

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA)
)
v.) No. 3:05-CR-00185
) Judge Trauger
TIMOTHY RYAN RICHARDS)
)

GOVERNMENT’S SENTENCING POSITION AND MEMORANDUM

The United States of America, by and through S. Carran Daughtrey, Assistant United States Attorney for the Middle District of Tennessee, respectfully submits the following sentencing position and memorandum to this Court for consideration in sentencing defendant Timothy Ryan Richards. With regard to the Presentence Report (PSR), the government has no objections. The government urges this Court to impose a sentence of at least thirty years and believes that a substantially higher sentence is warranted based on the evidence at trial, the evidence that will be presented in the sentencing hearing, and for the reasons set forth in this memorandum and in the Presentence Investigative Report (PSR) prepared by the United States Probation Office, all of which demonstrate defendant’s egregious criminal conduct, his pattern of abuse of adolescent boys, his shifting of blame to everyone but himself, and his continuing disrespect for the criminal laws.

The defendant has set forth numerous objections to the PSR and addressed them briefly in a letter to probation. The government expects that defendant’s filing today will address most, if not all, of these objections in much greater detail. To avoid repetition in this already highly litigious case with voluminous and lengthy filings, the government will address its position in this filing and

will respond to defendant's objections in the subsequent filing due next week, rather than submitting bifurcated responses to each of defendant's arguments.

Background

Defendant was arrested on September 22, 2005 and subsequently indicted. On September 27, 2006, the grand jury returned the final superseding indictment charging defendant with Production of Child Pornography (Counts Four, Six, Twenty-Three, Twenty-Five); Distribution of Child Pornography (Counts One, Nine, Sixteen, and Twenty-One); Conspiracy to Distribute Child Pornography (Count Twenty); Advertising Child Pornography (Counts Two, Three, Ten, Thirteen, Fourteen, Fifteen, and Nineteen); Conspiracy to Advertise Child Pornography (Counts Twelve and Eighteen); Possession of Child Pornography (Counts Five, Seven, Twenty-Four, and Twenty-Six); Improper Record Keeping (Counts Eight, Eleven, Seventeen, and Twenty-Two); Transfer of Obscenity to a Minor (Count Twenty-Seven); and a Forfeiture Count. D.E. 157: Superseding Indictment. Prior to trial, Count Twenty was severed from the remainder of the case and was later dismissed. D.E. 165: Order to Sever; D.E. 230: Order Dismissing Count Twenty-Seven. The dates of these offenses ranges from in or about 2000 up until defendant was arrested on September 22, 2005. D.E. 157: Superseding Indictment.

Beginning on October 10, 2006, a trial proceeded on Counts One through Twenty-Six. During the course of the trial, Counts Eight, Ten, Thirteen, Fourteen, and Seventeen were dismissed. On October 26, 2006, a jury found defendant Timothy Ryan Richards guilty of eleven counts involving child pornography: Production of Child Pornography (Count Twenty-Three); Distribution of Child Pornography (Counts One, Sixteen, and Twenty-One); Conspiracy to Distribute Child

Pornography (Count Twenty); Advertising Child Pornography (Counts Two, Three, and Nineteen); Possession of Child Pornography (Count Twenty-Four); Improper Record Keeping (Counts Eleven and Twenty-Two). D.E. 203: Jury Verdict. The jury found defendant not guilty on the remaining ten counts (Counts Four to Seven, Nine, Twelve, Fifteen, Eighteen, Twenty-Five, and Twenty-Six). D.E. 203: Jury Verdict. This case is set for sentencing on November 7, 2008.

Brief Summary of Facts As Established at Trial

Counts One and Sixteen relate to the distribution of child pornography via the websites www.CaseyandKylesCondo.com and www.CaseysCondo.com respectfully. Proof that the website included child pornography included evidence in the form of the defendant's own admission when he testified, (Timothy Richards, TTR¹ at 1106), and by corroboration of victim Patrick,² (Patrick, TTR at 279), that defendant knew the victim's true age and his date of birth, in July of 1985. (*See* Special Agent Brooke Donahue, TTR at 176-177; Government's Trial Exhibit 28). Moreover, both the defendant, (Richards, TTR at 987), and Patrick, (Patrick, TTR at 289), testified that sexual contact occurred on a repeated basis starting from the time that Patrick was fourteen years old. Patrick testified that a number of images and videos associated with the websites www.CaseyandKylesCondo.com and www.CaseysCondo.com (Counts One and Sixteen) were taken

¹TTR refers to the Trial Transcript, which pages were numbered chronologically from 1 on the first day of the trial on October 10, 2005, to 1707 at the end of the trial on October 26, 2005. (D.E. 209-220).

²Given that defendant posts every filing on his website (www.freecasey.com/HistDocQry.html) and discussions frequently ensue (www.freecasey.com/forum/), the government has elected to avoid the use of the victim's full name in this filing.

at a time when he was a minor, starting when he was fourteen. (Patrick, TTR at 307-08). Patrick's impressive and credible demeanor during his testimony may well have affected the jurors and convinced them of his accuracy and truthfulness. Moreover, this victim likely gained further credibility from FBI Special Agent Brooke Donahue's testimony that Patrick identified as child pornography only those images that he stated he could be certain were taken before his eighteenth birthday. (Patrick, TTR at 315, 361). Importantly, the government also was careful to juxtapose the pornographic pictures of Patrick that were taken over a period of years to debunk the defendant's testimony that every one of the recordings were taken close in time after the victim's eighteenth birthday. (*See e.g.* Richards, TTR at 1102-03, as compared to Government's Trial Exhibits 6, 7, 8, 10, 11, 12, 14, 15, 31, 121). In other words, the government used the pictures themselves to make obvious that they had been produced over a period time, starting when Patrick looked very young, and continuing to a time when his appearance had matured: the recorded images began when Patrick was 14 years of age, (Patrick, TTR at 307-08; Government's Trial Exhibit 12); and included images of Patrick at age 14 to 15, (Patrick, TTR at 309, 328-29; Government's Trial Exhibits 11, 31); at age 16 to 17, (Patrick, TTR at 310-11; Government's Trial Exhibit 6), (Patrick, TTR 311-12; Government's Trial Exhibit 10), (Patrick, TTR at 312; Government's Trial Exhibit 15), (Patrick, TTR at 312-13; Government's Trial Exhibit 8), (Patrick, TTR at 310; Government's Trial Exhibit 14); at age 17 (Patrick, TTR at 310; Government's Trial Exhibit 7); and ending just after Patrick had turned 18 (Donahue, TTR at 1374; Government's Trial Exhibit 121).

Regarding a specific set of images / videos associated with Counts One and Sixteen, the "Sydney/XPhotos," the government introduced evidence of passport records that confirmed that Patrick had traveled to Australia only one time, at a time that he was a minor. (Patrick, TTR at 317-

18; Government's Trial Exhibit 33). That evidence combined with forensic evidence that the Sydney/XPhotos was distributed on the www.CaseyandKylesCondo.com website and the photographic proof that the handstamp on the victim's hand in a benign picture at the Sydney aquarium that the defendant admitted was taken when Patrick was a minor (Richards, TTR at 1097-98) *also* appeared in the sexually explicit photos labeled "Sydney/Xphotos," provided unequivocal proof that the defendant had distributed child pornography. (Government's Trial Exhibits 7A, 53, 54). Additionally, Patrick testified that the set of images of his lascivious exhibition of his genitals that included him pictured peering around a shower curtain with the name of the Iceland hotel printed on it, were taken by Richards while the two of them were in Iceland. (Patrick, TTR at 1363-66; Government's Trial Exhibits 14, 119).

The evidence clearly showed that these websites were subscription websites which offered the vast majority of their content via a paid subscription. (Patrick, TTR at 298-99; Richards, TTR at 999, 1062-63, 1082, 1112; Government's Trial Exhibits 5, 16 21, 41, 50).

The government proved Count Two (Advertising website www.CaseyandKylesCondo.com) through similar means. The testimony of Patrick served as direct proof that the some of pornographic pictures of him in the video "Welcome.wmv" were produced when he was a minor. (Patrick, TTR at 361-63). Agent Donahue's testimony and computer forensic expert testimony proved that the video appeared on the internet, (Donahue, TTR at 190, 224-26; Kristi Witsman, TTR at 836), and Richards himself appeared in the video and took credit for the site "www.CaseyandKylescondo.com" that the charged video advertised. (Donahue, TTR at 224). The video advertised the website, describing what was offered via a paid subscription, such as journals, photos, movies, games, special guests, web cams, robot cam, etc. (Donahue, TTR at 225-26).

Counts Twenty-Three (Production) and Twenty-Four (Possession) pertain to child pornography offenses committed using 8 mm video tape that included sexually explicit activity involving Patrick. Again, Patrick provided direct testimony that the images on that video were created when he was a minor. (Patrick, TTR at 328-29). Additionally, Patrick corroborated his own recollection by pointing out that he recognized the home in which the video was shot as being a home in Massachusetts that the defendant lived in at the time Patrick was approximately fifteen years old. (Patrick, TTR at 328-29). Moreover, the video tape itself supported the guilty verdicts on this count as Patrick appeared to look very young on this video, (*See* Government's Trial Exhibit 31), and the jurors could therefore easily and reasonably conclude that the "Casey@16" 8mm video tape indeed constituted child pornography.

Counts Nineteen (Advertising), Twenty (Conspiracy to Distribute), and Twenty-One (Distribution) pertain to the website "www.JustinsFriends.com" / "www.JustinsFriends.net." Abundant proof was introduced to support the charges that the defendant knowingly trafficked in child pornography through the latter website. As a predicate matter, the government introduced uncontroverted evidence that two of the people, "Taylor" and "Colin," who were depicted in pornography on this site, were minors even at the time of trial. (Donahue, TTR at 174-76). Additionally, Agent Donahue testified that he had met both Taylor and Colin and that he recognized them as being the same boys that were depicted in some of the child pornography on this site. (Donahue, TTR at 174-76). With respect to the defendant's knowledge that these children were minors at the time of production for Counts Nineteen, Twenty, and Twenty-One, the government introduced evidence of a chat between the defendant and other co-conspirators, in which the defendant claimed ownership of the site and demonstrated his role as the defacto operator of the site.

(See Government's Trial Exhibit #95; Witsman, TTR at 872-73). The government also introduced evidence of communication between defendant and co-conspirator Mitchel, in which the two discussed the fact that this site depicted child pornography of "Taylor" in July of 2005. (See Government's Trial Exhibit #94; Witsman, TTR at 870). The government then elicited testimony that the child discussed in that chat was depicted on the site as late as September 2005 (Witsman, TTR at 871). In other words, the government effectively proved that the defendant had continued to traffic in child pornography via this site months after he had, at a minimum, been put on notice that it contained child pornography. Lastly, the government also introduced evidence that the defendant demonstrated his role as the operator of the site by putting a pornographic picture of himself and Patrick on the site. (See Government's Trial Exhibit #22; Donahue, TTR at 188-189). Copies of the images and other graphic design elements associated with the JustinFriends site also were found on the defendant's computer; this forensic proof further solidified the proof that the defendant knowingly committed the child pornography offenses charged in Counts Nineteen, Twenty, and Twenty-One.

Subsequent to the trial, defendant established a new website, www.freecasey.com. See Attachment 1. That website contains a variety of features including transcripts, court filings, forums, podcasts, blogs (which were eliminated from the site subsequent to comments made by this Court during a hearing in July of 2007).³ Evidently unable to resist the lure of celebrity, defendant resumed his blogging in January of this year via the website gayboyinjail.blogspot.com. See Attachments 2, 3. Through these website, defendant has revealed his true attitude about this case,

³Evidently, others are also disturbed by this defendant's activities from jail, as evidenced by a letter received by the undersigned attorney this summer. (See Attachment 9: Letter from CJC Inmate).

as will be discussed below and during the sentencing hearing. The government anticipates that defendant's statements and attitudes pervading the websites will differ significantly from his presentation and legal filings before this Court.

Determining Appropriate Sentence

Subsequent to *United States v. Booker*, the Supreme Court has ruled that the Sentencing Guidelines are no longer mandatory and binding on sentencing courts but rather advisory in nature. 125 S. Ct. 738, 757 (2005). A sentencing court is required to consider a defendant's sentencing guideline range in imposing the appropriate sentence, along with other factors, as set forth in 18 U.S.C. § 3553(a).⁴ *Id.* In *Booker*, the Supreme Court severed the statutory provisions making the Guidelines mandatory (18 U.S.C. §3553(b)(1)) and setting the standard of review on appeal (18 U.S.C. §3742(e)). Thus construed, the "Federal Sentencing Act . . . requires a sentencing court to consider Guidelines ranges . . . but it permits the court to tailor the sentence in light of other statutory concerns as well." *Id.*

⁴The Supreme Court stated in *Booker* that

Without the "mandatory" provision, the Act nonetheless requires judges to take account of the Guidelines together with other sentencing goals. See 18 U.S.C.A. § 3553(a). The Act nonetheless requires judges to consider the Guidelines "sentencing range established for . . . the applicable category of offense committed by the applicable category of defendant," § 3553(a)(4), the pertinent Sentencing Commission policy statements, the need to avoid unwarranted sentencing disparities, and the need to provide restitution to victims, §§ 3553(a)(1), (3), (5)-(7). And the Act nonetheless requires judges to impose sentences that reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, protect the public, and effectively provide the defendant with needed educational or vocational training and medical care. § 3553(a)(2).

125 S.Ct. at 764.

Pursuant to *Booker*, a District Court

shall impose a sentence sufficient, but not greater than that necessary to comply with the purposes [in 18 U.S.C. §3553(a)(2)]. The court, in determining the particular sentence to be imposed, shall consider -

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed -
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant;
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. §3553(a)(1)-(2)(A)-(D). The Court also must consider the kinds of sentences available, the guideline range, any pertinent Sentencing Commission policy statement, the “need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct,” and the need to provide restitution to victims. 18 U.S.C. §3553(a)(3)-(7).

Since the Sentencing Guidelines are now advisory, the Court has the discretion to impose a sentence within, above, or below the Sentencing Guidelines range in light of these statutory concerns, subject to statutory limitations. The sentence is subject to appellate review for “unreasonableness” in light of the previously noted statutory concerns. *Booker*, 125 S. Ct. at 765-66.

The Supreme Court has held that a district court should begin all sentencing proceedings by correctly calculating the applicable guideline range. *Gall v. United States*, 128 S.Ct. 586, 597 (2007). “As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.” *Id.* The sentencing court then should consider all

of the 18 U.S.C. § 3553(a) factors. *Id.* If a district court finds that a sentence outside the guidelines is warranted, it must “consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.” *Id.* The Supreme Court found “it uncontroversial that a major departure should be supported by a more significant justification than a minor one.” *Id.* Therefore, the Sixth Circuit has held that when reviewing a sentence for substantive reasonableness, it will consider the length of the sentence as well as the factors used in determining the sentence. *Vowell*, 516 F.3d at 510 (citing *United States v. Webb*, 403 F.3d 373, 383(6th Cir. 2005)). The government submits that the factors in 18 U.S.C. § 3553(a) weigh heavily in favor of this Court’s imposing a sentence within the Guideline range of 235 to 293 months.

Nature and Circumstance of the Offense, 18 U.S.C. § 3553(a)(1)

Pursuant to 18 U.S.C. § 3553(a)(1), this Court should consider the nature and circumstance of this offense. Congress, the Sentencing Guidelines Commission, and prominent researchers in the field all view production, distribution, and advertising child pornography as extremely serious child exploitation offenses.

In this particular case, the jury found defendant guilty of advertising, distributing, and profiting from adolescent child pornography websites that he created, operated, and managed, with the intention of reaping significant profits. The jury also found defendant guilty of production of child pornography. The proof at trial clearly indicated that defendant was seeking to profit from these websites by providing various membership packages. (See Government’s Trial Exhibits Exhibit 5, 21, 41, 50). In fact, it is clear from defendant’s testimony, that the websites that contained child pornography were quite lucrative. (Richards, TTR at 999, 1062-63, 1082, 1112; Government’s

Trial Exhibit 16). Among other things, defendant used the proceeds from the website CaseyandKylesCondo to travel internationally, lease an airplane, buy a limousine, and purchase a \$6000 dog from Germany. (Richards, TTR at 1034, 1082).

In enacting laws prohibiting the production, advertisement, and distribution of child pornography, Congress has found that “the use of children in the production of sexually explicit material, including photographs, films, videos, computer images, and other visual depictions, is a form of sexual abuse which can result in physical or psychological harm, or both, to the children involved.” Pub.L 109-248, Sept. 30, 1996 at (1). Congress further found that

- (7) the creation or distribution of child pornography which includes an image of a recognizable minor invades the child's privacy and reputational interests, since images that are created showing a child's face or other identifiable feature on a body engaging in sexually explicit conduct can haunt the minor for years to come;
-
- (10) (A) the existence of and traffic in child pornographic images creates the potential for many types of harm in the community and presents a clear and present danger to all children; and
(B) it inflames the desires of child molesters, pedophiles, and child pornographers who prey on children, thereby increasing the creation and distribution of child pornography and the sexual abuse and exploitation of actual children who are victimized as a result of the existence and use of these materials;
- (11) (A) the sexualization and eroticization of minors through any form of child pornographic images has a deleterious effect on all children by encouraging a societal perception of children as sexual objects and leading to further sexual abuse and exploitation of them; and
(B) this sexualiation of minors creates an unwholesome environment which affects the psychological, mental and emotional development of children and undermines the efforts of parents and families to encourage the sound mental, moral and emotional development of children;
- (12) prohibiting the possession and viewing of child pornography will encourage the possessors of such material to rid themselves of or destroy the material, thereby helping to protect the victims of child pornography and to eliminate the market for the sexual exploitative use of children; and

- (13) the elimination of child pornography and the protection of children from sexual exploitation provide a compelling governmental interest for prohibiting the production, distribution, possession, sale, or viewing of visual depictions of children engaging in sexually explicit conduct, including both photographic images of actual children engaging in such conduct and depictions produced by computer or other means which are virtually indistinguishable to the unsuspecting viewer from photographic images of actual children engaging in such conduct.

Congressional Findings, Pub.L 109-248, Sept. 30, 1996.

In 2003, Congress enacted the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (the PROTECT Act, Public Law 108-21), in large part to enhance the penalties for crimes involving the sexual exploitation of children. Another legislative purpose was to restrict the ability of courts to grant downward departures generally, but specifically in cases involving the sexual exploitation of children. The Commentary to U.S.S.G. § 5K2.0 explains that the standard for a downward departure in child crimes and sexual offenses differs from the standard for other departures under the policy statement in that it includes a requirement ... that any mitigating circumstance that forms the basis for such a downward departure be affirmatively and specifically identified as a ground for downward departure. Commentary to § 5K2.0, Scope of Policy Statement 4(B)(i). Although the Sentencing Guidelines are no longer mandatory, it is important to understand the views of Congress and the Sentencing Commission on sentencing in cases involving the sexual exploitation of children. As justification for higher sentences in child exploitation offenses, Congress stated:

- (2) “The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers.” ‘The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance,’ New York v. Ferber, 458 U.S. 747 (1982).

The Protect Act, Title V. - Obscenity and Pornography, Sec. 501. Findings.

In the case of child exploitation prosecutions, the government has a compelling interest to protect children, even adolescents, from those who would exploit them. The defendant is among the types of offenders that Congress contemplated when it drafted and enacted the PROTECT Act. The federal child sexual exploitation statutes and penalty provisions are designed to provide just punishment for the offenses that the defendant has committed. Notably, the Sentencing Commission revised the Guideline used in this case effective November 1, 2003, and again effective November 1, 2004, and the base offense levels for the crimes to which the defendant faces sentencing. The government provides this context to suggest that the trend has been to do everything possible to increase punishment for crimes like the offenses for which the defendant now faces sentencing. This reflects the societal concern that crimes connected to the sexual exploitation of children are some of the most serious that can be committed.

More recently, on July 27, 2006, Congress enacted the Adam Walsh Child Protection and Safety Act of 2006, H.R. 4472. This new legislation created new offenses related to the sexual exploitation of minors and increased punishments for some existing offenses. It is worth noting the continued Congressional focus on enacting additional legislation to enhance the protection of children from those who would use the internet to exploit them. The defendant is in the general population of sexual offenders that have been deemed worthy of significant federal punishments.

Based on the trial and prior filings by this defendant, the government expects that this defendant will be arguing either that he is innocent of the charges and / or that the children in the videos were consenting participants, thus minimizing the seriousness of these offenses. Although the production of child pornography involving an adolescent may not be perceived to be as serious as production of images of sexual activity involving very young children, nevertheless it is both

extremely harmful and unlawful. And it is clear that Congress intended for these pornography laws to apply to all children under the age of eighteen. Thus, such arguments are contrary to Congressional intent.

Furthermore, in this case, this Court can actually see the deliterious effect that this defendant's influence has had on the primary victim, Patrick. Patrick indicated that he initially met defendant Richards online in May of 2000. (Patrick, TTR at 281). At the first meeting in person, defendant drove to the small town south of Boston where fourteen year old Patrick resided and took him on a day trip to Boston. (Patrick, TTR at 281-82). Patrick testified "I hadn't traveled a lot, and I was shown around town with him and his friend Missy, took me to a lot of fun places to go, window shopped, mall, had some lunch, went to his apartment." (Patrick, TTR at 282). This was Patrick's first time to skip school, as well as his first time to go to Boston. (Patrick, TTR at 282). Patrick told the jurors:

It was nice to be acknowledged by another person to, you know, have an interest in, you know, what I would like to do. You know, they asked what I wanted to do, and it was just nice. I haven't gotten too much attention lately.

....

My mom was busy taking care of my grandparents, and my dad was very busy with work, and my sister had her social groups, and she was preparing for college, and everything like that.

....

It was the best day I have ever had in my life so far, and then when the evening came, I was just kind of depressed that it's over and I wasn't sure if I was going to have another day like that ever again.

....

Well, that night I sarterd feeling depressed after dinner, and I told him that I wanted to come back up, I was feeling suicidal. We had - - I had my own web camera then, and we connected, and I showed myself trying to slit my wrist with scissors.

....

He told me don't do it, he will come and get me, he will take care of me.

(Patrick, TTR at 283-85). In fact, Richards arrived that night to pick up Patrick, who left a note for his parents stating that he was running away. (Patrick, TTR at 286). He took some clothes and his beloved cat, whom he could not bear to leave behind. (Patrick, TTR at 286). Patrick was with Richards for six days, including an overnight trip to defendant's family's home in Maryland, where he had his first sexual encounter with defendant. (Patrick, TTR at 287-88).

Such behavior by a victim is not uncommon. Retired FBI Special Agent Kenneth Lanning has written about his experience working with compliant child victims:

Children at an early age learn to manipulate their environment to get what they want. Almost all children seek attention and affection. Children, especially adolescents, are often interested in and curious about sexuality and sexually explicit material. . . . They are moving away from the total control of parents and trying to establish new relationships.

. . . .

In almost all criminal cases I know of in which adolescents left home to personally meet with an adult they had first met online, they did so voluntarily in the hope that they were going to have sex (not to get help with homework) with someone they felt they knew and who cared about them.

. . . .

Child victims cannot be held to idealistic and superhuman standards of behavior. Their frequent cooperation in the victimization must be viewed as understandable human characteristics that should have little or no criminal-justice significance.

Attachment 4 at 1: Kenneth Lanning, Law Enforcement Perspective on the Compliant Child Victim, The APSAC Advisor (Spring 2002).

Indeed, Richards has historically tried to focus the blame on others, including and especially Patrick. At times, defendant has vilified Patrick on his websites, despite the fact that Patrick had nothing to do with the prosecution of this case. Additionally, as this Court noted in its findings at the hearing for defendant's Motion for New Trial, it is clear from Patrick's testimony that this entire experience has been very difficult for him:

It's very clear to the Court from hearing and witnessing Patrick's testimony that he felt very badly, very bad about what he had testified to, the fact that he had testified against Mr. Richards, who was his first love and they were in a four year relationship, and he was reacting to this website that the defendant is maintaining through his parents, apparently two websites that they are maintaining trying to convince people that Mr. Richards has been unjustly convicted and trying to blame other people, including the government and certainly Mr. Patrick for Mr. Richards' conviction.

And Mr. Patrick is a young and immature person who was in a long-term relationship with Mr. Richards. He obviously still has remembered affection from that relationship, and he's sad that he had to participate in this prosecution.

(Court, Hearing on Motion for New Trial at 130-31). In addition to defendant's attempt to shift the blame onto Patrick, Richards and his family have continued to contact Patrick and his family, despite clear messages that Patrick does not wish to maintain such contact. For example, after rejecting all letters from Richards in 2007, Patrick recently received an unidentified piece of mail, in which Richards acknowledged Patrick's rejection of many other letters, but insisted he would continue to contact Patrick regardless. Attachment 5: Letter from Richards to Patrick; Attachment 6: Email from Richards to Patrick.

Although this defendant is likely to argue that filming, advertising, and distributing sexually explicit conduct involving compliant adolescents is harmless, such offenses are far more serious and detrimental to society than this defendant would have this Court believe. Dr. Sharon Cooper, with Developmental & Forensic Pediatrics, has opined that "Youths in the adolescent years who have been pornographically victimized are at risk for depression, computer aversion, anxiety disorders, PTSD, runaway behaviors or being thrown away from home with subsequent homelessness and revictimization through prostitution." See Attachment 7 at 4: Affidavit of Dr. Sharon Cooper.

And although the age gap between Richards and Patrick is just over four years, Richards' second long term relationship occurred with a teenage boy who was ten years younger than

Richards. In fact, that child was merely thirteen at the time that Richards was arrested. Although the government was unable to identify any sexually explicit recordings involving that child, there is ample evidence of a sexual relationship with that child, as will be demonstrated at the sentencing hearing. Proof at the sentencing hearing will show that this defendant is attracted to adolescent boys. Had he not been caught at the age of twenty-three, he likely would have continued his exploitation of adolescent boys, with the age gap continuing to grow as he ages.

The effect of defendant's behavior on others is enormous and extremely harmful to young adolescent boys whose hormones are raging prior to the full development of their sense of judgment. For example, several years ago, FBI Unit Chief Michael J. Heimbach, Crimes Against Children Unit, Criminal Investigative Division, was asked to testify before the Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary of the United States House of Representatives, regarding "Internet Child Pornography."⁵ Heimbach's testimony was in direct response to the subcommittee's request for him to address several specific issues, and he stated he had prepared by relying on his own experiences; consulting with various experts, including SSA James T. Clemente of the FBI's National Center for the Analysis of Violent Crime (NCAVC), Behavioral Analysis Unit (BAU), who is a recognized expert in the fields of Child Sex Offender Behavior, Child Sexual Victimology and Child Pornography; and relying on peer-reviewed articles and monographs on the sexual victimization of children and offender behavioral characteristics, such as those published by FBI SSA Ken Lanning, now retired but former member of the NCAVC, BAU. Heimbach discussed a study about the connection between collection of child pornography and

⁵See <http://www.fbi.gov/congress/congress02/heimbach050102.htm> for the full text of the testimony.

hands on offenses. The Subcommittee asked whether child pornography seduces child pornographers to molest children, to which Heimbach replied that “[i]t definitely has that effect on some of the collectors.” People who collect child pornography participate in organized and informal networks of like-minded individuals, which serve as support groups, giving the participants comfort in the fact that they are not alone and validating their offending behavior. They feel they are part of a vast network of like-minded people who believe it is acceptable to engage in sexual fantasies about children, thus lowering their inhibitions about acting on their fantasies and increasing the likelihood that they will actually molest children. Thus, it is clear that Richards’ production, advertisement, and distribution of this child pornography fed this group of collectors, essentially normalizing the sexual exploitation of adolescents whose sense of judgment have yet to develop. The blatant distribution of these sexually explicit images of adolescents boys is highly likely to “whet” the appetite of gay men of all ages who fantasize about engaging in sexual activity with adolescents. See Congressional Findings, Pub.L 109-248, Sept. 30, 1996 at (4).

Finally, a review of the defendant’s post trial websites reveals defendant’s attitude about this case and the crimes for which he has been committed. Examples will be highlighted at the sentencing hearing on November 7, 2008.

In summary, this defendant’s activity violates the most serious of the federal child pornography laws. This Court has heard from many child pornography collectors who ask for leniency, arguing that they are not responsible for creating the child pornography or profiting from it as this defendant did. And now before this Court is such a producer and profiteer. This defendant has supplied many child pornographers with numerous videos of sexual conduct involving an

adolescent boy who looks much younger than eighteen. And, the effect on at least one of these victims has been enormous.

Defendant's History, 18 U.S.C. § 3553(a)(1)

Pursuant to 18 U.S.C. § 3553(a)(1), this Court also should consider the defendant's history. Of great significance to this case, the government believes that defendant is sexually attracted to adolescent boys, as evidenced by his relationships prior to his incarceration during which time Richards apparently had only long term boyfriends with whom he had a sexual relationship, both of whom were minors for the majority, if not all, of the time that Richards was involved with them. Since being incarcerated, Richards reports having had numerous relationships, some of which have been sexual in nature. Many, if not all, of these relationships have been with individuals who were eighteen or very near that age.

Reportedly, Richards' first sexual relationship was with fourteen year old Patrick, whom he began dating in May of 2000, the same month defendant turned nineteen. (Richards, TTR at 1084-85). They initially met on line and soon thereafter Richards picked up Patrick for a day trip to Boston and then again for a six day period, during which Patrick was considered a runaway; and Richards took Patrick to his parents' home in Maryland where they slept together in the same bed and had their first sexual encounter. (Patrick, TTR at 287-88; Richards, TTR at 1085). Richards and Patrick dated for several years, until the fall of 2004 just after Patrick turned eighteen. (Patrick, TTR at 322-23). Their relationship became sexual early on and the recording of their sexual exploits began long before Patrick came of age. (Patrick, TTR at 287-88, 307-08).

By the time Patrick was eighteen, defendant had already befriended “Dew,” who was eleven years of age when defendant met him. In January of 2004, while in Las Vegas, Richards married Dew’s mother, PSR ¶63, apparently on a whim. At the time of defendant’s arrest in this case, he and Dew were living together, although Dew was only thirteen years old. (See DE 162: Jon Stephens, Evidentiary Hearing at 34; PSR ¶63). In fact, Dew’s mother was living in Florida and pregnant with another man’s child. (DE 162: Richards, Evidentiary Hearing at 34). Defendant’s relationship with Dew clearly was of a sexual nature, as will be demonstrated at the sentencing hearing. Although Richards was aging, it is clear that he still was sexually attracted to adolescent boys. Unlike many sex offenders, Richards has been caught at an early age, and the government sincerely hopes that Richards receives the kind of sentence that will prevent him from ever engaging in another sexual relationship with an adolescent boy.

Additionally, although this defendant has no prior arrests or convictions, he has had prior contact on several contacts with law enforcement as it relates to the exploitation of children. PSR at ¶¶ 56-57. Additionally, in May of 2000, when Patrick had run away with Richards, the police ultimately located Patrick, placed him in jail overnight, and returned him to his parents. (Patrick, TTR at 289-90).

Furthermore, defendant has had disciplinary issues while incarcerated, as will be shown through jail records (which have yet to be received), as well as defendant’s own admissions online.

Need for Sentence to Promote Goals of 18 U.S.C. § 3553(a)(2)

In determining an appropriate sentence, this Court must consider “the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide

just punishment for the offense, and to afford adequate deterrence to criminal conduct. 18 U.S.C. § 3553(a)(2)(A)-(B). This case has been highly publicized, and Richards himself has endeavored to attract media attention as well as the support of the gay community. In fact, defendant has over 550 subscribers to his website's forum, with over 6000 posts. See Attachment 8. As will be demonstrated at the sentencing hearing, a significant portion of this forum discusses this case, defendant's innocence, and the perceived appropriateness of Richards' criminal activity. Furthermore, the forum, in combination with defendant's own blogs, seek to shift the blame from Richards. These websites provide significant insight into defendant's psyche and that of others who condone this behavior, some of whom may well be prone to repeating it.

This Court also must impose a sentence that protects the public from further crimes of defendant, pursuant to 18 U.S.C. § 3553(a)(2)(C). Based on defendant's *laizes faire* attitude about his behavior and activity, it is not clear that the public can be protected from further criminal activity by this defendant other than through a lengthy period of incarceration. Thus, the government also recommends that this defendant be placed on lifetime supervision, should he ever be released from prison.

Moreover, the Court must ensure that the sentence imposed provides defendant with "needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a)(2)(D). Professionals who have expertise in treating and researching sexual offenders, have worked with ATSA⁶ to compile position statements and fact sheets that offer

⁶ATSA is a non-profit, interdisciplinary organization that was founded in 1984 to foster research, facilitate information exchange, further professional education and provide for the advancement of professional standards and practices in the field of sex offender evaluation and treatment. ATSA is an international organization focused specifically on the prevention of sexual abuse through effective management of sex offenders.

current information about various issues, which are meant to educate the public. The following information can be found under the “Facts About Adult Sex Offenders” section, in answer to the question “Can sex offenders be cured?”:

Sexual offending, like many mental and medical conditions, can not be cured. Contemporary cognitive behavioral treatment, however, helps offenders learn to control their behavior. By recognizing and changing the thoughts that rationalize and justify sexually abusive behavior, sex offenders can become more aware of the harm caused to victims and view their own behavior differently. As well, sex offenders learn to identify their patterns of behavior, including the people, places, and things that put them at risk for offending. Through avoidance of certain situations, acquiring new coping skills, and learning to meet their emotional and sexual needs in healthy ways, motivated sex offenders can prevent future offending. Although some sex offenders may continue to be attracted to children, they can learn to avoid acting on their impulses. Consider this analogy: When adults get married, they do not stop being attracted to other people. They do stop acting on that attraction, because the way they think about the commitment of marriage helps them to control their behavior. Likewise, many chemically addicted persons continue to struggle with urges to use drugs or alcohol. Through treatment and recovery, however, they choose to change their behavior because they are committed to a new, healthy and productive lifestyle.

See <http://www.atsa.com/ppOffenderFacts.html>. Richards is the epitome of the sex offender who cannot be cured. He continues to maintain his innocence in the filings with this Court, as well as through his websites. He clearly indicates his attraction to young, just developing boys. And he professes to see nothing wrong with his behavior, arguing instead that the government is on some kind of misguided witch hunt.

A sentence anywhere near the mandatory minimum sentence would fail to reflect the seriousness of this offense, promote respect for the law, promote just punishment, or deter similar criminal behavior, pursuant to 18 U.S.C. § 3553(a)(2)(A)-(B). Given this defendant flagrantly dismissive attitude about the seriousness of his crimes, it certainly does not appear that a minimal sentence would protect the public from future crimes of this defendant. 18 U.S.C. § 2553(a)(2)(C).

Finally, it appears that long term incarceration would best provide this particular defendant with “needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” 18 U.S.C. § 3553(a)(2)(D).

Sentencing Guideline Range, 18 U.S.C. § 3553(a)(4)

Pursuant to 18 U.S.C. § 3553(a)(4), this Court also must consider the sentencing guideline range. In this case, the offense level is 48 and thus the advisory guideline range in this case is life. The statutorily authorized maximum sentences, however, are less than life. Thus the Probation Office has recommended that the counts be run consecutively, as permitted by U.S.S.G. § 5G1.2(d), which states as follows: “If the sentence imposed on the count carrying the highest statutory maximum is less than the total punishment, then the sentence imposed on one or more of the other counts shall run consecutively, but only to the extent necessary to produce a combined sentence equal to the total punishment. In all other respects, sentences on all counts shall run concurrently, except to the extent otherwise required by law.” Such consecutive sentencing is permitted, pursuant to 18 U.S.C. § 3584(a), and the government believes that consecutive sentencing is appropriate in this case, given the egregious nature of defendant’s conduct and the other factors enumerated in 18 U.S.C. § 3553(a)(2).

Furthermore, the sentencing guidelines deserve respectful consideration because the Sentencing Commission not only developed guidelines sentences using an empirical approach based on data about past sentencing practices, including 10,000 presentence reports, but it also modified and adjusted past practice in the interest of greater rationality, avoiding inconsistency, complying with congressional instructions, and the like. *Kimbrough v. United States*, 128 S.Ct. 558, 567

(2007). Congress has expressly instituted such penalties in the interest of deterring harm against children. Thus, the government concurs with the U.S. Probation Officer's recommendation that at least some, if not all, of the counts of convictions should be run consecutively.

Strong Recommendation By Congress

Although *Booker* eliminated the mandatory section of 18 U.S.C. § 3553, the government encourages this Court not to overlook the fact that 18 U.S.C. § 3553(b)(2)(A) strongly recommends not varying from a sentence within the guideline range when a defendant commits crimes against children, as happened in this case, absent extreme circumstances which are not present in the instant case.

Conclusion

The government intends to introduce evidence at the sentencing hearing to further bolster the above arguments. When this Court considers all of the relevant evidence in this case, the government believes that the 18 U.S.C. § 3553(a) factors weigh heavily in favor of a significant sentence, which would reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, provide deterrence to such criminal conduct, be more likely to protect the public from further crimes by this defendant, provide defendant with needed treatment in the most effective manner, appropriately consider the Guidelines and policy statements, and avoid unwarranted sentencing disparities amount defendants with similar records who have been found guilty of similar conduct, all consistent with 18 U.S.C. § 3553(a).

For these reasons, the government respectfully requests this Court impose a guideline sentence followed by life time supervision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by electronic case filing to the following:

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