
**In The
Supreme Court of the United States**

DOYLE RANDALL PAROLINE,

Petitioner,

v.

UNITED STATES OF AMERICA, ET AL.,

Respondents.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Fifth Circuit**

**JOINT APPENDIX
VOLUME I**

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**Petition For Certiorari Filed January 31, 2013
Certiorari Granted June 27, 2013**

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**RELEVANT DOCKET ENTRIES FOR THE
UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF TEXAS**

Date Filed # Docket Text

- 01/09/2009 Arrest of Doyle Randall Paroline (kls,) (Entered: 01/12/2009)
- 01/09/2009 4 CONSENT to Administration of Guilty Plea and Fed.R.Crim.P.11 Allocution by U.S. Magistrate Judge by Doyle Randall Paroline (kls,) (Entered: 01/12/2009)
- 01/09/2009 6 SEALED PLEA AGREEMENT as to Doyle Randall Paroline (kls,) (Entered: 01/12/2009)
- 01/12/2009 1 1 INFORMATION as to Doyle Randall Paroline (1) count(s) 1. (kls,) (Entered: 01/12/2009)
- 01/12/2009 2 WAIVER OF INDICTMENT by Doyle Randall Paroline (kls,) (Entered: 01/12/2009)
- 01/12/2009 3 Minute Entry for proceedings held before Magistrate Judge John D. Love: Frank Coan for Bill Baldwin, Buck Files for Dft. Initial Appearance and Plea Agreement Hearing as to Doyle Randall Paroline held on 1/12/2009, Plea entered by Doyle Randall Paroline (1) Count 1Doyle Randall Paroline (1) Guilty Count 1. Dft. remanded to custody of USM.

(Court Reporter Ecro: S. Guthrie.)
(kls,) (Entered: 01/12/2009)

- 02/03/2009 8 ORDER ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE as to Doyle Randall Paroline for 7 Report and Recommendation on Guilty Plea. Signed by Judge Leonard Davis on 2/3/2009. (kls,) (Entered: 02/03/2009)
- 03/20/2009 9 SEALED OBJECTION TO PRESENTENCE INVESTIGATION REPORT by Doyle Randall Paroline (kls,) (Entered: 03/23/2009)
- 06/08/2009 10 SENTENCING MEMORANDUM by Doyle Randall Paroline (Attachments: # 1 Exhibit) (Files, F R) (Entered: 06/08/2009)
- 06/10/2009 13 ORDER severing the restitution determination from the sentencing proceeding. The Court orders all interested parties, including the Government, the deft, probation, and "Amy" to submit briefs on the issues raised by the Court by 720-09. The Court invites briefing from any other interested party by the same date. The Court will hear evidence and oral arguments on these issues and the amount, if any, and manner of assessing restitution in this case on 8-04-09 at 10:00 a.m. Although deft retained counsel for his plea and sentencing proceedings, the Court

now finds the deft indigent and appoints F.R. Files Jr to represent him during the restitution proceedings. The Clerk is directed to add "Amy" and her counsel, James R Marsh, as a party/victim to this case. Mr Marsh is ordered to file a copy of this Order in every case in which "Amy" has filed a Request for Restitution with an appropriate cover page identifying the pendency of this action and this Court's invitation for any interested party to file a brief or statement of interest in this case in accordance with this Order's Briefing Schedule. The Clerk shall also transmit a copy of this order to the National Center for Missing & Exploited Children, Alexandria, Virginia. Signed by Judge Leonard Davis on 06/10/09. cc:attys 6-10-09 (mll,) (Entered: 06/10/2009)

06/10/2009 14 **Minute Entry – 6.10.2009 Sentencing** for proceedings held before Judge Leonard Davis:Sentencing held on 6/10/2009 for Doyle Randall Paroline (1), Count(s) 1, Imprisonment for a term of 24 Months; Fine Waived; Restitution to be Determined; \$100 Special Assessment; 10 Years Supervised Release. Court ordered Restitution Proceedings be severed. Dft advised of right to appeal & court appointed counsel. Dft REMANDED

to USM. (Court Reporter Shea Sloan.)
(rlf,) (Entered: 06/10/2009)

- 06/10/2009 15 SEALED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Doyle Randall Paroline (rlf,) (Entered: 06/10/2009)
- 06/10/2009 16 SEALED PSI – SENTENCING RECOMMENDATION as to Doyle Randall Paroline (rlf,) (Entered: 06/10/2009)
- 06/10/2009 17 SEALED ADDENDUM TO PRESENTENCE INVESTIGATION REPORT (Sealed) as to Doyle Randall Paroline (Attachments: # 1 CV of Eric Holden; # 2 Holden's Report; # 3 CV of Timothy Proctor; # 4 Proctor's Report; # 5 CV of Wade French; # 6 French's Report; # 7 Sentencing Letters; # 8 Defendant's Statement)(rlf,) (Entered: 06/11/2009)
- 06/15/2009 18 JUDGMENT as to Doyle Randall Paroline (1), Count(s) 1, Imprisonment for a term of 24 Months; Fine Waived; Restitution to be Determined; \$100 Special Assessment; 10 Years Supervised Release. Signed by Judge Leonard Davis on 6/15/2009. (kls,) (Entered: 06/15/2009)
- 06/15/2009 19 SEALED Statement of Reasons re 18 Judgment. (kls,) (Entered: 06/15/2009)
- 06/22/2009 21 ORDER as to Doyle Randall Paroline re 13 Order. The Court modifies its

previous Order 13 and ORDERS Mr. Marsh to notify parties and the Court in every case in which “Amy” has requested restitution of this Court’s June 10 Order with an appropriate cover page identifying the pendency of this action and this Court’s invitation for any interested party to file a brief or statement of interest in this case in accordance with the Court’s June 10 Order’s briefing schedule. Signed by Judge Leonard Davis on 6/22/2009. (kls,) (Entered: 06/23/2009)

- 07/20/2009 27 TRIAL BRIEF by National Crime Victim Law Institute, Victim Rights Center as to Doyle Randall Paroline (Attachments: # 1 Appendix) (Cassell, Paul) (Entered: 07/20/2009)
- 07/20/2009 29 TRIAL BRIEF by USA as to Doyle Randall Paroline (Baldwin, William) (Entered: 07/20/2009)
- 07/20/2009 30 TRIAL BRIEF by The National Center for Missing and Exploited Children as to Doyle Randall Paroline (Souras, Yiota) (Entered: 07/20/2009)
- 08/19/2009 33 Rebuttal Response in Opposition to Request for Restitution by Doyle Randall Paroline. (Attachments: # 1 Exhibit Affidavit of Wade E. French, # 2 Exhibit Vitae of Wade E. French)(Files, F R) Modified on 8/19/2009 (kls,). (Entered: 08/19/2009)

- 08/20/2009 35 **Minute Entry – 8.20.09 Restitution Hearing** for proceedings held before Judge Leonard Davis:Motion Hearing as to Doyle Randall Paroline held on 8/20/2009 re 12 Request/ Motion for Restitution (Court Reporter Shea Sloan) (rlf) (Entered: 08/20/2009)
- 08/20/2009 36 **WAIVER** of 90-Day Restitution Determination as to Dft Doyle Randall Paroline (rlf) (Entered: 08/20/2009)
- 08/24/2009 37 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Restitution Hearing Proceedings as to Doyle Randall Paroline held on 8/20/09 before Judge Leonard Davis. Court Reporter: Shea Sloan, shea_sloan@txed.uscourts.gov. 104 pages
- 09/04/2009 42 MOTION for Discovery *in Response to Court'* by Doyle Randall Paroline. (Attachments: # 1 Text of Proposed Order) (Files, F R) (Entered: 09/04/2009)
- 09/14/2009 44 RESPONSE in Opposition by USA as to Doyle Randall Paroline re 42 MOTION for Discovery *in Response to Court'* (Baldwin, William) (Entered: 09/14/2009)
- 09/24/2009 46 ORDER granting in part and denying in part 42 Motion for Evidentiary Materials, for the Taking of Depositions, for an Accounting, for Expert

Funds, as to Doyle Randall Paroline (1). Signed by Judge Leonard Davis on 9/24/2009. (kls,) (Entered: 09/24/2009)

- 10/14/2009 47 NOTICE of *Stipulation of Parties* by Doyle Randall Paroline (Files, F R) (Entered: 10/14/2009)
- 10/27/2009 54 RESPONSE by Amy Unknown to 45 Order on Motion for Extension of Time to File *Victim's Supplementary Brief and Evidence* (Attachments: # 1 Exhibit Victim's Request for Restitution, # 2 Exhibit Transcript of Restitution Hearing on 08-20-2009, # 3 Exhibit Excerpts from Beyond Tolerance, # 4 Exhibit Excerpts from Child Molesters: A Behavioral Analysis, # 5 Exhibit Child pornography in peer-to-peer networks, # 6 Exhibit Child Pornography Possessors Arrested in Internet-Related Crimes, # 7 Exhibit Federal Prosecution of Child Sex Exploitation Offenders, 2006, # 8 Exhibit Excerpts from Child Pornography and Sexual Exploitation of Children Online, # 9 Exhibit Child Pornographs Forgotten Victims) (Marsh, James) (Entered: 10/27/2009)
- 10/28/2009 56 RESPONSE by Amy Unknown to 45 Order on Motion for Extension of Time to File *Victim's Additional Evidence* (Attachments: # 1 Exhibit Snakenberg v. Hartford Casualty, # 2 Exhibit United States of America v.

John Estep, # 3 Exhibit United States of America v. Alan Hesketh, # 4 Exhibit United States of America v. David Allen Torrey, # 5 Exhibit United States of America v. Jose M. Hilario, # 6 Exhibit United States of America v. James Freeman, # 7 Exhibit United States v. Simon, # 8 Exhibit United States of America v. Paul Edward Monk, # 9 Exhibit United States of America v. Terry Zane, # 10 Exhibit United States v. Ferenci, # 11 Exhibit United States of America v. John Granato, # 12 Exhibit United States v. Arthur Weston Staples, # 13 Exhibit United States of America v. Michael Berk, # 14 Exhibit Excerpt from Response to A Reluctant Rebellion (Marsh, James) (Entered: 10/28/2009)

- 10/28/2009 57 **Minute Entry – 10.28.2009 Request for Restitution** for proceedings held before Judge Leonard Davis:Restitution Hearing as to Doyle Randall Paroline held on 10/28/2009 re 12 Sealed Request for restitution (Court Reporter Shea Sloan.) (rlf) (Entered: 10/29/2009)
- 12/07/2009 59 MEMORANDUM OPINION AND ORDER as to Doyle Randall Paroline, ORDER as to Doyle Randall Paroline: Having considered the parties' oral arguments and written submissions, and for the reasons explained below, the Government has not met its

burden of proving what losses, if any, were proximately caused by Paroline's possession of Amy's two pornographic images and thus, the Request for Restitution is DENIED. Signed by Judge Leonard Davis on 12/7/2009. (kls,) (Entered: 12/07/2009)

- 12/17/2009 62 NOTICE OF APPEAL by Amy Unknown. Filing fee \$ 455, receipt number 0540000000002285008. (Marsh, James) Modified on 1/18/2013 (tlh,). (Entered: 12/17/2009)
- 12/18/2009 63 ORDER granting 61 Motion to Appoint Co-Counsel. Stanley George Schneider for Doyle Randall Paroline appointed as to Doyle Randall Paroline (1). Signed by Judge Leonard Davis on 12/18/09. (mjc,) (Entered: 12/18/2009)
- 12/22/2009 64 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Restitution Hearing Proceedings as to Doyle Randall Paroline held on 10/28/09 before Judge Leonard Davis. Court Reporter: Shea Sloan, shea.sloan@txed.uscourts.gov. 67 pages.
- 01/04/2010 65 ORDER of USCA (certified copy) re 62 Notice of Appeal. The petition for writ of mandamus is denied. (ljw,) (Entered: 01/05/2010)
- 03/11/2010 70 AMENDED JUDGMENT as to Doyle Randall Paroline (1), Count(s) 1, Imprisonment for a term of 24

Months; Fine Waived; \$100 Special Assessment; 10 Years Supervised Release. Signed by Judge Leonard Davis on 3/11/10. (mjc,) (Entered: 03/11/2010)

- 03/11/2010 71 SEALED Statement of Reasons re 70 Amended Judgment. (mjc,) (Entered: 03/11/2010)
- 01/15/2013 76 MANDATE of USCA (certified copy) as to Doyle Randall Paroline re 62 Notice of Appeal. It is ordered and adjudged that the judgment of the District Court is vacated, and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court. Issued as mandate 1/11/2013. (Attachments: # 1 Cover Letter) (mjc,) (Entered: 01/18/2013)
- 01/30/2013 77 Unopposed MOTION Motion to Stay by Doyle Randall Paroline. (Attachments: #1 Text of Proposed Order) (Schneider, Stanley) (Entered: 01/30/2013)
- 02/25/2013 79 ORDER granting 77 Motion to Stay as to Doyle Randall Paroline (1). Signed by Judge Leonard Davis on 2/25/13. (mjc,) (Entered: 02/25/2013)
- 06/11/2013 81 ORDER granting 80 Motion to Clarify the Appointment of Counsel as to Doyle Randall Paroline (1). F.R. "Buck" Files Jr. and Stanley G. Schneider were appointed to

represent the Defendant pursuant to
the Criminal Justice Act of 1964.
Signed by Judge Leonard Davis on
6/11/13. (mjc,) (Entered: 06/11/2013)

**RELEVANT DOCKET ENTRIES FOR THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Date Filed Docket Text

- 12/17/2009 PETITION filed by Petitioner Ms. Amy Unknown for writ of mandamus [6431948-2]
- 12/17/2009 MOTION filed by Petitioner Ms. Amy Unknown to waive right to a decision within 72-hours.
- 12/17/2009 EXHIBITS IN SUPPORT of petition for writ of mandamus [6431948-2] filed by Petitioner Ms. Amy Unknown [0941238] (SAT)
- 12/21/2009 RESPONSE/OPPOSITION filed by USA [6433950-1] to the petition for writ of mandamus filed by Petitioner Ms. Amy Unknown in 09-41238 [6431948-2]
- 12/21/2009 RESPONSE/OPPOSITION filed by Doyle Randall Paroline [6433954-1] to the petition for writ of mandamus filed by Petitioner Ms. Amy Unknown in 09-41238 [6431948-2]
- 12/21/2009 EXHIBITS IN SUPPORT of response/opposition [6433950-2] filed by Respondent Doyle Randall Paroline
- 12/21/2009 PUBLISHED OPINION ORDER FILED. [09-41238 Affirmed] Judge: WED, Judge: JES, Judge: JLD; denying petition for writ of mandamus filed by

Petitioner Ms. Amy Unknown (ISSUED
AS & FOR THE MANDATE)

- 12/21/2009 MANDATE ISSUED.
- 12/22/2009 REVISED PUBLISHED OPINION
FILED.
- 01/11/2010 PETITION filed by Petitioner Ms. Amy
Unknown for rehearing [6445979-2].
- 01/11/2010 PETITION filed by Petitioner Ms. Amy
Unknown for rehearing en banc
[6445991-2]
- 01/25/2010 COURT ORDER GRANTING motion to
treat mandamus petition as appellant's
brief on the merits filed by Petitioner
Ms. Amy Unknown [6446249-3] in
09-41238, SUBJECT TO FURTHER
ORDER FROM THE MERITS PANEL;
GRANTING, motion to treat mandamus
petition as appellant's brief filed by
Appellant Ms. Amy Unknown [6445847-
3] in 09-41254, SUBJECT TO FUR-
THER ORDER FROM THE MERITS
PANEL; GRANTING motion to consoli-
date case filed by Petitioner Ms. Amy
Unknown [6446249-2] in 09-41238 for
briefing and oral argument purposes,
GRANTING motion to consolidate case
filed by Appellant Ms. Amy Unknown
[6445847-2] in 09-41254 for briefing
and oral argument purposes. Judge(s):
WED. [09-41238, 09-41254] (LBM)
- 01/25/2010 APPELLANT'S BRIEF FILED by Ms.
Amy Unknown in 09-41238, 09-41254.

- 01/27/2010 OPPOSED MOTION filed by Appellee USA to dismiss the appeal [6458532-2].
- 02/04/2010 RESPONSE filed by Doyle Randall Paroline [6463309-1] to the motion to dismiss appeal filed by Appellee USA in 09-41254 [6458532-2] and INCORPORATED MOTION to dismiss the appeal [6463309-3].
- 02/12/2010 RESPONSE/OPPOSITION filed by Ms. Amy Unknown in 09-41238, 09-41254 [6468567-1] to the motion to dismiss appeal filed by Appellee USA in 09-41254 [6458532-2], motion to dismiss appeal filed by Appellee Doyle Randall Paroline in 09-41254 [6463309-3]
- 02/19/2010 REPLY filed by Appellee USA in 09-41254 [6472309-1] to the response/opposition filed by Petitioner Ms. Amy Unknown, Appellant Ms. Amy Unknown in 09-41238,09-41254 [6468557-2]
- 06/08/2010 APPELLEE'S BRIEF FILED by Appellee USA in 09-41254, Respondent USA in 0941238
- 06/15/2010 APPELLEE'S BRIEF FILED by Appellee Mr. Doyle Randall Paroline
- 07/02/2010 APPELLANT'S REPLY BRIEF FILED by Ms. Amy Unknown in 09-41238, 09-41254.
- 09/30/2010 RECORD EXCERPTS FILED by Petitioner Ms. Amy Unknown in 09-41238, Appellant Ms. Amy Unknown in 09-41254.

- 11/01/2010 SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Respondent USA in 09-41238, Appellee USA in 09-41254
- 11/04/2010 ORAL ARGUMENT HEARD before Judges Jones, Jolly, Garza. Arguing Person Information Updated for: Paul G Cassell arguing for Petitioner Amy Unknown; Arguing Person Information Updated for: Fred Rimes Files, Jr. arguing for Respondent Doyle Randall Paroline; Arguing Person Information Updated for: Traci Lynne Kenner arguing for Respondent United States of America [09-41238, 09-41254] (SME)
- 11/04/2010 SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Respondent Mr. Doyle Randall Paroline in 09-41238, Appellee Mr. Doyle Randall Paroline in 09-41254
- 03/22/2011 PUBLISHED OPINION FILED. [09-41238 Reversed (GRANTED & REMANDED) 09-41254 Reversed & Remanded] Judge: EHJ, Judge: EGJ, Judge: EMG Judges EGJ and EMG concur, except inPart11, which they consider advisory. Mandate pull date is 05/13/2011; granting petition for rehearing filed by Petitioner Ms. Amy Unknown [6445979-2] in 09-41238; [6431948-2] in 09-41238; granting & remanding petition for writ of mandamus filed by Petitioner Ms. Amy

Unknown [6431948-2] in 09-41238
[09-41238, 09-41254] (RMF)

- 03/22/2011 JUDGMENT ENTERED AND FILED.
- 04/15/2011 PETITION filed by Respondent Mr. Doyle Randall Paroline in 09-41238, Appellee Mr. Doyle Randall Paroline in 09-41254 for rehearing [6790086-2].
- 04/15/2011 PETITION filed by Respondent Mr. Doyle Randall Paroline in 09-41238, Appellee Mr. Doyle Randall Paroline in 09-41254 for rehearing en banc [6790103-2].
- 05/09/2011 COURT DIRECTIVE ISSUED requesting a response to the petition for rehearing en banc.
- 05/10/2011 COURT DIRECTIVE ISSUED requesting a response from the government to the petition for rehearing en bancResponse/Opposition due on 05/20/2011.
- 05/19/2011 RESPONSE/OPPOSITION filed by Ms. Amy Unknown in 09-41238, 09-41254 [6816611-1] to the petition for rehearing en banc filed by Respondent Mr. Doyle Randall Paroline, Appellee Mr. Doyle Randall Paroline in 09-41238, 09-41254 [6790103-2]
- 05/27/2011 REPLY filed by Respondent Mr. Doyle Randall Paroline in 09-41238, Appellee Mr. Doyle Randall Paroline in 09-41254 [6822436-1] to the response/opposition

filed by Petitioner Ms. Amy Unknown
in 09-41238 [6816611-2].

- 06/27/2011 RESPONSE/OPPOSITION filed by USA in 0941238, 09-41254 [6845570-1] to the petition for rehearing en banc filed by Respondent Mr. Doyle Randall Paroline, Appellee Mr. Doyle Randall Paroline in 09-41238, 09-41254 [6790103-2]
- 01/25/2012 COURT ORDER granting petition for rehearing en banc filed by Respondent Mr. Doyle Randall Paroline, Appellee Mr. Doyle Randall Paroline [6790103-2]
- 02/08/2012 LETTER filed by Petitioner Ms. Amy Unknown in 09-41238, Appellant Ms. Amy Unknown in 09-41254 This letter seeks clarification of the Court's letter to counsel dated February 6, 2012.
- 02/09/2012 LETTER filed by Respondent USA in 09-41238, Appellee USA in 0941254 referencing letter filed by Petitioner Ms. Amy Unknown, Appellant Ms. Amy Unknown in 09-41238, 09-41254 [7012223-2]
- 02/24/2012 APPELLANT'S SUPPLEMENTAL BRIEF FILED by Ms. Amy Unknown in 09-41238, 09-41254
- 03/26/2012 APPELLEE'S SUPPLEMENTAL BRIEF FILED by USA in 09-41238, 09-41254
- 03/26/2012 APPELLEE'S SUPPLEMENTAL BRIEF FILED by Mr. Doyle Randall Paroline in 09-41238, 09-41254
- 03/27/2012 LETTER filed by Respondent USA in 09-41238, Appellee USA in 09-41254 on it's

views on both the allocation of argument time, and the order of the argument presentation.

- 03/28/2012 LETTER filed by Respondent Mr. Doyle Randall Paroline in 09-41238, Appellee Mr. Doyle Randall Paroline in 09-41254 referencing letter filed by Respondent USA, Appellee USA in 09-41238, 09-41254 [7048469-2].
- 03/28/2012 LETTER filed by Petitioner Ms. Amy Unknown in 09-41238, Appellant Ms. Amy Unknown in 09-41254 referencing letter filed by Respondent USA, Appellee USA in 09-41238, 09-41254 [7048469-2].
- 04/20/2012 OPPOSED MOTION filed by Petitioner Ms. Amy Unknown in 09-41238, Appellant Ms. Amy Unknown in 09-41254 to strike appellee supplement brief filed by Respondent USA, Appellee USA in 09-41238, 09-41254 [7047841-2] [7069044-2].
- 04/23/2012 RESPONSE/OPPOSITION filed by USA in 09-41238, 09-41254 [7069312-1] to the motion to strike brief filed by Petitioner Ms. Amy Unknown, Appellant Ms. Amy Unknown in 09-41238, 09-41254 [7069044-2]
- 04/23/2012 COURT ORDER filed carrying with the case petitioner's motion to strike a portion of respondent's brief filed by Petitioner Ms. Amy Unknown, Appellant Ms. Amy Unknown [7069044-2]
Judge(s): EHJ. [09-41238, 09-41254]
(SMH)

- 04/26/2012 REPLY filed by Petitioner Ms. Amy Unknown in 09-41238, Appellant Ms. Amy Unknown in 09-41254 [7073910-1] to the response/opposition filed by Respondent USA, Appellee USA in 09-41238, 09-41254 [7069312-2], to the motion to strike brief filed by Petitioner Ms. Amy Unknown, Appellant Ms. Amy Unknown in 09-41238, 09-41254 [7069044-2].
- 04/27/2012 LETTER filed by Respondent USA in 09-41238, Appellee USA in 09-41254 addressing a post-briefing factual dispute identified by Amy's counsel.
- 05/02/2012 SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Petitioner Ms. Amy Unknown in 09-41238, Appellant Ms. Amy Unknown in 09-41254
- 05/03/2012 EN BANC ORAL ARGUMENT HEARD Jones, King, Jolly, Davis, Smith, Garza, Stewart, Dennis, Clement, Prado, Owen, Elrod, Southwick, Haynes, Graves En Banc;. Arguing Person Information Updated for: Paul G. Cassell arguing for Petitioner/Appellant Amy Unknown; Arguing Person Information Updated for: Michael A. Rotker arguing for Respondent/Appellee United States of America; Arguing Person Information Updated for: Stanley G. Schneider arguing for Respondent/Appellee Doyle Randall Paroline [09-41238, 09-41254] (SMH)

- 07/03/2012 LETTER filed by Respondent USA in 09-41238, Appellee USA in 09-41254 referencing letter filed by Respondent USA, Appellee USA in 09-41238, 09-41254
- 07/03/2012 LETTER filed by Respondent USA in 09-41238, Appellee USA in 09-41254 referencing letter filed by Respondent USA, Appellee USA in 09-41238, 09-41254
- 07/03/2012 LETTER filed by Respondent USA in 09-41238, Appellee USA in 09-41254 referencing letter filed by Respondent USA, Appellee USA in 09-41238, 09-41254 [7125831-2].
- 07/05/2012 RESPONSE/OPPOSITION filed by Ms. Amy Unknown in 09-41238, 09-41254 [7127584-1] to the letter filed by Respondent USA, Appellee USA in 09-41238, 09-41254 [7126250-2]
- 10/01/2012 PUBLISHED OPINION FILED. [09-41238 Vacated & Remanded 09-41254 Vacated and Remanded] Judge: EMG, Judge: JLD concurs in part in the judgment, Judge: WED concurs in part and dissents in part joined by CDK, JES, & JEG, Judge: LHS dissents. Mandate pull date is 11/26/2012; denying motion to strike brief filed by Petitioner Ms. Amy Unknown, Appellant Ms. Amy Unknown [7069044-2]; denying motion to file brief in excess of word count filed by Appellee Mr. Doyle Randall Paroline [7047403-2] in 0941254, denying motion to file brief in excess of word count filed

by Appellee USA [7038235-2] in
09-41254 (ALSO FILED IN 09-31215)
[09-41238, 09-41254] (RMF)

- 10/01/2012 JUDGMENT ENTERED AND FILED.
[09-41238, 09-41254] (RMF)
- 10/01/2012 REVISED PUBLISHED OPINION
FILED. [7193980-2] [09-41238, 09-
41254] (RMF)
- 11/19/2012 OPINION WITHDRAWN. [7194491-2],
[7193980-2]Mandate pull date canceled.
[09-41238, 09-41254] (JMA)
- 11/19/2012 PUBLISHED OPINION FILED. [09-
41238 Reversed (Granted) 09-41254
Vacated and Remanded] Judge: EMG,
Judge: JLD, Judge: WED, Judge: LHS
Mandate pull date is 01/10/2013 [09-
41238, 09-41254] (JMA)
- 11/19/2012 JUDGMENT ENTERED AND FILED.
[09-41238, 09-41254] (JMA)
- 01/11/2013 MANDATE ISSUED. Mandate pull date
satisfied. [09-41238, 09-41254] (CAG)
-

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

From: Becky Smith
To: Victim Notification System
Subject: US Department of Justice Victim
Notification System
Date: Friday, April 17, 2009 11:38:19 AM

DO NOT REPLY TO THIS EMAIL.

U.S. Department of Justice
United States Attorney's Office
Eastern District of Texas in Tyler
110 N. College
Ste. 700
Tyler, TX 75702
Phone: 18008043547
Fax: (903) 590-1439

April 17, 2009

James Marsh
14525 S.W. Milliken Way
Beaverton, OR 97005

RE: United States v. Defendant(s) Doyle Randall
Peroline Case Number 2008R00609 and Court Docket
Number 6:08CR61

Dear James Marsh:

The United States Department of Justice believes it is important to keep victims of federal crime informed of court proceedings. You have been identified to receive notifications for [REDACTED] [REDACTED]. This notice provides information about the above-referenced criminal case.

Charges have been filed against defendant(s) Doyle Randall Peroline. The lead prosecutor for this case is Bill Baldwin. The main charge is categorized as Project Safe Childhood.

The Crime Victims' Rights Act gives victims of criminal offenses in Federal court the following rights: (1) The right to be reasonably protected from the accused; (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime, or of any release or escape of the accused; (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding; (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding; (5) The reasonable right to confer with the attorney for the Government in the case; (6) The right to full and timely restitution as provided in law; (7) The right to proceedings free from unreasonable delay; and (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

We will make our best efforts to ensure you are provided the rights described above. It is important to keep in mind that the defendant(s) are presumed innocent until proven guilty and that presumption requires both the Court and our office to take certain steps to ensure that justice is served. While our office

cannot act as your attorney or provide you with legal advice, you can seek the advice of an attorney with respect to these rights or other related legal matters.

On January 12, 2009, defendant Doyle Randall Peroline pled guilty to the charges listed below. Any remaining counts will be disposed of at the time of sentencing. As a result of the guilty plea, there will be no trial involving this defendant.

<u>Number of Charges</u>	<u>Description of Charges</u>	<u>Disposition</u>
1	Material involving sexual exploitation of Minors	Guilty

The sentencing hearing for defendant(s), Doyle Randall Paroline, has been set for May 27, 2009, 11:00 AM at U.S. Federal Courthouse, 211 W. Ferguson, Tyler, TX before Judge Leonard E. Davis. You are welcome to attend this proceeding; however, unless you have received a subpoena, your attendance is not required by the Court. If you plan on attending, please check with the VNS Call Center to verify the sentencing date and time. Should you wish to speak at the sentencing or want to check for the most current information on the date/time of this event please call our office a day or two before the scheduled hearing.

A United States Probation Officer prepares a report for the Court and may contact you to discuss the impact the crime had on you financially, physically, and/or emotionally. If you are contacted, please make

every effort to provide accurate and detailed information.

The Victim Notification System (VNS) is designed to provide you with information regarding the case as it proceeds through the criminal justice system. You may obtain current information about this case on the VNS Web site at <https://www.notify.usdoj.gov> or from the VNS Call Center at 1-866-DOJ-4YOU (1-866-365-4968) (TDD/TTY: 1-866-228-4619) (International: 1-502-213-2767). In addition, you may use the Call Center or Internet to update your contact information and/or change your decision about participation in the notification program. If you update your information to include a current email address, VNS will send information to that address. In order to continue to receive notifications, it is your responsibility to keep your contact information current.

You will use your Victim Identification Number (VIN) [REDACTED] and Personal Identification Number (PIN) [REDACTED] anytime you contact the Call Center and the first time you log on to the VNS web site. In addition, the first time you access the VNS Internet site, you will be prompted to enter your last name (or business name) as currently contained in VNS. The name you should enter is [REDACTED]

Remember, VNS is an automated system and cannot answer questions. If you have other questions which involve this matter, please contact this office at the number listed above.

Sincerely,

Rebecca A. Gregory
United States Attorney

Becky Smith
Victim Witness Coordinator

If you do not want to receive email notifications from the Victim Notification System (VNS) or wish to no longer participate in the Department of Justice victim notification program, please log into the VNS Web site at <https://www.notify.usdoj.gov>. To stop receiving email notifications or change your email address select My Information and either remove your email address or provide a new address and click the “update” button. If you no longer wish to receive notifications in your case or access the VNS Web site and toll free telephone service, select Stop Receiving Notifications and follow the instructions on the screen.

If you believe you have received this email in error, please contact the office listed at top of the email message.

Please note, if this is the first notification you have received from VNS you will need to wait 4-8 hours from receipt of this email before you can login to the VNS Internet site (<http://www.notify.usdoj.gov>). In addition, it will also be 4-8 hours before any documents which may have been uploaded to VNS as part of this notification will available under the “Documents/Links” section on the Web page.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

THE MARSH LAW FIRM PLLC

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May 1, 2009

Ms. Becky Smith
Victim Witness Coordinator
United States Attorney's Office
110 N College Ave Ste 700
Tyler, TX 75702-7237

Re: ***United States v. Doyle Randall Paroline***
Case Number 2008R00609
Court Docket Number 6:08CR61

Dear Ms. Smith,

I am the attorney for Amy, the victim in the Misty child pornography series. Amy is hereby requesting restitution in accordance with the Mandatory Restitution for Sex Crimes section of the Violence Against Women Act of 1994 [VAWA], codified at 18 U.S.C. 2259, from every criminal defendant who receives, possesses or distributes her images.

On February 23, 2009, a federal district court judge in Connecticut awarded Amy restitution in a criminal child pornography receipt and distribution case. This was the first time a victim of child pornography obtained restitution from a criminal defendant

who was not directly involved in producing the pornography depicting the victim.

The VAWA provisions require each defendant to pay Amy the “full amount” of her losses. Under the Act, the term “full amount of the victim’s losses” includes any costs incurred for:

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) attorneys’ fees, as well as other costs incurred; and
- (F) any other losses suffered by the victim as a proximate result of the offense.

This list is not exclusive since the primary goal of restitution under 18 U.S.C. 2259 is to award the full amount of the victim’s losses regardless of how those losses are categorized.

The attached documents are incorporated into this request:

1. Victim Impact Statement of Amy – The Victim in the Misty Series;
2. Report of Psychological Consultation by Joyanna Silberg, Ph.D. dated November 21, 2008;

3. Letter Calculating the Value of Certain Losses by the Smith Economics Group, Ltd. dated September 15, 2008;

Introduction

When she was eight and nine years old, Amy was repeatedly raped and sexually exploited in order to produce child pornography.¹ Her abuse images depict rape, cunnilingus, fellatio and digital penetration. Amy was also forced to actively participate in her exploitation and abuse by performing sex acts over the telephone and computer for other pedophiles; being asked to solicit friends to join her in sex acts; and being taken into the woods to meet other pedophiles. Most if not all of this activity was for the purpose of producing the child pornography possessed and distributed by the Defendant in this case.

According to Amy's forensic psychologist, Dr. Joyanna Silberg, Amy faces a long and difficult course of treatment for post traumatic stress disorder:

¹ "In the context of children . . . there can be no question of consent, and use of the word pornography may effectively allow us to distance ourselves from the material's true nature. A preferred term is abuse images and this term is increasingly gaining acceptance among professionals working in this area. Using the term abuse images accurately describes the process and product of taking indecent and sexualized pictures of children, and its use is, on the whole, to be supported." Sharon W. Cooper, et. al., *Medical Legal; & Social Science Aspect of Child Sexual Exploitation* p. 258 (2005).

These post traumatic symptoms and effects of sexual abuse are more resistant to treatment than those that would normally follow a time limited trauma, as her awareness of the continued existence of the pictures and their criminal use in a widespread way leads to an activation in these symptoms. . . .

. . . As noted by Klain, Davies and Hicks (2001) "Child victims of pornography face a lifetime of victimization because the pornography can be distributed indefinitely." . . .

Feelings of shame and humiliation are some of the worst affective reactions to treat in victims of sexual abuse. These feelings of shame and humiliation are multiplied exponentially for victims of Internet child pornography. Anonymity is something we offer victims of sexual crimes with acknowledgment that they deserve this protection of privacy. Yet, knowing one's image is out there at all times is an invasion of privacy of the highest degree which makes the victim feel known, revealed and publicly shamed, rather than anonymous. . . .

The ongoing awareness that the pictures are out there interferes significantly with the therapeutic resolution of these problems, as she lives in an enduring state of feeling that she can never really escape or get away from abuse.

For these reasons, the re-victimization of Amy through the trading of her images on the Internet is the source of enduring trauma

that will have lasting effects on her and the symptoms she displays are particularly resistant to standard treatment for post-traumatic stress and the effects of sexual abuse.

. . . It is expected that she will continue to struggle with the enduring effects of these traumatic experiences as described above over her lifetime. She will require weekly therapy, and it is likely there will be periods where more intensive inpatient treatment or rehabilitation services will be required over the course of her lifetime.

Silberg, *Psychological Consultation* pp. 8-10.

Scientific research and established legal precedence support Dr. Silberg's conclusions. Dr. Mimi Halper Silbert discovered that the long-term effects on child pornography victims of being photographed were more debilitating than any short-term or medium-term effects and that these effects are compounded when children are involved in more than one form of sexual exploitation. These ill-effects may be exacerbated by the knowledge that others may see or distribute the images. Dolf Zillmann & Jennings Bryant, *Pornography: Research Advances and Policy Considerations* p. 215 (1989).

In the landmark case of *New York v. Ferber*, 458 U.S. 747 (1982), the United States Supreme Court found that:

[t]he use of children as subjects of pornographic materials is very harmful to both the

children and the society as a whole. It has been found that sexually exploited children are unable to develop healthy affectionate relationships in later life, have sexual dysfunctions, and have a tendency to become sexual abusers as adults. . . .

Pornography poses an even greater threat to the child victim than does sexual abuse or prostitution. Because the child's actions are reduced to a recording, the pornography may haunt him in future years, long after the original misdeed took place. A child who has posed for a camera must go through life knowing that the recording is circulating within the mass distribution system for child pornography. . . . It is the fear of exposure and the tension of keeping the act secret that seem to have the most profound emotional repercussions.

Id. at pp. 758-760 nn. 9, 10. See also *U.S. v. Sherman*, 268 F.3d 539 (7th Cir. 2001) (the children depicted in the pornography suffer a direct and primary emotional harm when another person possesses, receives or distributes the material); *U.S. v. Knox*, 32 F.3d 733 (3rd Cir. 1994) (child pornography is an affront to the dignity and privacy of the child and an exploitation of the child's vulnerability); *U.S. v. Andersson*, 803 F.2d 903 (7th Cir. 1986) (the harm inflicted on these children is two-fold: the sexual abuse when the film or photograph is initially produced . . . and the harm continues when these photographs and films are distributed).

“Whatever the complexities, it is quite clear that the production of abusive images of children feeds, sustains, and generates sexual exploitation of children. . . . There are no good and bad offenders with respect to the trade of abuse images of children.” Sharon W. Cooper, et. al., *Medical, Legal, & Social Science Aspect of Child Sexual Exploitation* p. 273 (2005).²

Amy is the Victim of the Defendant’s Crimes

Child pornography is largely distributed by loosely organized networks of anonymous pedophiles and members of other deviant subcultures utilizing a variety of Internet technologies. The individuals who trade and receive child pornography do not know each other which enables them to conduct their illegal activities with impunity and little risk of discovery. Given the nature of the child pornography trade, these networks comprise a concerted and coordinated group effort to perpetrate the production and distribution of child pornography worldwide and the associated sexual victimization of children.³ The Defendant in

² Dr. Cooper has been retained by Amy as a consulting expert.

³ A recently reported study of individuals incarcerated for possession, receipt and distribution of child pornography found that these offenders were significantly more likely than not to have sexually abused a child via a hands-on act. The study’s authors suggest that online criminal investigations, while targeting so-called “Internet sex offenders,” likely have resulted in the apprehension of concomitant child molesters. Upon being

(Continued on following page)

this case was one such member of this group. See Philip Jenkins, *Beyond Tolerance: Child Pornography on the Internet*. New York: NYU Press, 2001.

The United States courts of appeal have consistently and repeatedly held that the primary victims of child pornography possession, receipt, distribution and production are the children depicted in the pornographic materials.

In *United States v. Ketcham*, 80 F.3d 789 (3rd Cir. 1996), the Third Circuit Court of Appeals held that “the primary victims that Congress had in mind when it enacted 18 U.S.C. 2252(a) were the children depicted in pornographic materials.” Similarly in

discovered these offenders tend to minimize their behavior. They may attribute their search for child pornography to “curiosity” or a similar benign motivation. They may “accept responsibility” only for those behaviors that are already known to law enforcement, but hide any contact sexual crimes to avoid prosecution for these offenses, or to avoid the shame and humiliation that would result from revealing their deviance to family, friends, and community. Only later do the majority of sex offenders who enter treatment acknowledge that they were not, as they initially claimed, merely interested in sexual images involving children; they were, and are, sexually aroused by children. Further, as prior research and the current findings suggest, it appears that the manifestations of their deviant sexual arousal was not limited to fantasy. Rather, when an opportunity arose either incidentally or as a result of planned predatory efforts many offenders molested or raped children and engaged in a variety of other sexually deviant behaviors. Michael L. Bourke & Andres E. Hernandez, *The ‘Butner Study’ Redux: A Report of the Incidence of Hands-on Child Victimization by Child Pornography Offenders*. *Journal of Family Violence* (2009) 24:183-191.

United States v. Hibbler, 159 F.3d 233 (6th Cir. 1998), the Sixth Circuit Court of Appeals concluded that “the child pornographer, quite simply, directly victimizes the children pictured in such materials. . . . It is the children depicted in the child pornography distributed and possessed by defendant who are the primary victims of the crimes of which he was convicted.”

In *United States v. Davis*, 204 F.3d 1064 (11th Cir. 1999), the Eleventh Circuit Court of Appeals explained that “the harm resulting from possession of child pornography occurs when one sustains a market for such pictures. . . . Therefore, it is not necessary for one to derive any benefit from the child pornography or actively solicit the pornography, provided one’s actions play a role in the distribution network.”

In *United States v. Boos*, 127 F.3d 1207 (9th Cir. 1997), the Ninth Circuit Court of Appeals noted that “the harm caused by the distribution of child pornography is concentrated. It is visited upon a single individual or discrete group of individuals, namely, the child or children used in the production of the pornographic material.” The Court reasoned:

it seems to us scarcely debatable that the children depicted – many as young as 5 years old – were the primary “victims” of Boos’s criminal conduct After all, it was the children depicted . . . who were “injured” (both physically and psychologically) as a result of Boos’s patronage of the porn industry,

who were “sacrificed” to satisfy Boos’s curiosities, who were “subjected” to the cruelest form of “oppression, hardship, [and] mistreatment” at the hands of pornography producers and photographers, and whose lives were quite possibly “destroyed” in the process.

Id. at p. 1210.

The *Boos* court also “categorically reject[ed] Boos’s attempt to draw a fine-line distinction between the production of child pornography, which he concedes primarily injures the children involved, and the distribution of that pornography, which he claims does not have the same injurious effect.” *Id.* at 1211 n. 1.

In *United States v. Norris*, 159 F.3d 926 (5th Cir. 1998), the defendant argued that “when he committed the crime of receiving child pornography, the children depicted were not ‘victimized’ by that act and therefore were not ‘victims’ for sentencing purposes. Under this theory the victimization of the children occurred at the time the pornographic images were produced. Therefore, according to Norris, the criminal act of simply receiving child pornography is a victimless crime, and the children depicted in the child pornography can only be victims of the crime of receiving child pornography in an indirect or secondary sense.” *Id.* at p. 929.

The *Norris* court, like the *Boos* court, unequivocally rejected this reasoning finding that this was an

“unrealistically narrow view” of the scope of harms experienced by child pornography victims, surmising that “[u]nfortunately, the victimization of the children involved does not end when the pornographer’s camera is put away.” *Id.* The court found that the consumer, or end recipient, of child pornography cause the children depicted in those materials to suffer in at least three ways:

First, the simple fact that the images have been disseminated perpetuates the abuse initiated by the producer of the materials. “[T]he materials produced are a permanent record of the children’s participation and the harm to the child is exacerbated by their circulation.” . . . The consumer who “merely” or “passively” receives or possesses child pornography directly contributes to this continuing victimization.

Second, the mere existence of child pornography represents an invasion of the privacy of the child depicted. Both the Supreme Court and Congress have explicitly acknowledged that the child victims of child pornography are directly harmed by this despicable intrusion on the lives of the young and the innocent. The recipient of child pornography obviously perpetuates the existence of the images received, and therefore the recipient may be considered to be invading the privacy of the children depicted, directly victimizing these children.

Third, the consumer of child pornography instigates the original production of child

pornography by providing an economic motive for creating and distributing the materials. As Congress put it in explicit factual findings: “[T]he existence of and traffic in child pornographic images . . . inflames the desires of child molesters, pedophiles, and child pornographers, 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[.]”

Id. at pp. 929-930 (internal citations removed).

The *Norris* court recognized that:

there is no sense in distinguishing . . . between the producers and the consumers of child pornography. Neither could exist without the other. The consumers of child pornography therefore victimize the children depicted in child pornography by enabling and supporting the continued production of child pornography, which entails continuous direct abuse and victimization of child subjects.

Id. at p. 930.

The court concluded that “the victimization of a child depicted in pornographic materials flows just as directly from the crime of knowingly receiving child pornography as it does from the arguably more culpable offenses of producing or distributing child pornography.” *Id.*

Like the defendants in *Norris* and *Boos*, the defendant in *United States v. Tillmon*, 195 F.3d 640 (11th Cir. 1999) argued that “while the minor depicted was victimized when the photographs were taken, the interstate transportation of the photograph does not further harm that child. The Eleventh Circuit Court of Appeals rejected this argument distinguishing between child pornography production and child pornography distribution:

Although an argument can be made that the production of child pornography may be more immediately harmful to the child involved, the dissemination of that material certainly exacerbates that harm, not only by constituting a continuing invasion of privacy but by providing the very market that led to the creation of the images in the first place. Thus, the children depicted remain the primary victims not only when the pictures are taken or purchased, but also when they are subsequently transported or distributed from one person to another.

Id. at p. 644. The Court concluded that “the primary identifiable victim of the transportation of child pornography is the minor depicted in the image. *Id.* at p. 645.

**Amy is Entitled to the Full Amount
of her Losses as Restitution**

As the “primary identifiable victim” in this case, Amy is entitled to criminal restitution. The primary

goal of restitution under the Mandatory Restitution for Sex Crimes section of the Violence Against Women's Act of 1994 [18 U.S.C. 2259] is to award the full amount of the victim's losses regardless of how those losses are categorized.

The district court has substantial discretion over the entire process leading to a restitution order and in determining the amount of restitution. So long as the basis for reasonable approximation of a victim's loss is at hand, difficulties in achieving exact measurements will not preclude the district court from ordering restitution. *United States v. Savoie*, 985 F.2d 612 (1st Cir. 1993).

In *United States v. Julian*, 242 F.3d 1245 (10th Cir. 2001), the Tenth Circuit Court of Appeals reviewed 18 U.S.C. 2259 and its application in child pornography cases:

We note that § 2259 and the other two mandatory restitution statutes associated with violence against women and children which were adopted at the same time, *see* 18 U.S.C. §§ 2248 & 2264, **are much broader than § 3663A** [the Mandatory Victims Restitution Act or MVRA] these three statutes use the terms "full amount of the victim's losses" for "any costs incurred" for physical, psychiatric, or psychological care, and also include restitution for "any other losses suffered by the victim as a proximate result of the offense."

Id. at p. 1247 (emphasis added). The court found that the legislative history of the VAWA statutes justified imposing mandatory restitution for psychological counseling:

Congress was well aware that children victimized by sexual abuse often do not recover quickly from their injuries. Indeed, the legislative history of the amended statutes prohibiting the use of children in pornography cites and quotes broadly from the landmark United States Supreme Court case of *New York v. Ferber*, 458 U.S. 747 (1982). In *Ferber*, the court extensively discussed the long-term serious physiological, emotional, and mental difficulties of children who have been sexually exploited:

The use of children as subjects of pornographic materials is very harmful to both the children and the society as a whole. It has been found that sexually exploited children are unable to develop healthy affectionate relationships in later life, have sexual dysfunctions, and have a tendency to become sexual abusers as adults.

....

Pornography poses an even greater threat to the child victim than does sexual abuse or prostitution. Because the child's actions are reduced to a recording, the pornography may haunt him in future years, long after the original misdeed took place. A child who has posed for a camera must go through life

knowing that the recording is circulating within the mass distribution system for child pornography. . . . It is the fear of exposure and the tension of keeping the act secret that seem to have the most profound emotional repercussions.

Ferber, 458 U.S. at 758-60 nn. 9, 10.

Id. The *Julian* court concluded that “in discussing the rationale behind the mandatory restitution statutes, Congress noted the goal of criminal restitution: to ensure that the wrongdoer is required to the degree possible to restore the victim to his or her prior state of well being.” *Id.*

In *United States v. Laney*, 189 F.3d 954 (9th Cir. 1999), the Ninth Circuit Court of Appeals explained that “the language of the relevant statutes shows that Congress intended to allow district courts to include future counseling expenses in the amount of restitution under section 2259. Section 2259 is phrased in generous terms, in order to compensate the victims of sexual abuse for the care required to address the long term effects of their abuse. . . . Congress was well aware that children victimized by sexual abuse often do not recover quickly from their injuries.” *Id.* at p. 966.

The court concluded that as long as the district court estimates the amounts that victims will spend on future counseling with reasonable certainty in accordance with the procedures set forth in 18 U.S.C.

3664, an award of restitution for future counseling expenses will be upheld.

In *United States v. Whitedirt*, 216 F.3d 1085, 2000 WL 377778 (9th Cir. 2000), the Ninth Circuit Court of Appeals recognized that “a court may order mandatory restitution for amounts that victims have not yet spent.” In a later case, *United States v. McKay*, 242 F.3d 384, 2000 WL 1517159 (9th Cir. 2000), the Ninth Circuit held that a district court may order restitution for the future counseling of a sexual abuse victim even though the costs of counseling have not yet been incurred and even when the victim is not already in therapy.

Determining Mandatory Restitution

In awarding \$309,280 in mandatory restitution, the court in *United States v. Danser*, 270 F.3d 451 (7th Cir. 2001) explained how such an amount is properly determined:

In support of an award of this figure, the government, through a licensed actuary, determined that Karen Doe’s life should last an additional 75 years. The government then multiplied the present costs of Karen’s weekly [therapy] sessions (\$78 per session) by her actuarially determined life expectancy to come up with \$304,200.

Id. at p. 453 n. 1. The *Danser* court found that “in enacting section 2259, it is clear that Congress intended to provide victims of sexual abuse with

expansive relief for the full amount of . . . [their] losses suffered as a result of abuse. Congress chose unambiguously to use unqualified language in prescribing full restitution for victims.” *Id.* at p. 455.

The district court has broad discretion in awarding restitution for “any other losses suffered by the victim as a proximate result of the offense.” In *U.S. v. Estep*, 378 F.Supp.2d 763 n. 4 (E.D.Ky. 2005) the court awarded attorney’s fees to the mother of one child victim for divorce proceedings against the perpetrator, rent payments and transportation expenses, in addition to past and future treatment and counseling costs. The court also awarded attorney’s fees and costs for the victims’ attorney who filed a civil case on their behalf.

In *United States v. Doe*, 488 F.3d 1154 (9th Cir. 2007), the Ninth Circuit Court of Appeals upheld an award of restitution for trauma counseling and psychological care, case review by a social worker, quarterly medical check-ups, vocational training, formal schooling, and a management fee to a social services organization to coordinate services for numerous child victims.

The VAWA statute’s use of the broad term “lost income” is distinct from other restitution provisions which limit recovery to “lost income . . . incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense” 18 U.S.C. 3663A(b)(4), or “lost income . . . related to participation in the investigation

or prosecution of the offense or attendance at proceedings related to the offense” 18 U.S.C. 3663(b)(4).

In 18 U.S.C. 3663A(b)(2)(c), which applies to an offense resulting in bodily injury to a victim, Congress provided for reimbursement for “income lost by such victim as a result of such offense.” See *United States v. Oslund*, 453 F.3d 1048, 1062 (8th Cir. 2006) (when an offense causes bodily harm to a victim, restitution must be ordered for medical or psychological treatment, costs of therapy and rehabilitation, and ‘income lost by such victim as a result of such offense’); *U.S. v. Bedonie*, 317 F. Supp. 2d 1285 (D. Utah 2004) (there is no distinction between past and future income as both are lost “as a result of” the offense; in cases involving crimes of violence courts are required to award restitution for both past and future lost income).

In *U.S. v. Serawop*, 505 F3d 1112 (10th Cir. 2007), the Tenth Circuit Court of Appeal held that “any victim suffering bodily injury or death necessarily incurs the income lost only after the injury, i.e. in the future, as a consequence of the defendant’s violent act. Moreover, the term “lost earnings,” which is similar to “income lost,” is defined by Black’s Law Dictionary to include future earnings:

‘lost earnings. Wages, salary, or other income that a person could have earned if he or she had not lost a job, suffered a disabling injury, or died. Lost earnings are typically awarded as damages in personal-injury and wrongful-termination cases. There can be past lost

earnings and future lost earnings. Both are subsets of this category, though legal writers sometimes loosely use future earnings as a synonym for lost earnings. Cf. LOST EARNING CAPACITY: BLACK'S LAW DICTIONARY 526 (8th ed. 2004)"

Id. at p. 1121.

The Mandatory Victims Restitution Act of 1996, which amended and restructured several parts of the Mandatory Restitution for Sex Crimes section of VAWA, highlighted the importance of “emotional damages” as an essential component of restitution for victims of child pornography. Senate Report 104-179 emphasized that “no change is made to the scope of restitution required under the VAWA provisions, including the availability of emotional damages.” Such damages are also known as noneconomic compensatory damages and includes damages for what is commonly called “emotional distress.”

Clearly, a victim’s emotional distress is a foreseeable and proximate result of violating the federal child pornography laws. In 1946, the United States Supreme Court held in *Bell v. Hood*, 327 U.S. 678 (1946) that “federal courts may use any available remedy to make good the wrong done.” Emotional damages are plainly a form of compensatory damages designed to “make good the wrong done” and fall within the scope of the “full amount of the victim’s losses” as well as “losses suffered by the victim as a proximate result of the offense” allowed by the VAWA provisions.

In requiring that a victim recover the “full amount” of her losses, Congress also imposed joint and several liability on defendants. In *United States v. Erickson*, 83 Fed.Appx. 997 (10th Cir. 2003), the defendant argued that his restitution order was illegal because it included losses attributable to other defendants. The Tenth Circuit Court of Appeals disagreed finding that the statute under which the defendant received his restitution sentence, 18 U.S.C. 3664(h), states that “[i]f the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution.”

The *Erickson* court found that “the severe, collaborative abuse of this child was cumulative in effect and could not be apportioned to individual perpetrators of crimes against her.” Concerning the defendant’s crimes, the court of appeals agreed with the district court that “it is no defense for this defendant to say there were other partners; that there were other people who are complicit.” *Id.* at p. 1000.

Like the victim in *Erickson*, Amy is also a victim who has experienced “severe, collaborative abuse” due to the widespread and almost unlimited distribution of her child pornography images by individuals including the Defendant in this case. For Amy, the fact that hundreds of criminal defendants have and continue to victimize her is neither a bar to recovery nor a basis for reducing recovery since “if the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each

defendant liable for payment of the full amount of restitution.” 18 U.S.C. 3664(h). According to Amy’s forensic psychologist, Dr. Joyanna Silberg, it is precisely because her images are so highly sought, traded and re-distributed that Amy’s psychological injuries are so lasting and severe and difficult to treat.

The doctrine of joint and several liability reflected in 18 U.S.C. 3664 has a long history in the civil law. It is especially applicable in cases involving the distribution and possession of child pornography since, as the Supreme Court recognized in *Ferber*, “[t]he victim’s knowledge of publication of the visual material increases the emotional and psychic harm suffered by the child. . . . Thus, distribution of the material violates the individual interest in avoiding disclosure of personal matters. . . . When such performances are recorded and distributed, the child’s privacy interests are also invaded.” *Ferber*, 458 U.S. at 758-760 nn. 9, 10.

As William L. Prosser recognized in his singular *Handbook of the Law of Torts*, when “there is a joint enterprise, and a mutual agency, so that the act of one is the act of all . . . liability for all that is done must be visited upon each. It follows that there is no logical basis upon which the jury may be permitted to apportion the damages.” William L. Prosser, *Torts* p. 315 (4th ed. 1971).

The defendant in *United States v. Crandon*, 173 F.3d 122 (3rd Cir. 1999) pled guilty to one count of

receiving child pornography. After considering the victim's un rebutted evidence, the Third Circuit Court of Appeals held that "the statute requires the court to order restitution for the full amount of the victim's losses. There is nothing in the statute that provides for a proportionality analysis." *Id.* at p. 126.

The illicit trade in child pornography is a joint enterprise, albeit a sometimes large and amorphous one. Although the Defendant did not produce Amy's child pornography images, he was part of the "joint enterprise and mutual agency" which received, possessed and distributed her images to ever more willing and eager consumers. It is the scale of this publication of Amy's abuse images and the resulting invasion of her privacy interests which has and will cause the greatest ongoing harm during her lifetime. Each possession and each distribution of each image all combine to what Prosser calls a "single indivisible result."

Certain results, by their very nature, are obviously incapable of any logical, reasonable, or practical division. Death is such a result, and so is a broken leg or any single wound, the destruction of a house by fire, or the sinking of a barge. No ingenuity can suggest anything more than a purely arbitrary apportionment of such harm. Where two or more causes combine to produce such a single result, incapable of any logical division, each may be a substantial factor in bringing about the loss, and if so, each must be charged with all of it. . . .

Such entire liability is imposed both where some of the causes are innocent and where two or more of the causes are culpable. It is imposed where either cause would have been sufficient in itself to bring about a result and also where both were essential to the injury. It is not necessary that the misconduct of two defendants be simultaneous. One defendant may create a situation upon which the other may act later to cause the damage. . . . Liability in such case is not a matter of causation, but of the effect of the intervening agency upon culpability. If a defendant is liable at all, he will be liable for all the damage caused.

Prosser, *Torts* pp. 315-317.

In this case, it is equally impossible to apportion the harm to Amy amongst the numerous past, present and future defendants. This Defendant undeniably contributed to Amy's psychiatric "death by a thousand cuts" when he received and/or distributed her child pornography images with impunity until apprehended by law enforcement. By using images as barter for other images, the Defendant also profited from Amy's victimization and exploitation.

Congress recognized the difficulty in apportioning harm – so eloquently stated by Prosser – when it adopted 18 U.S.C. 3664 by imposing joint and several liability for possession, receipt and distribution of child pornography.

Calculating the Full Amount of Amy's Losses

A criminal restitution order is reviewed for abuse of discretion and will not be overturned provided that it is within the bounds of the statutory framework. *United States v. Johnson*, 132 F.3d 1279, 1286 (9th Cir. 1997). The trial court need only determine the amount of loss by a preponderance of the evidence. *United States v. Menza*, 137 F.3d 533, 537 (7th Cir. 1998). Hearsay testimony may be introduced at sentencing hearings to support a claim for restitution so long as the testimony has “sufficient indicia of reliability to support its probable accuracy.” U.S.S.G. 6A1.3(a).

The Mandatory Restitution for Sex Crimes section of the Violence Against Women's Act of 1994 [18 U.S.C. 2259] requires the Defendant to pay Amy the “full amount” of her losses including any costs incurred for:

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) attorneys' fees, as well as other costs incurred; and
- (F) any other losses suffered by the victim as a proximate result of the offense.

Two un rebutted experts calculated the “full amount” of Amy’s losses at \$3,408,404. A University of Chicago educated Doctor of Economics, Stan V. Smith, in consultation with Amy’s distinguished forensic psychologist, Dr. Joyanna Silberg, calculated Amy’s cost of future treatment and counseling at \$512,681. Amy’s lost and reduced income as a result of her abuse and exploitation was actuarially calculated by Dr. Smith, after consulting Dr. Silberg, at \$2,855,173.

In addition, Amy’s expert witness fees are \$15,550. Amy’s attorney’s fees as well as other costs incurred in this case are not yet finalized.

In determining the minimum amount of Amy’s loss, the Court can consider Congress’ presumption in Masha’s Law [18 U.S.C. 2255] that victims of child pornography “shall be deemed to have sustained damages of no less than \$150,000 in value.”⁴ See

⁴ Masha’s Law is a civil remedy separate and apart from criminal restitution. The relationship between criminal restitution and civil tort actions was discussed by the Seventh Circuit Court of Appeals in *U.S. v. Bach*, 172 F.3d 520 (7th Cir. 1999): “The [MVRA] requires the court to identify the defendant’s victims and to order restitution to them in the amount of their loss. In other words, definite persons are to be compensated for definite losses just as if the persons were successful tort plaintiffs. Crimes and torts frequently overlap. In particular, most crimes that cause definite losses to ascertainable victims are also torts . . . Functionally, the Mandatory Victims Restitution Act is a tort statute, though one that casts back to a much earlier era of Anglo-American law, when criminal and tort proceedings were not clearly distinguished. The Act enables the
(Continued on following page)

United States v. Estep, 378 F.Supp.2d 763 n. 4 (E.D.Ky. 2005).

In *In re Hawaiian Airlines, Inc.*, 355 B.R. 225 (D.Ha 2006), a federal district court ruled that a victim may obtain statutory damages on a per-violation basis, resulting in an award of statutory damages for each violation of the law. The statutory damages set forth in Masha's Law may therefore be multiplied by the number of images downloaded by the Defendant, or for each violation of each provision of the law, or both.

For example, a defendant who pleads guilty to two distinct violations of the federal child pornography laws, such as receipt and distribution of Amy's child pornography images in violation of 18 U.S.C. 2252A(a)(2), will be minimally liable for \$300,000 in

tort victim to recover his damages in a summary proceeding ancillary to a criminal prosecution. . . . It is a detail from a defrauder's standpoint whether he is ordered to make good his victims' losses in a tort suit or in the sentencing phase of a criminal prosecution." *Id.* at 523. See also *U.S. v. Duncan*, 870 F.2d 1532 (10th Cir. 1989) (where a civil suit covered the same alleged acts of wrongdoing as the restitution order, and the amount of compensatory damages sought in the civil suit was no greater than the amount alleged by the Government in connection with the criminal offense, there was no abuse of discretion in the district court's deferral to judgment in the civil suit in determining the proper amount of restitution); *U.S. v. Rhodes*, 201 F.Supp.2d 906 (C.D.Ill. 2002) (restitution was not limited to a mail fraud defendant's personal gain; rather, it tracked recovery to which victim would have been entitled in civil suit against the defendant).

damages using a “per violation” statutory damages theory (\$150,000 for receipt plus \$150,000 for distribution).⁵

Using a “per image” statutory damages theory, a defendant who receives four of Amy’s child pornography images in violation of 18 U.S.C. 2252A(a)(2) will be minimally liable for \$600,000 in damages (\$150,000 for each image).

Both of these theories can also be combined. A defendant who both receives and distributes four of Amy’s child pornography images commits eight violations of the law and is therefore minimally liable for \$1,200,000 in damages (\$150,000 multiplied by eight).

The Attorney General Guidelines

Congress has repeatedly stressed the importance of mandatory restitution:

The committee believes that restitution must be considered a part of the criminal sentence, and that justice cannot be considered served until full restitution is made. . . . The committee also intends that the defendant’s

⁵ In a recent civil case, *Tilton v. Deslin Hotels, Inc.*, Case No. 8:05-CV-692-T-30TGW (M.D. Fla. Sept. 6, 2007), a federal district court awarded a default judgment of \$100,000 under the old version of Masha’s Law (in which the statutory damages were \$50,000 per violation) based on one violation of 18 U.S.C. 2252A(a) and one violation of 18 U.S.C. 2251(a).

affidavit stating the defendant's assets and ability to pay be subject to strict review by the court. In particular, the committee is concerned that defendants not be able to fraudulently transfer assets that might be available for restitution.

Senate Report 104-179, p. 20.

In furtherance of this mandate, we encourage the Government to follow the *Attorney General Guidelines for Victim and Witness Assistance* (May 2005) and seek a prejudgment restraint of the defendant's assets through an injunction prior to sentencing – either voluntary or pursuant to a properly supported motion – to prevent the dissipation or transfer of assets for the benefit of crime victims such as Amy. (See 18 U.S.C. 1345) *Attorney General Guidelines*, p. 39.

Since any criminal monetary penalties must be paid immediately and may be enforced immediately, the Government should encourage the defendant to make payment toward his restitution obligation before the imposition of sentence as directed in U.S.S.G. 3E1.1, cmt. n.1(c) and the *Attorney General Guidelines*, p. 40.

Once restitution is ordered, a lien in favor of the United States should be filed on the defendant's property and rights to property as if it were liability for unpaid taxes. 18 U.S.C. 3613(c). According to the *Attorney General Guidelines*, this lien should be filed by the Financial Litigation Unit in all cases in which

restitution is ordered in an amount greater than \$500 and not immediately paid. *Attorney General Guidelines*, p. 45.

If the defendant does not have sufficient assets to pay the restitution order immediately without using forfeitable property, the Government is encouraged to use the procedural provisions of the forfeiture statutes to preserve and recover forfeitable property and to apply such property toward satisfaction of the restitution order. *Attorney General Guidelines*, p. 46.

Finally, even though Amy has reached legal adulthood, we ask that the Government continue to recognize her as a child sex crime victim and scrupulously protect her privacy in accordance with 18 U.S.C. 3509(d) and the *Attorney General Guidelines*. Any documents that disclose her name or any other information concerning her should be held in a secure place and disclosed only to persons who by reason of their participation in the proceeding have reason to know the information.

Please notify me immediately if you plan on filing papers that disclose Amy's real name or if you must, for any reason, disclose her identity to the defendant or his attorney. In either situation, the Government should move for an order that Amy's name, address, social security number, and other nonphysical identifying information (other than her age or approximate age) shall not be admissible and may be redacted from otherwise admissible evidence pursuant to 18 U.S.C. 2252A(e).

Conclusion

Federal law is clear concerning criminal restitution for victims of child pornography: the Defendant must pay Amy the “full amount” of her losses regardless of how many other people are complicit in the crimes against her. The act of one is the act of all and liability for all that is done must be visited upon each defendant.

In calculating the full amount of Amy’s losses under 18 U.S.C. 2259, the Court must include a variety of damages including psychological care, lost income and attorney’s fees which in Amy’s case amounts to at least \$3,448,954. There is nothing in the statute that provides for a proportionality analysis.

Since there is no rational basis upon which to apportion damages, Congress provided clear guidance in 18 U.S.C. 2255 that at absolute minimum, victims of child pornography have sustained damages of no less than \$150,000 in value.

As Amy told Dr. Silberg, “[e]veryday I have to live in fear of these pictures being seen.” According to Dr. Silberg:

[Amy] states when she is at a friend’s house, she is afraid that someone might use Google and that when they Google her name, pictures of her might “pop up” and she would be humiliated. She feels that her privacy has been invaded on a fundamental level as these pictured acts in which she was an unwilling

participant are there for other people to find against her will. She fears the discovery of the pictures by her friends, but she also fears the unknown and unnamed people who continue to be looking at these pictures of her for their own perverse interests or to “groom” other children into these acts. She feels continually violated when she contemplates these possibilities. As Amy stated, *“I don’t want to be there, but I have to be there and it’s never going away, and that’s a scary thought.”*

Silberg, *Psychological Consultation* at p. 4.

As the criminal justice system carefully considers restitution, it should remember the fear, isolation and personal violation Amy feels every day of her life. The Defendant reaped pleasure from this fear and violation and could have refused to profit from Amy’s child pornography images but did not. As Congress said, “restitution must be considered a part of the criminal sentence . . . justice cannot be considered served until full restitution is made.” Thank you for your careful attention to this matter.

Sincerely,

/s/ James R. Marsh
James R. Marsh
Attorney for Amy

enclosures

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

**Victim Impact Statement of Amy –
the Victim in the Misty Series**

I am a 19 year old girl and I am a victim of child sex abuse and child pornography. I am still discovering all the ways that the abuse and exploitation I suffer has hurt me, has set my life on the wrong course, and destroyed the normal childhood, teenage years, and early adulthood that every one deserves.

My uncle started to abuse me when I was only 4 years old. He used what I now know are the common ways that abusers get their victims ready for abuse and keep them silent: he told me that I was special, that he loved me, and that we had our own “special secrets.” Since he lived close to our house, my mother and father didn’t suspect anything when I walked over there to spend time with him.

At first he showed me pornographic movies and then he started doing things to me. I remember that he put his finger in my vagina and that it hurt a lot. I remember that he tried to have sex with me and that it hurt even more. I remember telling him that it hurt. I remember that much of the time I was with him I did not have clothes on and that sometimes he made me dress up in lingerie. And I remember the pictures.

After the abuse he would take me to buy my favorite snack which was beef jerky. Even now when I eat beef jerky I get feelings of panic, guilt, and humiliation. It’s like I can never get away from what happened to me.

At the time I was confused and knew it was wrong and that I didn't like it, but I also thought it was wrong for me to tell anything bad about my uncle who said he loved me and bought me things I liked. He even let me ride on his motorcycle. Now I will never ride on a motorcycle again. The memories are too upsetting.

There is a lot I don't remember, but now I can't forget because the disgusting images of what he did to me are still out there on the Internet. For a long time I practiced putting the terrible memories away in my mind. Thinking about it is still really painful. Sometimes I just go into staring spells when I am caught thinking about what happened and not paying any attention to my surroundings.

Every day of my life I live in constant fear that someone will see my pictures and recognize me and that I will be humiliated all over again. It hurts me to know someone is looking at them – at me – when I was just a little girl being abused for the camera. I did not choose to be there, but now I am there forever in pictures that people are using to do sick things. I want it all erased. I want it all stopped. But I am powerless to stop it just like I was powerless to stop my uncle.

When they first discovered what my uncle did, I went to therapy and thought I was getting over this. I was very wrong. My full understanding of what happened to me has only gotten clearer as I have gotten older. My life and my feelings are worse now because the

crime has never really stopped and will never really stop.

It is hard to describe what it feels like to know that at any moment, anywhere, someone is looking at pictures of me as a little girl being abused by my uncle and is getting some kind of sick enjoyment from it. It's like I am being abused over and over and over again.

I find myself unable to do the simple things that other teenagers handle easily. I do not have a driver's license. Every time I say I am going to do it, I don't. I can't plan well. My mind skips out on me when I think about moving forward with my life. I have been trying to get a job, but I just keep avoiding things. Forgetting is the thing I do best since I was forced as a little girl to live a double life and "forget" what was happening to me. Before I realize it, I miss interviews or other things that will help me get a job.

Sometimes things remind me of the abuse and I don't even realize it until it is too late. For example, I failed anatomy in high school. I simply could not think about the body because of what happened to me. The same thing happened in college. I went to a psychology class where we watched a video about child abuse. Without even realizing why, I just stopped going to class. I failed my freshman year of college and moved back home.

It's easy for me to block out my feelings and avoid things that make me uncomfortable. I don't know when I will be ready to go back to college because I have huge problems with avoiding anything that makes me uncomfortable or reminds me of my abuse.

I am always scared that people can look at me and tell that I am a victim of sex abuse because my abuse is a public fact. I am worried that when my friends are on the Internet they are going to come across my pictures and it fills me with shame and embarrassment.

I am humiliated and ashamed that there are pictures of me doing horrible things with my uncle. Everywhere I go I feel judged. Am I the kind of person who does this? Is there something wrong with me? Is there something sickening and disgusting about who I am?

I am embarrassed to tell anyone what happened to me because I'm afraid they will judge me and blame me for it. I live in a small town and I think that if one person knows then everyone will know. I am just living in fear of the day someone sees those awful pictures of me and then "the secret" about me will be out. It's like my life is on hold for that day and I am frozen in time waiting. I know those disgusting pictures of me are stuck in time and are there forever for everyone to see.

I had terrible nightmares for a long long time. I would wake up sweating and crying and go to my parents for comfort. Now I still get flashbacks sometimes. There are thoughts in my head that are memories of the things that my uncle did to me. My heart will start racing and I will feel sweaty and then a stronger picture will pop up in my head and I have to leave the situation I am in. I have heard the voice of my uncle in my mind still talking to me saying, "don't

tell, don't tell, don't tell." Thinking and knowing that the pictures of all this are still out there just makes it worse. It's like I can't escape from the abuse, now or ever.

Because I've had so many bad dreams, I find it hard to sleep when it's dark. I like to keep the lights on thinking that will protect me from bad dreams. I hate scary movies and sometimes have nightmares for days.

Sometimes I have unreasonable fears that prevent me from doing the normal things that other kids do. My friend once asked me to go with her and her uncle to an amusement park. I could not get it out of my head that I would be abused. In the end I just couldn't go. I kept wondering if my friend's uncle had seen my pictures. Did he know me? Did he know what I did? Is that why he invited me to the amusement park?

Trust is a very hard thing for me and often people just make me uncomfortable. I had to quit a job I had as a waitress because there was a guy who I thought was always staring at me. I couldn't stop thinking, did he recognize me? Did he see my pictures somewhere? I was simply too uncomfortable to keep working there.

I have trouble saying "no" to people since I learned at a young age that I really don't have control over what's happening to me. I am trying to learn to get better at this because I know that not saying "no" makes it easier for someone to hurt me again.

Because of the way my uncle bribed me to perform sex acts on camera, I have trouble taking gifts from

anyone. I always feel that people will expect something from me if they give me a present. This makes it difficult in my relationship with friends.

I want to have children someday, but it frightens me terribly to think about how I could keep them safe. Who could I possibly trust? Their teacher? Their coach? I don't know if I could ever trust anyone with my children. And what if my children and their friends see my pictures on the internet? How could I ever explain to them what happened to me?

I am very confused about what love is. My uncle said he loved me and I wanted that love. But I know now that what he did to me is not love. But how will I be able to tell in the future if it is real love or just another person trying to exploit and use me?

The truth is, I am being exploited and used every day and every night somewhere in the world by someone. How can I ever get over this when the crime that is happening to me will never end? How can I get over this when the shameful abuse I suffered is out there forever and being enjoyed by sick people?

I am horrified by the thought that other children will probably be abused because of my pictures. Will someone show my pictures to other kids, like my uncle did to me, then tell them what to do? Will they see me and think it's okay for them to do the same thing? Will some sick person see my picture and then get the idea to do the same thing to another little girl? These thoughts make me sad and scared.

I blame myself a lot for what happened. I know I was so little, but why didn't I know better? Why didn't I stop my uncle? Maybe if I had stopped it there wouldn't be so many pictures out there that I can never take back or erase. I feel like now I have to live with it forever and that it's all my fault.

I feel like I am unworthy of anything and a failure. What have I been good for except to be used by others over and over again. That's one of the reasons I haven't been able to get a job or stay in school. I'm tired of disappointing myself. I've already had enough disappointment for a lifetime and just don't want any more failure. To me this brings back all the terrible feelings and shame of abuse and exploitation.

Sometimes I deal with my feelings by trying to forget everything by drinking too much. I know this isn't good, but my humiliation and angry feelings are there with me all the time and sometimes I just need a way to make them go away for awhile.

I feel like I have always had to live a double life. First I had to lie about what my uncle was doing to me. Then I had to act like it didn't happen because it was too embarrassing. Now I always know that there is another "little me" being seen on the internet by other abusers. I don't want to be there, but I am. I wish I could go back in time and stop my uncle from taking those pictures, but I can't.

Even though I am scared that I will be abused or hurt again because I am making this victim impact statement, I want the court and judge to know about me

and what I have suffered and what my life is like. What happened to me hasn't gone away. It will never go away. I am a real victim of child pornography and it effects me every day and everywhere I go.

Please think about me and think about my life when you sentence this person to prison. Why should this person, who is continuing my abuse, be free when I am not free?

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

Childhood Recovery Resources

Report of Psychological Consultation

(Please Note: This is a version of a psychological consultation of a victim of sexual abuse and child pornography who wishes to remain anonymous, and her name is changed in this document to Amy. The full report is available to authorized readers, with the correct name.

Other than the name change, this report is identical to the originally submitted report.)

Name: Amy A

Birth Date: June 14, 1989

Date of Evaluation: June 11, June 12, July 29,
November 10, 2008

Evaluator: Joyanna Silberg, Ph.D.

Date of Report: November 21, 2008

Reason for Referral:

Attorney James Marsh referred Amy for a forensic evaluation to determine the psychological effects of her continuous re-victimization in the form of internet pornographic photographs of her being exchanged and viewed. The purpose of this evaluation was to document the current effects on Amy of this re-victimization and describe the potential for long-standing future effects as a result of this victimization.

Sources of Information:

In Person Interviews with Amy A: June 11, 2008;
June 12, 2008; July 29, 2008; November 10, 2008

Review of Documents:

Police Complaint against Eugene Zebroski, March 1997

Criminal Complaint against Eugene Zebroski, October 14, 1997 of oral, digital, and attempted anal or vaginal in January to October 1997

October 20, 1998, Grand Jury Indictment

October 27, 1998, Federal Criminal Complaint

Government's Statement of the Offense, December, 14, 1998

Psychotherapy Notes of Ruby Salazar, LCSW, BCD, Oct 21,1998-December 12, 1999 Psychosocial Treatment Report, dated February 22, 1999

Psychological Testing by Daniel Bruiner, Ph.D, dated March 1, 1999

Defendant's Guilty Plea, December 24, 1998

Revocation of Detention Order and Release on Personal Recognizance, July 28, 1999 Sentence of Eugene Zebroski, May 25, 1999 for rape, involuntary deviate sexual intercourse, aggravated indecent assault

Proceedings at Sentencing for Eugene Zebroski, May 25, 1999

Press Release, Department of Justice, October 17, 2008

Letter, September 22, 2008 restitution request from James Marsh to Ms. Slater

Psychological Instruments:

Trauma Symptom Inventory
Dissociative Experiences Scale

Summary of Case History

According to documents reviewed, an investigation began in 1997 of a man in Washington State who was purchasing internet child pornography from a man in Scranton, Pennsylvania. Though tracking of his email address, this man in Pennsylvania was identified as Eugene Zebroski, Amy's uncle. The pornographic pictures that had been forwarded to the Washington State man showed a particular setting with gray carpet and identifiable furniture that matched Mr. Zebroski's home. The child in the pictures was identified as Amy, who was Mr. Zebroski's niece who lived close by and visited frequently. The pictures showed acts of rape, oral sodomy, and digital penetration as well as posed suggestive pictures with genitals exposed. Zebroski was charged with both State and Federal charges and is currently serving time.

The continued accessibility of internet and the ease with which child pornography can be distributed has led Amy's picture to continue to be viewed, traded, and purchased. Currently, an international businessman was charged and has pled guilty to trading and viewing images of Amy and a restitution hearing has been set. He is apparently one of a large number of individuals who have been found to possess Amy's images created by her uncle in the 1990's.

Amy underwent an initial course of therapy with Ms. Ruby Salazar beginning in October of 1998 when she was 9 and four months. At the time, Amy revealed to Ms. Salazar acts including digital penetration, forced oral sodomy, and oral abuse of Amy to her genitals. The disclosures to her therapist further describe her being forced to manually stimulate her perpetrator, being required to perform sex acts telephonically and over the computer, soliciting friends for sexual acts, and planned meetings with other potential abusers (it is unclear if these arranged meetings took place.) Symptoms reported to Ms. Salazar at the time of this initial course of therapy included intrusive recollections, difficulty concentrating in school, fearfulness, anxiety, depression, hypervigilance, feelings of guilt, difficulties with trust and intimacy, and confusion about her attachment to the abuser.

Her psychological testing showed feelings of mistrust, anger and guilt in interpersonal relationships, morbid themes, expectation of victimization in interpersonal relationships and an underlying fragility. The evaluator noted a facade of adjustment, but a fragility under this seemingly strong facade.

Ms. Salazar further noted strengths in Amy such as creativity, sensitivity, and empathy which predicted a good response to therapy. By the end of treatment in 1999, Ms. Salazar's notes reported that Amy was "back to normal." Amy's involvement in dance and other age appropriate activities and support of her family appear to have helped her in coping with this trauma as a young girl.

Despite this optimistic assessment following this initial course of treatment, Amy's functioning appeared to decline as she reached her teenage years as documented by Amy in the clinical interview described below. At that time, problems with alcohol abuse and academic achievement became prominent. The issues from her past abuse escalated in prominence as she became faced with decision-making involving issues of trust and intimacy and future planning about her life.

Most significantly, at the age of 17, Amy was informed through legal notifications about the widespread presence of her picture on the internet, illustrating to her that in some ways the sexual abuse of her has never really ended. This knowledge further exacerbated her symptoms, interfered with her ability to overcome the increasing symptoms of post traumatic stress, and impeded her ability to move on with her life. This is described in detail below.

History from Amy

In 7 and a half hours of interview, Amy catalogued in great detail the initial effects of the abuse and the ongoing effects of the re-victimization from the trading of her image on the internet. She impressed the examiner as a bright girl, who had developed a habit of putting things out of her mind to avoid facing unpleasant memories. However, with gentle inquiry, Amy was able to be very explicit about the various ways that these experiences have impacted her. She

described that each discovery of another defendant that has traded her image re-traumatizes her again.

She was able to remember the initial events of the picture taking, though not in great detail. She remembers that she had gone to her uncle's home independently when she was as young as 4 or 5, and that she began to sleep at his house at a young age. She remembers that he showed her some pornographic pictures and movies and eventually he asked her to do things that she saw pictured. She said she can remember digital penetration and pain associated with it, with attempts at penile penetration as well, and she is unsure if he succeeded. She recalls that she told him that these actions hurt, and that he reassured her that it would hurt less over time.

She remembers that he required her to dress up in clothing that he picked out, and that sometimes he asked her to pose for pictures with no clothing on at all. She remembers that she would be given candy or beef jerky at a drug store after these sessions as a reward.

She remembers the day vividly when the police came to his house and removed his computer. She recalls that her family initially asked her if she had been involved but she denied involvement because he had told her not to tell, and she believed because he "loved" her, she should not tell. Eventually, she did reveal what had happened after her family explained to her that the actions he had asked her to do were wrong, and she was eventually taken to see Ms. Ruby Salazar, her therapist.

She remembers talking to Ms. Salazar, and believes that that initial therapy did help her in coping with her symptoms at the time. She remembers having repeated nightmares when she was younger accompanied by crying and waking up sweating. She would dream that he was getting out of jail and “coming to get” her and then have trouble getting back to sleep. She remembers feeling relief about talking about these events with her therapist, and particular relief that these secrets were not hers to bear alone.

However, Amy is clear that there has been a resurgence of the trauma with her ongoing realization that her image is being traded on the internet. Specifically, Amy mentions fear of discovery, shame, fears of the traumatization of others, and renewed self-blame about her participation.

As Amy stated, *“Everyday I have to live in fear of these pictures being seen.”* She states when she is at a friend’s house, she is afraid that someone might use Google and that when they Google her name, pictures of her might “pop up” and she would be humiliated. She feels that her privacy has been invaded on a fundamental level as these pictured acts in which she was an unwilling participant are there for other people to find against her will. She fears the discovery of the pictures by her friends, but she also fears the unknown and unnamed people who continued to be looking at these pictures of her for their own perverse interests or to “groom” other children into these acts. She feels continually violated when she contemplates these possibilities. As Amy stated, *“I*

don't want to be there, but I have to be there and it's never going away, and that's a scary thought."

When Amy thinks about the crimes, she is filled with feelings of anger and helplessness. She imagines that she might go back in time and change what occurred, but realizes that nothing can change the fact of the existence of these pictures no matter how much she wishes it.

Amy reports being plagued by feelings of shame. She feels what she was made to do is "dirty" and she is trapped in this sense of being dirty and shamed. Amy describes constantly being in a state of waiting for "the other shoe to drop," as someone new finds her picture, and discovers this painful and "dirty" secret about her..

Additionally, Amy has thoughts of self-blame even though she acknowledges that these are illogical. She feels like she could have stopped all of this, if she had just refused, said no, and walked away from her uncle. Now that the pictures continue to be discovered, these feelings of self-blame are particularly accentuated. If another child is abused by using her picture, Amy feels she is responsible for this abuse. This fills her with guilt.

One of the most traumatizing parts of her memory of her uncle is the manipulation she felt from him saying that he loved her. Amy reports ongoing problems with trust and intimacy as she struggles with knowing whom she can trust and who deserves her allegiance. She feels she must protect herself from confiding

completely even in her closest friends because her secret is too shameful. Amy was able to admit that she still hears the voice of her perpetrator in her mind, talking to her and telling her it is wrong to tell, and she must still keep the secret. She even has a visual image of this, seeing him on his knees and begging her to keep this secret. This compelling directive to keep the secret still haunts her and interferes with her complete trust and attachment to others.

She feels a desire to warn others about not being “tricked” by false claims of “love.” Yet, she is aware her pictures may be used to trap other children into exploitation in the same way that she was trapped, and this is a terrifying thought.

Amy reported that she still can easily get triggered by the memories of these events and there are many things in the world that can activate her symptoms. Things that remind her of her uncle or were sites of abuse can activate her anxiety. For example, motorcycles, beef jerky, and amusement parks remain potent triggers for her as they remind her of activities that she engaged in with her uncle. Similarly, when shows come on television involving abuse, Amy reports getting feelings of fear and disgust and finding herself tearing up and crying.. She has a basic feeling that people are not going to understand her and that her secret about herself separates her from others. Her fear of discovery on the internet is coupled with her desire for privacy and secrecy and fear that no

one could really understand her or what she went through.

Amy has developed some habits of blocking out feelings and uncomfortable information which is often called dissociation. Dissociation is an automatic habit of mind which allows a traumatized individual to sequester painful information from awareness. Her mind may wander, she may daydream, forget what she is doing, and otherwise allow herself to avoid feeling something painful. This affects her planning skills and her ability to move forward. Many victims of sexual abuse and trauma engage in self-harming behaviors. Amy has a habit of biting her nails down very far and biting on her cuticles to the point of bleeding. This type of self-injury often serves to anesthetize victims from the experience of further pain and is another foul” of dissociation.

Amy’s problem with alcohol appears to be an ongoing battle, which began when she was approximately 16. Amy attributes the escalation in drinking in part to her feelings about her brother who was dealing with a drug addiction at the time, as well as the ongoing issues with recovery from sexual abuse. Her drinking has escalated on and off reaching a peak when she was 17, and having intermittent periods of severity. There are indications that this problem has reached the level of alcoholism. She describes blackouts when she drinks too much, increasing tolerance, and regret about impulsive behaviors she has engaged in that have led to difficulty for her. Currently, Amy states

she is trying to be sober, but is not attending any support groups or AA to assist her with this.

Amy has had problems pursuing her educational goals due to these overwhelming feelings of shame, guilt, anger and helplessness, traumatic triggering effects, dissociation, and alcohol abuse. She had wanted to go to college and had hoped to be able to go into psychology and possibly be a psychologist. Although she enrolled in college, she found herself not attending classes shortly after her psychology class saw a movie about abused children. The emotional reaction to this film with all of the accompanying overwhelming feelings was too much for her to bear, so she blocked out her reaction, and just avoided the source of the problem – her class. She further resorted to drinking as a further avoidance strategy to forget the source of her fears, and ultimately, she was forced to drop out of school

Amy went into further detail describing her basic difficulty getting things done and moving on with goals. She described a horrible fear of disappointment that relates to her profound disappointment from these experiences of abuse and exploitation in her life, which leads her not to try anything and give up easily as she fears further disappointments. She has found that if she focuses only on the present, and dulls her senses with alcohol, her feelings of shame, fear and humiliation are avoided. This is the coping tool she has been using for the past several years since she discovered the widespread availability of

these pictures and her ongoing unwitting re-victimization from moment to moment.

The widespread availability of her picture is almost too big for her to envision, and rather than think about the serious implications of this, she has become comfortable with avoidance of feelings, avoidance of planning, and thus avoidance of thinking too deeply about herself and her future.

On a positive note, going through the process of developing her Victim Impact Statement and discussing these events through these interviews have begun to empower her, and has helped her emerge in part from her feelings of shame. She has discussed an ongoing relationship with her boyfriend which she describes as a source of comfort in her life, although problems with communication, alcohol abuse, and over dependence have emerged in this relationship.

Psychological Testing Results:

The Trauma Symptom Index is a normed instrument developed to document symptomatic presentations following trauma. This questionnaire was normed on a reference group of traumatized men and women. This questionnaire is comprised of items that span a variety of symptoms known to be associated with traumatic stress, and these symptoms are organized into scales which yield a profile of the client's symptomatic reactions. T scores higher than 65% are considered significant clinical elevations.

On the Trauma Symptoms Index it is clear that Amy shows the features commonly associated with significant Post-Traumatic Stress with multiple clinically significant elevations. The validity scales indicate that this is a generally valid indicator of her symptoms without over reporting, underreporting, or misunderstanding of the basic questions. Some mild inconsistency was noted in her responses which is best accounted for by the fact that her symptoms have waxed and waned over the years, and she is making increased efforts to deal with some of the symptoms such as her alcohol abuse.

Both Intrusive Experiences (T score= 66) and Defensive Avoidance (T score = 72) are highly rated symptom clusters. Amy acknowledges intrusive symptoms such as thoughts popping up in her mind and sudden memories or flashbacks of unwanted images from the past. She also reports that she continues to suffer from bad dreams. Defensive Avoidance symptoms (T score= 71) include trying to put bad thoughts out of her mind, blocking memories, and making efforts to forget painful feelings and events. Amy's score on the Impaired Self-reliance scale (T score=70) indicates that she is struggling with maintaining a stable sense of self, lacks self confidence, and struggles with confusion between her needs and those of others. This scale is typically elevated with individuals who have suffered from early childhood trauma. Amy's high score on the Dissociative Scale (T score=77) indicates that she struggles with symptoms involving unconscious avoidance such as her mind going blank,

daydreaming, and absent-mindedness. Also clinically elevated are symptoms of Anxious Arousal (T score=66) which include feelings of jumpiness, nervousness, and exaggerated startle response. Amy also acknowledges utilizing abundant tension reducing behaviors to manage these symptoms such as fear of being alone, some self-harm (picking her nails and cuticles), and provoking arguments. Finally, Amy describes feelings of anger which give her a significant elevation on the Anger/Irritability Subscale (T score = 81). The only scales not significantly elevated, but with some symptoms evident, were Depression (T=52), Sexual Concerns (T=50) and Dysfunctional Sexual Behavior (T=54).

In summary, this symptom profile portrays Amy as a multiply symptomatic young lady with the three main clusters of post-traumatic stress symptoms intrusions, avoidance and hyperarousal. She has accompanying deficits in her view of her own self-efficacy, relies on dissociation to avoid confronting problems, acts out her feelings with angry behaviors towards those she is close to and utilizes tension reducing activities that may involve some self-harm.

The Dissociative Experiences Scale is a screening instrument that helps assess the presence of dissociative symptoms that may indicate the presence of a dissociative disorder. On the Dissociative Experiences Scale, Amy scored 38.9, which is considered to be in the clinically significant range. She acknowledged the following dissociative symptoms to a significantly high level – loss of awareness, having vivid flashback, high absorption, staring spells, feelings of derealization

and forgetfulness about her own behaviors. These behaviors indicate an ongoing pattern of dissociation as a coping tool with the overwhelming information she is constantly trying to avoid or deny. The symptoms on this screening tool suggest that a more full blown diagnosis of dissociative disorder might emerge at a later time, but the current interview does not support this as a primary diagnosis.

Analysis of the Impact of These Events on Amy

Based upon my evaluation of Amy, and my review of the records, I draw the following conclusions to a reasonable degree of psychological certainty based upon my background in the treatment of victims of sexual victimization and internet commercial exploitation, and my knowledge of developmental psychology and post-traumatic stress.

The sexual assault perpetrated against Amy, and its continued memorialization in pictures which continue to be traded and used affect her in a variety of ways, and has had long lasting and life changing impact on her.

Specifically, she has experienced significant effects in the following areas:

Mood regulation, cognitive distortions, feelings of shame, self-blame, and guilt, self-esteem, alcohol abuse, dissociation, academic progress, interpersonal relationships, and vocational success. In addition, despite some resolution of Amy's post-traumatic

symptoms when she was younger, Amy continues to have the hallmark features of posttraumatic stress disorder which include intrusive images, attempts at avoidance and denial, and hyper arousal.

These posttraumatic symptoms and effects of sexual abuse are more resistant to treatment than those that would normally follow a time limited trauma, as her awareness of the continued existence of the pictures and their criminal use in a widespread way leads to an activation in these symptoms. She is flooded with memories of what happened to her, since she knows at any moment others might see these. She tries to avoid this knowledge with unhealthy coping strategies such as alcohol abuse and dissociation, and she is overwhelmed with feelings of shame, self blame, and guilt. Planning for the future becomes difficult as planning involves thinking and processing her fears of the reality of these images, that she does not want to face or re-experience. Difficulty with planning and the presence of dissociation has led to her inability to follow through with educational or vocational plans. Furthermore, Amy has ongoing problems with trust in relationships which has interfered with working with authorities in jobs and interpersonal relationships. Although she reports the presence of a significant other, problems have emerged with communication and over-dependence in that relationship.

Research on sexual abuse and post-traumatic stress strongly supports that all of these are known sequelae of abuse, and Amy's history conforms to the expected

trajectory of victims like herself who experience early sexual abuse. There is sparse literature researching the effects of commercial child exploitation on children, particularly internet child pornography as it is a relatively new crime, whose victims are often unidentified. However, as noted by Klain, Davies and Hicks (2001) "Child victims of pornography face a lifetime of victimization because the pornography can be distributed indefinitely (p.11)".

The literature on child sexual abuse can inform us about how the added element of having one's picture viewed and traded on the internet can affect the rapidity with which the known symptoms of child sexual abuse and post-traumatic stress can be treated.

First, it is well-known that recovery from post-traumatic stress requires foremost a sense of safety that the trauma is over and that the past will not be replayed in the present (Briere & Scott, 2006) Yet, a victim of child pornography whose pictures remain present on the internet can never really have that sense of safety, or separation of the past and present. The past, in fact continues to be repeated in the present over and over again.. The safety is not there because the pictures can turn up at any time, and at any moment new moments of victimization are occurring everywhere.

Secondly, treatment for post-traumatic stress involves protection from the triggers that stimulate memories of the abuse. In the case of victims of child pornography, such protection from triggers is not completely

possible as the existence of the pictures themselves remain constant triggers. Specifically, Amy's awareness of these pictures, knowledge of new defendants being arrested become ongoing triggers to her.

Self-blame is an important dimension for victims of sexual abuse, and one of the most enduring fixed beliefs that victims must wrestle with. In the case of victims of internet child pornography, the self-blame is multiplied, as not only do they feel guilty about their own victimization but feel responsible for the potential victimization of others who may be forced to view their pictures as part of a grooming phase in preparation for acts of sexual abuse. This was clearly expressed by Amy.

Feelings of shame and humiliation are some of the worst affective reactions to treat in victims of sexual abuse. These feelings of shame and humiliation are multiplied exponentially for victims of internet child pornography. Anonymity is something we offer victims of sexual crimes with acknowledgement that they deserve this protection of privacy. Yet, knowing one's image is out there at all times is an invasion of privacy of the highest degree which makes the victim feel known, revealed and publicly shamed, rather than anonymous..

One vivid illustration of how difficult treatment is for Amy, is a description of one of the techniques used in dealing with flashbacks of abuse. In this imagery technique, the client is helped to imagine going back in time and standing up to the abuser to undo the

experience of victimization in their imagination. For victims like Amy, such a technique would actually be harmful as she has to face she can never erase the ongoing “evidence” and “proof” of what she was forced to do. Such an exercise would add to her feelings helplessness. For events in the past, imagery techniques work that help to separate the past from the present, but because of the existence of the pictures, such techniques would be ineffective and potentially harmful.

Another healing techniques is to have the victim find ways to use their experience to help others, which is something that Amy is expressing that she is committed to do. Yet, in doing so, Amy is constantly aware that her image out there, may actually be hurting other children who are potential victims of similar crimes.

The ongoing awareness that the pictures are out there interferes significantly with the therapeutic resolution of these problems, as she lives in an enduring state of feeling that she can never really escape or get away from abuse.

For these reasons, the re-victimization of Amy through the trading of her image on the internet is the source of enduring trauma that will have lasting effects on her and the symptoms she displays are particularly resistant to standard treatment for post-traumatic stress and the effects of sexual abuse.

Victims like Amy generally experience increased symptoms during developmental periods that are

reminiscent of the abuse. For example, when her own child becomes the age of her own victimization, she might relive her traumatic experiences more vividly. As Amy faces new developmental challenges, it is expected she will continue to struggle with the enduring effects of these traumatic experiences as described above over her lifetime. She will require weekly therapy, and it is likely there will be periods where more intensive inpatient or rehabilitation services will be required over the course of her lifetime.

Respectfully submitted,
Joyanna Silberg, Ph. D.
Licensed Psychologist

References:

- Beitchman, J. H. Zucker, K. J., Hood, J. E., daCosta. G. A., & Ackman, D. (1992) A review of the long-term effects of child sexual abuse. *Child Abuse & Neglect*, 16, 101-118.
- Briere, J. & Scott, C. (2006) *Principles of Trauma Therapy: A Guide to Symptoms, Evaluation and Treatment*, Thousand Oaks, California: Sage
- Calam, R. Horne, L. Glasgow, D. & Cox, A. (1998) Psychological disturbance and child sexual abuse: a follow-up study. *Child Abuse & Neglect*, 22, 911-913.
- Dallam, S.J., Gleaves, D. H., Cepeda-Benito, A., Silberg, J. L., Kraemer, H. C., Spiegel, D (2001) The Effects of Child Sexual Abuse: Comment on Rind, Tromovitch and Bauserman (1998), *Psychological Bulletin*, Vol 127, 6, 715-733.

Finkelhor, David & Ormrod, Richard, (Dec, 2004) Child Pornography: Patterns from NIBRS, *Juvenile Justice Bulletin*, OJJDP.

Goldstein, S. (1999) *The Sexual Exploitation of Children: A Practical Guide of Assessment, Investigation and Intervention*, 2nd Ed. Boca Raton, Fl.: CRC Press.e

Jenkins, P. (2001) *Beyond Tolerance: Child Pornography on the Internet*. New York, N. Y.: New York University Press.

Kim, C. (2004) From Fantasy to Reality: The Link Between Viewing Child Pornography and Molesting Children. *Child Sexual Exploitation Update*, Volume 1, Number 3, American Prosecutors Research Institute.

Klain, E., Davies, H., Hicks, M. A., (March, 2001) *Child Pornography: Criminal Justice Response*, Publication of the American Bar Association and the National Center for Missing and Exploited Children.

Putnam, F.W (2003) Ten Year Research Update Review: Child Sexual Abuse. *Journal of the American Academy of Child & Adolescent Psychiatry*. 42 (3): 269-278.

Silberg, J. L., ed. (1996/1998) *The Dissociative Child: Diagnosis, Treatment and Management*. Lutherville, MD: Sidran Press.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

Smith Economics Group, Ltd.
A Division of Corporate Financial Group
Economics / Finance / Litigation Support

*Stan V. Smith, Ph.D.
President*

September 15, 2008

Mr. James R. Marsh
Marsh Law Firm
PO Box 4668 #65135
New York, NY 10163-4668

Re: [REDACTED]

Dear Mr. Marsh:

You have asked me to calculate the value of certain losses subsequent to the sexual exploitation of [REDACTED]. These losses are: (1) the loss of wages and employee benefits; (2) the present value of future treatment and counseling costs; and (3) the reduction in value of life ("RVL"), also known as loss of enjoyment of life.

[REDACTED] is a Caucasian, single female, who was born on [REDACTED] 1989, and suffered sexual abuse by her uncle which was made into child pornography at the age of 9 years. Ms. [REDACTED] will be 19.6 years old at the estimated trial or settlement date of January 1, 2009, with a remaining life expectancy estimated at 61.9 years. This data is from the

National Center for Health Statistics, *United States Life Tables, 2004*, Vol. 56, No. 9, National Vital Statistics Reports, 2007.

In order to perform this evaluation, I have reviewed the following materials: (1) an interview with Dr. Joyanna Silberg on September 13, 2008; and (2) the case information form. Additionally, it is my understanding that additional supportive information will be provided by Dr. Joyanna Silberg and Dr. Sharon Cooper.

My methodology for estimating the losses, which is explained below, is generally based on past wage growth, interest rates, and consumer prices, as well as studies regarding the value of life. The effective net discount rate using statistically average wage growth rates and statistically average discount rates is 0.50 percent.

My estimate of the real wage growth rate is 1.15 percent per year. This growth rate is based on Business Sector, Hourly Compensation growth data from the Major Sector Productivity and Costs Index found at the U.S. Bureau of Labor Statistics website at www.bls.gov/data/home.htm, Series ID: PRS84006103, for the real increase in wages primarily for the last 20 years.

My estimate of the real discount rate is 1.65 percent per year. This discount rate is based on the rate of return on 91-day U.S. Treasury Bills published in the *Economic Report of the President* for the real return on T-Bills primarily for the last 20 years. This

rate is also consistent with historical rates published by Ibbotson Associates, Chicago, in its continuously updated series *Stocks, Bonds, Bills and Inflation* published by Morningstar, Inc. This series, which acknowledges me as the Originator while a Principal and Managing Director at Ibbotson Associates, is generally regarded by academics in the field of finance as the most widely accepted source of statistics on the rates of return on investment securities. It is relied upon almost exclusively by academic and business economists, insurance companies, banks, institutional investors, CPA's, actuaries, benefit analysts, and economists in courts of law.

Estimates of real growth and discount rates are net of inflation based on the Consumer Price Index (CPI-U), published in monthly issues of the U.S. Bureau of Labor Statistics, *CPI Detailed Report* (Washington, D.C.: U.S. Government Printing Office) and available at the U.S. Bureau of Labor Statistics website at www.bls.gov/data/home.htm, Series ID: CUUR0000SA0. The rate of inflation for the past 20 years has been 3.04 percent.

I(A). LOSS OF WAGES AND EMPLOYEE BENEFITS – Full-Time Employment

Tables 1 through 3 show the loss of wages and benefits. Ms. [REDACTED] graduated high school and started college; however, she failed her first year due to impact of her sexual abuse and exploitation. Ms. [REDACTED]'s mother attended Biscayne Paramedical

Institute and has a certificate in Registered Medical Assistant. Ms. [REDACTED]'s father attended City of London Technical College and has a degree in Electrical Contracting. Ms. [REDACTED]'s brother graduated high school and attended Johnson Trade Center to study Electrical Contracting. Ms. [REDACTED] was interested in attending college and becoming an elementary school teacher.

Since the earnings of teachers is comparable to the earnings of female college graduates, the wage estimate starting in 2011 is illustrated at the average earnings of non-Hispanic, white females between the ages of 18 and 24 years old with a Bachelor's degree of \$34,533 in year 2007 dollars. The wage estimate is grown in the year 2024 to the average earnings of non-Hispanic, white females between the ages of 35 and 44 years old with a Bachelor's degree of \$61,587 in year 2007 dollars. This wage data is published in the U.S. Bureau of the Census and the Bureau of Labor Statistics, *Current Population Survey, Annual Social and Economic Supplement*, Washington, D.C., 2008.

Employee benefit estimates are based on data from the U.S. Chamber of Commerce, *2007 Employee Benefits Study*, (Washington, DC: Statistics and Research Center, 2008). I have assumed that employee benefits grow at the same rate as wages and are discounted to present value at the same discount rate. Since these tables assume full-time work, I do not include employee benefits relating to unemployment, injury,

illness or disability; benefits are estimated at 29.3 percent of wages.

I assume full-time employment each year and show the accumulation through life expectancy. While these tables are calculated through the end of life expectancy, the losses from working full-time through any assumed retirement age can be read off the table.

Based on the above assumptions, my opinion of the wage loss for full-time employment is \$4,121,025 ► Table 3. This figure assumes full-time work to age 81.5, but any assumed retirement age may be read from Table 3; for example, the full-time employment wage loss to age 67 is \$3,204,353.

I(B). EARNINGS CAPACITY OFFSET

Tables 4 through 6 show the offset to wages. Ms. ██████ dropped out of college when she discovered the extent of her victimization, and she is currently unemployed. Based on my interview with Dr. Joyanna Silberg, Ms. ██████ is currently only able to do part-time, low lever work, if she is able to work at all.

The offset starting January 1, 2009 is illustrated at a benchmark of \$10 per hour for 15 hours per week. Employee benefits are estimated at 6.2 percent of wages.

Based on these assumptions, my opinion of the wage *offset* is \$436,091 ► Table 6 for full-time employment. This figure assumes work to age 81.5, but any

assumed retirement age may be read from Table 6. For example, the wage *offset* to age 67 is \$349,180.

The net loss of earnings capacity is \$2,855,173 to age 67.

II. COST OF FUTURE TREATMENT AND COUNSELING COSTS

Table 7 shows the cost of future treatment and counseling costs. The present value of treatment and counseling costs is based on my interview with Dr. Joyanna Silberg and expected testimony of Dr. Silberg and Dr. Cooper. It is my understanding that Ms. [REDACTED] will require counseling for the remainder of her life. I illustrate counseling costs at one hour per week at \$150 per hour, which is \$7,800 annually.

Dr. Silberg states that Ms. [REDACTED] will also require approximately 3 institutionalizations during her lifetime at various stages of her life, which range from \$30,000 to \$50,000 per institutionalization, which is an average of \$120,000 over her lifetime, or \$1,938.61 annually.

The annual future treatment and counseling costs starting on January 1, 2009 are illustrated at \$9,739. Future costs are illustrated to grow at 1.15 percent real wage growth.

Based on this information, my opinion of the average cost of future treatment and counseling costs is \$512,681 ► Table 7.

III. REDUCTION IN VALUE OF LIFE

Tables 8 through 10 show the loss of the value of life. Economists have long agreed that life is valued at more than the lost earnings capacity. My estimate of the value of life is based on many economic studies on what we, as a contemporary society, actually pay to preserve the ability to lead a normal life. The studies examine incremental pay for risky occupations as well as a multitude of data regarding expenditure for life savings by individuals, industry, and state and federal agencies. Based on the average value of a statistical life and life expectancy of 81.5 years, my opinion of the loss of the value of life for [REDACTED] is \$8,886,300 ► Table 10.

My estimate of the value of life is consistent with estimates published in other studies that examine and review the broad spectrum of economic literature on the value of life. Among these is “The Plausible Range for the Value of Life,” *Journal of Forensic Economics*, Vol. 3, No. 3, Fall 1990, pp. 17-39, by T. R. Miller. This study reviews 67 different estimates of the value of life published by economists in peer-reviewed academic journals. The results, in most instances, show the value of life to range from approximately \$1.6 million to \$2.9 million dollars in year 1988 after-tax dollars, with a mean of approximately \$2.2 million dollars, and variance in the estimate of the mean of up to 40 percent. In “The Value of Life: Estimates with Risks by Occupation and Industry,” Harvard University, John M. Olin Center for Law, Economics, and Business, No. 442, May

2003, Professor W. K. Viscusi estimates the value of life to be approximately \$4.7 million dollars in year 2000 dollars.

Because it is generally accepted by economists, the methodology used to estimate the value of life has been found to meet *Daubert* standards, as well as *Frye* standards and the Rules of Evidence in various states, by Federal Circuit and Appellate courts, as well as state trial, supreme and appellate courts nationwide. Testimony based on this peer-reviewed methodology has been admitted in over half the states in over 175 trials nationwide.

Proof of general acceptance and other standards is found in a discussion of the extensive references to the scientific economic peer-reviewed literature on the value of life listed in the **Value of Life Appendix** to this report.

The underlying, academic, peer-reviewed studies fall into two general groups: (1) consumer behavior and purchases of safety devices; (2) wage risk premiums to workers; in addition, there is a third group of studies consisting of cost-benefit analyses of regulations. For example, one consumer safety study analyzes the costs of smoke detectors and the lifesaving reduction associated with them. One wage premium study examines the differential rates of pay for dangerous occupations with a risk of death on the job. Just as workers receive shift premiums for undesirable work hours, workers also receive a higher rate of pay to accept a increased risk of death on the job. A

study of government regulation examines the lifesaving resulting from the installation of smoke stack scrubbers at high-sulphur, coal-burning power plants. As a hypothetical example of the methodology, assume that a safety device costs \$460 and results in lowering a person's risk of premature death by one chance in 5,000. As a hypothetical example of the methodology, assume that a safety device costs \$460 and results in lowering a person's risk of premature death by one chance in 2,500. The cost per life saved is obtained by dividing \$460 by the one in 2,500 probability, yielding \$4,600,000. Overall, based on the peer-reviewed economic literature, I estimate the central tendency of the range of the economic studies cited above which I estimate to be credibly as high as \$5.7 million in year 2008 dollars.

A trier-of-fact may weigh other factors to determine if these estimated losses for ██████████ should be adjusted because of special qualities or circumstances that economists do not as yet have a methodology for analysis. These estimates are provided as an aid, tool and guide for the trier-of-fact.

All opinions expressed in this report are clearly labeled as such. They are rendered in accordance with generally accepted standards within the field of economics and are expressed to a reasonable degree of economic certainty. Estimates, assumptions, illustrations and the use of benchmarks, which are not opinions, but which can be viewed as hypothetical in nature, are also clearly disclosed and identified herein.

In my opinion, it is reasonable for experts in the field of economics and finance to rely on the materials and information I reviewed in this case for the formulation of my substantive opinions herein.

If additional information is provided to me, which could alter my opinions, I may incorporate any such information into an update, revision, addendum, or supplement of the opinions expressed in this report.

If you have any questions, please do not hesitate to call me.

Sincerely,

/s/ Stan V. Smith
Stan V. Smith, Ph.D.
President

APPENDIX: VALUE OF LIFE

The economic methodology for the valuation of life has been found to meet the *Daubert* and *Frye* standards by many courts, along with the Rules of Evidence in many states nationwide. My testimony has been accepted in approximately 175 state and federal jurisdictions nationwide in over half the states. Testimony has been accepted by Federal circuit and Appellate courts as well as in state trial, supreme, and appellate Courts. The *Daubert* standard sets forth four criteria:

1. Testing of the theory and science
2. Peer Review

3. Known or potential rate of error
4. Generally accepted.

Testing of the theory and science has been accomplished over the past four decades, since the 1960s. Dozens of economists of high renown have published over a hundred articles in high quality, peer-reviewed economic journals measuring the value of life. The value of life theories are perhaps among the most well-tested in the field of economics, as evidenced by the enormous body of economic scientific literature that has been published in the field and is discussed below.

Peer Review of the concepts and methodology have been extraordinarily extensive. One excellent review of this extensive, peer-reviewed literature can be found in “The Value of Risks to Life and Health,” W. K. Viscusi, *Journal of Economic Literature*, Vol. 31, December 1993, pp. 1912-1946. A second is “The Value of a Statistical Life: A Critical Review of Market Estimates throughout the World.” W. K. Viscusi and J. E. Aldy, *Journal of Risk and Uncertainty*, Vol. 27, No. 1, November 2002, pp. 5-76. Additional theoretical and empirical work by Viscusi, a leading researcher in the field, can be found in: “The Value of Life”, W. K. Viscusi, John M. Olin Center for Law, Economics, and Business, Harvard Law School, Discussion Paper No. 517, June 2005. An additional peer-reviewed article discusses the application to forensic economics: “The Plausible Range for the Value of Life,” T. R. Miller, *Journal of Forensic Economics*,

Vol. 3, No. 3, Fall 1990, pp. 17-39, which discusses the many dozens of articles published in other peer-reviewed economic journals on this topic. This concept is discussed in detail in "Willingness to Pay Comes of Age: Will the System Survive?" T. R. Miller, *Northwestern University Law Review*, Summer 1989, pp. 876-907, and "Hedonic Damages in Personal Injury and Wrongful Death Litigation," by S. V. Smith in *Litigation Economics*, pp. 39-59.

Kenneth Arrow, a Nobel Laureate in economics, discusses this method for valuing life in "Invaluable Goods," *Journal of Economic Literature*, Vol. 35, No. 2, 1997, pp. 759.

The known or potential rate of error is well researched. All of these articles discuss the known or potential rate of error, well within the acceptable standard in the field of economics, generally using a 95% confidence rate for the statistical testing and acceptance of results. There are few areas in the field of economics where the known or potential rate of error has been as well-accepted and subject to more extensive investigation.

General Acceptance of the concepts and methodology on the value of life in the field of economics is extensive. This methodology is and has been generally accepted in the field of economics for many years. Indeed, according to the prestigious and highly-regarded research institute, *The Rand Corporation*, by 1988, the peer-reviewed scientific methods for estimating the value of life were well-accepted: "Most

economists would agree that the willingness-to-pay methodology is the most conceptually appropriate criterion for establishing the value of life,” *Computing Economic loss in Cases of Wrongful Death*, King and Smith, Rand Institute for Civil Justice, R-3549-ICJ, 1988.

While first discussed in cutting edge, peer-reviewed economic journals, additional proof of general acceptance is now indicated by the fact that this methodology is now taught in standard economics courses at the undergraduate and graduate level throughout hundreds of colleges and universities nationwide as well as the fact that it is taught and discussed in widely-accepted textbooks in the field of law and economics: *Economics*, Sixth Edition, David C. Colander, McGraw-Hill Irwin, Boston, 2006, pp. 463-465; this introductory economics textbook is the third most widely used textbook in college courses nationwide. Hamermesh and Rees’s *The Economics of Work and Pay*, Harper-Collins, 1993, Chapter 13, a standard advanced textbook in labor economics, also discusses the methodology for valuing life. Other textbooks discuss this topic as well. Richard Posner, a Justice and former Chief Justice of the U.S. Court of Appeals for the highly regarded 7th Circuit and Senior Lecturer at the University of Chicago Law School, one of most prolific legal writers in America, details the Value of Life approach in his widely used textbooks: *Economic Analysis of Law*, 1986, Little Brown & Co., pp. 182-185 and *Tort Law*, 1982, Little Brown & Co., pp. 120-126.

As further evidence of general acceptance in the field, many surveys published in the field of forensic economics show that hundreds of economists nationwide are now familiar with this methodology and are available to prepare (and critique) forensic economic value of life estimates. Indeed, many economists who indicate they will prepare such analysis for plaintiffs also are willing to critique such analysis for defendants, as I have often done. That an economist is willing to critique a report does not indicate that he or she is opposed to the concept or the methodology, but merely available to assure that the plaintiff economist has employed proper techniques. The fact that there are economists who indicate they do not prepare estimates of value of life is again no indication that they oppose the methodology: many claim they are not familiar with the literature and untrained in this area. While some CPAs and others without a degree in economics have opposed these methods, such professionals do not have the requisite academic training and are unqualified to make such judgements. However, as in any field of economics, this area is not without controversy and there are some qualified and trained economists who dispute certain aspects of the methodology. General acceptance does not mean universal acceptance.

Additional evidence of general acceptance in the field is found in the teaching of the concepts regarding the value of life. Forensic Economics is now taught as a special field in a number of institutions nationwide. I taught what is believed to be the first course ever presented in the field of Forensic Economics

at DePaul University in Spring, 1990. My own book, *Economic/Hedonic Damages*, Anderson, 1990, and supplemental updates thereto, coauthored with Dr. Michael Brookshire, a Professor of Economics in West Virginia, has been used as a textbook in at least 5 colleges and universities nationwide in such courses in economics, and has a thorough discussion of the methodology. Toppino et. al., in "Forensic Economics in the Classroom," published in *The Earnings Analyst*, Journal of the American Rehabilitation Economics Association, Vol. 4, 2001, pp. 53-86, indicate that hedonic damages is one of 15 major topic areas taught in such courses.

Lastly, general acceptance is found by examining publications in the primary journal in the field of Forensic Economics, which is the peer-reviewed *Journal of Forensic Economics*, where there have been published many articles on the value of life. Some are cited above. Others include: "The Econometric Basis for Estimates of the Value of Life," W. K. Viscusi, Vol. 3, No. 3, Fall 1990, pp. 61-70; "Hedonic Damages in the Courtroom Setting." S. V. Smith, Vol. 3, No. 3, Fall 1990, pp. 41-49; "Issues Affecting the Calculated Value of Life," E. P. Berla, M. L. Brookshire and S. V. Smith, Vol. 3, No. 1, 1990, pp. 1-8; "Hedonic Damages and Personal Injury: A Conceptual Approach." G. R. Albrecht, Vol. 5., No. 2, Spring/Summer 1992, pp. 97-104; "The Application of the Hedonic Damages Concept to Wrongful and Personal Injury Litigation." G. R. Albrecht, Vol. 7, No. 2, Spring/Summer 1994, pp. 143-150; and also "A Review of the Monte Carlo

Evidence Concerning Hedonic Value of Life Estimates,” R. F. Gilbert, Vol. 8, No. 2, Spring/Summer 1995, pp. 125-130.

It is important to note that this methodology is endorsed and employed by the U. S. Government as the standard and recommended approach for use by all U. S. Agencies in valuing life for policy purposes, as mandated in current and past Presidential Executive Orders in effect since 1972, and as discussed in “Report to Congress on the Costs and Benefits of Federal Regulations,” *Office of Management and Budget*, 1998, and “Economic Analysis of Federal Regulations Under Executive Order 12866,” *Executive Office of the President, Office of Management and Budget*, pp. 1-37, and “Report to the President on Executive Order No. 12866,” Regulatory Planning and Review, May 1, 1994, *Office of Information and Regulatory Affairs, Office of Management and Budget*. Prior presidents signed similar orders as discussed in “Federal Agency Valuations of Human life,” *Administrative Conference of the United States, Report for Recommendation 88-7, December 1988*, pp. 368-408. 7911

SUMMARY OF LOSSES FOR [REDACTED]

TABLE	DESCRIPTION	ESTIMATE
*****	*****	*****
	<u>EARNINGS</u>	
	LOSS OF WAGES & BENEFITS	
3	Full-Time Employment to age 67	\$3,204,353
	OFFSET OF WAGES BENEFITS	
6	Employment to age 67	<u>(\$ 349,180)</u>
	NET WAGES & BENEFITS LOSS	
3-6	Employment to age 67	<u>\$2,855,173)</u>

	<i>PRESENT VALUE OF FUTURE COUNSELING COSTS</i>	
7	COST OF FUTURE TREATMENT AND COUNSELING COSTS	\$ 512,681

	<i>LOSS OF ENJOYMENT OF LIFE</i>	
10	REDUCTION IN VALUE OF LIFE	\$8,886,300

The information on this Summary of Losses is intended to summarize losses under certain given assumptions. Please refer to the report and the tables for all the opinions.

Table 1
PRESENT VALUE OF FUTURE WAGES
2011-2070

YEAR	AGE	WAGES	DISCOUNT FACTOR	PRESENT VALUE
****	****	*****	*****	*****
2011	22	\$19,215	0.95209	\$18,294
2012	23	40,566	0.93664	37,996
2013	24	42,937	0.92143	39,563
2014	25	45,447	0.90647	41,196
2015	26	48,104	0.89176	42,897
2016	27	50,916	0.87729	44,668
2017	28	53,893	0.86305	46,512
2018	29	57,044	0.84904	48,433
2019	30	60,379	0.83525	50,432
2020	31	63,909	0.82170	52,514
2021	32	67,645	0.80836	54,682
2022	33	71,600	0.79524	56,939
2023	34	75,786	0.78233	59,290
2024	35	80,216	0.76963	61,737
2025	36	81,138	0.75714	61,433
2026	37	82,071	0.74485	61,131
2027	38	83,015	0.73276	60,830
2028	39	83,970	0.72086	60,531
2029	40	84,936	0.70916	60,233
2030	41	85,913	0.69765	59,937
2031	42	86,901	0.68633	59,643
2032	43	87,900	0.67519	59,349
2033	44	88,911	0.66423	59,057
2034	45	89,933	0.65344	58,766
2035	46	90,967	0.64284	58,477
2036	47	92,013	0.63240	58,189
2037	48	93,071	0.62214	57,903
2038	49	94,141	0.61204	57,618
2039	50	95,224	0.60210	57,334
2040	51	96,319	0.59233	57,053
2041	52	97,427	0.58272	56,773
2042	53	98,547	0.57326	56,493
2043	54	99,680	0.56395	56,215
2044	55	100,826	0.55480	55,938
2045	56	101,985	0.54579	55,662
2046	57	103,158	0.53693	55,389
2047	58	104,344	0.52822	55,117
2048	59	105,544	0.51964	54,845
2049	60	106,758	0.51121	54,576
2050	61	107,986	0.50291	54,307
2051	62	109,228	0.49475	54,041
2052	63	110,484	0.48672	53,775
2053	64	111,755	0.47882	53,511
2054	65	113,040	0.47104	53,246
2055	66	114,340	0.46340	52,985
2056	67	115,655	0.45587	52,724
2057	68	116,985	0.44847	52,464
2058	69	118,330	0.44120	52,207
2059	70	119,691	0.43403	51,949
2060	71	121,067	0.42699	51,694
2061	72	122,459	0.42006	51,440
2062	73	123,867	0.41324	51,187
2063	74	125,291	0.40653	50,935
2064	75	126,732	0.39993	50,684
2065	76	128,189	0.39344	50,435
2066	77	129,663	0.38705	50,186
2067	78	131,154	0.38077	49,940

Table 2
PRESENT VALUE OF FUTURE EMPLOYEE BENEFITS
2011-2070

YEAR	AGE	EMPLOYEE BENEFITS	DISCOUNT FACTOR	PRESENT VALUE
****	****	*****	*****	*****
2011	22	\$5,630	0.95209	\$5,360
2012	23	11,886	0.93664	11,125
2013	24	12,581	0.92143	11,545
2014	25	13,316	0.90647	12,045
2015	26	14,094	0.89176	12,575
2016	27	14,918	0.87729	13,085
2017	28	15,791	0.86305	13,615
2018	29	16,714	0.84904	14,165
2019	30	17,691	0.83525	14,735
2020	31	18,725	0.82170	15,315
2021	32	19,820	0.80836	16,005
2022	33	20,979	0.79524	16,665
2023	34	22,205	0.78233	17,335
2024	35	23,503	0.76963	18,015
2025	36	23,773	0.75714	17,935
2026	37	24,047	0.74485	17,915
2027	38	24,323	0.73276	17,815
2028	39	24,603	0.72086	17,715
2029	40	24,886	0.70916	17,615
2030	41	25,173	0.69765	17,515
2031	42	25,462	0.68633	17,415
2032	43	25,755	0.67519	17,315
2033	44	26,051	0.66423	17,215
2034	45	26,350	0.65344	17,115
2035	46	26,653	0.64284	17,015
2036	47	26,960	0.63240	17,015
2037	48	27,270	0.62214	16,915
2038	49	27,583	0.61204	16,815
2039	50	27,901	0.60210	16,715
2040	51	28,221	0.59233	16,715
2041	52	28,546	0.58272	16,615
2042	53	28,874	0.57326	16,515
2043	54	29,206	0.56395	16,415
2044	55	29,542	0.55480	16,315
2045	56	29,882	0.54579	16,315
2046	57	30,225	0.53693	16,215
2047	58	30,573	0.52822	16,115
2048	59	30,924	0.51964	16,015
2049	60	31,280	0.51121	15,915
2050	61	31,640	0.50291	15,915
2051	62	32,004	0.49475	15,815
2052	63	32,372	0.48672	15,715
2053	64	32,744	0.47882	15,615
2054	65	33,121	0.47104	15,615
2055	66	33,502	0.46340	15,515
2056	67	33,887	0.45587	15,415
2057	68	34,277	0.44847	15,315
2058	69	34,671	0.44120	15,215
2059	70	35,069	0.43403	15,215
2060	71	35,473	0.42699	15,115
2061	72	35,880	0.42006	15,015
2062	73	36,293	0.41324	14,915
2063	74	36,710	0.40653	14,915
2064	75	37,132	0.39993	14,815
2065	76	37,559	0.39344	14,715
2066	77	37,991	0.38705	14,715
2067	78	38,428	0.38077	14,615

Table 3
PRESENT VALUE OF NET WAGE AND BENEFIT LO
2011-2070

YEAR	AGE	WAGES	EMPLOYEE BENEFITS	TOTAL
****	****	*****	*****	*****
2011	22	\$18,294	\$5,360	\$23,654
2012	23	37,996	11,133	49,129
2013	24	39,563	11,593	51,156
2014	25	41,196	12,071	53,267
2015	26	42,897	12,568	55,465
2016	27	44,668	13,087	57,755
2017	28	46,512	13,628	60,140
2018	29	48,433	14,191	62,624
2019	30	50,432	14,776	65,208
2020	31	52,514	15,386	67,900
2021	32	54,682	16,022	70,704
2022	33	56,939	16,683	73,622
2023	34	59,290	17,372	76,662
2024	35	61,737	18,089	79,826
2025	36	61,433	17,999	79,432
2026	37	61,131	17,911	79,042
2027	38	60,830	17,823	78,653
2028	39	60,531	17,735	78,266
2029	40	60,233	17,648	77,881
2030	41	59,937	17,562	77,499
2031	42	59,643	17,475	77,118
2032	43	59,349	17,390	76,739
2033	44	59,057	17,304	76,361
2034	45	58,766	17,218	75,984
2035	46	58,477	17,134	75,611
2036	47	58,189	17,050	75,239
2037	48	57,903	16,966	74,869
2038	49	57,618	16,882	74,500
2039	50	57,334	16,799	74,133
2040	51	57,053	16,716	73,769
2041	52	56,773	16,634	73,407
2042	53	56,493	16,552	73,045
2043	54	56,215	16,471	72,686
2044	55	55,938	16,390	72,328
2045	56	55,662	16,309	71,971
2046	57	55,389	16,229	71,618
2047	58	55,117	16,149	71,266
2048	59	54,845	16,069	70,914
2049	60	54,576	15,991	70,567
2050	61	54,307	15,912	70,219
2051	62	54,041	15,834	69,875
2052	63	53,775	15,756	69,531
2053	64	53,511	15,678	69,189
2054	65	53,246	15,601	68,847
2055	66	52,985	15,525	68,510
2056	67	52,724	15,448	68,172
2057	68	52,464	15,372	67,836
2058	69	52,207	15,297	67,504
2059	70	51,949	15,221	67,170
2060	71	51,694	15,147	66,841
2061	72	51,440	15,072	66,512
2062	73	51,187	14,998	66,185
2063	74	50,935	14,924	65,859
2064	75	50,684	14,850	65,534
2065	76	50,435	14,777	65,212
2066	77	50,186	14,704	64,890
2067	78	49,940	14,632	64,572

Table 4
PRESENT VALUE OF FUTURE OFFSET WAGES
2009-2070

YEAR	AGE	WAGES	DISCOUNT FACTOR	PRESENT VALUE
****	****	*****	*****	*****
2009	20	\$7,800	0.98377	\$7,673
2010	21	7,890	0.96780	7,636
2011	22	7,981	0.95209	7,599
2012	23	8,073	0.93664	7,561
2013	24	8,166	0.92143	7,524
2014	25	8,260	0.90647	7,487
2015	26	8,355	0.89176	7,451
2016	27	8,451	0.87729	7,414
2017	28	8,548	0.86305	7,377
2018	29	8,646	0.84904	7,341
2019	30	8,745	0.83525	7,304
2020	31	8,846	0.82170	7,269
2021	32	8,948	0.80836	7,233
2022	33	9,051	0.79524	7,198
2023	34	9,155	0.78233	7,162
2024	35	9,260	0.76963	7,127
2025	36	9,366	0.75714	7,091
2026	37	9,474	0.74485	7,057
2027	38	9,583	0.73276	7,022
2028	39	9,693	0.72086	6,987
2029	40	9,804	0.70916	6,953
2030	41	9,917	0.69765	6,919
2031	42	10,031	0.68633	6,885
2032	43	10,146	0.67519	6,850
2033	44	10,263	0.66423	6,817
2034	45	10,381	0.65344	6,783
2035	46	10,500	0.64284	6,750
2036	47	10,621	0.63240	6,717
2037	48	10,743	0.62214	6,684
2038	49	10,867	0.61204	6,651
2039	50	10,992	0.60210	6,618
2040	51	11,118	0.59233	6,586
2041	52	11,246	0.58272	6,553
2042	53	11,375	0.57326	6,521
2043	54	11,506	0.56395	6,489
2044	55	11,638	0.55480	6,457
2045	56	11,772	0.54579	6,425
2046	57	11,907	0.53693	6,393
2047	58	12,044	0.52822	6,362
2048	59	12,183	0.51964	6,331
2049	60	12,323	0.51121	6,300
2050	61	12,465	0.50291	6,269
2051	62	12,608	0.49475	6,238
2052	63	12,753	0.48672	6,207
2053	64	12,900	0.47882	6,177
2054	65	13,048	0.47104	6,146
2055	66	13,198	0.46340	6,116
2056	67	13,350	0.45587	6,086
2057	68	13,504	0.44847	6,056
2058	69	13,659	0.44120	6,026
2059	70	13,816	0.43403	5,997
2060	71	13,975	0.42699	5,967
2061	72	14,136	0.42006	5,938
2062	73	14,299	0.41324	5,909
2063	74	14,463	0.40653	5,880
2064	75	14,629	0.39993	5,851
2065	76	14,797	0.39344	5,822

Table 5
PRESENT VALUE OF FUTURE OFFSET EMPLOYEE BENEFITS
2009-2070

YEAR	AGE	EMPLOYEE BENEFITS	DISCOUNT FACTOR	PRESENT VALUE
****	****	*****	*****	*****
2009	20	\$484	0.98377	\$476
2010	21	489	0.96780	473
2011	22	495	0.95209	471
2012	23	501	0.93664	469
2013	24	506	0.92143	466
2014	25	512	0.90647	464
2015	26	518	0.89176	462
2016	27	524	0.87729	460
2017	28	530	0.86305	457
2018	29	536	0.84904	455
2019	30	542	0.83525	453
2020	31	548	0.82170	450
2021	32	555	0.80836	449
2022	33	561	0.79524	446
2023	34	568	0.78233	444
2024	35	574	0.76963	442
2025	36	581	0.75714	440
2026	37	587	0.74485	437
2027	38	594	0.73276	435
2028	39	601	0.72086	433
2029	40	608	0.70916	431
2030	41	615	0.69765	429
2031	42	622	0.68633	427
2032	43	629	0.67519	425
2033	44	636	0.66423	422
2034	45	644	0.65344	421
2035	46	651	0.64284	418
2036	47	659	0.63240	417
2037	48	666	0.62214	414
2038	49	674	0.61204	413
2039	50	682	0.60210	411
2040	51	689	0.59233	408
2041	52	697	0.58272	406
2042	53	705	0.57326	404
2043	54	713	0.56395	402
2044	55	722	0.55480	401
2045	56	730	0.54579	398
2046	57	738	0.53693	396
2047	58	747	0.52822	395
2048	59	755	0.51964	392
2049	60	764	0.51121	391
2050	61	773	0.50291	389
2051	62	782	0.49475	387
2052	63	791	0.48672	385
2053	64	800	0.47882	383
2054	65	809	0.47104	381
2055	66	818	0.46340	379
2056	67	828	0.45587	377
2057	68	837	0.44847	375
2058	69	847	0.44120	374
2059	70	857	0.43403	372
2060	71	866	0.42699	370
2061	72	876	0.42006	368
2062	73	887	0.41324	367
2063	74	897	0.40653	365
2064	75	907	0.39993	363
2065	76	917	0.39344	361

Table 6
PRESENT VALUE OF NET OFFSET WAGES AND BENEFITS
2009-2070

YEAR	AGE	WAGES	EMPLOYEE BENEFITS	TOTAL
****	****	*****	*****	*****
2009	20	\$7,673	\$476	\$8,149
2010	21	7,636	473	8,109
2011	22	7,599	471	8,070
2012	23	7,561	469	8,030
2013	24	7,524	466	7,990
2014	25	7,487	464	7,951
2015	26	7,451	462	7,913
2016	27	7,414	460	7,874
2017	28	7,377	457	7,834
2018	29	7,341	455	7,795
2019	30	7,304	453	7,756
2020	31	7,269	450	7,716
2021	32	7,233	449	7,682
2022	33	7,198	446	7,644
2023	34	7,162	444	7,606
2024	35	7,127	442	7,567
2025	36	7,091	440	7,528
2026	37	7,057	437	7,489
2027	38	7,022	435	7,450
2028	39	6,987	433	7,421
2029	40	6,953	431	7,382
2030	41	6,919	429	7,343
2031	42	6,885	427	7,304
2032	43	6,850	425	7,265
2033	44	6,817	422	7,226
2034	45	6,783	421	7,200
2035	46	6,750	418	7,163
2036	47	6,717	417	7,131
2037	48	6,684	414	7,095
2038	49	6,651	413	7,060
2039	50	6,618	411	7,025
2040	51	6,586	408	6,990
2041	52	6,553	406	6,955
2042	53	6,521	404	6,920
2043	54	6,489	402	6,885
2044	55	6,457	401	6,850
2045	56	6,425	398	6,820
2046	57	6,393	396	6,785
2047	58	6,362	395	6,750
2048	59	6,331	392	6,720
2049	60	6,300	391	6,690
2050	61	6,269	389	6,655
2051	62	6,238	387	6,620
2052	63	6,207	385	6,585
2053	64	6,177	383	6,550
2054	65	6,146	381	6,520
2055	66	6,116	379	6,490
2056	67	6,086	377	6,460
2057	68	6,056	375	6,430
2058	69	6,026	374	6,400
2059	70	5,997	372	6,365
2060	71	5,967	370	6,330
2061	72	5,938	368	6,300
2062	73	5,909	367	6,270
2063	74	5,880	365	6,240
2064	75	5,851	363	6,210
2065	76	5,822	361	6,180

Table 7
PRESENT VALUE OF FUTURE TREATMENT AND COUNSEL
2009-2070

YEAR	AGE	LIFE CARE	DISCOUNT FACTOR	PRESENT VA
****	****	*****	*****	*****
2009	20	\$9,739	0.98377	\$9,581
2010	21	9,851	0.96780	9,534
2011	22	9,964	0.95209	9,487
2012	23	10,079	0.93664	9,440
2013	24	10,195	0.92143	9,394
2014	25	10,312	0.90647	9,348
2015	26	10,431	0.89176	9,302
2016	27	10,551	0.87729	9,256
2017	28	10,672	0.86305	9,210
2018	29	10,795	0.84904	9,165
2019	30	10,919	0.83525	9,120
2020	31	11,045	0.82170	9,076
2021	32	11,172	0.80836	9,031
2022	33	11,300	0.79524	8,986
2023	34	11,430	0.78233	8,942
2024	35	11,561	0.76963	8,898
2025	36	11,694	0.75714	8,854
2026	37	11,828	0.74485	8,810
2027	38	11,964	0.73276	8,767
2028	39	12,102	0.72086	8,724
2029	40	12,241	0.70916	8,681
2030	41	12,382	0.69765	8,638
2031	42	12,524	0.68633	8,596
2032	43	12,668	0.67519	8,553
2033	44	12,814	0.66423	8,511
2034	45	12,961	0.65344	8,469
2035	46	13,110	0.64284	8,428
2036	47	13,261	0.63240	8,386
2037	48	13,414	0.62214	8,345
2038	49	13,568	0.61204	8,304
2039	50	13,724	0.60210	8,263
2040	51	13,882	0.59233	8,223
2041	52	14,042	0.58272	8,183
2042	53	14,203	0.57326	8,142
2043	54	14,366	0.56395	8,102
2044	55	14,531	0.55480	8,062
2045	56	14,698	0.54579	8,022
2046	57	14,867	0.53693	7,983
2047	58	15,038	0.52822	7,943
2048	59	15,211	0.51964	7,904
2049	60	15,386	0.51121	7,865
2050	61	15,563	0.50291	7,827
2051	62	15,742	0.49475	7,788
2052	63	15,923	0.48672	7,750
2053	64	16,106	0.47882	7,712
2054	65	16,291	0.47104	7,674
2055	66	16,478	0.46340	7,636
2056	67	16,667	0.45587	7,598
2057	68	16,859	0.44847	7,561
2058	69	17,053	0.44120	7,524
2059	70	17,249	0.43403	7,487
2060	71	17,447	0.42699	7,450
2061	72	17,648	0.42006	7,413
2062	73	17,851	0.41324	7,377
2063	74	18,056	0.40653	7,340
2064	75	18,264	0.39993	7,304
2065	76	18,474	0.39344	7,268

Table 8
 LOSS OF PAST RVL OF [REDACTED]
 1999-2008

YEAR	AGE	RVL	CUMULATE
*****	*****	*****	*****
1999	10	\$142,362	\$142,362
2000	11	147,189	289,551
2001	12	149,470	439,021
2002	13	153,027	592,048
2003	14	155,904	747,952
2004	15	160,987	908,939
2005	16	166,492	1,075,431
2006	17	170,721	1,246,152
2007	18	177,687	1,423,839
2008	19	183,017	\$1,606,856
[REDACTED]		\$1,606,856	

Table 9
PRESENT VALUE OF FUTURE RVL OF ██████████
2009-2070


YEAR	AGE	RVL	DISCOUNT FACTOR	PRESENT VAL
****	****	*****	*****	*****
2009	20	\$188,508	0.98377	\$185,449
2010	21	188,508	0.96780	182,438
2011	22	188,508	0.95209	179,477
2012	23	188,508	0.93664	176,564
2013	24	188,508	0.92143	173,697
2014	25	188,508	0.90647	170,877
2015	26	188,508	0.89176	168,104
2016	27	188,508	0.87729	165,376
2017	28	188,508	0.86305	162,692
2018	29	188,508	0.84904	160,051
2019	30	188,508	0.83525	157,451
2020	31	188,508	0.82170	154,897
2021	32	188,508	0.80836	152,382
2022	33	188,508	0.79524	149,909
2023	34	188,508	0.78233	147,475
2024	35	188,508	0.76963	145,081
2025	36	188,508	0.75714	142,727
2026	37	188,508	0.74485	140,410
2027	38	188,508	0.73276	138,131
2028	39	188,508	0.72086	135,888
2029	40	188,508	0.70916	133,682
2030	41	188,508	0.69765	131,513
2031	42	188,508	0.68633	129,379
2032	43	188,508	0.67519	127,279
2033	44	188,508	0.66423	125,213
2034	45	188,508	0.65344	123,179
2035	46	188,508	0.64284	121,180
2036	47	188,508	0.63240	119,212
2037	48	188,508	0.62214	117,278
2038	49	188,508	0.61204	115,374
2039	50	188,508	0.60210	113,501
2040	51	188,508	0.59233	111,659
2041	52	188,508	0.58272	109,847
2042	53	188,508	0.57326	108,064
2043	54	188,508	0.56395	106,309
2044	55	188,508	0.55480	104,584
2045	56	188,508	0.54579	102,886
2046	57	188,508	0.53693	101,216
2047	58	188,508	0.52822	99,574
2048	59	188,508	0.51964	97,956
2049	60	188,508	0.51121	96,367
2050	61	188,508	0.50291	94,803
2051	62	188,508	0.49475	93,264
2052	63	188,508	0.48672	91,751
2053	64	188,508	0.47882	90,261
2054	65	188,508	0.47104	88,795
2055	66	188,508	0.46340	87,355
2056	67	188,508	0.45587	85,935
2057	68	188,508	0.44847	84,540
2058	69	188,508	0.44120	83,170
2059	70	188,508	0.43403	81,818
2060	71	188,508	0.42699	80,491
2061	72	188,508	0.42006	79,185
2062	73	188,508	0.41324	77,899
2063	74	188,508	0.40653	76,634
2064	75	188,508	0.39993	75,390
2065	76	188,508	0.39344	74,167

Table 10
 PRESENT VALUE OF NET RVL OF [REDACTED]
 1999-2070

YEAR	AGE	RVL	CUMULATE
*****	*****	*****	*****
1999	10	\$142,362	\$142,362
2000	11	147,189	289,551
2001	12	149,470	439,021
2002	13	153,027	592,048
2003	14	155,904	747,952
2004	15	160,987	908,939
2005	16	166,492	1,075,431
2006	17	170,721	1,246,152
2007	18	177,687	1,423,839
2008	19	183,017	1,606,856
2009	20	185,449	1,792,305
2010	21	182,438	1,974,743
2011	22	179,477	2,154,220
2012	23	176,564	2,330,784
2013	24	173,697	2,504,481
2014	25	170,877	2,675,358
2015	26	168,104	2,843,462
2016	27	165,376	3,008,838
2017	28	162,692	3,171,530
2018	29	160,051	3,331,581
2019	30	157,451	3,489,032
2020	31	154,897	3,643,929
2021	32	152,382	3,796,311
2022	33	149,909	3,946,220
2023	34	147,475	4,093,695
2024	35	145,081	4,238,776
2025	36	142,727	4,381,503
2026	37	140,410	4,521,913
2027	38	138,131	4,660,044
2028	39	135,888	4,795,932

2029	40	133,682	4,929,614
2030	41	131,513	5,061,127
2031	42	129,379	5,190,506
2032	43	127,279	5,317,785
2033	44	125,213	5,442,998
2034	45	123,179	5,566,177
2035	46	121,180	5,687,357
2036	47	119,212	5,806,569
2037	48	117,278	5,923,847
2038	49	115,374	6,039,221
2039	50	113,501	6,152,722
2040	51	111,659	6,264,381
2041	52	109,847	6,374,228
2042	53	108,064	6,482,292
2043	54	106,309	6,588,601
2044	55	104,584	6,693,185
2045	56	102,886	6,796,071
2046	57	101,216	6,897,287
2047	58	99,574	6,996,861
2048	59	97,956	7,094,817
2049	60	96,367	7,191,184
2050	61	94,803	7,285,987
2051	62	93,264	7,379,251
2052	63	91,751	7,471,002
2053	64	90,261	7,561,263
2054	65	88,795	7,650,058
2055	66	87,355	7,737,413
2056	67	85,935	7,823,348
2057	68	84,540	7,907,888
2058	69	83,170	7,991,058
2059	70	81,818	8,072,876
2060	71	80,491	8,153,367
2061	72	79,185	8,232,552
2062	73	77,899	8,310,451
2063	74	76,634	8,387,085

2064	75	75,390	8,462,475
2065	76	74,167	8,536,642
2066	77	72,962	8,609,604
2067	78	71,778	8,681,382
2068	79	70,613	8,751,995
2069	80	69,467	8,821,462
2070	81	64,838	\$8,886,300

 \$8,886,300

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

From: Larisa Mitcham
To: Victim Notification System
Subject: US Department of Justice Victim
Notification System
Date: Monday, June 22, 2009 4:26:21 PM

DO NOT REPLY TO THIS EMAIL.

U.S. Department of Justice
United States Attorney's Office
Eastern District of Texas in Tyler
110 N. College
Ste. 700
Tyler, TX 75702
Phone: 18008043547
Fax: (903) 590-1439

June 22, 2009

James Marsh, Attorney
14525 S.W. Milliken Way
Suite 100
Beaverton, OR 97005

RE: United States v. Defendant(s) Doyle Randall Paroline
Case Number 2008R00609 and Court Docket Number
08-CR-00061-6

Dear James Marsh, Attorney:

The United States Department of Justice believes it is important to keep victims of federal crime informed of court proceedings. You have been identified to receive notifications for [REDACTED] This notice provides information about the above-referenced criminal case.

Defendant Doyle Randall Paroline was sentenced by the Court. Court ordered the defendant to the following:

Incarceration of 24 month(s)
Followed by Supervised Release of 10 year(s)
Special Assessment of \$100.00.
Fine of \$0.00.

The Court further ordered the following special condition(s): Sex Offender Treatment.

The Victim Notification System (VNS) is designed to provide you with information regarding the case as it proceeds through the criminal justice system. You may obtain current information about this case on the VNS Web site at <https://www.notify.usdoj.gov> or from the VNS Call Center at 1-866-DOJ-4YOU (1-866-365-4968) (TDD/TTY: 1-866-228-4619) (International: 1-502-213-2767). In addition, you may use the Call Center or Internet to update your contact information and/or change your decision about participation in the notification program. If you update your information to include a current email address, VNS will send information to that address. In order to continue to receive notifications, it is your responsibility to keep your contact information current.

You will use your Victim Identification Number (VIN) [REDACTED] and Personal Identification Number (PIN) [REDACTED] anytime you contact the Call Center and the first time you log on to the VNS web site. In addition, the first time you access the VNS Internet site, you will be prompted to enter your last name (or

business name) as currently contained in VNS. The name you should enter is [REDACTED]

Remember, VNS is an automated system and cannot answer questions. If you have other questions which involve this matter, please contact this office at the number listed above.

Sincerely,
JOHN M. BALES
United States Attorney

Becky Smith
Victim Witness Coordinator

If you do not want to receive email notifications from the Victim Notification System (VNS) or wish to no longer participate in the Department of Justice victim notification program, please log into the VNS Web site at <https://www.notify.usdoj.gov>. To stop receiving email notifications or change your email address select My Information and either remove your email address or provide a new address and click the “update” button. If you no longer wish to receive notifications in your case or access the VNS Web site and toll free telephone service, select Stop Receiving Notifications and follow the instructions on the screen.

If you believe you have received this email in error, please contact the office listed at top of the email message.

Please note, if this is the first notification you have received from VNS you will need to wait 4-8 hours from receipt of this email before you can login to the

VNS Internet site (<http://www.notify.usdoj.gov>). In addition, it will also be 4-8 hours before any documents which may have been uploaded to VNS as part of this notification will be available under the “Documents/Links” section on the Web page.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

[SEAL]

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

JAMES C. DUFF
Director

WILLIAM R. BURCHILL, JR.
Associate Director
and General Counsel

JILL C. SAYENGA
Deputy Director

ROBERT K. LOESCHE
Deputy General Counsel

August 17, 2009

Mr. David J. Maland
Clerk
United States District Court
106 William M. Steger Federal Building
and United States Courthouse
211 West Ferguson Street
Tyler, TX 75702

Dear Mr. Maland:

I am responding to your inquiry concerning a restitution request under 18 U.S.C. § 2259 by James Marsh, an attorney for an alleged victim depicted in child pornography that was distributed approximately ten years ago. Mr. Marsh has filed restitution requests similar to this one in approximately thirty judicial districts. He made each request after he identified defendants who were potentially liable to pay restitution because they had downloaded his

client's image and were thereafter convicted of pornography possession offenses. While Mr. Marsh has advanced on his client's behalf restitution requests seeking to have all defendants convicted of possessing the pornography to be declared jointly and severally liable with the original pornography distributor, the government has declined to endorse Mr. Marsh's position. If Mr. Marsh prevails, an attempt to frame the type of order he seeks would involve duplicative fact-finding in multiple districts involving the same victim and similar crimes. Managing such restitution awards would prove onerous. In light of these obstacles, you ask whether (1) joint and several liability may be imposed against offenders in multiple districts as Mr. Marsh proposed; (2) there are measures that could assist clerks in administering multiple joint and several liability in diverse districts; (3) transfer to one venue for coordinated fact-finding is possible in order to minimize duplicative effort; and (4) 18 U.S.C. § 2259 precludes the sort of global open-ended restitution awards that Mr. Marsh requests on behalf of his client.¹

¹ On June 10, 2009, District Judge Leonard Davis ordered all parties to submit briefs concerning a variety of issues involving the restitution request addressed to defendant Doyle Randall Paroline. The court also invited any other party, including the Administrative Office of the United States Courts ("AO"), to file briefs in the case. 28 U.S.C. § 607 provides that "[a]n officer or employee of the Administrative Office shall not engage directly or indirectly in the practice of law in any court of the United States." This precludes me from filing a brief, but I may provide you with legal advice that may coincidentally be
(Continued on following page)

1. Joint and Several Liability Under 18 U.S.C. § 2259

Section 2259 does not expressly authorize apportionment and joint and several liability, but it does incorporate all general restitution provisions in 18 U.S.C. § 3664.² Section 3664(h) of the Mandatory

beneficial to the court. My legal advice simply represents my judgment concerning statutory and case law authority. This letter hereafter refers to the arguments of the victim advocacy groups that have filed briefs in this matter as “the victim’s advocates.”

² Section 2259 states:

(a) In general. – Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) Scope and nature of order. –

(1) Directions. – The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim’s losses as determined by the court pursuant to paragraph (2).

(2) *Enforcement.* – *An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.*

(3) Definition. – For purposes of this subsection, the term “full amount of the victim’s losses” includes any costs incurred by the victim for –

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(Continued on following page)

Victim Restitution Act³ (“MVRA”) provides that “the court may make each defendant liable for payment of the full amount of restitution or may apportion

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorneys’ fees, as well as other costs incurred; and

(F) any other losses suffered by the victim *as a proximate result of the offense.*

(4) Order mandatory. –

(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of –

(I) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) Definition. – For purposes of this section, the term “victim” means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

18 U.S.C. § 2259 (emphasis added).

³ Title II, subtitle A of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, 1227 (April 24, 1996).

liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant." 18 U.S.C. § 3664(h). This subsection does not directly refer to "joint and several liability,"⁴ but integrates that doctrine by giving courts the option of making each defendant who inflicted compensable harm liable for the full amount of restitution.

The legislative history of § 3664(h) also notes that Congress intended to "give[] the court[s] the discretion either to make multiple defendants jointly and severally liable . . . or to apportion the restitution order among the various defendants." S. Rep. No. 104-179, at 15 (1996). This reference to joint and several liability in the Senate Report was not expressly incorporated into the MVRA, but the "joint and several" objective is implicit in the statute – § 3664(h) simply requires that the court make each defendant liable for the full amount of the restitution debt or apportion the debt among the defendants.

⁴ The concept of "joint and several liability" is a common law doctrine that,

refers to the liability of multiple wrongdoers (typically, for torts). It means that damages are a single sum specified in the judgment, that each wrongdoer is liable for the full amount, but the wronged party cannot collect under the judgment *more* than the single sum. *Restatement (Third) of Torts* § 20 & cmt. b (Proposed Final Draft (Revised) 1999).

Tilcon Capaldi, Inc. v. Feldman, 249 F.3d 54, 62-63 (1st Cir. 2001).

Thus, making each defendant liable for the full amount of the victims' losses in the judgment for the same or related cases is the functional equivalent to invoking the common law "joint and several" language.

In sum, § 2259's incorporation of § 3664 by reference authorizes the imposition of joint and several liability.

2. Practical Problems and Solutions Concerning Joint and Several Liability

Form AO245B, the criminal judgment form, contemplates that a court will have complete information concerning all defendant debtors and victims at sentencing. However, restitution obligations are not always apparent at a single point in time. For example, defendants convicted in separate cases who participated in related offenses are responsible for the same foreseeable loss to the victim. A judge conducting the initial sentencing of one defendant may be unaware of the identity or existence of the other potential debtors who will be sentenced later. The judge therefore would not appreciate the need to enter a "joint and several" order that would account for all debtors who would be bound in future judgments. Likewise, the government may be unaware when the first offender is convicted that others are equally culpable and responsible for the same restitution debt. One way to address this problem is to include language in each restitution order that ensures that

separate orders considered together have the same legal effect as a consolidated joint and several order.

To enhance the likelihood that related restitution orders in different cases could support an interpretation that they may have the same effect as a single restitution order consolidating all debtors in a joint and several obligation, courts could include language in the restitution order stating that “the victim[’s] recovery is limited to the amount of [her] loss and the defendant’s liability for restitution ceases if and when the victim[] receive[s] full restitution.” See *United States v. Nucci*, 364 F.3d 419, 422 n.3 (2d Cir. 2004) (proposing this express limitation precluding recovery by victim that exceeds loss when joint and several liability is imposed); see also *United States v. Scott*, 270 F.3d 30, 52-53 (1st Cir. 2001) (“If the defendants are each made liable for the full amount, but the victim may recover no more than the total loss, the implication is that each defendant’s liability ends when the victim is made whole, regardless of the actual contributions of individual defendants.”). Such language would allow the court to obligate each defendant to pay the full amount of the debt notwithstanding that the identity of all debtors might be unknown when the first restitution order is entered. It would also allow in different cases for relatively easy implementation of seemingly contradictory restitution orders that apportion different obligations to different defendants. For example, assume a court enters a restitution order in 2008 against defendant A for the entire victim loss of \$200,000. In 2009, two

more defendants, B and C, are indicted and ordered to pay \$80,000 and \$40,000, respectively, towards the same loss. The statutory language requiring the first defendant to pay the full amount of the \$200,000 restitution debt, combined with the language that the Second Circuit suggested in *Nucci*, would allow an interpretation of the orders that would make all the defendants jointly and severally liable for the \$200,000. Defendant B would have to pay until he contributed his \$80,000 or defendant A and/or defendant C (up to his \$40,000 obligation) satisfied the \$200,000. Defendant C would be obliged up to \$40,000, but he would pay only a portion of that amount (or nothing) if defendant A and/or defendant B (up to his \$80,000 obligation) paid off the entire debt before defendant C contributed. *See Scott*, 270 F.3d at 52-53; *see also United States v. Trigg*, 119 F.3d 500-01 & n.6 (7th Cir. 1997) (interpreting a pre-MVRA version of the restitution statute; noting that the MVRA had made the authority to impose joint and several liability broader than the pre-MVRA statute).

In addition to allowing enforcement as one joint and several order, the suggested language avoids the sort of ambiguity that could lead to recovery by a victim that exceeds her loss or payment by a debtor after other debtors have satisfied the total restitution amount. Given that full recovery on restitution orders is rarely achieved, the chance that a victim will realize a windfall double recovery is small. Nonetheless, it is a theoretical risk when multiple defendants

in different cases are ordered to pay full restitution, as opposed to a single “joint and several” order accounting for the entire debt and all debtors. Careful drafting of restitution orders is required because the MVRA does not explicitly prevent double-recovery in the criminal context, nor does it terminate a defendant’s restitution obligation upon payment of the victim’s losses by other defendants responsible for the same loss. *Nucci*, 364 F.3d at 423. Rather, it simply prevents overpayment when a victim is later compensated in a “civil” proceeding. See 18 U.S.C. § 3664(j)(2).

Despite the absence of an explicit statutory bar against orders that could result in restitution windfalls, courts generally abide by common law constraints against double recovery when joint and several liability is imposed. The Second Circuit noted in *Nucci* that it based its holding,

on the common law background against which Congress is presumed to legislate. At common law, joint and several liability does not permit double recovery. As we have held, “[t]he effect of joint liability in a tort context is to excuse one defendant from paying any portion of the judgment if the plaintiff collects the full amount from the other.” Because reading the statute to provide recovery in excess of the amount of the loss would be in derogation of the common law, Congress would have to speak clearly and unequivocally to authorize it. Congress has

not done so here; accordingly, we apply the common law rule.

The situation presented in this case, where one defendant was ordered to pay the full loss from five burglaries after his co-defendants had been ordered to pay restitution for some but not all of the burglaries, is but a variation on the same general theme of no double recovery upon orders of joint and several liability. While the district judge could have made it clearer in her restitution order that a given victim would not be allowed to receive compensation in excess of his loss, and probably should have in order to remove the question from all doubt, we will not find error for any failure to do so because, in any event, absent a statutory command, there is no legal basis to permit an award that allows a victim to recover more than his due. We read the First Circuit's decision in *United States v. Scott* as following essentially the same reasoning.

The district court's decision to hold Nucci accountable for the entire \$34,476 is in accordance with the MVRA' rules regarding apportionment of liability. Accordingly, we . . . hold that a district court does not commit error by failing to state explicitly that a victim's recovery shall be limited to the amount of its loss.

Nucci, 364 F.3d at 423-24 (citations omitted).

Applying the approach that the Second Circuit discussed in *Nucci* would simplify the implementation of separate, but related, restitution orders. This procedure, however, does not diminish the administrative burden on the Clerk's Office to insure that all debt payments are accurately accounted for to prevent overpayment. The most practical way for clerks to simplify their responsibilities would be to confer with the U.S. Attorney's Office, which has the investigative resources to identify all those responsible for the loss and all victims, and the U.S. Probation Office, which is responsible for a complete accounting of the losses to each victim, identification of plea agreement provisions concerning restitution, and provision of notice to all identified victims. 18 U.S.C. § 3664(a), (d)(1) & (2). Both the Probation Office and the U.S. Attorney's Office are responsible for maximizing debt collection, so each has a stake in cooperating in your administration of the debts.

To my knowledge, however, it would be highly impractical if not impossible for a clerk to track debt payments in multiple jurisdictions over an extended period of time to insure that a § 2259 victim does not receive windfall restitution payments. Clerks would be unaware of subsequent convictions that result in new joint and several orders. One way of addressing this uncertainty would be for the court to shift the burden of insuring against double recovery to one of the parties. Section 3664(e) imposes the burden of demonstrating the amount of loss on the government, but it also provides that "[t]he burden of

demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.” 18 U.S.C. § 3664(e). If the government proposes joint and several restitution in cases of this sort, it seems that justice may require that the government demonstrate how it will ensure that windfall recoveries will not ensue.⁵

Of course, this discussion is in all likelihood academic. To my knowledge, the government has never promoted § 2259 restitution orders in pornography possession cases of this type. Courts may be unlikely to enter such orders because it may be impossible to establish a causal relationship between the crime of possession and the victim’s loss.

3. Coordinated Restitution Fact Finding in One Venue

Because the victim’s counsel has made restitution requests on behalf of the same victim in multiple jurisdictions, fact-finding in each case will involve common issues and the potential of inconsistent resolutions. To avoid an apparent inefficient

⁵ The Crime Victims’ Rights statute, 18 U.S.C. § 3771, requires the government to use its best efforts to see that victims are accorded their rights, including the “right to full and timely restitution as provided in law.” The government’s reluctance to advance Mr. Marsh’s and the victim’s advocates’ position suggests that it believes that alleged victims depicted in pornography possession cases have no legal right to restitution under present law.

duplication of effort, you ask whether courts in different districts could transfer the restitution component of the criminal sentences to a single venue that would resolve factual and legal issues common to all cases. The example you have in mind is the Judicial Panel on Multidistrict Litigation's ("JPML") authority to transfer pretrial proceedings in civil actions. Such transfers in civil cases under 28 U.S.C. § 1407 place all similar actions before a single judge who develops a pretrial plan that allows discovery regarding any noncommon issues to proceed concurrently with discovery on common issues.⁶ This procedure enhances the likelihood that pretrial proceedings will lead to just and expeditious resolution of all actions that will generally benefit all parties. See *In re Vioxx Products Liability Litigation*, 360 F. Supp. 2d 1352 (J.P.M.L. 2005).

Notwithstanding its efficiency, such consolidated factual and legal determinations are precluded by the Constitution and Rule 18 of the Federal Rules of Criminal Procedure. Rule 18's restrictive venue requirement would preclude transfer and consolidation of related restitution proceedings to a single district. Rule 18 states:

⁶ 28 U.S.C. § 1407 authorizes the JPML to transfer and consolidate pretrial proceedings and the plaintiff's choice of forum when (1) one or more common questions of fact are pending in different districts, (2) a transfer would serve the convenience of parties and witnesses, and (3) a transfer would promote the just and efficient conduct of the actions.

Unless a statute or these rules permit otherwise, the government must prosecute an offense in a district where the offense was committed. The court must set the place of trial within the district with due regard for the convenience of the defendant, any victim, and the witnesses, and the prompt administration of justice.

Fed. R. Crim. P. 18. While no court has definitively held that Rule 18 governs the venue for sentencings or the restitution component of a criminal sentence, no other rule or statute could conceivably apply, and the U.S. Supreme Court observed, in *Bradley v. United States*, 410 U.S. 605, 609-11 (1973), that “sentencing is part of the prosecution.” See also *United States v. Avants*, 367 F.3d 433, 451-52 (5th Cir. 2004) (recognizing that Rule 18 likely applies in this context; holding that the Rule 52(a) harmless error rule, however, precluded reversal of a district judge’s decision to conduct sentencing in the Northern District of Texas rather than the Southern District of Mississippi, which was the appropriate venue). Rule 18 authorizes a change of venue if a statute or the Federal Rules of Criminal Procedure permit, but no rule or statute authorizes such a change under these circumstances. The only authorization for a sentencing hearing venue change is contained in Rule 20 (“Transfer for Plea and Sentence”), which authorizes a plea and sentencing to occur in a district other than the one in which the defendant was indicted. This rule applies, however, only when *both* the plea and sentencing occur in a district other than the one

where the indictment or information is pending. See *Cook v. United States*, 171 F.2d 567, 569 (1st Cir. 1948) (resentencing of a defendant who was tried, found guilty, and sentenced in the District of Massachusetts must be done by a court in that district; a defendant imprisoned in California could not consent to transfer of his case to the Northern District of California for resentencing).

Rule 18's bar against venue changes to a district other than the one where the offense occurred reiterates a constitutional venue right in criminal cases that appears in two places in the Constitution. Article III, section 2, clause 3 states that, "[t]he Trial of all Crimes . . . shall be by Jury; *and such Trial shall be held in the State where the said Crimes shall have been committed.*" U.S. Const. art. III, § 2, cl. 3 (emphasis added). The Sixth Amendment provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State *and district wherein the crime shall have been committed*, which district shall have been previously ascertained by law." U.S. Const. amend. VI (emphasis added). The Constitution does not provide a similar constitutional right to venue in civil cases, thus the JPML may transfer venue and consolidate pretrial proceedings against a plaintiff's wishes. Criminal defendants may waive the constitutional right to venue, but few defendants would deem that course of action to be in their interest. In sum, changing venue for a component of criminal sentencing is unauthorized based on the constitutional guarantee

to trial in the district where the offense was committed.

While consolidation of related matters in one venue is not possible, the 1996 MVRA amendment to 18 U.S.C. § 3664 authorized district judges to refer criminal restitution matters to a magistrate judge or special master. Section 3664(d)(6) states:

The court may refer any issue arising in connection with a proposed order of restitution to a magistrate judge or special master for proposed findings of fact and recommendations as to disposition, subject to a *de novo* determination of the issue by the court.

18 U.S.C. § 3664(d)(6). Unfortunately, Congress neglected to provide statutory or regulatory authority for payment of special masters appointed under § 3664(d)(6). In this regard, § 3664(d)(6) referrals differ from referrals to special masters in civil cases under Federal Rule of Civil Procedure 53 or for remedial proceedings in prison conditions cases, *see* 18 U.S.C. § 3626(f)(4) (setting hourly rate not to exceed that for appointed counsel to be “paid with funds appropriated to the Judiciary”). Rule 53 and § 3626(f)(4) provide explicit payment instructions and identify the source of funding for special masters; § 3664(d)(6) is silent on payment matters. The absence of payment authority for § 3664(d)(6) special master referrals explains why most restitution referrals are made to magistrate judges rather than to special masters. Nonetheless, the authority to refer restitution matters to a magistrate judge or a special

master compensated by one or more parties may alleviate some of the workload imposed on district judges by complex § 2259 fact finding.

4. Victim Status and Causation Requirement

Whether children who are victims in a general sense by virtue of their depiction in pornography are also entitled to restitution under § 2259 when the offense of conviction is possession of pornography (as opposed to its production and distribution) is an issue about which the government, the victims's advocates, and Mr. Marsh disagree. Section 2259 requires that a court order a defendant convicted of any sex offense in chapter 110 of Title 18 of the U.S. Code to pay restitution to the victim. "Victim" is defined as "the individual harmed as a result of a commission of a crime under . . . chapter [110]." The government and the victim's advocates disagree about whether the possession offense must be the cause of the loss, and if so, whether "proximate cause" is the appropriate causation standard. The government and the victim's advocates seem to agree that causation of some type is required, but they part ways when attempting to resolve the difficult question of whether the causal connection between crime and harm must be "proximate cause" or merely a more generalized and perhaps broader causal link, such as "but for" cause.

The government and courts applying the statute have interpreted § 2259 to require proof that the crime proximately caused the harm before restitution

may be awarded. The victim's advocates accurately counter that there is no proximate cause requirement to be found in § 2259 except for the § 2259(3)(F) catch-all concerning "other losses suffered by the victim as a proximate result of the offense." Given the apparent absence of an unambiguous proximate cause requirement for the specific categories of losses, the victim's advocates suggest that Congress intended that courts assume that possession offenses satisfy the § 2259 "cause" requirement because possession offenses fall within chapter 110 and the victims are indisputably injured.

The phrase "proximate cause" first entered the restitution idiom in 1996 when the MVRA added a definition of "victims" into 18 U.S.C. § 3663 and created 18 U.S.C. § 3663A, a new mandatory restitution statute. The predecessor restitution statute, 18 U.S.C. § 3579(a)(1) (1982), simply authorized a court to order "a defendant convicted of an offense" to "make restitution to any victim of such offense." The absence of a statutory causation standard caused a circuit split over whether a court could order restitution for losses beyond those related to the offense of conviction. In *Hughey v. United States*, 495 U.S. 411 (1990), the Supreme Court resolved this split by carefully analyzing the statute as a whole:

As the Government concedes, . . . a straightforward reading of the provisions indicates that the referent of "such offense" and "an offense" is the offense of conviction. Given that the ordinary meaning of "restitution" is

restoring someone to a position he occupied before a particular event, *see, e.g.*, Webster's Third New International Dictionary 1936 (1986); Black's Law Dictionary 1180 (5th ed.1979), the repeated focus in § 3579 on the offense of which the defendant was convicted suggests strongly that restitution as authorized by the statute is intended to compensate victims only for losses caused by the conduct underlying the offense of conviction.

Id. at 416. The Court thereby confined losses compensable by restitution under the VWPA to those caused by the offense of conviction.⁷

Reading § 2259 with the same rigor that the Supreme Court applied in *Hughey* yields the conclusion that offenders who commit a chapter 110 offense are subject to the mandatory restitution provision only if the losses are “a proximate result of the

⁷ The pre-*Hughey* and pre-MVRA “scheme” provision in 18 U.S.C. § 3663(a)(2) was unchanged by the MVRA and continued to provide for broader restitution exposure with respect to offenders convicted of any type of scheme offense: “in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, [the court may order the defendant to pay restitution to] any person directly harmed by the defendant’s criminal conduct in the course of the scheme, conspiracy, or pattern.” Attempts by the victim’s counsel to rely upon § 3663(a)(2) “scheme” cases as support for expansive awards under § 2259 should be rejected. Uncharged crimes committed in furtherance of a scheme offense of conviction are a component of the scheme causing compensable harm. The offense of possessing pornography in 2008 is not a component of someone else’s unrelated scheme to distribute it in 1998.

offense” of conviction. 18 U.S.C. § 2259(b)(3)(F). Section 2259(b)(1) requires that the “order of restitution under this section [] direct the defendant to pay the victim . . . the full amount of the victim’s losses.” Section 2259(b)(3)(F) defines the phrase “full amount of the victim’s losses” as including several specific categories of loss such as attorney’s fees and psychological care. The list of specific items concludes by requiring compensation for “any other losses *suffered by the victim as a proximate result of the offense.*” *Id.* § 2259(b)(3)(F) (emphasis added). The subsection (b)(3)(F) catch-all category of loss is expressed as conjunctive with the preceding specific items of loss, and it contains the only reference to a standard of causation in § 2259 – “proximate cause of the offense.”

The victim’s advocates contend that the subsection (b)(3)(F) proximate cause requirement was designed to apply only to “any other losses.” They allege that Congress intended that the wide variety of specific losses mentioned in subsections (b)(3)(A) through (E) should be viewed as lacking a proximate cause requirement. Under this anomalous interpretation, restitution would be required whenever an offender committed a chapter 110 possession offense, notwithstanding that the victim’s injury might have been caused exclusively by the offender who originally exploited the victim and distributed her image. The conjunctive structure of § 2259(b)(3) and the interpretive requirement of reading the statute in its entirety that the Court imposed in *Hughey*, however, reveals that the § 2259(b)(3)(F) phrase “suffered by the victim

as a proximate result of the offense” should apply to all the specific items of recovery in § 2259(b)(3)(A) through (E) as well as the catch-all “any other losses” mentioned in § 2259(b)(3)(F). As the government noted at page 4 of its brief, courts generally recognize that § 2259 requires a causal connection between the offense of conviction and the victim’s harm, and that causal standard is almost always characterized as “proximate cause.” See *United States v. Doe*, 488 F.3d 1154, 1160 (9th Cir. 2007) (invoking proximate cause standard recognized in *United States v. Laney*, 189 F.3d 954 (9th Cir. 1999), but holding that §2259 losses do not have to be established with “mathematical precision”); *Laney*, 189 F.3d at 965 (“Section 2259 . . . incorporates a requirement of proximate causation.”); *United States v. Crandon*, 173 F.3d 122, 126 (3d Cir. 1999) (affirming award of restitution under a proximate cause standard); *United States v. Searle*, No. 02-1271, 2003 WL 21025, *2 (2d Cir. May 2, 2003) (“Because the children’s father ceased to care for them shortly after discovering the pornographic videotape involving his son . . . , the district court reasonably concluded that the defendant’s actions proximately caused the children’s loss of their home and father.”); *United States v. Raplinger*, No. 05-CR-49, 2007 WL 3285802 (N.D. Iowa Oct. 9, 2007) (“The statute is broadly worded: any loss suffered by a crime victim as a proximate result of the offenses of conviction qualifies.”).

The victim’s advocates respond to this uniform adverse case law construing a relatively lucid

statutory proximate cause requirement with an emotional appeal: “Clearly Congress wanted sentencing courts to side with the victims of child pornography – not their victimizers.” Brief of National Crime Victim Law Institute, The National Center for Victims of Crime, and the Victim Rights Law Center, at 22. A fair reading of § 2259, however, establishes that it, like other restitution statutes, contains a proximate cause requirement. Section 2259 is more favorable to victims of chapter 110 offenses than other restitution statutes in that it authorizes compensation for a broader array of losses in § 2259(b)(3) than is usually allowed. Nonetheless, the statute’s causation requirement likely precludes its application to possession offenses. This conclusion is borne out by the government’s refusal to endorse Mr. Marsh’s restitution requests in cases involving mere possession. Restitution under § 2259 would be possible in possession cases that also include conviction on a distribution count, because the *redistribution* of pornography could cause additional harm. There is no indication in the statute or its legislative history, however, that Congress intended that sentencing judges do more than dispense justice impartially by ordering restitution to the extent authorized by statute. Repugnant as child pornography possession offenses are, the only appropriate judicial role is to apply § 2259 evenhandedly.

I hope this discussion responds to your concerns.
Please contact me if you have any further questions.

Sincerely,

/s/ Joe Gergits

Joe Gergits

Assistant General Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

UNITED STATES) DOCKET NO. 6:08cr61
OF AMERICA)
) Tyler, Texas
-vs-) 10:00 a.m.
) August 20, 2009
DOYLE RANDALL)
PAROLINE)

TRANSCRIPT OF RESTITUTION HEARING
BEFORE THE HONORABLE LEONARD DAVIS,
UNITED STATES DISTRICT JUDGE

APPEARANCES

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Proceedings taken by Machine Stenotype; transcript was produced by a Computer.

* * *

[12] MR. FILES: It is not only the information, but it is the not being able to furnish the effective assistance of counsel by being limited as to whom I could associate with and have help me in this preparation and trial of the case.

THE COURT: Well, have you visited with him about that?

MR. FILES: No, Your Honor, we have not.

THE COURT: Visit with him about that, tell him who you want to share it with, and see if you can work out an agreement.

MR. FILES: All right.

THE COURT: Okay. Mr. Baldwin, you may proceed with your opening statement.

MR. BALDWIN: First of all, I would like to summarize the undisputed facts, and I am sure Counsel will object if I misstate the facts. The facts are set forth in the Pre-sentence Report dated February 18th, 2009. That includes the offense conduct. Also, there was a Plea Agreement which attaches a factual resume. Both of those documents are on file under seal and represent evidence in this particular situation.

It is undisputed, I believe, that of the approximately 300 photographs that the defendant possessed, child porn photographs, two were of the victim Amy. There is [13] no indication that the defendant was file-sharing. He was merely receiving these photos from downloads on the Internet and possessing them.

During his plea and through the Plea Agreement, the defendant received the notice of the penalty of restitution as part of the sentencing penalty in this case. That is in the Plea Agreement at Paragraph 3(e); and it indicated that the defendant would be responsible for restitution to victims, which may be mandatory and which may include restitution arising from all relevant conduct, not limited to that arising from the conduct of conviction alone.

Also on file and a part of the record and we would submit and have submitted and relied upon as evidence, is the victim's request for restitution in the amount of approximately \$3.4 million. It includes the victim's attorney's brief and the request itself; the

victim's impact statement, which I read at sentencing and is part of the record; it also includes a report of a psychologist who consulted the victim on several occasions in 2008, conducted interviews – that psychologist was Joyanna Silberg, PhD. Her resume is on file as well – who indicates the value of the future treatment necessary as \$512,681.

There is also a submission regarding a financial and economic loss and an assessment and evaluation of that by Stan Smith, PhD, of Smith Economics Group, indicating that future [14] wages lost are in the amount of \$2,855,173. Mr. Marsh also requests expert witness fees of \$15,550, as well as attorney's fees. And at Page 14 of the request for restitution, Mr. Marsh indicates that the total amount of restitution is \$3,408,404. And I believe he is also asking for attorney's fees as well.

He is here today and is prepared to, it is my understanding, explain any – or answer any questions that the Court would have regarding those submissions, but we would rely on those as evidence, as well as the evidence in the Pre-sentence Report and in the Plea Agreement as well.

Now, obviously, the restitution is governed by 18 USC, Section 2259, which is a mandatory restitution requirement to the victim by the defendant. And the language there says, "The restitution shall be the full amount of the victim's losses as determined by the Court." 2259 directs that any restitution order entered by this Court be issued and enforced in the

manner set forth in Title 18, United States Code, Section 3664.

And the rules set forth in 3664 are the only rules that apply to this hearing. Hearsay is admissible, and I would submit that the Government has the burden of proving by a preponderance of the evidence that Amy has been damaged.

* * *

[16] MR. BALDWIN: Then in Ashcroft in 2002, which we have submitted, that is the Supreme Court case – the Supreme Court concluded in citing Ferber that these types of photos of Amy are a permanent record of her abuse; and that when each new publication occurs, the injury follows it. So there is a new injury with each publication of these photographs.

Now I go back to the 1998 case of Norris, which is a Fifth Circuit case. It was addressing the issue of grouping within a Guidelines analysis, but the rationale is very powerful. The case makes it clear that Amy is a victim, and there is some specific language in Norris that is very powerful and I believe applies directly to this hearing. That case says that, “The consumer who merely or passively receives or possesses child pornography directly contributes to the continuing victimization.” They go on to say that, “The consumer of child pornography instigates the original production and that consumers of child pornography, therefore, victimize the children depicted, supporting the continued production, which entails direct abuse and victimization of the subject.”

So, in effect, Amy is a victim of Paroline's conduct. It is a part of her continuing victimization that Paroline participated in. Norris says that the victimization flows just as directly from the crime of receiving, which he [17] received these photographs from the Internet, as it does from producing or distributing. It is a very powerful rationale that they use as it relates to this type of criminal activity, which is unique in that sense.

I know that Mr. Bales, the U.S. Attorney, is here; and we were discussing this case. And we believe that in a sense when Mr. Paroline downloaded these photographs, he stepped into the room of the abuse of Amy. It is the nature of our digital age and the Internet in a virtual world is that Mr. Paroline goes right into the room of the abuse and is a participant. And I believe Norris backs up that analysis.

So if we were to apply proximate cause, we would have to say through this analysis and through Norris, that Mr. Paroline was there when it occurred. Following that analysis, one has to conclude that Amy is a victim. Then we look to see what the damages are. She has proven the damages, and under the Norris analysis it appears that Mr. Paroline stepped in the shoes of the producer from the very beginning.

Looking at 2259 it appears that Congress is saying to Mr. Paroline you are now responsible for the entire amount of the damages that can be proven.

Now, what is the evidence that is before this Court? I submit when you take the submission by Mr.

Marsh and you put with it the victim impact statement, which is incredibly powerful, it explains what she has gone through, [18] the impact on her life, the fact that she wanted to go to college, she wanted to be a teacher, but she could not do that. She tried. And you consider what her lost income is – would have been in the future and the damages that she has been exposed to are the victimization that she has endured.

It is clear that there is a sufficient indicia of reliability with that impact statement and the other submissions for this Court to consider. Once this Court considers that, I believe it proves by a preponderance of the evidence that she has been damaged in that amount because there is no other indication that she has been damaged any less. And I think common sense explains to us that clearly she has been damaged severely. Once that occurs, I think this Court has to enter an order for the full amount of the restitution.

I am not – it is a difficult area to grasp. I think a lot of other courts are struggling with the issue of specific conduct and causation related to what the value of that causation is to damages, but you cannot get there if you try to calculate the possession of two photographs as it may relate to damages that occurred at the time of that possession. But if you look at Norris, Norris says, wait a minute, if you step into that room, you go back in time to the original damage and you accept the entire amount. That is what I believe is governing this particular hearing.

* * *

THE COURT: Thank you. I interrupted you. Go ahead.

MR. MARSH: So the victim's parents in this case were receiving notices. And at that point in time they didn't know what they were or what significance they had; and they were seeking the assistance of an attorney to help them, primarily at that point take charge of these notices and become the point of contact because they were literally overwhelmed with hundreds and hundreds of notices. At that point in time they did not want to take any specific action with regard to the notices. That was in 2006.

In 2007 Amy turned 18 and at that point in time contacted my office directly to discuss, again, the notices and what the notices meant and, again, provide some legal advice regarding those notices. One of our first and primary goals from our work with federal law enforcement was to provide a victim impact statement for use at sentencing. I was not familiar at that point in time with restitution, and I wasn't even thinking about restitution. This was in 2007 and 2008.

And at that point in time we wanted to find a forensic psychologist to assist us, not only in evaluating our [33] client, but also for the creation of a victim impact statement. And I interviewed a variety of professionals and settled on Dr. Silberg. And one of my charges for her was to create a victim impact statement. I didn't provide any context – well, other than that it would be used at criminal sentencing.

I didn't provide any guidelines. I didn't provide any samples. I merely said, is this something that you can sit down with a victim to help create?

I did not want it to be written by an attorney. I did not want it to be viewed as a litigation document or a legal advocacy document or an affidavit even that the attorney created. I wanted to rely solely on the expert in this case and the victim to create that statement for aid in sentencing. So that was one of the first charges of Dr. Silberg.

The second charge was then to produce a report outlining the damages for my victim/client and to provide some context for those damages. Again, I didn't engage in any drafts or revisions or clarifications with her. Knowing full well that these materials would be viewed as litigation documents, I wanted to allow her to proceed as a professional with regards to both of those documents without, if you will, the coaching of a lawyer.

So the documents that she produced, both her report and the victim impact statement are the documents that the [34] Court has today. With one exception, in the victim impact statement I reviewed it with my client and changed one part of the document which she said wasn't true, so we just omitted a sentence. But, otherwise – I put out a piece of paper but, otherwise, I didn't aid in the creation of that document.

THE COURT: By the victim impact statement, that is what has been filed with the Court and

was read at the sentencing, the victim impact statement of Amy the victim in the Misty Series –

MR. MARSH: That's correct, Your Honor.

THE COURT: – which is about three pages in length. It does not mention any restitution amounts. It just speaks of the impact that her abuse and the sharing of pornographic photographs of her as a minor has had on her.

MR. MARSH: That is correct, Your Honor. I put it on that piece of paper, but I did not – other than deleting one sentence – contribute to the context. I, of course, submitted it in this case and in several other cases.

THE COURT: Okay.

MR. MARSH: That was in 2008, Your Honor, that that was completed and delivered to the U.S. Attorneys in the Office of the Child Exploitation and Obscenity Section of the U.S. Attorney's office in Austin. And they have a system of distributing those in cases throughout the country. They have a couple of different ways of distributing them. But what we [35] eventually settled upon is that we would distribute them as part of our submissions, although I think it is important for the Court to note that in cases in which we, for whatever reason, do not or cannot or are unaware of cases that the U.S. Attorneys are responsible for accessing those victim impact statements and submitting them even if we didn't want them submitted because they are victim impact statements.

THE COURT: If I understand you correctly, the victim impact statement was written by Amy without your help other than taking out one sentence?

MR. MARSH: Yes, Your Honor. She wrote it in conjunction with Dr. Silberg. Dr. Silberg is more capable of addressing the format of how it was created. But what I can tell you is that it was created – Dr. Silberg drafted it based on notes that she took during the, I believe it was four interviews with Amy. It was reduced to writing and reviewed by the client; and with the exception of that one sentence, was approved by her as her statement. So that was how it was created.

THE COURT: So Dr. Silberg actually wrote the statement based upon what Amy had told her?

MR. MARSH: Correct. And those are the notes that – I wouldn't even call it a dispute – that we have some concerns about in terms of their wide distribution with the defendant.

* * *

[45] In April and May we began sending out restitution requests in cases that were nearing sentencing, and the Court I know has some numbers – and this has become a big issue in subsequent cases, but what I can tell you is we have now to date submitted 250 requests for restitution. And I dare say it involves probably every district in the country at this point.

What we are discovering – just to digress briefly because I believe that this is important and this is one, perhaps, heart of the analysis that the Court wants to take into account – we are discovering that in the vast majority of these cases that the defendants are indigent and that they have no assets at all. Some of them have negative net worth. Some of them have very little net worth. But the vast majority of these individuals are indigent, meaning that they have publicly-appointed counsel and the PSI indicates that they have no ability to pay a fine.

THE COURT: Which is not uncommon in any criminal – I'd say in the majority of criminal cases that we see; and in those cases normally if restitution is involved, be it from bank fraud or whatever, the amount is entered and then the restitution is, as I recall, usually set at 10 percent of the defendant's gross earnings while under supervised release. And we can get into that later, perhaps; but then after supervised release is over – and I think –

[46] Actually isn't a portion taken out while they are in prison for restitution or not, Mr. Wells or Mr. Thomas?

MR. THOMAS: Yes, sir, there is a small amount taken out in prison.

THE COURT: What they earn in prison is taken out that is applied toward that; and when they come out on supervised release, an indigent defendant would be required to pay 10 percent of

their earnings, gross earnings toward that restitution order.

While they are under supervised release, right?

MR. WELLS: Well, that is at a minimum, Your Honor.

THE COURT: Excuse me?

MR. WELLS: That is at a minimum.

THE COURT: At a minimum. Then after supervised release then the restitution section would continue to pursue, as long as viable, an agreement for them to pay a portion of their earnings toward the restitution amount.

Is that right?

MR. WELLS: That is correct, Your Honor.

THE COURT: All right. Thank you.

Go ahead, Mr. Marsh.

MR. MARSH: Yes, thank you for that clarification. Because, you know, it is an issue; and as Professor Cassell points out, you know, as the Court recognizes we aren't seeking anything beyond the amounts in our request. And we [47] fully believe and fully hope at some level that once we max out with that amount, that we will be in effect done with restitution in terms of –

THE COURT: That amount is all across the board now, isn't it? Isn't it somewhat of a – I know

what you have asked for, and some courts have granted almost that much and some have granted nothing and some have granted lesser amounts.

MR. MARSH: Well, we view the amounts that we have proposed as global amounts from all sources. So, again, another issue for this Court to struggle with – and I will say that many courts throughout the country are waiting for this Court's decision. I have a lot of cases being delayed until like October or November because I think they are waiting on this Court to make a determination.

But, you know, we view our request for restitution as a global request. And without being disingenuous or disrespectful, we don't care how that pot gets filled. Once we get the 3.3 or 3.5 from all these defendants, whether it is \$10,000 or \$50,000 – I will get to the very interesting fact in a second of the amounts – we are going to be done with restitution. We have got our request. You know, we don't view – one defense attorney said, Mr. Marsh, you have got 250 requests, three million dollars, that's a billion dollars you want. We are not looking for a billion dollars. We are [48] looking for the 3.3. And if we get really courageous we are going to go into Hedonic Damages, but we are not looking to go beyond that maximum from all sources.

Then, as the Court I think recognizes, it does in some ways become an apportionment issue, an apportionment not only by and between the defendants but also by and between future defendants. But let me

provide some more facts to the Court so we can grapple with this in some more concrete terms.

So that was where we were in June of this year. And in June of this year we were beginning to get some feedback from AUSAs, this is Assistant United States Attorneys throughout the country, about possible cases that might be worth pursuing. And, to be honest with the Court in all honesty, we have not wanted to waste the time or resources of the Federal Government and the U.S. court system, which I know is one of the issues for this Court.

So as a practical matter and as a policy in our office where individual defendants are shown to be indigent, we have been withdrawing requests and not pursuing restitution in those cases, at least initially because there is already enough issues to deal with just on the baseline issues. So in approximately, you know, 80 percent of the cases, we are withdrawing.

* * *

[60] MR. MARSH: Let's put it that way. I want it –

* * *

MR. MARSH: Your Honor, the only issue – and, again, I think the proximate cause issue Your Honor is fully aware of and engaged with. It is a matter of statutory interpretation. We have stated our position. I have adopted the position of Professor Cassell in his brief on the issue. The courts are struggling with the proximate cause issue. I don't –

and Mr. Baldwin states in one of his footnotes, 13, that it is nonsensical. I respectfully disagree with it. Certainly Congress could find that the set of enumerated losses are a baseline and anything else you wanted to get, you have to prove some more.

You know, as remedial legislation if my client came and said, you know, I found out I was a victim of child of pornography, you know, and a week later I broke my leg, I want you to pay for my broken leg, maybe we would have to provide something more. Is the broken leg related to the injury of [61] child pornography – caused by child pornography? Is there any proximate cause between the broken leg and the possession? But, clearly, I don't think that it is necessarily nonsensical for Congress to provide a baseline of recognizable and enumerated losses with the provision that if you want more, if you want something different or unique – and perhaps our claim for Hedonic Damages – without conceding the issue – would be that, then clearly you need to provide the Court with something more to base it on.

THE COURT: So you are saying if you are a victim of child pornography, then the enumerated (a) through (e) in 2259, medical services relating to physical, psychiatric, or psychological care; physical and occupational therapy or rehabilitation; necessary transportation; temporary housing; childcare expenses; loss income; and attorney's fees as well as other costs incurred, that those are not subject to a proximate cause test relating to this defendant but all defendants that have, as Mr. Baldwin said, entered

the room are jointly and severally responsible for those; but if there is some other loss such as breaking the leg or something else, then under subparagraph (f) any other losses suffered by the victim as a proximate result of the offense, that is where the proximate cause would come in?

MR. MARSH: Yes, Your Honor. That is our position. And I think for all of the reasons that have been stated ad [62] nauseam in all of the papers that, you know, if you look at what the Supreme Court said, if you look at what the courts of appeals have said – and I am not talking specific – well, I am going to get to that in one second. If you look at the other statutory scheme, the MVRA, and the general restitution statute, they are all very specific in linking victimhood, if you will, victim's status to proximate cause. And this statute doesn't.

And what you see in the cases from the Supreme Court on down and in the Congressional language and in the statutory language is the use of the word "harm"; that the victim has to be harmed by a violation of Chapter 110. And, you know, Congress – and in their findings, if you will, Congress recognized there is a set of enumerated harms, that that based on all of the material that has been discussed so aptly by Mr. Baldwin and myself and everyone else in the papers, recognizes that there is a harm. There is a harm from this criminal activity.

I think what has been equally recognized and because the law characterizes this fundamentally or

at least primarily as a privacy tort, it is an invasion of the privacy of the victim and a revictimization. I liked what Mr. Baldwin said about, you know, the stranger in the room, because I think more accurately than anyone has been able to elucidate, he describes precisely the harm that Congress is trying to . . . [66] in which judges, police officers, politicians, lawyers, doctors, accountants, and the boy next door, all know her; but she doesn't know them. She can't know them. And that is the real nature of the harm in this case. And Dr. Silberg can talk more about that, and Dr. Cooper can speak more about that.

But if you look at the totality of the crime from start to finish and how my client has gotten to this point, she exists in a world – we just had one, the Staples case involved a law enforcement officer. He, in fact, was a court officer in the federal courthouse. He was trading in child pornography. So for my clients, in effect – and, again, I am not trying to testify, but I am just offering our perspective, there is no safe place for this girl in the world.

She doesn't know who has seen it, who is trading it, who is talking about it, who is laughing at her, who is comparing her to the pictures. It could be anyone. As the Court knows, I'm sure the Court has seen these defendants – I know because I have 800 of them – they are all kinds of people from everywhere; people that you could not imagine would engage in this activity.

THE COURT: You say you have 800 defendants that have been identified in the Amy Series?

MR. MARSH: Yes, I will explain where that number comes from, too, because that is a good point. We have 250 [67] requests that are pending. Those individuals are pre-sentencing or pending sentencing. And we are at the point now where when new defendants are identified, we generate requests so that as soon as we get notice that our client is a victim, we generate a request for restitution. That can take place anywhere in the case.

Unfortunately, a lot of times it only occurs right before sentencing because of the process that the Court recognized earlier involving the identification process. And it takes a while to go to the National Center and to come back and to issue the reports. And sometimes that takes place only prior to sentencing.

For the other – I don't know, what are we talking, 550 cases, probably half of those individuals have been sentenced. Again, my client started receiving notices in 2005, so these are from 2006 and 2007 and 2008 from individuals who have been sentenced. That makes up the bulk of those numbers. Those individuals are not, if you will, subject to restitution at this point.

Then we have a handful of individuals; military and other, Forest Service and state courts and then we have individuals that we just – we got one notice from them back in 2005 and never heard anything again. I have a law student coming in, and we are

going to go through every single case on ECF and pull down all of the relevant documents to find out . . . [71] those things work – and basically looking towards Congress’s intention in those cases to say, you cause any harm – because the standard in that case is actual harm caused by the violation – then it is \$150,000.

And, quite frankly, from the victim’s standpoint, this victim in this case’s standpoint, we have more than enough defendants from now until eternity to fill our three million dollar pot with \$150,000 awards. It is not going to be that way in every case. But in this case we have, perhaps, the fortunate or unfortunate scenario where I get one or two of these sometimes a day of new defendants. So we have plenty of time to fill that bucket of damages.

But then there is the point that Mr. Baldwin makes, which I think is worthy of dealing with because it may, in fact, have a constitutional dimension, which he so aptly points out, which is the amortization of damages and not making this defendant in effect liable for damages that pre-dated his offense because, again, we have presented a global, if you will, package of damages. And Dr. Smith has been very good – if you see all of the charts and tables and other materials that he submitted – of breaking down, of really amortizi – amortize – how do you say that word? Amortizing those losses – whatever – putting them down here and here and showing how they add up.

Dr. Smith is in China right now, but I called him [72] when I got Mr. Baldwin’s brief and I said, you

know, what is this? This is crazy. How are we ever going to figure this out and break all this stuff down? I don't know that he read it or understood it either, but clearly he would be helpful to the Court in addressing that specific issue in terms of the ability to sort of amortize these costs over a lifetime, which is what in effect he has done.

In appreciating the constitutional dimension, you know, that may be something that the Court needs to consider in terms of – and even part and parcel of the due process –

THE COURT: I'm not sure I fully understand the amortization. Perhaps Mr. Baldwin or you can explain that.

MR. MARSH: I think what Mr. Baldwin – he is certainly capable of speaking to the issues. What he is saying is we have a global number – and let's just use three million dollars for simplicity – for January 1st, 2009, which I believe is the date that Dr. Smith bases his numbers on, up through her lifetime, therapy included, and a reduction in wages because I think it is important for the Court to realize that we are not claiming full lost income; that there is an offset.

THE COURT: Let me be sure I understand. In your expert's analysis, are they seeking damages prior to January 1, 2009, past damages?

MR. MARSH: No, not at this point because she was a [73] minor, and we didn't view her as being in the work force prior to.

THE COURT: You are talking about economic damages? What about counseling –

MR. MARSH: I am talking about both economic and counseling. We were projecting those for –

THE COURT: Just prospectively?

MR. MARSH: Prospective, yes, Your Honor.

THE COURT: Okay.

MR. MARSH: All of the nature of our request is prospective.

THE COURT: All right. What about the amortization?

MR. MARSH: Yes, and so what Dr. Smith's – I sort of said I need some sort of – I don't know, this thing popped in my head, I need a forensic economist and I Googled him and he came up and I said I needed someone to break down all these damages because I want to present the Court with – it is not me talking or adding, I want somebody to add these things up and put some basis to them so we can present them to the Court in an expert way, so that is what Dr. Smith did.

His methodology, which he describes in his report but I will just review briefly with the Court, is that in terms of future therapy expenses he consulted with

Dr. Silberg, he reviewed the numbers that she provided for the cost of therapy, and then he factored in, you know, whatever [74] economists do; cost-of-living, increases in the costs of therapy. And he plugged all this data into a spreadsheet and then showed how these costs accumulate yearly over her lifetime. So there is a breakdown already for those costs.

In terms of lost income, he did the same thing. But – and this is an important “but” – he did not claim complete incapacity in her ability to work. There is an offset. And I believe he credited her – or in effect the defendant – with the ability to work 15 hours a week at a minimum wage. So we are not claiming, if you will, that she is, you know, an invalid in a wheelchair unable to do any work. What we are claiming is that there is a reduced capacity to work based on, you know, the crime, the Chapter 110 violations that she has experienced.

She is not going to become a school teacher. And let me just, again, digress briefly to inform the Court on how this information was arrived at because I was part of this discussion, and I have testified about this specific issue.

Dr. Smith interviewed Dr. Cooper – excuse me, Dr. Silberg, got the numbers about therapy, plugged those into his charts, and arrived at a number. Dr. Smith then interviewed me and got some background on the victim and her family in terms of vocational ability and history. And, again, he talks about these

in his reports, but I will briefly summarize what was important to him.

[75] He asked what – you know, whether her parents were employed, whether they had any educational background, whether they had any degrees or certifications. And, in fact, her father is a licensed plumber and an electrician. Her mother is a registered nurse. Her brother has also completed a trades course. I believe he is an electrician or a licensed plumber. And my client was enrolled and engaged in college as a freshman. And her stated vocational desire was to be a nurse – excuse me, was to be a school teacher or a psychologist.

And when we were discussing those vocational goals, Dr. Smith's assistant looked at the chart, Bureau of Labor chart for school teacher and he looked at the Bureau of Labor chart for the average woman in the U.S. work force and found that those numbers were pretty much the same; those income levels were the same. So I said take the lesser of the two and we will base it on that. So what you are seeing there, the vocational, the basis for the lost income, is really based on not, you know, a lawyer or a doctor or a psychologist or anything like that; but the average woman working in the U.S. labor force. So that is those amounts as a baseline.

And then we discounted it. We offset it based on my client's ability, whether she does or not, to work at a minimum wage job 15 hours a week.

THE COURT: What support is there in the record that [76] that is all she could work?

MR. MARSH: I believe he based that on his discussion with Dr. Silberg, and she has actually testified about this – not that I have heard her testimony, but I know she has testified about this. She would be more appropriate to address that issue, as she did in the two Florida cases. But just, you know, we are being conservative, and we are not presenting a case to the Court saying our client is never going to work, she is an invalid, it is impossible, she is a vegetable. We are saying, you know, she was on this road.

She is derailed, and all she can do is 15 hours a week. Again, Dr. Silberg would be more appropriate to address that particular question. But it is just important for the Court to know that we are not alleging or arguing for total disability in that respect.

And what Mr. Baldwin then says is, well, you know, if she couldn't work let's say – where are we now, 2010. Let's say we are in 2010. Let's just forward it a year. And my numbers are based on 2009 and the defendant didn't get arrested until 2010, what Mr. Baldwin is saying should he be liable for my client's losses quote, unquote in 2009, which has occurred before his criminal activity? In other words, breaking it down even further let's say that her loss package of lost income and psychological damages, lost therapy was 10,000 – let's say \$10,000 a year for the next –

[77] THE COURT: So, in other words, you are saying under this approximation there would be a sliding scale based upon when the guilty plea occurred or based upon when the evidence shows that the violation first occurred?

MR. MARSH: I believe that is his concern, and I think it is a legitimate concern from a constitutional standpoint.

THE COURT: Okay.

MR. MARSH: So I don't know where that leaves us, but clearly these are the issues that the Court needs to grapple with.

THE COURT: And those are – the three that you have mentioned, joint and several, the Masha's – applying the copyright type \$150,000, and then the amortization?

MR. MARSH: That's correct, Your Honor. And when I brought this up to Dr. Smith he is like, well, each defendant is like a cancer cell, this is a life plan, it is a global amount, they should all be liable for everything; but clearly with all his charts and tables, he would be the sort of person who does that type of analysis to address that specific concern to the Court. Is it utilized? It is useful? Has he done it in other cases? How would it be done? You know, what would be the mechanism, et cetera, et cetera.

* * *

[81] THE COURT: Well, in some cases through whatever means – your client Amy had the ability to hire very competent forensic psychologists and economists, but I have two other cases here involving four minors who don't have that ability and where are they left if there is not some vehicle to provide? Should they just not have their day in court?

MR. MARSH: No. Absolutely, Your Honor, they should. And, you know, I think this is an interesting question for the national amicus organizations to address. You know, as a gut reaction there is money out there. There is state crime victims funds that are used to provide this. I know a lot is made of the \$6,000, you know, paid by the uncle in this case. The reality of that is that that money was used by the Government to hire a forensic – she wasn't a forensic psychologist. She was a counselor – to help in the sentencing. So that was sort of a time-limited, you know, counseling that was coordinated by the U.S. Attorney's Office there in Pennsylvania. So the restitution in that case was sort of used to provide that information to the Court.

* * *

[85] . . . know, several dozen identified victims. There weren't that many. So I was thinking there were 10, 15, 20 identified victims. Now, the National Center, who is the most accurate source of this information, has provided the first definitive numbers that I have seen about the number of 2,000 identified victims. Obviously not all of them will be in every case.

So that is – and the vast majority from my research into this issue is that the vast majority of those victims are minors, so they have yet to reach their 18th birthday. I know of a couple other victims that have reached majority, that have turned 18. But my sense is that the vast majority of those victims, the 80 percent of the 2000 that are in this country are minors. And in my discussions with the Justice Department and other sources, the vast majority of those victims, of the 80 percent of the 2000 that have been identified, many of them have opted out of even receiving notices because – well, I don't know why. But for whatever reason, the vast majority of them – you can opt out of the victim notification system. So you can say don't send me anything –

THE COURT: You get tired of getting the letters, bring the memories back up?

MR. MARSH: Right. And I have heard talks of mothers having filing cabinets in the basement that they throw these things into, and they pile up.

If there are other economic aspects of this case that you wish for me to examine, I will be pleased to work with you concerning such matters. Thank you for the opportunity to work with you on this case. I look forward to working with you in the future as we approach the date of the trial.

Yours sincerely,

/s/ Kent Gilbreath
Kent Gilbreath, Ph. D.

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**NARRATIVE OF ECONOMIC ANALYSIS
RE: "AMY"**

PREPARED BY DR. KENT GILBREATH

NARRATIVE OF THE REPORT

Re: In the United States District Court for
the Eastern District of Texas, Tyler Division;
United States of America vs. Doyle Randall Paroline;
Case No. 6:08-CR-61

My Assignment in This Case

The purpose of this report is to assess the pecuniary value of "Amy's" past and future potential earning capacity. I have also been asked to discuss the role of economics in estimating and assessing potential "hedonic damages" (a.k.a. "value of life" damages.)

My Qualifications

My qualifications to serve as a forensic economist/ expert witness in this case may be seen in my resume, which is attached as “Appendix C” to my report. However, as a brief summary of my background, some of the important elements of my qualifications include:

1. Education: Ph. D. in Economics from the University of Florida, 1971, GPA: 4.0.
MA in Economics from Baylor University, 1968, GPA: 4.0
BA in Economics from Baylor University, 1967, GPA: 3.75
2. Professor of Economics, Baylor University for the past 35 years. Teaching economic theory, economic history, energy economics, and environmental economics. The methodology and principles used in this report are used and taught in these classes.
3. Member of the Board of Directors of the Federal Reserve Bank of Dallas for seven years where I helped formulate monetary policy for the United States and to oversee the practices of banks and other financial institutions in the Southwest.
4. Appointed by the Chief Justice of the Texas Supreme Court to serve on the *Citizens’ Commission on the Texas Judicial System*, which sought to develop Texas court reform proposals for the consideration of the Texas State Legislature.

5. Served as a practicing forensic economist for both plaintiff and defense for the past 30 years – working on hundreds of cases as an expert witness using the methodologies employed in this report. (Appendix D to this report lists the “style” of the cases for which I have testified at trial or given depositions during the past six years.)
6. Charter member of the National Association of Forensic Economists.
7. Peer reviewer (past &/or present) for the three leading journals in forensic economics: the *Journal of Forensic Economics*; the *Journal of Legal Economics*; and the *Litigation Economics Review*.
8. Member of the Board of Editors: *Journal of Legal Economics*.

Documents Reviewed

In preparing this report, I have reviewed numerous documents related to this case and have consulted source materials of data generally accepted and normally relied upon by economists for both forensic and non-forensic research purposes – including analyzing employment, earnings, interest rates, inflation rates, consumption patterns, and other activities customarily performed by professional economists. The case specific materials I have reviewed are:

1. May 1, 2009 Protective Order letter from James R. Marsh

2. Victim Impact Statement of Amy
3. Childhood Recovery Resources by Joyanna Silberg
4. Order on Defendant's Motion for Evidentiary Materials by Judge Leonard Davis
5. Stan Smith letter contain his "intake" form and retainer information
6. Stan Smith's letter dated August 15, 2008 containing his economic analysis in this case.

A list of other statistical sources I have reviewed and used in this report and their relevant citations are contained in Appendix A, the summary section of my report entitled: "Assumptions and Statistical Sources." Additionally, throughout this narrative of the report, I have identified the sources of data and information I have relied upon in formulating each of my opinions concerning the economic damages in this case.

Economic Analysis: Assumptions and Methodology

The economic analysis contained in this report is consistent with current practices in the field of forensic economics, and the methodology employed in the report has been used and accepted in court cases participated in by this author for the past 31 years. I have taught these methodologies in various classes at Baylor University, and they are used by me and other economists in non-forensic economic research. It is my opinion that the conclusions contained in the report reflect reasonable economic probability.

This report employs various economic information and assumptions in order to determine the value of lost potential income and benefits. These assumptions are discussed in detail below and source materials are contained in Appendix B.

Review of Assumptions in the Report

I. Life Expectancy:

- A. At the time of the preparation of this report (2009), the average life expectancy of individuals with Amy's demographic profile and age (20years old) is 60 years.¹
- B. The life expectancy and the "worklife" expectancy of Amy are important variables used in measuring the scope of economic damages in this case.
- C. Knowing Amy's life expectancy is necessary in measuring:
 1. The present value of her lost potential income and benefits

¹ *United States Life Tables, 2004*; Department of Health and Centers for Disease Control and Prevention, National Center for Health Statistics, Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics System, Volume 53, Number 6, November 10, 2005. Convenient access to this source for life expectancy is found at the website:

http://www.cdc.gov/nchs/data/nvsr/nvsr56/nvsr56_09.pdf

A copy of the life expectancy table used in this report is attached in Appendix B.

II. Worklife Expectancy:

The worklife expectancy assumptions used concerning Amy are based on the two earnings capacity scenarios examined in this report. The first scenario is based on the assumption that Amy would have graduated from college and would have become an elementary school teacher. The second scenario is based on the knowledge that Amy is a high school graduate with one year of college. In these two scenarios the average worklife expectancies are: 1) as a college graduate beginning work at age 22, she would have had an average worklife expectancy of:

35 years²

And as a high school graduate with one year of college beginning work at age 20, she would have an average worklife expectancy of:

35 years

² *Worklife Estimates: Effects of Race and Education*, U.S. Department of Labor: Bureau of Labor Statistics, February 1986, Bulletin 2254; *Worklife Estimates: Effects of Race and Education*, U.S. Department of Labor: Bureau of Labor Statistics, February 1986, Bulletin 2254; Kurt V. Krueger: Tables of Inter-year Labor Force Status of the U.S. Population (1998-2004) to Operate the Markov Model of Worklife Expectancy, *Journal of Forensic Economics*, pp. 313-381, December, 2005. Gary Skoog and Ryan E. Ciecka: The Markov (Increment-Decrement) Model of Labor Force Activity: Extended Tables of Central Tendency, Variation, and Probability Intervals, *Journal of Legal Economics*, pp. 2387 Spring/Summer 2001. A copy of the worklife expectancy table used in this report is attached in Appendix B.

- A. Knowing Amy's worklife expectancy is necessary in measuring the present value of her future potential income and benefits.
- B. In light of the multiple elements of loss related to lost income and benefits, the worklife expectancy of an individual is often more critical to the measurement of economic loss than is life expectancy
- C. The Federal government has prepared worklife expectancy tables broken down on the basis of age, sex, race, and education.
 - 1. These worklife expectancy tables are published in:
 - 2. More recent studies of worklife expectancy have been published in the professional journals of the economics profession. The more recent studies do not show substantial changes in the worklife expectancy of men since the BLS 1986 study. However, due to significant social changes in recent years, there has been a substantial increase in the worklife expectancy of women in the United States.

III. Income Growth Rate:

- A. Sources of increase in income:
 - 1. When projecting wage increases into the future, it is important to understand the American labor market and the bases for rising money wages in the

U.S. economy – increases that are well documented by historical evidence.³

- a. Historical data indicates that workers at all levels have experienced growth in earnings.
 - i. There are several explanations for this increase but the two main sources of income growth are:
 - Increases caused by inflation
 - Increases in worker productivity
 - ii. Other factors contributing to increases in wages include:
 - Seniority
 - Promotions
 - Collective bargaining power

B. Inflation and income growth:

1. Inflation is the main cause of increases in wages in recent history.

³ Average weekly earnings of production or nonsupervisory workers on private nonfarm payrolls by industry sector and selected industry; U.S. Dept. of Labor, Bureau of Labor Statistics; See <http://stats.bls.gov/webapps/legacy/cesbtab3.htm>. A copy of the income growth table used in this report is attached in Appendix B.

2. If inflation's impact on wages were not accounted for in this report, it would be as if an individual contracted to work the remainder of his or her life without any pay raises.
3. The average compound rate of growth in the consumer price index, 1970-2008⁴:

4.48%/Year

C. Productivity

1. In addition to increases in income caused by inflation, salaries and wages also rise because of increases in worker productivity
2. Productivity-based increases in wages result from a worker producing a growing quantity of goods or services
 - a. Productivity increases occur primarily because of improvements in technology, which increase workers' output.

⁴ Consumer Price Index, All Urban Consumers, U.S. City Average; U.S. Department Of Labor, Bureau of Labor Statistics, Washington, D.C. 20212; See: <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt>

In forecasting future trends based on historical data, it is important to use data from a relatively long time period. This applies to interest rates, inflation rates, productivity growth rates, individual earnings history, and other data used in analyses. A statistically significant national economic trend needs at least 15 years of data, and I prefer to use a minimum of 25-35 years of data whenever possible.

- b. Productivity growth of worker's may also come from increased experience
- c. To assume that wage growth would be zero in the absence of inflation is to assume that there would be no increases in worker productivity

D. Education

- 1. There is a high correlation between education and lifetime earnings.⁵
 - a. This suggests a relationship between education and productivity.
- 2. In addition to the higher income levels associated with higher levels of education, the higher the educational achievement of an individual the larger the number of potential job opportunities, which should positively affect lifetime earnings.

E. Statistical Cohorts and Income Growth

- 1. Economists need statistical information to make economic forecasts concerning an individual's income growth.
- 2. Two important factors determining future income growth are:
 - a. The individual's earnings history

⁵ "Money Income of Households, Families, and Persons in the United States".

- b. The earnings history of all individuals in the same or a similar industry
3. When individuals have little or no income history or their historical income growth is not a good indicator of their future income growth, it is often necessary to estimate their future earning capacity comparing to the relevant demographic, statistical groups into which they fall or could have been expected to fall.
 - a. To project the economic losses of an individual, he or she can be viewed as part of a group (statistical cohort) when classified by age, sex, race, education, occupation, and possibly other factors.
4. When one looks at an individual as a member of a large group of similar people, as mentioned above, data is available showing historical income growth rates of the group.⁶
 - a. The economist can use this data to estimate an individual's future income growth based upon the group characteristics applied to the individual.

⁶ Historical Statistics of the United States, Colonial Times to 1970; Statistical Abstract of the United States.

- b. This “statistical cohort” data is not gathered primarily for use in litigation, but for other important purposes like forecasting employment needs, studying wage trends, tracking labor force changes, and many other purposes.
- F. An income growth rate reflecting the average American wage growth rate in weekly wages for 1970-2008 was used in this report when analyzing the future earning capacity of Amy:

4.2%/yr.⁷

IV. Benefits

- A. In modern society, employment benefits are a substantial part of total employee compensation and must be addressed and measured carefully in any evaluation of economic loss. In this report, it is assumed that Amy would have received fringe benefits. The value of potential job-related benefits as a percentage of income used in this report is reflective of the benefits of an average American worker:

14.02%⁸

⁷ For source, see footnote three.

⁸ The table “Benefits as a Percentage of Income”, which shows average benefits rates in various industries 2007, is attached to this report in Exhibit B. This table is from the United States Department of Labor, Bureau of Labor Statistics, (Continued on following page)

V. Discounting and Discount Rates:

- A. Courts require that estimates of the future value of economic damages be discounted to their present value.
- B. Discounting to present value in this case refers to a mathematical procedure used to reduce future monetary losses to a dollar amount today, which, if invested will generate a flow of money in the future sufficient to restore the value of the lost income, benefits, and services of the individual.
- C. The discount rate used in determining the present value of future income for Amy is reflective of the current legal requirement that future potential losses incorporate the impact of income taxes on lost potential earnings. The discount rate used in this report is based on the average tax-free rate of return of AAA municipal bonds, 1970-2008:

6.16%⁹

Employer Cost for Employee Compensation-March, 2007. Also, see website: <http://www.bls.gov/news.release/pdf/ecec.pdf>

⁹ The table, "Municipal Bond Yields: AAA Moody Series, 1970-2008," is derived from *Interest Rates: Money and Capital Markets; Statistical Supplement to the Federal Reserve Bulletin; Federal Reserve*, Washington D.C. 20551. Also, see Federal Reserve System website: <http://www.federalreserve.gov/Pubs/supplement/2008/12/table1.35.htm>

D. Definition of discounting and present value:

1. Discounting to the present value is based on the proposition that a dollar to be received at some future date has a present value today of less than one dollar.
2. For example, would you rather have \$100 today or \$100 a year from today? Obviously, a dollar today is worth more than a dollar next year because interest can be earned on money received today. Failing to discount future economic losses would over-compensate a plaintiff because of the interest income earning capacity of a sum of money received today.
3. When discounting income and benefits to the present value, an amount is computed which, if invested, would allow a payout each year equal to the income, benefits, and services that were lost, and at the end of the normal life expectancy there would be a zero balance.
 - a. The initial payouts from a fund will consist of substantial interest and less principal, while the latter payouts will mostly be principal.
 - b. One's home mortgage payments work in a similar fashion.

E. Selecting a discount rate – the logic

1. In selecting a discount rate, it is important to remember that an individual has lost income earning capacity. In order to realize his or her full potential earnings and not be penalized, he or she must invest this money in such a way that it will yield a rate of return that will duplicate the projected lost potential earnings.
2. There is tradition among the courts that the discount rate should reflect the rate of return on assets that embody both safety of principle and safety of earnings. In this context, it is generally acceptable in litigation to assume that a recovering claimant would invest any recovered amounts in risk free instruments, such as U.S. government securities or high-grade municipal bonds.
3. Maximizing the rate of return or some other investment objective is secondary to insuring that income will be available in future years which can act as a substitute for the lost income.
 - a. In this context, an appropriate discount rate is a rate of interest, which could reasonably be expected from safe investments made by an ordinary person without financial experience or skill.

b. In the context of the above consideration, and taking into consideration the need to consider the tax implications of lost potential income, I have used AAA municipal bonds for determining an income and benefits discount rate in this report.

F. Selecting a discount rate – the time period

1. The *time period* used in selecting an average discount rate is important because small differences in discount rates can produce large differences in present value calculations.
2. The behavior of the economy of the United States is less predictable in the short run than for longer periods of time.
3. Because interest rates are intertwined with inflation and other business cycle phenomenon, discount rates based on longer term interest rate averages tend to be more reliable than discount rates based on currently existing rates or short term averages.
4. I select a discount rate that I believe reflects a reasonably probable expectation of how interest rates will behave over longer periods of time.

G. To illustrate the complexity of interest rate behavior, in 1981, the prime interest rate was 21%. At that time, I was serving on the

Board of Directors of the Federal Reserve Bank of Dallas. If I had said to business and financial leaders at that time that 3 or 4 years later prime rates would be down below 10% or that in 12 years they would be 6%, few would have believed me, but that is exactly what happened.

- H. Conclusion on the discount rate: The philosophy guiding my selection of the appropriate discount rate is that it should be the rate of interest that money invested safely and prudently by a person untrained in financial matters may be expected to earn.

VI. Personal Income Taxes

- A. Federal and Texas law requires that some elements of loss in civil litigation be adjusted for the impact of income taxes.
- B. Explanation of the percentage tax rate used in the analysis.
 - 1. In order to adjust a loss for the impact of taxes, a percentage of potential lost income is deducted from the base income used in projecting future lost potential income.
 - 2. Amy's income put her in a tax bracket where the average rate of taxation on her income as a college graduate would be 8.95% and, as a high school graduate 5.13%

VII. Summary of Opinions:

- A. The opinions expressed in this report reflect a reasonable economic probability.
- B. The present value of Amy's discounted total potential income and benefits (adjusted for taxes) is summarized below and may be seen in detail in the accompanying statistical analysis:

**FUTURE POTENTIAL EARNING
CAPACITY AS A COLLEGE GRADUATE:**

\$1,008,944

**PAST & FUTURE POTENTIAL EARNING
CAPACITY AS A HIGH SCHOOL GRADUATE:**

\$582,973

NET POTENTIAL PECUNIARY LOSS:

With no mitigating income: \$1,008,944

**With half-time work as
high school graduate: \$717,457
(\$1,008,944 - \$291,486)**

**With full-time work as
high school graduate: \$425,971
(\$1,008,944 - \$582,973)**

PRELIMINARY REPORT

**ECONOMIC ANALYSIS OF
EARNING CAPACITY RE: "AMY"**

PREPARED BY DR. KENT GILBREATH

"AMY"

SCENARIO I:

SUMMARY OF EARNING CAPACITY AS: ELEMENTARY SCHOOL TEACHER	
FUTURE EARNING CAPACITY:	\$1,008,944

SCENARIO II:

SUMMARY OF EARNING CAPACITY AS: AVE. HIGH SCHOOL GRADUATE	
PAST & FUTURE EARNING CAPACITY (MITIGATING INCOME):	\$582,973

NET LOST POTENTIAL EARNING CAPACITY:

LOSS WITH NO MITIGATING INCOME:	\$1,008,944
LOSS WITH HALF OF MITIGATING INCOME:	\$717,457
LOSS WITH FULL MITIGATING INCOME:	\$425,971

**POTENTIAL EARNING CAPACITY
WORKING AS ELEMENTARY TEACHER**

“AMY”

**SUMMARY OF POTENTIAL EARNING
CAPACITY: ELEMENTARY TEACHER**

1. PRESENT VALUE OF FUTURE POTENTIAL INCOME:	\$884,884
2. PRESENT VALUE OF FUTURE POTENTIAL BENEFITS:	\$124,060
3. PRESENT VALUE OF TOTAL EARNING CAPACITY:	\$1,008,944

**PRESENT VALUE OF FUTURE
POTENTIAL INCOME**

YEAR	FUTURE POTENTIAL INCOME	DISCOUNTED FUTURE POTENTIAL INCOME
2011	\$17,550	\$17,550
2012	\$35,481	\$33,422
2013	\$36,971	\$32,805
2014	\$38,524	\$32,200
2015	\$40,142	\$31,605
2016	\$41,828	\$31,022
2017	\$43,585	\$30,449
2018	\$45,416	\$29,887
2019	\$47,323	\$29,335
2020	\$49,311	\$28,793
2021	\$51,382	\$28,262
2022	\$53,540	\$27,740
2023	\$55,788	\$27,228
2024	\$58,131	\$26,725

2025	\$60,573	\$26,232
2026	\$63,117	\$25,747
2027	\$65,768	\$25,272
2028	\$68,530	\$24,805
2029	\$71,408	\$24,347
2030	\$74,408	\$23,898
2031	\$77,533	\$23,457
2032	\$80,789	\$23,024
2033	\$84,182	\$22,599
2034	\$87,718	\$22,181
2035	\$91,402	\$21,772
2036	\$95,241	\$21,370
2037	\$99,241	\$20,975
2038	\$103,409	\$20,588
2039	\$107,752	\$20,208
2040	\$112,278	\$19,835
2041	\$116,994	\$19,469
2042	\$121,907	\$19,109
2043	\$127,027	\$18,756
2044	\$132,363	\$18,410
2045	\$137,922	\$18,070
2046	\$143,714	\$17,737

Total**\$884,884**

**PRESENT VALUE OF FUTURE
POTENTIAL BENEFITS**

YEAR	DISCOUNTED FUTURE POTEN- TIAL INCOME	DISCOUNTED FUTURE POTEN- TIAL BENEFITS
2011	\$17,550	\$2,461
2012	\$33,422	\$4,686
2013	\$32,805	\$4,599
2014	\$32,200	\$4,514

2015	\$31,605	\$4,431
2016	\$31,022	\$4,349
2017	\$30,449	\$4,269
2018	\$29,887	\$4,190
2019	\$29,335	\$4,113
2020	\$28,793	\$4,037
2021	\$28,262	\$3,962
2022	\$27,740	\$3,889
2023	\$27,228	\$3,817
2024	\$26,725	\$3,747
2025	\$26,232	\$3,678
2026	\$25,747	\$3,610
2027	\$25,272	\$3,543
2028	\$24,805	\$3,478
2029	\$24,347	\$3,414
2030	\$23,898	\$3,350
2031	\$23,457	\$3,289
2032	\$23,024	\$3,228
2033	\$22,599	\$3,168
2034	\$22,181	\$3,110
2035	\$21,772	\$3,052
2036	\$21,370	\$2,996
2037	\$20,975	\$2,941
2038	\$20,588	\$2,886
2039	\$20,208	\$2,833
2040	\$19,835	\$2,781
2041	\$19,469	\$2,729
2042	\$19,109	\$2,679
2043	\$18,756	\$2,630
2044	\$18,410	\$2,581
2045	\$18,070	\$2,533
2046	\$17,737	\$2,487

Total**\$124,060**

**POTENTIAL EARNING CAPACITY AS:
AVE. HIGH SCHOOL GRADUATE**

“AMY”

**SUMMARY OF POTENTIAL EARNING
CAPACITY: AVE. HIGH SCHOOL GRADUATE**

1. PAST POTENTIAL INCOME:	\$19,609
2. PAST POTENTIAL BENEFITS:	\$2,749
3. TOTAL PAST POTENTIAL EARNING CAPACITY:	\$22,358
4. PRESENT VALUE OF FUTURE POTENTIAL INCOME:	\$489,270
5. PRESENT VALUE OF FUTURE POTENTIAL BENEFITS:	\$71,345
6. TOTAL FUTURE POTENTIAL EARNING CAPACITY:	\$560,615
7. TOTAL PAST & FUTURE EARNING CAPACITY:	\$582,973

VALUE OF LOST PAST POTENTIAL INCOME

YEAR	PAST POTEN- TIAL INCOME
2009	\$19,609
Total	\$19,609

VALUE OF LOST PAST POTENTIAL BENEFITS

YEAR	PAST POTEN- TIAL INCOME	PAST POTEN- TIAL BENEFITS
2009	\$19,609	\$2,749
Total		\$2,749

**PRESENT VALUE OF FUTURE
POTENTIAL INCOME**

YEAR	FUTURE POTENTIAL INCOME	DISCOUNTED FUTURE POTENTIAL INCOME
2010	\$20,433	\$19,247
2011	\$21,291	\$18,892
2012	\$22,186	\$18,543
2013	\$23,117	\$18,201
2014	\$24,088	\$17,865
2015	\$25,100	\$17,535
2016	\$26,154	\$17,211
2017	\$27,253	\$16,894
2018	\$28,397	\$16,582
2019	\$29,590	\$16,276
2020	\$30,833	\$15,975
2021	\$32,128	\$15,680
2022	\$33,477	\$15,391
2023	\$34,883	\$15,106
2024	\$36,348	\$14,828
2025	\$37,875	\$14,554
2026	\$39,465	\$14,285
2027	\$41,123	\$14,021
2028	\$42,850	\$13,762
2029	\$44,650	\$13,508
2030	\$46,525	\$13,259
2031	\$48,479	\$13,014
2032	\$50,515	\$12,774
2033	\$52,637	\$12,538
2034	\$54,848	\$12,307
2035	\$57,151	\$12,079
2036	\$59,552	\$11,856
2037	\$62,053	\$11,637
2038	\$64,659	\$11,423

2039	\$67,375	\$11,212
2040	\$70,205	\$11,005
2041	\$73,153	\$10,802
2042	\$76,226	\$10,602
2043	\$79,427	\$10,406

Total**\$489,270**

**PRESENT VALUE OF FUTURE
POTENTIAL BENEFITS**

YEAR	DISCOUNTED FUTURE POTEN- TIAL INCOME	DISCOUNTED FUTURE POTEN- TIAL BENEFITS
2009	\$19,609	\$2,749
2010	\$19,247	\$2,698
2011	\$18,892	\$2,649
2012	\$18,543	\$2,600
2013	\$18,201	\$2,552
2014	\$17,865	\$2,505
2015	\$17,535	\$2,458
2016	\$17,211	\$2,413
2017	\$16,894	\$2,368
2018	\$16,582	\$2,325
2019	\$16,276	\$2,282
2020	\$15,975	\$2,240
2021	\$15,680	\$2,198
2022	\$15,391	\$2,158
2023	\$15,106	\$2,118
2024	\$14,828	\$2,079
2025	\$14,554	\$2,040
2026	\$14,285	\$2,003
2027	\$14,021	\$1,966
2028	\$13,762	\$1,929
2029	\$13,508	\$1,894

2030	\$13,259	\$1,859
2031	\$13,014	\$1,825
2032	\$12,774	\$1,791
2033	\$12,538	\$1,758
2034	\$12,307	\$1,725
2035	\$12,079	\$1,694
2036	\$11,856	\$1,662
2037	\$11,637	\$1,632
2038	\$11,423	\$1,601
2039	\$11,212	\$1,572
2040	\$11,005	\$1,543
2041	\$10,802	\$1,514
2042	\$10,602	\$1,486
2043	\$10,406	\$1,459
Total		\$71,345

APPENDIX A:

ASSUMPTIONS & STATISTICAL SOURCES

APPENDIX A:

ASSUMPTIONS & STATISTICAL SOURCES

INFORMATION AND ASSUMPTIONS SUMMARY:

1. LIFE EXPECTANCY: 60 YEARS, FROM 2009 (AGE 20)
2. WORK LIFE EXPECTANCY AS HIGH SCHOOL GRADUATE: 35 YEARS, FROM 2009 (AGE 20)
WORK LIFE EXPECTANCY AS COLLEGE GRADUATE: 35 YEARS, FROM 2011 (AGE 22)

3. AVERAGE ANNUAL WAGE INCREASES 1970-2008: 4.2%/YR
 4. AVERAGE ANNUAL INFLATION RATES, 1970-2008: CPI 4.48%
 5. AVERAGE ANNUAL BENEFITS 1970-2008: 14.02%
 6. DISCOUNT RATE: 6.16% (1970-2008 AVERAGE RATE ON AAA MUNICIPAL BONDS)
- A. *Life Expectancy Table:*

United States Life Tables, 2004: Department of Health and Centers for Disease Control and Prevention, National Center for Health Statistics, Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics System, Volume 56, Number 9, Page 16 Convenient access to this source for life expectancy is found at the website:
http://cdc.gov/nchs/data/nvsr/nvsr56/nvsr56_09.pdf

- B. *Worklife Expectancy Table:*

Worklife Estimates: Effects of Race and Education, U.S. Department of Labor: Bureau of Labor Statistics, February 1986, Bulletin 2254, and Kurt V. Krueger: Tables of Inter-year Labor Force Status of the U.S. Population (1998-2004) to Operate the Markov Model of Worklife Expectancy, *Journal of Forensic Economics*, pp. 313-381. December, 2005.

- C. *Average Weekly Earnings Table; 1970-2008*

U.S. Dept. of Labor, Bureau of Labor Statistics: Average weekly earnings of production or

nonsupervisory workers on private nonfarm payrolls by industry sector and selected industry detail.

Also, see website: <http://stats.bls.gov/webapps/legacy/cesbtab3.htm>

D. *Consumer Price Index Table: 1970-2008 (Inflation Rate)*

U.S. Department Of Labor, Bureau of Labor Statistics, Washington, D.C. 20212

Consumer Price Index, All Urban Consumers, U.S. City Average

Also, see website: <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt>

E. *Benefits*

U.S. Department Of Labor, Bureau of Labor Statistics, Washington, D.C. 20212

Employer Cost for Employee Compensation – March, 2007

Also, see website: <http://www.bls.gov/ncs/ect/home.htm>

F. *Discount Rate*

Municipal Securities:

Interest Rates: Money and Capital Markets, Statistical Supplement to the Federal Reserve Bulletin, March 2008; Interest Rate Tables, 1970 to 2008, and thereafter: Federal Reserve, Washington D.C. 20551

Also, see website: http://www.federalreserve.gov/Pubs/supplement/2007/02/table1_35.htm#fn10r

G. Taxes

“Individual Income Tax, All Returns: Adjusted Gross Income, Exemptions, Deductions, and Tax Items, by Size of Adjusted Gross Income and by Marital Status:” Individual Complete Report (Publication 1304), Table 1.2; Individual Tax Statistics, 2006, Internal Revenue Service.

See: <http://www.irs.gov/taxstats/indtaxstats/article/0,,id=96981,00.html>

APPENDIX B:

SUPPLEMENTAL MATERIALS

Life table for white females: United States, 2004

Age	Expectation of life
0-1	80.8
1-2	80.2
2-3	79.2
3-4	78.2
4-5	77.3
5-6	76.3
6-7	75.3
7-8	74.3
8-9	73.3
9-10	72.3
10-11	71.3
11-12	70.3
12-13	69.3
13-14	68.3
14-15	67.3
15-16	66.4

16-17	65.4
17-18	64.4
18-19	63.4
19-20	62.5
20-21	61.5
21-22	60.5
22-23	59.5
23-24	58.6
24-25	57.6
25-26	56.6
26-27	55.7
27-28	54.7
28-29	53.7
29-30	52.7
30-31	51.8
31-32	50.8
32-33	49.8
33-34	48.8
34-35	47.9
35-36	46.9
36-37	46.0
37-38	45.0
38-39	44.0
39-40	43.1
40-41	42.1
41-42	41.2
42-43	40.2
43-44	39.3
44-45	38.4
45-46	37.4
46-47	36.5
47-48	35.6
48-49	34.7
49-50	33.8
50-51	32.9

51-52	32.0
52-53	31.1
53-54	30.2
54-55	29.3
55-56	28.4
56-57	27.5
57-58	26.6
58-59	25.8
59-60	24.9
60-61	24.1
61-62	23.2
62-63	22.4
63-64	21.6
64-65	20.8
65-66	20.0
66-67	19.2
67-68	18.5
68-69	17.7
69-70	17.0
70-71	16.2
71-72	15.5
72-73	14.8
73-74	14.1
74-75	13.4
75-76	12.8
76-77	12.1
77-78	11.5
78-79	10.9
79-80	10.3
80-81	9.7
81-82	9.1
82-83	8.6
83-84	8.1
84-85	7.6
85-86	7.1

86-87	6.7
87-88	6.3
88-89	5.9
89-90	5.5
90-91	5.1
91-92	4.8
92-93	4.4
93-94	4.1
94-95	3.9
95-96	3.6
96-97	3.3
97-98	3.1
98-99	2.9
99-100	2.7
100 or over	2.5

Center for Disease Control

National Vital Statistics Report Vol. 56, No. 9, Pg. 18

<http://www.cdo.govinchs/datainvsrinv56/nvsr56.09.pdf>

WORK-LIFE EXPECTANCY

Years of Work Activity for Initially Active Women

Age	Less Than a High School Diploma	High School Diploma	Some College But No Bachelor's Degree	Bachelor's Degree But No Graduate Degree
16	–	–	–	–
17	24.75	33.97	–	–
18	24.19	33.46	36.16	–
19	23.65	32.81	35.49	–
20	23.16	32.11	34.82	36.24
21	22.60	31.40	34.12	35.70
22	22.14	30.69	33.43	34.98
23	21.67	30.01	32.72	34.20
24	21.26	29.34	31.96	33.41
25	20.82	28.67	31.22	32.58
26	20.33	27.98	30.49	31.73
27	19.79	27.27	29.74	30.92
28	19.30	26.59	29.00	30.15
29	18.81	25.94	28.27	29.38
30	18.35	25.29	27.53	28.59
31	17.90	24.61	26.78	27.81
32	17.42	23.93	26.03	27.07
33	16.84	23.26	25.30	26.37
34	16.25	22.58	24.56	25.63
35	15.73	21.88	23.79	24.87
36	15.23	21.16	23.03	24.14
37	14.73	20.44	22.26	23.41
38	14.21	19.71	21.49	22.64
39	13.70	18.98	20.71	21.87
40	13.24	18.27	19.94	21.11
41	12.73	17.56	19.16	20.33
42	12.18	16.83	18.40	19.53
43	11.59	16.15	17.65	18.70
44	11.08	15.47	16.91	17.88
45	10.57	14.76	16.14	17.08
46	9.99	14.08	15.39	16.29
47	9.56	13.41	14.67	15.48
48	9.18	12.69	13.95	14.65
49	8.67	11.96	13.23	13.84
50	8.17	11.26	12.53	13.05
51	7.83	10.64	12.28	12.28
52	7.54	10.02	11.53	11.53
53	7.13	9.37	10.77	10.77
54	6.72	8.75	10.01	10.01
55	6.35	8.16	9.31	9.31
56	5.97	7.61	8.71	8.71
57	5.54	7.11	8.12	8.12
58	5.09	6.59	7.51	7.51
59	4.64	6.03	6.88	6.88
60	4.21	5.55	6.26	6.26
61	3.84	5.08	5.70	5.70
62	3.64	4.77	5.29	5.29
63	3.51	4.57	4.93	4.93
64	3.33	4.33	4.57	4.57
65	3.30	4.15	4.37	4.37
66	3.24	4.01	4.15	4.15
67	2.98	3.94	3.83	3.83
68	2.80	3.84	3.50	3.50
69	2.88	3.64	3.12	3.12
70	2.85	3.43	2.92	2.92
71	2.61	3.21	2.75	2.75
72	2.42	2.95	2.56	2.56
73	2.32	2.71	2.40	2.40
74	2.22	2.52	2.29	2.29
75	2.08	2.29	2.16	2.16

Tables of inter-year Labor Force Status of the U.S. Population (1998-2004) to Operate Model of Worklife Ex

Kurt v. Krueger

Journal of Forensic Economics, p313-381, December 2005

*Data in this column taken from:

The Markov (Increment-Decrement) Model of Labor Force Activity: Extended Table of Tendency Variation

**INFLATION RATES:
THE CONSUMER PRICE INDEX, 1970-2008**

YEAR	INFLATION RATE*
1970	5.6%
1971	3.3%
1972	3.4%
1973	8.7%
1974	12.3%
1975	6.9%
1976	4.9%
1977	6.7%
1978	9.0%
1979	13.3%
1980	12.5%
1981	8.9%
1982	3.8%
1983	3.8%
1984	3.9%
1985	3.8%
1986	1.1%
1987	4.4%
1988	4.4%
1989	4.6%
1990	6.1%
1991	3.1%
1992	2.9%
1993	2.7%
1994	2.7%
1995	2.5%
1996	3.3%
1997	1.7%
1998	1.6%
1999	2.7%
2000	3.4%

2001	1.6%
2002	2.4%
2003	1.9%
2004	3.3%
2005	3.4%
2006	2.5%
2007	4.1%
2008	0.1%
AVERAGE 1970-2008	4.55%
CPI INDEX: December, 1970	39.8
CPI INDEX: December, 2008	210.2
AVE. COMPOUND RATE	4.48%

*December to December rates

Source:

U.S. Department Of Labor, Bureau of Labor Statistics, Washington, D.C. 20212 Consumer Price Index, All Urban Consumers, U.S. City Average

See: <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt>

NATURAL RESOURCES & MINING	\$166	\$403	\$603	\$670	\$735	\$852	\$962	\$1,014
CONSTRUCTION	\$179	\$351	\$513	\$572	\$686	\$751	\$815	\$842
MANUFACTURING	\$129	\$284	\$436	\$509	\$591	\$674	\$712	\$724
TRANSPORTATION	\$221	\$372	\$472	\$513	\$562	\$619	\$655	\$670
PUBLIC UTILITIES	\$233	\$403	\$670	\$812	\$956	\$1,097	\$1,182	\$1,231
RETAIL TRADE	\$124	\$182	\$236	\$273	\$333	\$378	\$385	\$386
FINANCE, INSURANCE, REAL ESTATE	\$112	\$210	\$355	\$436	\$537	\$645	\$705	\$726
PROFESSIONAL, BUSINESS SERVICES	\$145	\$248	\$381	\$426	\$535	\$618	\$700	\$738
EDUCATION, MEDICAL SERVICES	\$97	\$190	\$319	\$378	\$449	\$545	\$590	\$614
LEISURE, HOSPITALITY SERVICES	\$53	\$105	\$152	\$171	\$212	\$235	\$265	\$273

U.S. Dept. of Labor, Bureau of Labor Statistics: Average weekly earnings of production or nonsupervisory workers on private nonfarm payrolls by industry sector and selected industry detail.

Website: <http://stats.bls.gov/webapps/legacy/cesbtab3.htm>

Total Compensation	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Wages and Salaries	69.8%	69.46%	65.64%	71.06%	67.66%	73.28%	72.00%		
Insurance:									
Life	0.25%	0.19%	0.29%	0.19%	0.30%	0.22%	0.15%		
Health	11.26%	9.98%	13.95%	10.56%	10.81%	7.49%	9.73%		
Retirement and Savings:									
Defined Benefit	3.82%	4.70%	3.34%	2.39%	2.51%	1.67%	1.31%		
Defined Contribution	2.50%	2.47%	3.05%	2.58%	3.92%	2.54%	3.24%		
Total Benefits as Percentage of Income:									
Insurance and Defined Benefit Only	15.34%	14.87%	17.58%	13.14%	13.62%	9.38%	11.18%		
Insurance and Defined Contribution Only	14.02%	12.64%	17.29%	13.32%	15.03%	10.25%	13.12%		
Insurance, Defined Benefit and Defined Contribution	17.84%	17.34%	20.63%	15.71%	17.54%	11.92%	14.42%		

Source:

United States Department of Labor, Bureau of Labor Statistics, Employer Cost for Employee Compensation-December
 Also see: <http://www.bls.gov/news.release/pdf/ecec.pdf>

Note:

Percentages determined using 2007, 4th quarter data on the cost to employer per hour worked by employee

**AVERAGE MUNICIPAL BOND YIELDS:
AAA MOODY SERIES, 1970-2008**

YEAR	MUNICIPAL BOND YIELD
1970	6.12
1971	5.22
1972	5.04
1973	4.99
1974	5.89
1975	6.42
1976	5.66
1977	5.20
1978	5.52
1979	5.92
1980	7.85
1981	10.43
1982	10.88
1983	8.80
1984	9.61
1985	8.60
1986	6.95
1987	7.14
1988	7.36
1989	7.00
1990	6.96
1991	6.56
1992	6.09
1993	5.38
1994	5.77
1995	5.80
1996	5.52
1997	5.32
1998	4.93
1999	5.28
2000	5.58

2001	5.01
2002	4.87
2003	4.52
2004	4.50
2005	4.28
2006	4.15
2007	4.13
2008*	4.97
AVERAGE 1970-2008	6.16%

Sources:

Federal Reserve, Washington D.C. 20551

*Statistical Supplement to the Federal Reserve Bulletin,
December, 2008*

Interest Rate Tables, 1970 to 2007, and thereafter:
Most recent data – December, 2008

[http://www.federalreserve.gov/Pubs/supplement/2008/
12/table1_35.htm](http://www.federalreserve.gov/Pubs/supplement/2008/12/table1_35.htm)

*Data from 9-26-08

\$1 under \$5,000	3.93%	*	*	*
\$5,000 under \$10,000	2.57%	*	1.48%	*
\$10,000 under \$15,000	3.29%	0.87%	3.21%	*
\$15,000 under \$20,000	4.74%	2.00%	5.29%	0.67%
\$20,000 under \$25,000	5.70%	3.19%	6.35%	1.76%
\$25,000 under \$30,000	6.54%	*	7.75%	2.91%
\$30,000 under \$40,000	7.01%	4.07%	8.15%	3.97%
\$40,000 under \$50,000	7.77%	5.49%	9.13%	5.04%
\$50,000 under \$75,000	8.61%	7.54%	*	6.53%
\$75,000 under \$100,000	9.50%	10.90%	*	8.23%
\$100,000 under \$200,000	13.08%	14.70%	*	12.41%
\$200,000 under \$500,000	19.82%	20.89%	*	19.61%
\$500,000 under \$1,000,000	23.63%	23.75%	*	23.78%
\$1,000,000 or more	22.59%	22.20%	*	22.83%

Effective Tax Rates calculated as taxes owed divided by adjusted gross income

*Insufficient data to determine an effective tax rate.

Source:

“Individual Income Tax, All Returns: Adjusted Gross Income, Exemptions, Deductions, and Tax Items, by Size of Income and by Marital Status,” Individual Complete Report (Publication 1304), Table 1.2; Individual Tax Statistics, Revenue Service.

See: <http://www.irs.gov/taxstats/indtaxstats/article/0,,id=96981,00.html>

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS**

**BEHAVIORAL MEASURES &
FORENSIC SERVICES SOUTHWEST, INC.**

REPORT OF RECORD REVIEW & ANALYSIS

October 13, 2009
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Re: United States of America vs. Doyle Randall
Paroline (Case No. 6:08-CR-61)

Dear Mr. Files:

As you know, "Amy" is a 20-year-old female who has requested restitution from Mr. Paroline based on his of possession child pornographic images of her that were produced by her uncle when she was a pre-pubescent child. These images were obtained via the Internet by Mr. Paroline, who is currently incarcerated for the offense of Possession of Material Involving the Sexual Exploitation of Minors. "Amy" is represented by Mr. James R. Marsh of The Marsh Law Firm, PLLC. At the request of Mr. Marsh,

psychologist Joyanna Silberg, Ph.D. of Childhood Recovery Resources evaluated “Amy.” In addition, at Mr. Marsh’s request, economist Stan V. Smith, Ph.D. of Smith Economics Group, Ltd, conducted a loss analysis based largely on information/opinions provided by Dr. Silberg.

As the attorney for Mr. Paroline, you requested to the Court that “Amy” undergo a face-to-face forensic psychological evaluation. This request was denied; however, your request to review the underlying data relied upon by Drs. Silberg and Smith was granted. Absent the opportunity to conduct a face-to-face forensic psychological evaluation of “Amy,” you requested that I conduct a review and analysis of records pertaining to this case from a forensic psychological perspective. In particular, you asked me to consider the opinions and conclusions of the other psychologist, Dr. Silberg.

The records reviewed and analyzed included the reports of Drs. Silberg and Smith, dated 11/21/08 and 9/15/08, respectively. In addition to their reports, other documents produced by Drs. Silberg and Smith were reviewed. In the case of Dr. Silberg, this included her handwritten notes as well as the raw test data from the psychological tests she administered to “Amy.” Also reviewed were other documents that were reportedly relied upon by Dr. Silberg and/or Dr. Smith. Included within these documents were criminal records regarding the prosecution of “Amy’s” uncle for his abuse of her as well as records from the mental health evaluation and treatment services

“Amy” received after her abuse by her uncle came to light. Finally, I also reviewed the transcript from the restitution hearing that took place on 8/20/09.

The primary objective of this report is to summarize my opinions and conclusions regarding Dr. Silberg’s methods, opinions, and conclusions in this particular case. Prior to doing so, however, it must first be made clear that the opinions and conclusions expressed in this report are based on my review and analysis of the records provided, my training and experience, and a reasonable degree of psychological certainty. The conclusions and opinions expressed in this report might be amended if further information is reviewed. These opinions are entirely based on record review and analysis and not upon an individual, face-to-face psychological evaluation of “Amy.” Again, such an evaluation was requested, but not authorized, by the Court. It should be made clear that my opinions are limited by the methodology of record review and analysis, and that if a face-to-face evaluation of “Amy” were conducted by this evaluator, the following opinions might be amended. Nevertheless, the methodology of record review and analysis has the advantage of allowing a forensic evaluator to objectively analyze a case such as this from many different points of view based on a variety of records, rather than relying solely on the self-report of the individual being evaluated.

Opinions & Conclusions:

For reasons that are outlined below, it is my opinion that the amount of weight that can be placed on Dr. Silberg's opinions and conclusions in this case is very limited. Given that the loss analysis conducted by Dr. Smith was based largely on the opinions and conclusions put forth by Dr. Silberg, it is also my opinion that the extent to which his findings can be relied upon in this case appears to be very limited. The five major reasons for my level of concern in this regard are as follows:

1. From the information reviewed and analyzed, concern appears warranted regarding the extent to which, in this case, Dr. Silberg successfully served the role of an objective forensic psychological evaluator, which appears to have been her expressed intention. One reason for this concern is that it appears Dr. Silberg performed some services (e.g., writing "Amy's" Victim Impact Statement for her) that are typically associated with that of a consultant whose role is to help one side be successful in a case, rather than that of an objective expert who has no advocacy interest in either side's position. Another reason for this concern is that there are indications that Dr. Silberg may have reached some important conclusions in this case prior to conducting her evaluation (e.g., that "Amy" had psychological issues and required long-term treatment).

Some of the more illustrative examples of the areas of concern noted above are found in Dr. Silberg's "Forensic Services Agreement," which she entered into with "Amy's" attorney, Mr. Marsh, prior to her first evaluation session with "Amy." Indeed, one of the first sentences in this document includes a statement by Dr. Silberg that expresses that her "purpose" is to educate Mr. Marsh, "Amy," and the Court, regarding Amy's "psychological issues." The concern here is that this sentence seems to include the assumption that "Amy" has psychological issues, even though at the point that it was created and then signed, "Amy" had yet to have even been evaluated. Of particular note is the statement in Dr. Silberg's "Forensic Services Agreement" with Mr. Marsh that indicates that one of her "primary tasks" would be to assist Mr. Marsh and "Amy" in "developing a Victim Impact Statement which can be used in court." In my opinion, even assisting in "developing a Victim Impact Statement which can be used in court" suggests an expert that is serving the role of an advocate attempting to assist one side in prevailing in a legal case, rather than that of an objective, impartial investigator, and other documents reviewed indicate that Dr. Silberg's level of participation was even greater than simply assisting in the writing. Indeed, the transcript from the restitution hearing that was held on 8/20/09 indicates that, although the reader would not know it by reviewing the Victim Impact Statement itself, it was

actually written by Dr. Silberg based on information “Amy” told her, and not by “Amy” herself. It is also of note that it appears Dr. Silberg wrote “Amy’s” Victim Impact Statement prior to their last evaluation session, which reportedly took place on 11/10/08. This would seem to suggest that in addition to the Victim Impact Statement having been written by Dr. Silberg as opposed to “Amy,” it was not written with the benefit of all of the information obtained during the course of the evaluation process.

Also of concern from Dr. Silberg’s “Forensic Services Agreement” with Mr. Marsh is a statement that indicates that she will assist Mr. Marsh and “Amy” in “developing a treatment plan to provide long-term psychotherapy and treatment for [“Amy”]”. This statement appears to represent another instance of assumption being made that “Amy” has psychological issues prior to her even being evaluated. Also inherent in this statement is the assumption that “long-term psychotherapy and treatment” would be required in this case, even though “Amy” had yet to be evaluated by Dr. Silberg. Indeed, the statement suggests that even prior to evaluating “Amy,” Dr. Silberg was already of the opinion that “long-term psychotherapy and treatment” would be necessary. In contrast to such an opinion being formed prior to the evaluation, whether or not treatment is required, and the length of such treatment, should be reserved for the conclusion of the evaluation. Indeed, not all individuals

who have experienced trauma require, or even desire, psychological treatment, and of those who do, not all require long-term treatment.

2. Although consideration of objective sources of data is the hallmark of a forensic psychological evaluation, it appears, based in the materials reviewed, that Dr. Silberg relied very heavily on “Amy’s” subjective self-report. As is discussed in more detail in a later section, this approach is of particular concern because Dr. Silberg did not administer psychological tests with well-established validity scales. Indeed, in the absence of such testing, compelling evidence to suggest that significant weight should be placed on “Amy’s” subjective self-report is lacking. It is well established in the field of forensic psychology that the self-report of individuals being evaluated can be significantly influenced by their involvement in a legal proceeding where they potentially have much to lose and/or gain. Dr. Silberg, however, does not discuss in her report the potential influence of “Amy’s” involvement in legal proceedings on the extent to which her self-report can be heavily relied upon.

Of particular concern with respect to relying on “Amy’s” self-report is the apparent presence of several inconsistencies between assertions in Dr. Silberg’s report and/or in the Victim Impact Statement when compared with information found in Dr. Silberg’s handwritten notes. For example, Dr. Silberg

appears to attribute “Amy’s” reported lack of academic success to her sexual abuse history, although other possible explanations are found in Dr. Silberg’s handwritten notes. With respect to high school, in the Victim Impact Statement that Dr. Silberg helped “Amy” prepare, it is noted that Amy failed anatomy because she “simply could not think about the body” due to the abuse she experienced. In apparent contrast to this, however, is that Dr. Silberg’s notes appear to indicate that “Amy” expressed that she failed anatomy during her senior year of high school because she was “goofing off” with a female classmate. Further, Dr. Silberg’s handwritten notes indicate that Amy expressed that even in the classes she passed, she tended to put off school work as long as possible and do her school work, such as papers, the night before they were due.

With respect to college, both Dr. Silberg’s report and the Victim Impact Statement Dr. Silberg helped “Amy” create, focus on that “Amy” stopped attending classes shortly after a psychology class in which she saw movie about abused children. Dr. Silberg noted that the emotional reaction to this film was overwhelming to “Amy” and this led to her not attending class. It was further noted that she resorted to drinking “to forget the source of her fears,” and that she was ultimately “forced to drop out of school.” While “Amy’s” reported reaction to watching this movie about abused children is mentioned in Dr. Silberg’s notes, so are other apparently

important pieces of information regarding “Amy” leaving college that are not noted in either Dr. Silberg’s report or in the Victim Impact Statement. For example, Dr. Silberg’s notes appear to include admissions from “Amy” about having not been ready for college and that she was not responsible enough to get up and go to class. Although it will be discussed more in a later section, also of note here is that records reviewed regarding mental health treatment “Amy” received after the abuse against her originally came to light, indicate an apparent history of academic issues that date back to a very young age. For example, as a small child she was reportedly in special education for reading and had difficulty finishing her homework. She was also reportedly immature, tended to fidget, and had some problems related to expressive and receptive oral language. These apparent long-term academic issues documented in the available record were not mentioned in Dr. Silberg’s report, but rather, Dr. Silberg focused on “Amy’s” sexual abuse history as being the reason for her lack of academic success. Similarly, other pieces of information that are potentially relevant when analyzing “Amy’s” academic career do not appear to have been fully considered in Dr. Silberg report (e.g., her family educational history).

Other inconsistencies between assertions in Dr. Silberg’s report and/or in the Victim Impact Statement when compared with information found in Dr. Silberg’s handwritten

notes were also found. For example, in the Victim Impact Statement, it is noted that “Amy” failed her freshman year of college and moved back home. In contrast, however, Dr. Silberg’s handwritten notes appear to indicate that “Amy” dropped out of college and moved in with her boyfriend, but did not tell her parents that she had done so. Indeed, from the handwritten notes, it appears that her parents were not aware of what had transpired until they received a letter that indicated that “Amy” had not obtained any college credit for the semester.

Yet another area of inconsistency is that while Dr. Silberg’s report attributes “Amy’s” lack of vocational success to her sexual abuse history, there are other potential factors found in Dr. Silberg’s handwritten notes. In particular, it appears that “Amy” was looking for a job at the time of her evaluation sessions with Dr. Silberg, but that factors such as being a “procrastinator” may have interfered. Also indicated in Dr. Silberg’s handwritten notes is that Amy acknowledged that she is “picky about [her] jobs” and also expressed that she wanted to work with kids and did not want to “food serve.” It is of note that this information suggests if sufficient effort is applied and procrastination avoided, “Amy” may indeed be capable of performing much more in the way of work activity that was suggested by Dr. Silberg and subsequently relied upon by Dr. Smith in his analysis.

Also of concern with respect to relying on “Amy’s” self-report in the manner Dr. Silberg appears to have is that, as is typically the case in a forensic psychological evaluation, “Amy” was aware of how the outcome of the legal proceedings might impact her, and therefore, the likelihood of her putting forth a presentation that she believed would most likely lead to success from a legal standpoint was a possibility to be strongly considered. Indeed, Dr. Silberg’s handwritten notes appear to indicate that “Amy” reported that “3 million” dollars in restitution was being sought and that her father said she needed to hire an accountant. While “Amy’s” knowledge of the stakes involved in the legal proceedings does not necessarily mean that she put forth an inaccurate presentation of herself, it is certainly, given the circumstances, a possibility that should have been thoroughly investigated and in my opinion, based on the documents reviewed, this was not satisfactorily done by Dr. Silberg.

In summary with respect to this section, it appears that Dr. Silberg relied heavily on “Amy’s” self-report despite the forensic nature of the evaluation and a variety of apparent inconsistencies regarding underlying reasons for issues such as academic and vocational problems. While it seems that Dr. Silberg’s report includes details such as “Amy’s” reaction to a movie regarding child abuse that she viewed while in her college psychology class, other details that are relevant, such as her “goofing off” during the

high school anatomy class she failed, being irresponsible by not getting up and going to her college classes, and being picky regarding her jobs, are not noted. Again, relying on self-report to this extent is especially problematic given the lack of psychological testing using well-established validity scales to assist in verifying that “Amy” was responding to the evaluation in an open and forthright manner.

3. As was already demonstrated to some extent in the previous section, it appears that Dr. Silberg inadequately considered alternative hypotheses and overly attributed problematic behavior (e.g., academic problems, vocational problems, alcohol abuse) to “Amy’s” sexual abuse history, without fully exploring alternative hypotheses and considering that the cause of behavior is often multifaceted. For example, Dr. Silberg opined that “Amy” experienced problems with academic progress secondary to her sexual abuse history without mentioning “Amy’s” history of academic problems, including special-education for reading, that dates back to when she was a small child. Also, as was noted in the previous section, issues such as “Amy” not being ready for school and failing to wake up for her classes was not noted. Another example of the failure to consider alternative hypotheses appears to be found with “Amy’s” reported alcohol abuse problem. Indeed, while Dr. Spielberg indicated that “Amy” attributed the escalation of her drinking to feelings about her brother dealing with drug

addiction as well as to her recovery from sexual abuse, the possibility of a possible genetic predisposition to substance abuse, especially given her brother's history of substance abuse, was not discussed in the report. Of course, not all individuals who have substance abuse problems were sexually abused, and conversely, not all those who are sexually abused develop problems with substance abuse. Despite this, the reader of Dr. Silberg's report is left with the impression that Dr. Silberg is tying "Amy's" alcohol abuse to her sexual abuse without considering other possible influences as well. In total, based on review and analysis of the available records, it appears the Dr. Silberg was prone to solely attribute problems reported by "Amy" to her sexual abuse history, without fully exploring and discussing the potential influence of other relevant factors.

4. Psychological testing is typically of great value in forensic evaluations. Unfortunately, however, in this case Dr. Silberg administered only a very small battery of tests (i.e., two) that were inadequate due to the absence of well-established validity scales and because the tests were overly specific in nature.

The objective of psychological tests most commonly used in forensic evaluations (a e.g., Minnesota Multiphasic Personality Inventory – Second Edition, Personality Assessment Inventory) have the benefit of excellent, well-researched validity scales, while also being broad-based, so that they

assess for a variety of potential psychological issues. The inclusion of well-established validity scales is important because they allow the evaluator to assess the response style of the individual taking the test to determine if they were exaggerating problems, minimizing problems, or being open and forthright. Being a broad-based test, rather than one designed to only assess a specific condition, is important because it allows the evaluator to consider alternative hypotheses for behavior by assessing the presence or absence of variety of psychological disorders.

The only psychological testing performed by Dr. Silberg was with the Trauma Symptom Inventory (TSI) and the Dissociative Experiences Scale. Of these two tests, only the TSI has a validity scale that assesses the test-taker's response style, and unfortunately multiple research studies have expressed concern regarding the quality of this validity scale. Further, the TSI and Dissociative Experiences Scale are very specific tests, with the TSI focusing on posttraumatic stress issues, while the Dissociative Experiences Scale deals with dissociative experiences. Neither of these tests adequately explores a broad range of potential psychological/personality problems. While these tests could be used in a forensic psychological evaluation as part of a larger test battery that also includes one or more broad-based tests with well-established, well-researched validity scales, it is my opinion that these tests used alone in the manner that they

were in this case are inadequate because they do not allow for a valid assessment of whether the individual was being open and forthright during testing, nor does it allow for an exploration of a variety of diagnostic possibilities. Diagnostically, Dr. Silberg's report discusses posttraumatic stress and dissociative symptoms on the part of "Amy." The extent to which such symptoms are actually present; however, has, in my opinion, not been adequately established due to the inadequacy of the psychological test battery that was administered.

5. Finally, it is my opinion that Dr. Silberg's conclusions regarding the impact of "Amy's" abuse history on her over the course of her lifetime, and regarding the amount of treatment she will require in the future, is highly speculative and seems inconsistent with the results of her prior period of treatment. Indeed, as is noted in Dr. Silberg's report, "Amy" underwent psychotherapy with Ruby Salazar, LSW, BCD from 10/98 until the end of 1999, and Ms. Salazar's notes indicate that by the conclusion of this treatment, "Amy" was "back to normal." If Amy has had any additional treatment since 1999, it is not noted in Dr. Silberg's report. Despite this apparently good outcome during her previous experience in treatment, Dr. Silberg opined at the end of her report that "Amy" will require weekly psychotherapy over the course of her lifetime. In addition to "Amy's" prior treatment success appearing to indicate the potential for successful treatment of a much

shorter duration than recommended by Dr. Silberg, if treatment is indeed needed, it should be noted that I am not aware of available research literature suggesting the need for weekly psychotherapy over the course of a person's lifetime. Indeed, it is my opinion that treatment of that length is highly unusual and very rarely recommended; especially in the case of an individual who is only 20 years old. Instead, the length of treatment depends on the individual's progress over the course of time. In addition to individual psychotherapy, Dr. Silberg opined that there will likely be periods where "more intensive inpatient rehabilitation services will be required over the course of her lifetime." Given that "Amy" has no history that I am aware of having received such services in the past, I am unaware of what the basis is for the speculation that such services will be needed in the future. Indeed, given her history, including her prior treatment history, it appears unlikely that such services would be necessary in the future.

Thank you for the opportunity to review and analyze the records in this case. Please let me know if you require further explanation regarding any of the information provided above. As was noted previously, if additional information becomes available, the opinions and conclusions found in this report may change.

Sincerely,

/s/ Timothy Proctor

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

UNITED STATES	§
OF AMERICA	§
VS.	§ CASE NO. 6:08-CR-61
	§ (Honorable Leonard Davis)
DOYLE RANDALL	§
PAROLINE	§

STIPULATION

[Oct. 14, 2009]

It is stipulated by and between the Government and Doyle Randall Paroline who are the parties in this case and, also, by James R. Marsh who is, pursuant to 18 U.S.C. § 3771, “Amy’s” representative that:

Any and all notices required to be sent by to the Government to “Amy” were received by Mr. James R. Marsh, “Amy’s” representative.

Mr. Marsh did not pass on any of these notices to “Amy” or inform her that he had received them.

“Amy” does not know who Doyle Randall Paroline is.

None of the damages for which “Amy” is now seeking restitution flow from anyone telling her specifically about Mr. Paroline or telling her about his conduct which was the basis of the prosecution in this case.

Respectfully submitted,

/s/ Bill Baldwin

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Respectfully submitted,

/s/ [Illegible]

By: JAMES R. MARSH, ESQ.

“Amy’s” Representative pursuant
to 18 U.S.C. § 3771

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