U.S. Sentencing Commission
1 Columbus Circle N.E.
Washington DC 20002-8002

August 5, 2010

Ladies and Gentlemen of the Commission:

As a concerned citizen, I strongly support the thoughts and sentiments expressed in the *New York Times* editorial of July 7, 2010: that the vast inconsistency in federal sentences for possession of child pornography and other white collar crimes calls for a fundamental re-examination of the present system and judicial practices.

My own cursory research has provided evidence that sentences for the mere possession of a small number of illegal pornographic computer images (which nowadays seem to be flooding the internet) can vary between 1-2 years and 7-10 years imprisonment, with subsequent probation periods ranging from 2-3 years to lifetime supervision.

Most importantly, it appears that little or no distinction is being made between offenders who evidently pose little or no threat to others (because they received illegal computer images but have not otherwise endangered anyone) and, on the other hand, offenders who actively abuse children as they produce, distribute, and profit financially from such images. In this age of widespread and virtually unchecked use of the internet such a distinction is crucial if justice is to be served and the public is to have respect for the law and the courts administering the law.

Society as a whole is not well served when laws and sentences fail to make such differentiations. What is needed is a clear focus on punishment and/or treatment truly appropriate to the level of offense. Instead of following the lure of "getting tough on crime," lawmakers, prosecutors, and judges have an obligation to make crucial and consistent distinctions between minor and major offenders, or else our prison population explodes even more than it already has at a tremendous cost to society.

That cost cannot only be measured in dollars at roughly $50,000 per year per prisoner; it must also be accounted for in the pain and suffering of families and the ruined lives of those who will have permanent and significant felony records for relatively minor infractions of the law. For those who do not pose a danger to society appropriate treatment rather than incarceration might prove to be a much more constructive alternative.

Sincerely yours,

Christoph K. Lohmann
9 Keel Lane
Nantucket MA 02554

August 14, 2010

United States Sentencing Commission
Attn: Public Affairs – Priorities Comment
One Columbus Circle NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Re: Child Pornography

Gentlemen:

Since the U.S. Sentencing Commission is seeking public comment on possible priority policy issues for the amendment cycle ending May 1, 2011, I would like to comment on priority #6 (continuation of the commission's review of child pornography offenses).

As the mother of a 21 year old son who was sentenced in April of this year to 97 months in federal prison, I am painfully aware of the need for reform to the child pornography sentencing guidelines. My son had no prior criminal record and did not physically harm anyone yet received a longer sentence that individuals who have actually molested a child. Please see the enclosed article from the Billings Gazette. And to add insult to injury the judge sentenced my son to lifetime supervised release. When a person who sits in the privacy of his home viewing pornography gets a longer sentence than someone who physically abuses a child something is wrong with the system. I find it beyond comprehension that the base level for receipt of child pornography is the same as criminal sexual abuse of a minor. In reality the base level for receipt is higher because when the 2 level enhancement for use of a computer is added the base level becomes 20 compared to 18 for sexual abuse. I can say the base is 20 because everyone uses computers and that is where the FBI is directing its attention. So logically anyone the FBI arrests for receipt of child pornography has used a computer. The enhancements for the number of images also needs to be addressed. With the click of a mouse in no time at all the viewer can download enough videos to easily go over the 600 image threshold and have his base level increased by 5 levels.

It seems to me that the government is going to a huge expense to lock up child pornography viewers when it should be going after the people who produce the pornography. Unfortunately you don't see those people being arrested and sent to prison. Perhaps because it is so much easier for an FBI agent to sit in his office and track down viewers thereby justifying his salary rather than doing real leg work.

When the government puts a young man like my son in prison for 8 years and adds lifetime supervision I can only imagine what the total cost must be. I read where it costs $29000 to house a federal prisoner for a year, but what about the fact that he is no longer a tax paying member of society? And what will lifetime supervision cost the government when he is still in his 20s when he is released?

Parents of prisoners are not alone in feeling that the sentences for child pornography are too severe. I read the results of the U.S. Sentencing Commission's survey of U.S. District Judges January 2010 through March 2010. Roughly 70% of the judges said the guideline ranges were too high for both receipt and possession. Also there is an article in the Richmond Journal of Law & Technology, Volume XVI, Issue 3 by Associate Professor of Law Jelani Jefferson Exum. Jelani makes a strong case for changing the federal sentencing guidelines for possession of child pornography in order to make the punishment fit the crime.

Based on all of this feedback I ask that the commission submit changes to Congress for the amendment cycle ending May 1, 2011, that significantly lower the sentencing guidelines for child pornography viewers. I used the term viewers because that is what they are. They are not molesters and there really is no factual distinction between possession and receipt because if you possess it you had to have received it. In my research it has become apparent that the federal prosecutor makes the determination, or in rare instances the judge. In a few recent cases in Montana it backfired on the prosecutor when she got over zealous and charged the defendant with both possession and receipt. The judge ended up throwing out the receipt charge and the defendants were only charged with possession thereby getting lower sentences. Unfortunately not all judges view their authority the same thus there have been unwarranted disparencies between sentences across the country. The only way to avoid that is to change the guidelines. Just giving judges the authority to go outside the guidelines only adds to the disparencies.

In conclusion I am asking that you make significant changes to the sentencing guidelines for child pornography. Drop the distinction between possession and receipt and go back to a base level of 10 that the commission assigned to possession in 1991. And drop the enhancements for number of images because they really have no relevance as far as the dangerousness of the offender is concerned. In doing so the punishment would once again fit the crime. And if the changes were made retroactive, those individuals who are now serving time would once again be able to believe in a system of justice. They need addiction counseling and a chance to turn their lives around, not excessive time behind bars. If they re-offend then perhaps today's sentences are not out of line, but for first time offenders the sentences are extremely excessive. I would also recommend making a greater difference between the months of imprisonment for Criminal History Categories I and II. In my son's case the sentence for someone with 3 prior criminal offenses would only be 11 months longer.

Thank you for your time and I trust that you will send needed child pornography sentencing revisions to Congress for the amendment cycle ending May 1, 2011.

Sincerely,

Janet K. Mullen

Janet K. Mullen
P.O. Box 1125
Miles City, MT 59301
(406) 951-3261

Cc: Senator Tester, Senator Baucus, Representative Rehberg

To: United States Sentencing Commission
One Columbus Circle, NE, Suite 2-500, South Lobby
Washington DC 20002 – 8002
Attention: Public Affairs – Priorities Comment

From: Donald W. Bain, Lt Col., USAF Retired
1305 E. Douglas Street
Iola, Kansas 66749
Ph: (620) 365-6007
ltcol2@cox.net

Subject: Public Comments

Dear Sirs:

In response to your request for public comment on possible priority Policy issues for the amendment cycle ending May 1, 2011, I would like to submit the following comments relative to paragraph 6 in your tentative priorities. In as much as I have no legal background or training, I'm afraid my comments will not follow the prescribed format that you suggest in paragraph 14 of your notice. I apologize for that!!!

Recognizing that child pornography guidelines were one of your priorities during the most recent cycle and noting that at the present time, I see no legislative proposals or Sentencing Commission proposals to make needed changes to the child porn guidelines; I think it is imperative that changes to the guidelines continue to be a priority in the coming cycle as you've already suggested.

Many significant studies have been published in the past 5 years delineating the tremendous disparities that are occurring in sentencing and how it seems now that a defendant's sentence is determined more "by what judge he gets" than by the facts of the case! The original guidelines have been so prostituted with enhancements, in order to make them extremely harsh, to satisfy legislators, who are responding to the hysterics of their constituents, who are demanding them to be" tough on crime" if they want to be elected or re-elected!

Don't misunderstand me. I spent 32 years in K-12 education as a teacher, coach, Principal, & Superintendent and I'm well aware of how hysterical we parents can become when we think one of our children is being threatened or hurt! And I know how the media, (the 24 hour news stations), sensationalize every lost or missing child, driving parents and the public into a frenzy. They keep it before us day after day whether they have anything new to report or not.

After reading the *The History of Child Pornography Guidelines* which is available at <http://www.ussc.gov/general/2009, it is apparent that the Commission has not been able to exercise "its characteristic institutional role" as the experts in determining appropriate

penalties for child porn offenders., but have instead opted to allow politicians to set the standards.

I have absolutely zero tolerance for repeat offenders, but the fact is that some federal judges paint all offenders with the same broad guidelines brush – first offenders as well as repeat offenders!

Case in point: FBI agents arrived at my son's home in February 2006 and confiscated his computer and other material. In December of 2006 he was indicted for possession and distribution of child pornography. (He was actually placing images in his possession into a file sharing file so that others might have access to them.) In Aug of 2007, he pled guilty to one count of possession and one count of distributing. It had been 18 months since his first contact with the FBI. In that time he had continued working at his job with an architectural firm. He kept his employer aware of all that was going on. During part of that time, he was under court supervision and as he traveled to the middle east numerous times and to Japan once, he always cleared his travels ahead of time with the court. Obviously he was not a threat to society!!!!!

At trial the judge said he was going to rely heavily on two psychological tests that my son underwent; one hired and paid for by my son; the other appointed by the court. The results of the tests were essentially the same and according to the judge, showed no evidence of pedophilia and the probability of recidivism was very low.

Now, my son had committed his "crime" in the basement of his own home without the knowledge of his wife or any family member. Had someone known, anyone, he would have stopped the activity immediately!
He is not a pedophile
He never bought or sold any images.
He never abused anyone.
He never molested anyone.
He is not a predator.
He never tried to contact anyone, child or adult.
He was a non-violent first time offender who, according to the judge,

> "knew when you were doing it that it was wrong, you just didn't know how serious the punishment is for this offense and so you are right, you have – you're going to pay dearly, your wife is going to pay dearly and everyone who is associated with you is going to pay dearly and it is painful because you were by all accounts very successful, a contributing member to your community, certainly to your workplace, it is harsh".

After my son read his prepared statement indicating his sincere remorse about his actions and taking full responsibility for all of the fall-out, the judge proceeded to sentence him to incarceration for 210 months – 17.5 years!!! Plus 10years as a registered sex offender!!

What happened to the punishment fitting the crime???
What happened to "sufficient, but not greater than necessary"???
What happened???

There's no question that children who are introduced into child pornography by some sleazy character are tremendously victimized. My son has been similarly victimized, not by some sleazy character, but by an "injustice system" that seems to have lost its moorings.

My son's career as an architect is destroyed! Years of education, training, and experience are rendered useless. And after he serves his 17.5 years, he gets to live? as a sex offender for ten years!!!

If I sound a little bitter, it's because I am. He deserved to be punished, but he didn't deserve to be crucified!! We have always respected our justice system in this country and we've taught our kids to respect it. But this experience has made it almost impossible to defend it. Especially when we read the many cases where judges use their discretion to provide more fair and realistic sentences in these types of cases, such as the Supreme Court case 09 1318, US vs David Grober.

I apologize for this deteriorating into a personal issue, but I feel very strongly that it is important that the Commission know first-hand some of the issues that defendants and their families are facing with these run-a-way sentences promulgated by the out-of-whack guidelines. This case was appealed to the Circuit Court, was affirmed by the Circuit, appealed to the Supreme Court, was remanded by the Supreme Court back to the Circuit court for re-sentencing, the Circuit denied the remand, and it has now been appealed once again to the Supreme Court. Why must we go through all of this "legalese" and the time and cost it entails just to get a reasonable shot at justice?? Those of us who are not lawyers and live in the real world find it daunting and rediculus!!

Another area of concern in the pornographic arena is the way defendants are labeled. Many pornographers have never ever committed a physical sexual offense, yet that broad brush comes into play and they are lumped in with the real sexual offenders, abusers, molesters and rapists. If they have to be labeled, isn't there a more appropriate level of less severity for them and a shorter period of application?? Or is that too much to ask?? It seems to many of us taxpayers that it would be more prudent to cut some of these nonviolent first-time offenders loose, or on parole, and concentrate our resources on the truly violent offenders. I'm sure that sounds too simple, but something is going to have to be done to reduce the overcrowding in our prison population. Getting the ones out that can handle it, and into the working and tax-paying world ,seems to me to be two steps in the right direction.

Again, I apologize for the lack of format and thanks for listening.

Donald W Bain

Donald W. Bain

From: Fima Estrin <estrinyefim@gmail.com>
To: <pubaffairs@ussc.gov>
Date: Fri, Aug 13, 2010 10:37 AM
Subject: A response to the United States Sentencing Commission, request for public comment.

From Yefim Estrin
10411 Cedar Lake Rd Apt 204
Minnetonka MN 55305

A response to the United States Sentencing Commission, request for public comment.

Comments sent to:

United States Sentencing Commission

One Columbus Circle, NE Suite 2-500

South Lobby

Washington, DC 20002-8002

Attention: Public Affairs-Retroactivity Public Comment

To the United States Sentencing Commission:

I am seeking your support in amending the sentencing guidelines for possession of child pornography offenses.

To better protect children and society I am asking the USSC to focus on the actual "First Person" commercial producers and purveyors of child pornography and those who knowingly serve the pipeline that distributes such material via the Internet.

I am asking the USSC to provide meaningful and effective alternatives to incarceration for first time, non contact offenders for simple possession of child pornography that DOES NOT involve production or commercial distribution.

Recent, reliable studies indicate that practically NO child pornography offenders (.013%) are actually at risk to commit contact sexual offenses involving other children.

(Michael Seto and Angela W. Eke. The Criminal Histories and Later Offending of Child Pornography Offenders. 17 Sexual Abuse: J. Res & Treatment 2005)

"Any public policy that treats the possession of digitalized images as seriously as an assault on a young person is an irrational public policy that does not impose justice on offenders nor does it marshal scarce law enforcement resources to protects the public."

Florida ACLU

PLEASE CONSIDER THE FACTS:

+ "These guidelines treat even first-time offenders with no history of abusing or exploiting children as seriously as murders, rapists or child molesters" Stabenow, Troy. "Deconstructing the Myth of Careful Study: A primer on the flawed progression of the child pornography, guidelines. June 10, 2008

+ "The guidelines are PREDICTED on the untested assumption that anyone who would access pornography is a potential child molester."

Hansen, Mark. "A reluctant Rebellion. ABA Journal June, 2009

+ "Consuming child pornography alone is not a risk factor for committing hand-on sex-offenses- at least not for those subjects who had NEVER committed a hands-on sex offense"." The Consumption of Internet Pornography and violent and sex offending." BMC Psychiatry, July 14, 2009

+ "Only 5 percent of all child porn defendants in 2007 had been charges with production" Hansen, Mark. "A Reluctant Rebellion." ABA Journal June, 2009.

+ The National Center for Missing and Exploited Children reports that in 84 percent of child pornography cases there is NO empirical association between possession of pornography and actual abuse of children. "Disentangling Child Pornography from Child Sex Abuse,",Carissa Byrne Hessick, 88 Wash. U.L. Rev. (2010

+ "Going online for sexual pursuits does not necessarily cause problems or inevitably lead to inappropriate sexual acting out. "Profiling online sex offenders, cyber-predators and pedophiles", Dr. Kimberly Young Clinical Director The Center for Internet Addiction Recovery

+ Fred Berlin, founder of the Johns Hopkins Sexual Disorder Clinic, says many of his patients have a "voyeuristic" interest in child pornography. Absent any evidence that they have done something other than view child porn...

+ The U.S. Sentencing Commission for the first time questioned federal judges on their views about sentencing: 71% of judges said the mandatory minimums that they were required to impose for receipt of child pornography were too high. "Judges Give thumbs

down to Crack,Pot,Porn Mandatory Minimums, Marcia Cobyle6/16/2010 www.law.com

+ Judge Jack B. Weinstein US District Court in Brooklyn," does not believe that those who view the images, as opposed to producing or selling them, present a threat to children.....We're destroying lives unnecessarily, he said, "At the most, they should be receiving treatment and supervision."

+ Example of total cost to taxpayer to incarceration for offender and additional family needs/hardship costs for 5 years: $239,305.60 vs. cost to taxpayer if given supervised release and/or fines instead of incarceration: $2,425.92

+ "We believe changes in the use of technology and in the way these crimes are regularly carried out today suggest hat the time is ripe for evaluating the current guidelines and considering whether reforms are warranted. Consideration ought to be given to updating many aspects of the child pornography sentencing guidelines to better calibrate the severity and culpability of defendants' criminal conduct with the applicable guidelines sentencing ranges."
Department of Justice, June 28, 2010

We have a system that locks away too many young, first-time, non-violent offenders for the better part of their lives – a decision that's made not by a judge in a courtroom, but all too often by politicians in Washington and state capitals around the country"
President Barack Obama

Sincerely,
Yefim Estrin

James S. Kazanjian
Reg. No. 28323-050
L.S.C.I. Allenwood
P.O. Box 1000
White Deer, PA 17887

March 25, 2010

The Honorable William K. Sessions, III
Chairman
United States Sentencing Commission
One Columbus Circle. N.E.
Suite 2-500, South Lobby
Washington, DC 20002

Re: **Commission Review of the Child Pornography Guidelines for the Guideline Amendment Cycle ending May 1, 2010**

Dear Chairman Sessions:

I am writing to present comments for the Commission's consideration regarding its review of the child pornography guidelines for its guideline amendment cycle ending May 1, 2010. The guidelines for child pornography offenses are rightly being given scrutiny by the Commission because, in my view, they recommend extremely harsh punishments for receivers and possessors of child pornography, who are not themselves child molestors, that are grossly disproportionate to the nature of their offenses, their rate of recidivism and the threat that they pose to the community in general, and to children in particular.

I should know, because I am one of them. I am currently serving a 41-month sentence for Possession of Child Pornography at the Low Security Correctional Institution at Allenwood, Pennsylvania. Upon my release, I have been ordered to serve a five-year period of supervised release, and pay a $1000 criminal fine, which I have already paid. I will also be required to register as a sex offender in the State of New Jersey, where I will live with my wife when I am released. I was accused by the Government of possessing only three (3) short video clips depicting illegal images that I did not intend to download. These video files were sent to me unsolicited by individuals that I encountered in a chat room that had nothing to do with children or pornography. I expressed distaste for such materials to the persons I was chatting with and I attempted to delete these files from my computer unsuccessfully because I lacked a sophisticated knowledge of computer operations. I had no other illegal videos or images on my computer, and I never

attempted to correspond with minors over the Internet. I have never been accused of ever having inappropriate contact with a minor of any sort.

My 41-month sentence was at the low end of the recommended guideline range of 41 to 51 months, based on a total offense level of 22, reflecting the fact that I have absolutely no criminal history. Under the 2006 Guidelines Manual, the base offense level for Possession Of Child Pornography was 18, pursuant to U.S.S.G. § 2G2.2(a)(1). Two levels were added pursuant to § 2G2.2(b)(2) because the material involved a prepubescent minor or a minor that had not attained the age of 12. Two levels were added pursuant to § 2G2.2(b)(6) because the offense involved the use of a computer for the possession of the material; and three levels were added pursuant to § 2G2.2(b)(7)(B) because the offense involved at least 150 images but less than 300, using the arbitrary conversion factor of one video equalling 78 images, or 3 videos x 78 images/video = 234 images. This resulted in an enhanced offense level of 25, from which three (3) levels were subtracted for acceptance of full responsibility, pursuant to U.S.S.G. § 3E1.1(b).

Prior to my offense, for over 30 years, I was a highly-regarded teacher and coach in grades K-12 in several private Catholic Schools in New Jersey. I also coached youth sports and organized summer youth sports camps in the wider community. During my over 30-year career, I earned many awards and recognitions, and I played a leadership role in originating and developing athletic and educational programs that benefitted the schools and students that I worked with, as well as the wider community and state. My career accomplishments are summarized in the excerpted Declaration that I submitted in my Habeas Corpus Petition, entitled Kazanjian v. Scism, Civil No. 1:10-CV-00203 (M.D.PA 2010)(Jones, J.), a copy of which is enclosed.

During my entire teaching and coaching career, not a single complaint or accusation of inappropriate conduct had ever been lodged against me, and I have never, ever even attempted to engage in any conduct of that sort. As a result, Judge Hedges of the U.S. District Court for the District of New Jersey, in Newark, allowed me to retain my teaching license and to continue teaching while my case progressed. Judge Hedges remarked during my arraignment that my child pornography charge "is not the mark of Cain that should follow you for the rest of your life. " Sixteen family members, friends, colleagues and young people submitted character letters to the Court attesting to the fact that I would never harm a child, and that I was a positive role

model for young people. A copy of these letters is enclosed. Nonetheless, in spite of all of this, I was sentenced to 41 months, according to the guideline range recommended by the Commission. Given my life history and the isolated and minimal nature of my offense, by the standards of any civilized nation, my sentence was excessively harsh and unnecessarily draconian, even considering my acknowledgement of what I did was wrong and that child pornography is a harmful scourge that must be eradicated. These sentences must change, and such a change is justified, and indeed required, for the reasons that I will now discuss.

A great deal of false and misleading misinformation has been published by Congress and by federal prosecutors nationwide regarding persons accused of receiving child pornography to justify the unusually harsh and draconian penalties imposed on individuals like me. To achieve that end, the Government has fostered a number of myths about child pornography receivers that are not true. They claim that we are a homogenous group, which is far from being the case. For instance, the Government in these cases almost always claims that all people who view child pornography are pedophiles to capitalize on the incendiary and emotionally charged nature of that label to inflame the passions of courts, juries and the general public to obtain a lengthy prison sentence against the accused. But I was evaluated by a forensic psychologist prior to my sentencing, and he did not diagnose me to have pedophilia. The battery of tests that he administered (including the standard SONAR test) found that I had none of the indicators usually associated with sexual offending. I am certain that I am not out of the ordinary in that regard.

The Government often claims that the recidivism rate for child pornography viewers is very high: 70% to 90%. This is used to justify seeking and imposing harsh sentences. But this is another myth that is debunked by the available objective, empirical scientific research. Nonetheless, the Government insists on claiming in these cases that child pornography viewers have a high degree of recidivism, and they are just one step away from sexually abusing a child. Neither of these myths is true, and they are contrary to the available objective scientific research. The fact is, the steps from viewing child pornography to actual physical sexual contact is enormous, and there is no objective empirical support for a causal link between viewing illegal images and a substantial risk of the commission of contact offenses. In fact, the evidence proves the contrary. See, e.g., D. L. Riegel, Effects On Boy-

Attracted Pedo-Sexual Males on Viewing Boy Erotica, 33 Archives Of Sexual Behavior 4, 321-323 (2004)(letter to the editor regarding conclusion from Internet survey). Said another way, although in certain cases pornography may be part of a larger offense process (which was not the case with me), there is growing support for the conclusion that viewing pornography is not the cause of sexual offending. See R. Bauserman, Sexual Aggression And Pornography: A Review of Correlated Research, 18 Basic Applied 4, 405-427 (1996);W. L. Marshall, Revisiting The Use Of Pornography by Sexual Offenders: Implications For Theory And Practice, 6 Journal Of Sexual Aggression 1/2, 67-77 (2000); J. Endrass, et al., The Consumption of Internet Child Pornography and Violent Sex Offending, 9 BMC Psychiatry 43 (2009)("the current research literature supports the assumption that the consumers of child pornography form a distinct group of sex offenders" from those who commit contact offenses against children.)

With regard to the Government's often stated claim to a high recidivism rate, the reality is quite different. A 2005 study looking a re-offense rates for adult male child pornography offenders found that while only four percent (4%) of child pornography only offenders committed a further pornography offense, a mere one percent (1%) escalated to a contact sexual re-offense. Thus, 99% did not go on to touch a child, and 96% did not continue to look at child pornography. M. Seto and A. Eke, The Criminal History Of And Later Offending Of Child Pornography Offenders, 17 Sexual ABuse: A Journal Of Research and Treatment 2, 201-210 (2005). Thus, there was no evidence found of a significant connection between viewing child pornography and child molestation, or any other contact offenses, and only a small likelihood of continued viewing of illegal images. This was so, even though within the study cohort were individuals who had other, prior sexual offense convictions, to include prior contact offenses. Thus, it is reasonable to conclude that viewing-only offenders, like me, with no prior criminal history would have an even lower likelihood of committing another sexual offense of any type.

Similarly, a 2007 study found that "there is some indication to support that there is a subgroup of Internet offenders who pose a risk of repeated Internet pornography offending...[B]y far the largest subgroup of Internet offenders would appear to pose a very low risk of sexual recidivism." L. Webb, J. Craissati and S. Keen, Characteristics Of Internet Child Pornography: A Comparison With Child Molesters, 19 Sexual ABuse: A Journal of Research and

Treatment 4, 463 (2007). Importantly, for purposes of the Webb, et al. study, "Internet sex offenders" as a group included individuals convicted of "Making Of Child Pornography." Thus, persons with contact offenses were included in that study. Nonetheless, the Webb, et al. study concluded that the risk of recidivism was "very low."

In addition, a study issued in summer 2009 analyzes six-year recidivism dates of 231 men convicted of child pornography offenses on 2002 and found:

> Among the subjects of the present study, only 1% were known to committed a hands-on sex offense, and only 1% were charged with a hands-on sex offense in the 6-year follow-up. The consumption of child pornography alone does not seem to present a risk factor for hands-on sex offenses in the present sample -- at least not in those subjects without prior convictions for hands-on sex offenses.

Endrass, The Consumption Of Internet Child Pornography And Violent Sex Offending, Supra. The foregoing makes evident the utter derth of any support for the common myths that individuals like me are dangerous and deserving of lengthy prison sentences and periods of supervised release, and that we should have no contact with children. The stark contrast between the Government's stated justification and empirical, factual reality is truly disturbing. Given my undisputed history, to include my offense conduct, it appears that at most, I and other child pornography viewers like me pose at most a 1% chance of committing a contact sex offense. Given that the objective studies discussed include individuals with prior contact sex offenses, I dare say that the risk that we pose is even less. That is certainly not enough to justify the disproportionately harsh penalties that have been imposed.

Even the Government's own study found that sex offenders do not pose the level of threat that popular mythology suggests. In 2003, the U.S. Department of Justice (DOJ) released a study that examined the criminal records of the 9,691 sex offenders released in 15 states since 1994. See Lawrence A Greenfield, Recidivism of Sex Offenders Released From Prison in 1994 (2003). The key finding of the study was that recidivism rates among sex offenders were far lower than previously believed. The DOJ study found that within the first three years following their release from prison in 1994, 5.3% (517 of the 9,691) of released sex offenders were rearrested for a sex crime. This is notable because this study population consisted primarily of contact sex offenders, not individuals whose offense involved viewing child pornography,

as was the case with the studies discussed above. Even so, the recidivism rate was still low.

Although the recidivism rate for sex offenders in the DOJ study (5.3%) was slightly higher than for non-sex offenders (1.3%) during the critical first three years after release, the DOJ study also notably found that during the study period non-sex offenders committed over six times as many sex crimes as did sex offenders. Also of note is that only 5% of child molestation cases were committed by persons who were listed on the sex offender registries. Therefore, even by the Government's own data, sex offenders as a whole are dramatically less dangerous than the Government makes them out to be. Even the DOJ has endorsed this view by endorsing a similar conclusion by a U.S. Senate Subcommittee that there was "no causal connection" between viewing child pornography and physical molestation of children. See, Dep't of Justice, Project Safe Childhood, Protecting Children from Online Exploitation and Abuse 12 (2006)(citing child pornography and pedophilia: Report made by the Permanent Subcommittee on Investigations, U.S. Senate, 99th Congress 2d Sess. 44 (1986)).

The only report that the Government can rely on to support its efforts to obtain draconian sentences against child pornography viewers is the so-called "Butner Study", of which the Commission is undoubtedly aware. See, Bourke, Michael C. and Andres Hernandez, The Butner Study Redux: A Report Of The Incidence Of Hands-On Child Victimization By Child Pornography Offenders, Journal Of Family Violence, Volume 24, Issue 3 (April 2009). The Butner Study included 155 sexual offenders that had enrolled in an intensive, residential sex-offender treatment program at the Medium Security FCI at Butner, North Carolina. This study purported to find that many of the offenders who had no documented hands-on victims that were known at the time of sentencing each later admitted during treatment to having had multiple hands-on victims. This Butner Study and its conlcusions have been repeatedly used by Federal prosecutors and members of Congress to justify the harsh sentences that they seek to impose on child pornography viewers. Their argument is, essentially, that such viewers are likely to each have numerous unknown hands-on child victims. Thus, they should be incarcerated for prolonged periods of time in order to punish those offenses, and protect society from these highly dangerous predators.

However, the conclusions of the Butner Study are contradicted by the ob-

jective studies described above. In fact, the premises and methodology of the Butner Study itself have been thoroughly discredited by highly credible experts in this field. The Butner program was not therapy at all, but a highly coercive program which pressured and coerced participants into admitting past crimes in the name of "coming clean" and overcoming their allegedly deviant behavior. However, if the inmates did not go along with the study director's insistance that they identify prior victims, and hence cooperate with the "treatment", they could be subject to sanction, including loss of desirable housing and other privileges, up to expulsion from the program and the black mark on their records that that would entail. Therefore, it is not surprising that the inmates relented and told their inquisitors what they wanted to hear. The dramatic increase in the number of contact sexual offenses acknowledged by the treatment participants (2,369%) versus the 1% rate of hands-on offenses observed by the six independent studies of child pornography viewers described above should establish beyond a doubt that the Butner participants succumbed to the pressure to falsely admit victims rather than suffer the consequences.

Many courts have rightly rejected the conclusions of the Butner Study, and they have encouragingly acknowledged the myriad criticisms and widespread rejection of the Butner Study. For example:

> As [Dan L. Rogers, Ph.D] testified, the program is highly coercive. Unless offenders continue to admit to further sexual crimes, whether or not they actually committed those crimes, the offenders are discharged from the program. Consequently, the subjects in this study had an incentive to lie, despite the fact that participation in the program would not shorten their sentences. Rogers testified that the Study's 'whole approach' is rejected by the treatment and scientific community.

United States v. Johnson, 588 F. Supp. 2d 997, 1006 (S.D. Iowa 2008)(citations omitted). See also United States v. Phinney, 599 F. Supp 2d 1037, 1044-45 ("...the Butner studies are flawed. Most significantly, participants risk being kicked out of the treatment if they do not admit prior contacts.") The foregoing makes evident the utter dearth of any credible support for the insistance by Congress, Courts and prosecutors for imposing the harsh penalties set forth in the Guidelines.

As the Commission is aware, many of the harshest Guideline recommendations were directly imposed by Congress. In his widely-cited article, Troy Stabenouw

chronicles the dramatic, upward progression of sentences for viewing child pornography that has take place over the last 25 years. See Stabenow, Troy, Deconstructing The Myth Of Careful Study: A Primer Or The Flawed Progression Of The Child Pornography Guidelines, (January 1, 2009). Stabenow's article presents a thorough analysis of the development of Guideline 2G2.2, and the dramatic upward progression of the recommended sentences for viewing offenses over the last twenty years. Stabenow reviewed the Amendment history of 2G2.2 and found that these changes result from "numerous morality earmarks slipped into larger bills over the last fifteen years, often without notice, debate or study of any kind." Id. at 3. For example, the late Senator Jesse Helms of North Carolina introduced a "morality earmark" into House Resolution 2622, the Treasury-Postal Service Appropriations Bill of 1991. According to Stabenow, two religious organizations, the Religious Alliance Against Pornography and Morality in the Media, had sent letters to Senator Helms urging him to propose upward adjustments to the Guidelines for child pornography crimes. Id at 6. Senator Helms complied and proposed this Amendment instructing the Sentencing Commission to increase the penalties for child pornography offenders.

This Amendment was enacted by Congress over the objection of the then chair of the Sentencing Commission who, in a letter to the House of Representatives, noted that it "would negate the Commission's carefully structured efforts to treat similar conduct similarly and to provide proportionality among different grades of seriousness of these offenses." Id. This apparently marked the beginning of a series of changes to child pornography Guidelines that "would come from Congress [rather than the Sentencing Commission], and would be dictated not by experience and study, but instead by a general moral sense that the penalties for 'smut peddlers' should always, and regularly, be made stricter, not weaker." Id at 8. The most dramatic of these amendments occurred in 2003 when, at the behest of two Justice Department attorneys, freshman Congressman Tom Feeney inserted an amendment to the Child Abduction Prevention Act which established a five-year mandatory minimum sentence and a five-level increase, depending on the number of images possessed.

While I do not question the sincerity of the religious beliefs and socially conservative political views of these individuals, I strongly believe that allowing these views to dictate the sentences imposed for an entire category of viewing offenses has resulted in a grotesque perversion of justice that

has unnecessarily destroyed the lives and families of many thousands of individuals, most of whom, like myself, have absolutely no prior criminal history, and have never, ever lifted a finger to harm another human being. I am not alone, as these amendments have been widely criticized for their failure to consult the Sentencing Commission, and for their lack of empirical support. Id. at 18. They were consistently opposed not only by the Sentencing Commission, but also by the Chairman of the House Committee on the Judiciary, the Judicial Conference of the United States and the American Bar Association. Yet, these amendments are still the law and were used to sentence me to 41 months for possessing three illegal videos, without any evidence of any inappropriate contact with minors on my part. If that is not disproportionate to the nature and severity of my offense, I don't know what is.

The result of this is not only the imposition of draconian sentences on a class of persons the empirical evidence has shown not to be dangerous, but these direct amendments by Congress have caused § 2G2.2 to lose all meaning and usefulness as a means to differentiate the most culpable from the least culpable offenders. For instance, Mr. Stabenow determines that the 2-level enhancement for use of a computer applies in 96.5% of the cases. The enhancement for images involving a prepubescent child under 12 years of age applies in 95.5% of cases. The enhancement for possessing sadistic, masochistic or violent images applies in over two-thirds of cases. Given the ease with which a high volume of images can quickly be downloaded from the Internet today with a few mouse clicks, the 5-level enhancement for possessing over 600 images is reached in most cases, especially given the artificially high and arbitrary conversion factor for videos (1 video = 75 images) prescribed by the Guidelines. Therefore, someone who downloads 8 short video clips risks having almost three (3) years added to his sentence under the current guideline. Not surprisingly, Stabenow found that the typical offender charts out on the Guidelines at 120 months (the mean sentence for this offense) or more, regardless of his criminal history or acceptance of responsibility.

That virtually all offenders are grouped tightly together around this range indicates that the guidelines are "broken" and they must be fixed in order to restore their credibility and their role as a meaningful guide to courts that allows them to separate the most culpable/dangerous offenders from those, like me, that are less so. In spite of most offenders receiving virtually all of the prescribed enhancements in a typical case, the objective,

empirical data discussed above still finds that persons who view child pornography have a 1% likelihood of acting out physically against a child and a 4% likelihood of viewing child pornography again. Given the 99% likelihood that a viewer will never touch a child, using the number of images, and the subject matter and type of images as a proxy for protecting society from more dangerous people is completely invalid, because no matter how much they look at or what type of subject matter they look at, child pornography viewers pose, by all objective indicators, a very low risk to the community. Without any connection to empirical reality, these guideline enhancements amount to nothing more than the vengeance that the segment of our society which proposed them wants to inflict on viewers of illegal images. That is the very antithesis of justice.

Finally, Congress and prosecutors often justify these harsh sentences by arguing that the victims depicted in these illegal images are harmed once again each time someone downloads and views the image off of the Internet. However, when courts have squarely addressed this argument, usually in the context of overreaching claims of restitution against viewers pursued by overzealous prosecutors, courts have uniformly rejected these arguments.

In United States v. Berk, No. 2:08-CR-212-P-S (Slip Op.)(D.Me., October 26, 2009), the Court found that there was nothing in the record showing a specific injury to the child depicted in the images that was caused by that particular Defendant's possession of those images. The injuries pointed to by the child victims in Berk were caused by the physical abusers and the individuals who recorded that abuse and posted it, and distributed it over the Internet, thus traumatizing the victims with "the idea of their images being publically viewed rather than caused by this particular Defendant having viewed the images." Id at 44. The Court in Berk gave great weight to the fact that neither of the child victims mentioned any impact from learning of Mr. Berk's viewing of the images, and in fact, there was no mention of Mr. Berk at all. Id. The Court found that all of the alleged harm to the victims had already occurred by the time the Defendant had viewed the images. Id at 15. Other courts have agreed. See United States v. Cook, No. 4:08-CR-24 (Slip Op.)(D. Alaska September 9, 2009)(refusing to order restitution because "it would be highly speculative and impossible to assess a reasonable restitution amount as to Defendant for the images he observed and distributed);

United States v. Simon No. CR-08-0907 DLJ, 2009 WL 2424673 at *7 (N.D. Cal. August 7, 2009)(denying restitution in a similar possession case because there was no evidence identifying "a specific injury to the victim that was caused by the specific conduct of the Defendant.") Therefore, in spite of the Government's heated rhetoric, it is grossly unfair to impose the draconian sentences recommended by the Guidelines against viewers of child pornography. Such viewers like me view the images in private, we do not redistribute them, we do not attempt to find or contact the children depicted in the images. They do not know us, we will never know them or ever see or recognize them on the street. To say that we have caused them harm, so as to justify enhanced sentences for viewing those images, does not stand up to logical and rational scrutiny, and lacks credibility, as courts have found, to their credit.

In sum, the current Guidelines for Possession of Child Pornography direct courts to impose draconian and unreasonably harsh sentences. These Guidelines have been widely criticized by many Federal courts. At least one judge was compelled to ask the following question: "Am I working with a rational sentencing structure, or administering the Code of Hammurabi?" United States v. Grober, 595 F. Supp 2d. at 382. It is also well documented that sentences handed down are greater than state sentences for the same offense or who had actual physical sexual contact with children. Given the extremely low risk that viewers of these images pose to society, and the fact that courts, when pressed, have been unable to find any concrete, tangible harm that was caused by the private viewer of the images, justice and fair play cry out for the Commission to dramatically reduce the recommended sentences for viewers of illegal images.

To that end, I commend to the Commission that they consider the following amendments and recommendations:

1. Recommend that Congress repeal the five-year mandatory minimum for defendants convicted of receipt where the underlying offense involves only viewing, and not redistribution.
2. Recommend that Congress remove the enhancements for use of a computer, possessing images of prepubescent children under 12, and images of sadomasochistic or violent conduct, as there is no correlation between these items and an enhanced threat to the community.

3. Recommend that Congress remove the up to 5-level enhancement that depends on the number of images possessed, as there is no correlation between the number of images and the level of threat to the community, or harm to a victim depicted in them -- there is still only a 1% chance that a viewer will commit a hands-on offense against a child.
4. Refrain from recommending lifetime supervised release for a defendand whose only offense involved viewing, and where there is no history of abuse of children.
5. Recommend that Congress repeal the five-year mandatory minimum period of supervised release for defendants whose only offense was viewing illegal images.
6. Recommend a period of three years of supervised release for defendants whose only offense was viewing.
7. Lower or repeal the conversion factor for videos in terms of the number of images they represent.
8. Maintain the current sentencing structure for repeat offenders or those who distribute and produce the images, as these categories of offenders have been cited by the courts as being truly responsible for the harm caused to the child victims.
9. Recommend to Congress that defendants whose offense only involved viewing should not be required to register as sex offenders under SORNA.
10. Stiffen penalties for individuals who create, sponsor or benefit financially from Internet sites that offer child pornography to viewers, particularly those that obtain payment for access.
11. Maintain sentences more in line with State sentences for the same offense, and avoid disproportionality issues with State sentences for offenders who commit hands-on child sex offenses.
12. Enhance panalties for defendants who commit acts of physical child abuse as part of, or in parallel with, their child pornography offense.

Given the unfairness of the sentences that have been imposed on me, and many others like me, I respectfully request that these and other amendments to Guideline 2G2.2 that the Commission may make be made retroactive so that the injustice done to current offenders will be remedied.

I hope that the foregoing discussion has been useful. Although I understand that these offenses generate a great deal of passion and emotion because the images involved sometimes depict the horrible abuse of children, I hope that the Commission can put that aside and look objectively at the emperical data and extensive factual discussion provided here which demonstrate that the punishments recommended by § 2G2.2 do not fit the crime.

I would like to thank the Commission for its time in considering my comments. I stand ready to answer any questions that the Commission may have, and to provide any additional information that the Commission may request, if I am able to do so.

Very Truly Yours,

James S. Kazanjian

James S. Kazanjian

A response to the United States Sentencing Commission, request for public comment.

Comments sent to:

United States Sentencing Commission
One Columbus Circle, NE Suite 2-500
South Lobby
Washington, DC 20002-8002
Attention: Public Affairs-Retroactivity Public Comment

To the United States Sentencing Commission:

We are seeking your support in amending the sentencing guidelines for possession of child pornography offenses.

STATEMENT OF THE ISSUE:
"These penalties have been increased arbitrarily and irrationally based on political demands, and "enhancement specifics so ill-defined that they apply in almost every case. These guidelines treat even first-time offenders with no history of abusing or exploiting children as seriously as murders, rapists or child molesters." Troy Stabenow, former military prosecutor. (June 10, 2008)[1]
Possessing even one illegal image is a felony punishable by up to 10 years in prison.

ANALYSIS:
"Nearly 80 percent of all child pornography defendants in 2006 had no prior felonies of any kind, let alone a history of sexually abusing or exploiting a child. And only 5 percent of all child porn defendants in 2007 had been charged with production. Laws are tough on child pornography. But some federal judges think the time isn't fitting the crime". Mark Hansen. June 2009[2]

"Consuming child pornography alone is not a risk factor for committing hands-on sex-offenses, at least not for those subjects who had NEVER committed a hands-on sex offense. The majority of the investigated consumers had no previous convictions for hands-on sex offenses. For those offenders, the prognosis for hands–on sex offenses, [likelihood of no such criminal actions occuring] as well as for recidivism [lack of return

[1] Stabenow, Troy. "Deconstructing the Myth of Careful Study: A primer on the flawed progression of the child pornography guidelines. June 10, 2008
[2] Hansen, Mark. " A Reluctant Rebellion." ABA Journal June, 2009.

this results in is that many convicted under these guidelines receive a punishment too severe in relation to the crime. It is hard to justify a non-violent, non-contact crime with a 10 year mandatory minimum sentence thereby increasing the financial burden to taxpayers.

New York State Attorney General Andrew Cuomo stated in the Buffalo News, July 31, 2008: "Rather than individually prosecute the 'millions' of child pornography viewers, he has followed a more-efficient strategy by going after service providers who are part of the supply pipeline to computers."

The U.S. legal system exerts the majority of its effort upon convicting those who access illegal material while turning a blind eye to those who produce and provide it to the public.

We are requesting the Commission to implement the original modifications which would have lowered applicable offense levels. Also we request consideration in supervised release conditions including public notification of where registered offenders live. This act does not serve to keep children safer because most on the registry have not committed any hands-on offenses, especially where child pornography possession is a sole factor. Law enforcement has resources to track anyone by the same means used for someone convicted of manslaughter, driving under the influence, dealing and/or using drugs, etc. Public notification causes undue hardship on families who are making every effort to live productive lives. The hardship of being ostracized, lack of employment opportunities, the fear created among communities and in some instances hate crimes are just a few of the circumstances cause by publications of registered offenders.

Given the harsh sentences and registration conditions, in light of no available opportunities for half way house placements, educational emphasis on the pitfalls and addictions especially related to the high availability of pornography of all categories via the Internet, support groups prior, during and following incarceration, the time is right for research, modifications, and resource re-allocation to turn the tide on this growing societal ill. The safety of our children is not being served and resources are misspent. In closing, a quote from Judge Gilbert S. Merritt of the 6th U.S, Circuit Court of Appeals at Cincinnati: "The federal legal system has 'lost its bearings' on the subject of computer-based child pornography and likened the treatment of offenders to the 'witchcraft trials and burnings' of several centuries ago." [6]

Sincerely,

Print Name CATHERINE DESVINCENTES Signature Catherine DeVincentes

Address: 141 Ideal St
Buffalo, New York
14206

Phone: 716 895-9682

[6] Hansen, Mark. "A reluctant Rebellion." ABA Journal June, 2009.

January 30, 2010

United States Sentencing Commission
Attn: Public Affairs
One Columbus Circle, NE
Suite 2-500
Washington, DC 20002-8002

RE: 18 U.S.C. 2252 and 2252A Sentencing Guidelines

Dear Sentencing Commission:

Reduce the sentencing guidelines under U.S.S.G. § 2G2.2 for 18 U.S.C. § 2252 and § 2252A crimes, including a provision allowing probation for low level offenses, and make it retroactive to 2006 when the heavy handed *Project Safe Childhood* campaign began.

During any given week, in any major metropolitan newspaper, you would be able to read a news brief about someone being charged with or pleading guilty to possession, receipt or distribution of child pornography. The increasingly disturbing number of convictions for child pornography offenses and the equally troubling, excessive sentences based on social paranoia are not properly addressing the problem.

Child pornography is morally wrong and a sin that exploits the victims and the viewers, for the pecuniary gain of foreign organized crime. However, what bothers me most as a layperson is the severity of the punishment assessed in these cases as compared to other crimes of a far serious nature. I think we all agree that child pornography is a crime deserving of punishment, but we are taking the wrong approach. We prosecute far more child pornography defendants for possessing, receiving and distributing images than those who actually produce the offensive material. While oversimplifying the issue, it's akin to meting out greater punishments to 10 individuals who receive stolen property than the one person who actually stole the property. To say that prosecutions of persons receiving or possessing child pornography will end the practice by "drying up the market" is unrealistic at best. Quite frankly, it is not making even a small a dent in the billion dollar child pornography industry.

I seriously question whether the current range of punishments really fits the particular crime. This is especially so considering that the typical child pornography defendant is a white male, average age of 42, middle class, with some college education and no prior felony conviction. This is not the "typical defendant" one would normally associate with committing a crime. One only need review the Project Safe Childhood press releases from 2006 through 2009 show that those charged with pornography offenses come from the core and backbone of middle America – Soldiers, Attorneys, Teachers, Corrections Officers, Court Deputy, Pediatric Resident, Ivy League Professors, Pharmacists, Youth Sports Coaches, Businessmen, Ministers, Navy Officer, Education

Dean, Army Sergeant, NASA Executive – the list goes on.[1] Either America's most valued citizens are closet child predators and sexual deviants with a hidden agenda or rather, unsuspecting, socially awkward addicts of adult pornography viewed in the privacy of their homes who crossed the line after an enticing online ad for child pornography. From reading the press releases, it appears that the latter is more appropriate.

You can easily see that this particular class of non-violent defendants also involves the defendants' stay-at-home and career wives, children, family, businesses, community commitments, high incomes, home ownership, income tax revenue and political influence. The increasingly high rate of convictions and sentencing penalties are devastating the very fabric of our society by imposing sentences more associated with physically violent crimes. Child pornography is a crime largely driven by technological advances and the mass proliferation of pornography available via the internet, both adult and children alike. The extensive availability makes it "difficult to say whether [a] person has even had a sexual interest in a child as much as to a fascination with moving from thing to thing and picture to picture [while online]".[2] Most of the defendants charged with possessing, receiving or distributing child pornography are consumers, not predators, yet as a consumer they are punished more harshly than the predator.[3] More often than not, the percentage of child pornography found in such cases represents but a small percentage of the overall pornography contained on a defendant's computer.[4]

In the course of my research on this topic, I befriended a woman whose husband of five years was sentenced to federal prison for possession child pornography. The crime occurred more than six years prior and did not continue beyond a few email exchanges. He was in possession of fewer than 250 images. He was in his mid-forties, making a high, six figure income as a salesman and had no history of contact with a child. Given the defendant's background, just the stigma of having the conviction alone was enough to deter any future behavior and there was evidence that he was responding positively to mental health treatment. This is a classic case where a probationary sentence with treatment as an ongoing condition would be most appropriate. Instead, the judge sentenced him to prison, where his life has been repeatedly threatened by violent, career inmates. His wife lost their home to foreclosure and nearly lost her job because of the stigma associated with her husband's crime.

The high rate of conviction for child pornography possession does not achieve the intended goal of preventing abuse or solicitation of minors. It gives the public a misguided sense of safety, when in fact, a person who actually molests a child has a greater than average chance of receiving probation and deferred adjudication.

---

[1] See, *Project Safe Childhood* at http://www.projectsafechildhood.gov.
[2] *USA v. Grober*, Civil Action 06-cr-880 Opinion, p. 42, ¶ 2.
[3] *USA v. Grober*, p.21, ¶ 3. *See, Star Telegram*, Thursday, October 8, 2008 "Brownwood, Texas Doctor pleads guilty to sexual assault of an 8 year-old girl and receives 8 years deferred adjudication probation"; *Dallas Morning News*, Thursday, September 10, 2009, "Dallas child psychologist allowed to keep medical license despite molestation conviction".
[4] *Grober*, p.33, ¶ 2; p.43, ¶ 3.

The enhancements are also overly harsh, as almost all child pornography possession, receipt and distribution cases contain the enhancement elements. I suggest that the Sentencing Commission allow empirical data on this topic by noted psychologists and authors, such as Michael Seto and Patrick Carnes, to guide it in establishing effective sentencing guidelines on this topic, instead of social and religious paranoia.

Based on the foregoing statistics and facts, the crime of possession of child pornography is far more likely to be committed by your son, brother-in-law, father, neighbor, minister or colleague than any other criminal defendant. I urge the members of the Sentencing Commission to rethink its approach to addressing the issue of child pornography crimes.

Sincerely,

Concerned Citizen

A response to the United States Sentencing Commission, request for public comment.
Comments sent to:

United States Sentencing Commission
One Columbus Circle, NE Suite 2-500
South Lobby
Washington, DC 20002-8002
Attention: Public Affairs-Retroactivity Public Comment

To the United States Sentencing Commission:

I am seeking your support in amending the sentencing guidelines for Possession/Receipt of child pornography offenses.

Receipt of two (2) pictures of child pornography should not require a Mandatory Minimum of a 5 year/60 month sentence.

Please do not continue to let prosecutors to act as de facto judges and juries. *The law makes a distinction between Possession and Receipt of child pornography. It is a distinction without a difference. In order to possess you must receive and in order to receive you must possess. The US Sentencing Commission must work to remove the distparity in sentences. A non-violent first time offender who receives two pictures of child pornography should not receive a 5 year mandatory minimum sentence that costs the US Government in excess of $30,000 a year for imprisonment, but also has the effect of turning that first-time offenders children into victims of the government.*

To better protect children and society I am asking the USSC to focus on the actual "First Person" commercial producers and purveyors of child pornography and those who knowingly serve the pipeline that distributes such material via the Internet.

I am asking the USSC to provide meaningful and effective alternatives to incarceration for first time, non contact offenders for Possession/Receipt of child pornography that DOES NOT involve production or commercial distribution.

Recent, reliable studies indicate that **practically NO child pornography offenders (.013%)** are actually at risk to commit contact sexual offenses involving other children.
(Michael Seto and Angela W. Eke. The Criminal Histories and Later Offending of Child Pornography Offenders. 17 Sexual Abuse: J. Res & Treatment 2005)

"Any public policy that treats the possession of digitalized images as seriously as an assault on a young person is an irrational public policy that does not impose justice on offenders nor does it marshal scarce law enforcement resources to protects the public."
Florida ACLU

We have a system that locks away too many young, first-time, non-violent offenders for the better part of their lives – a decision that's made not by a judge in a courtroom, but all too often by politicians in Washington and state capitals around the country" **President Barack Obama**

Sincerely,

Johnna Murray
4 Pensacola Ct
Arnold, MO 63010