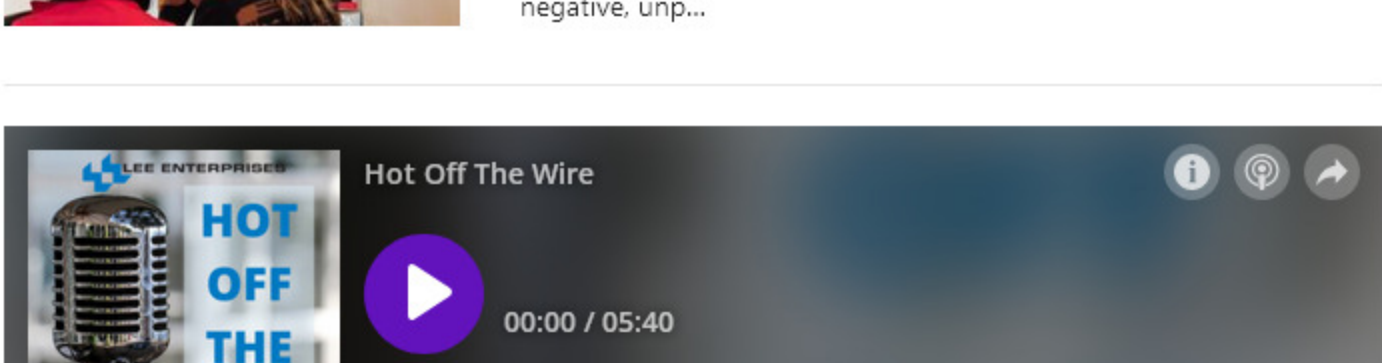
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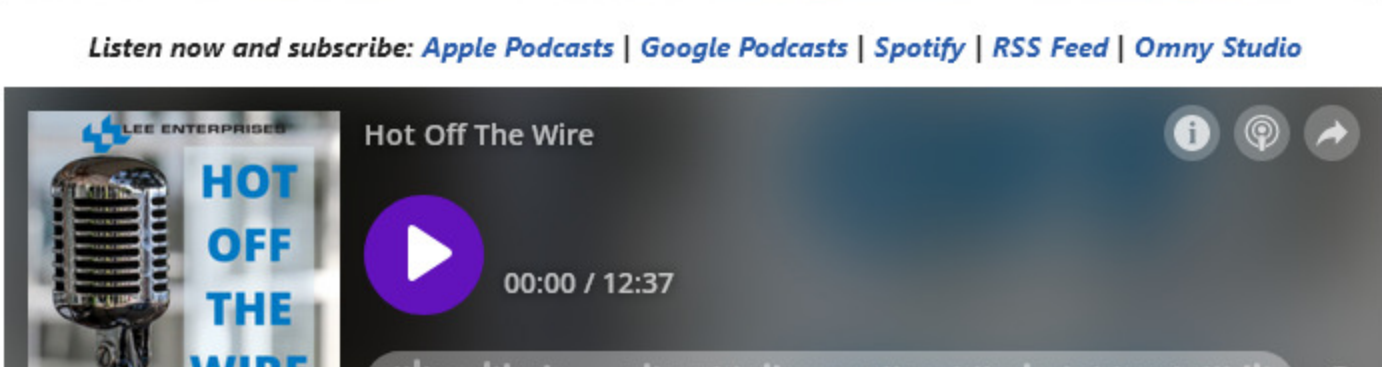


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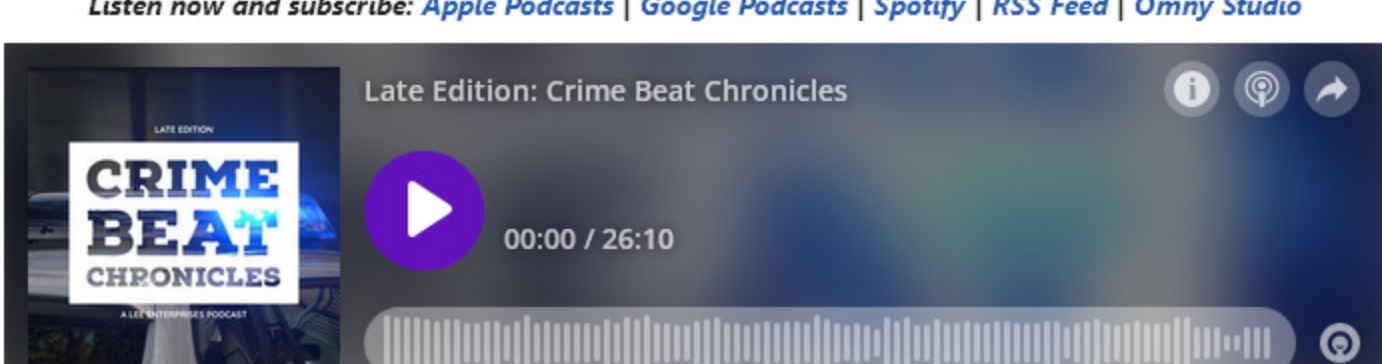
A student said the issue extends beyond student interactions. He said teachers discourage discussions about racism and have made negative, unh...



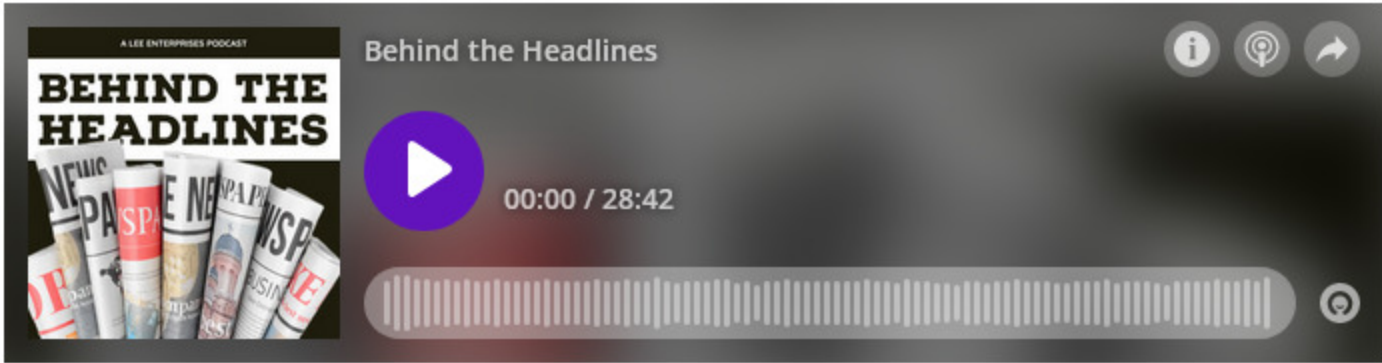
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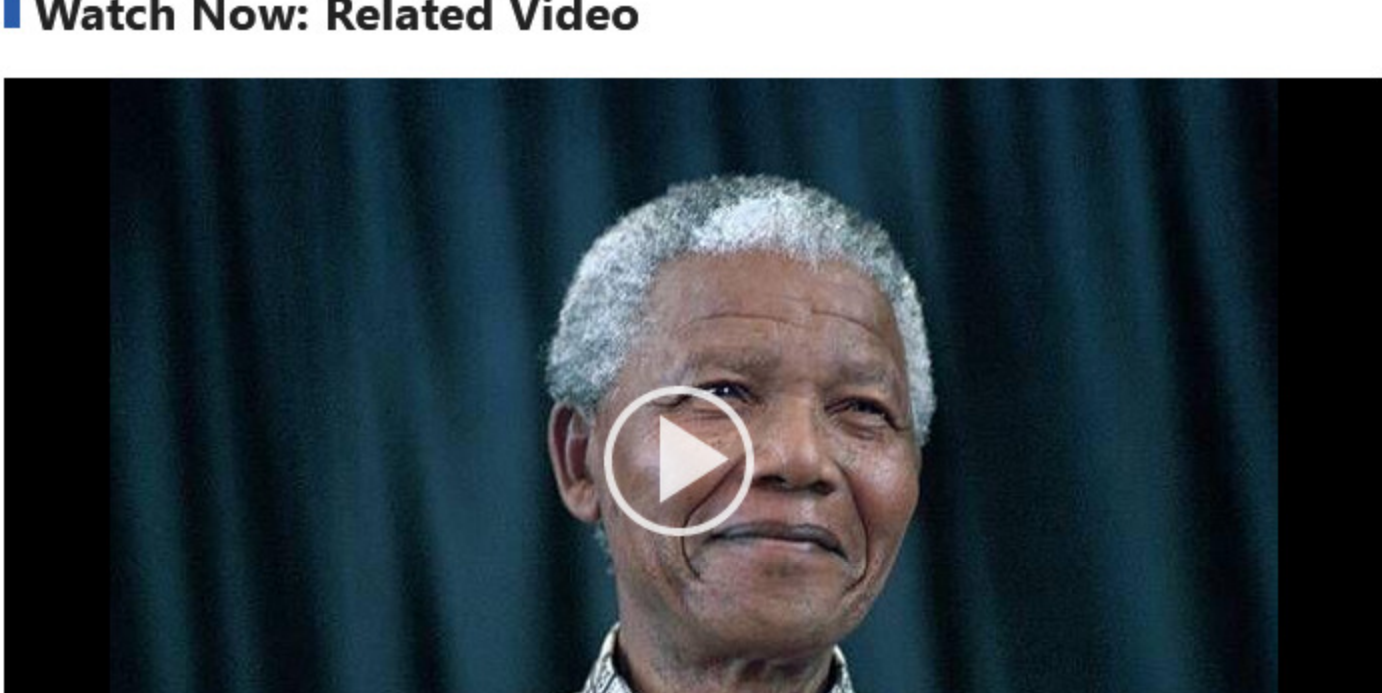


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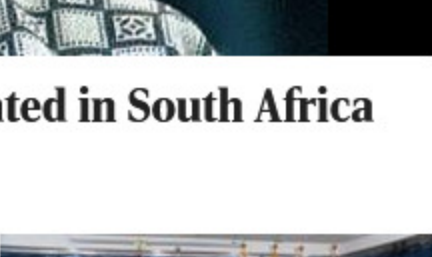
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