IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

UNITED STATES OF AMERICA

vs. **CASE NO. XXXXX**

CHARLES P. WILSON

Defendant.

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SENTENCING MEMORANDUM

Charles Wilson, who is 54 years old, has no prior criminal history. He has overcome an abusive childhood and addiction to drugs. He has talents and a concern for others that can form the basis for a better more responsible life. To the extent that his mental illness played a role in the offense, his illness is now controlled by medication and can be controlled in the future by the same medication. Given his age, the likelihood of recidivism seems remote. The applicable Sentencing Guidelines advisory range is one that has been dramatically increased over the last few years without the support of empirical studies. It ignores the traditional weight given to the effect the crime had upon the victim, penalizing those, such as Mr. Wilson, whose only contact was with a government agent, just as harshly as those who were involved with real children. Given these circumstances, the ten-year mandatory minimum sentence required by 18 U.S.C. § 2422(b) would be "sufficient, but not greater than necessary," to comply with the goals of sentencing set forth in 18 U.S.C. § 3553(a)(2). 18 U.S.C. § 3553(a).

Mr. Wilson, as he did in his trial, admits to the conduct underlying the solicitation offenses, but maintains that he never intended to engage in sexual activity with any children. He recognizes that his actions, including the possession of child pornography are inexcusable. His thoughts about

the offenses show the maturity that might be expected of a 54-year-old man. They show the insight that will support his rehabilitation. With regard to the pornography offense he has, in his letter to the Court, written:

> I did not take the time to consider that these were real children, caught in unbelievably cruel and immoral circumstances, and that their lives would never be the same because of the actions of adults they had trusted. I have had a year in solitary confinement[1] with little to do but think. I have come to understand the probable consequences of my thoughtless actions. . . . I am ashamed and feel great guilt that I have in any way helped perpetuate such horror.

(Ex. 1).[2] As for the solicitation charges, he has written:

> As for my actions at the time of my arrest, it is difficult for me sitting here today to believe that I allowed myself to get out of control to the extent I did. Again, because I was dealing with fantasies and the feelings of excitement they promoted, I was foolish and reckless beyond excuse. I am embarrassed, ashamed, and humiliated by my actions.

Id.

This Court undoubtedly is concerned with Mr. Wilson' disturbing interest in pornography, the graphic and sordid nature of his internet communications, and the rest of his conduct in this case. The testimony at the trial, though, revolved around only one aspect of Mr. Wilson' life. There is another side to Mr. Wilson that stands apart from the subject of his criminal charges. Cindy Stevens,

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[1]Mr. Wilson has been held at the Detention Center in the Special Housing Unit for the entirety of his stay there. He has been held there for his protection, but, for the most part, under the same circumstances reserved for those being held in that unit for disciplinary purposes. While the officials at the Center have provided increased visitation for Mr. Wilson, those conditions include being housed in a single cell unable to communicate with other prisoners, no access to TV or radio, little access to phones, and limited time outside the cell.

[2]Exhibit numbers have been assigned to each letter referred to in this pleading. The defense will introduce the originals at sentencing. Copies have, this date, been forwarded to the Court and the Government.

who testified at Mr. Wilson's trial, and her family have had a chance to see that side for years. Ms. Stevens has written that:

> I can tell you that Mr. Wilson is talented, creative, a perfectionist at his work, generous with his time and knowledge; I can tell you that he is intelligent and funny, is thoughtful and caring, that he is self-effacing. I can tell you that he is a good man who has done many loving and selfless things for me and others over the years.

Ex. 2. Lynn McCain, who is Cindy Stevens's sister, describes Mr. Wilson as "good and kind and helpful and caring" and recounts the care he provided her following her surgery (Ex. 3). Other family members have described him similarly: "gracious and kindhearted" (Ex. 4), "caring and giving" (Ex. 5), "thoughtful" (Ex. 6), "generous and caring . . . kind . . . talented and a perfectionist" (Ex. 7).

Uniformly, too, Ms. Stevens's children and grandchildren, who have grown up around Mr. Wilson, have never seen even a hint of any inappropriate conduct with children: "never once in all the years that [my children and grandchildren] have known Charles Wilson, has he ever said or suggested anything inappropriate toward any of them" (Ms. Stevens, Ex. 2); "The Charles Wilson I know showed no signs whatsoever of behavior that would remotely question his intentions toward children, not of our immediate family or our extended family which includes children of all ages" (Lynn McCain, Ex. 3); "I have NEVER once felt threatened, fearful, hesitant, apprehensive or nervous around Mr. Wilson" (Sheila Lewis, Ex. 4); "From the time I was born until now I have never felt in any way threatened or uncomfortable around Charles" (Linda Lewis, Ex. 6); "I do not believe that [Mr. Wilson] would or could have followed through with any inappropriate behavior toward a child. Mr. Wilson has been around my children all of their lives and he has never on any occasion said or done anything that would lead me to believe otherwise" (Louise Stevens Lindbergh, Ex. 7); "I never

felt uncomfortable, pressured, or uneasy for any reason around Charles Wilson; not when I was a child, adolescent, or young adult" (Susanna Lewis, Ex. 8).

Terry Leland, a Tallahassee psychologist, examined Mr. Wilson and has concluded that Mr. Wilson suffers from Bipolar Disorder. (Ex. 9, p. 3). An earlier diagnosis from the Bureau of Prisons did not reach the same conclusion. Mr. Wilson, however, unsure of his legal status, was not as forthcoming as he might have been with the Bureau's mental health experts, and they, unlike Dr. Leland, neither viewed Mr. Wilson' mental health records from Apalachee Mental Health nor spoke with anyone familiar with Mr. Wilson.[3] In Dr. Leland's view, Mr. Wilson' "involvement with internet pornography and sexual chat-rooms appears to have fueled and reinforced deviant sexual urges, in the context of insecurity with his own inadequacy and limited success with more socially acceptable outlets for his sexuality." (Ex. 9, p. 3). While acknowledging that Mr. Wilson' "disordered personality and deviant sexuality were also powerful contributors to the alleged actions," Dr. Leland explained that the Bipolar Disorder "very likely contributed to his current alleged offenses" *id.*:

> In my opinion, Mr. Wilson's untreated Bipolar Disorder very likely contributed to his current alleged offenses, by amplifying his sexual urges and fantasies and diminishing his judgment and behavioral control. It is not uncommon for mania/hypomania to lead to excessive involvement in pleasurable activities and acting-out.

[3]As Mr. Wilson explained when he entered his guilty plea before Judge Sherrill, his prior lawyer had not explained to him that he was being sent from the Detention Center to a Federal Medical Facility for psychological testing, and he was moved to the Federal Detention Center in Miami without any notice or guidance. Had the Bureau of Prisons psychologists spoken to Ms. Stevens, for example, they would have known that for "approximately a year prior to his arrest, Mr. Wilson had been suffering from depression and increasingly, longer, more problematic bouts of accelerated mania." (Ex. 2). Ms. Louise Lindbergh could have told them that in the week before Mr. Wilson' arrest that Mr. Wilson was "preoccupied and manic," and that, having seen that "side of him before," knew "that it would probably be followed by a crash of some sort." (Ex. 7).

Id. As recognized in Dr. Leland's report and in Mr. Wilson' testimony, Mr. Wilson' internet-fueled sexual fantasy life began seven or eight years ago. In the years prior to his solicitation offense, he had been receiving medication for his Bipolar Disorder, but had stopped taking the medication in August of 2005 (Ex. 9, p. 2, PSR ¶ 65). Since being at the Detention Center he has been receiving Depacote. (Ex. 2.).

Thus, it seems likely Mr. Wilson' Bipolar Disorder played a role in the conduct that led to, at least, the solicitation offenses. There is reason to believe that had he been taking his medication the reckless lack of self-control that underlies the solicitation charges would have been tempered. Most importantly, proper medication, treatment, and monitoring can give the Court assurance that Mr. Wilson will not return to the lifestyle that set the stage for his conduct.

The Court should find assurance, too, in Mr. Wilson' ability to overcome past difficulties. As a child, Mr. Wilson suffered a difficult upbringing marked by abuse and disinterest. *See* PSR ¶ 61, Ex. 3. In later years, he became addicted to drugs and alcohol. *See* PSR ¶ 66, Ex. 3, Ex. 2). He found the resolve, though, to end his substance abuse. *See* Ex. 2. That same resolve will allow him to abandon the conduct that underlies both the pornography and solicitation offenses.

Recidivism, particularly in the case of sexual offenders, is difficult to predict. *See* The Center for Sex Offender Management's *Recidivism of Sex Offenders*.[4] Nonetheless, in a review of some sixty-one studies, researchers found a relatively low rate of sex offense recidivism for "child molesters." (12.7% over a four to five year time period). *Id* at 10. Presumably, the category of

[4]The Center for Sex Offender Management is a collaborative effort of the Department of Justice's Office of Justice Programs, the National Institute of Corrections, and the State Justice Institute. *Recidivism of Sex Offenders* is available at http://www.csom.org/pubs/pubs.html.

"child molesters" includes, for the most part, those whose propensity was especially clear in that they had actually molested children. While those studies showed higher rates of recidivism for non-sex offenses for "child molesters," general recidivism studies show that those in Mr. Wilson' circumstance, those over fifty years of age and who find themselves in Criminal History Category I, have an especially low rate of recidivism. *See* United States Sentencing Commission, *Measuring Recidivism: Criminal History Computation of the Federal Sentencing Guidelines*, Exhibit 9 (2004).[5] Of all the different categories, the rate for those in Mr. Wilson' category is the lowest listed, 6.2%.[6] That compares, for example, to an overall recidivism rate of, for example, 31.9% in those from ages twenty-one to twenty-five. Significantly, too, sex offenders who participate in "relapse prevention treatment programs" have a reduced risk of recidivism. *Recidivism of Sex Offenders*, supra, at 13. Were this Court to impose even the mandatory minimum ten year sentence, in this case, Mr. Wilson would be nearly 64 years old, so his overall chances of recidivism would surely be even further reduced.

The arbitrary nature of the guideline can be seen by considering what Mr. Wilson' guideline range would have been in 2003 prior to the November 1, 2004, amendments to the guidelines that followed the enactment of the PROTECT Act. Had Mr. Wilson committed his offense five years ago, he would be facing *a range of roughly 6 to 7 years (70 to 87 months)* rather than the 24 to 30 years

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[5]The report is available at www.ussc.gov/publicat/Recidivism_G.pdf.

[6]There is a suggestion in the research, as well, that those like Mr. Wilson who have no prior arrests have an even lower rate of recidivism than some of the others in Criminal History Category I with prior arrests or one criminal history point. *Measuring Recidivism,* supra, at 15.

(292 to 365 months), called for by the November 2006 Guidelines Manual.[7] The reason for this more

[7]Prior to Amendment 664, which became effective on November 1, 2004, Appendix A listed §2G1.1 as the applicable guideline for a violation of 18 U.S.C. § 2422. *See also* United States v. Panfil, 338 F.3d 1299, 1302 (11th Cir. 2003). That guideline cross references several other guideline provisions, among those listed is §2A3.1. (§2G1.1(c)(2)). Section 2A3.1 is referenced "[i]f the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse." *Id.* The cross-reference provision goes on to say that "[i]f the offense involved criminal sexual abuse of a minor who had not attained the age of 12 years, §2A3.1 shall apply regardless of the 'consent' of the victim." *Id.* The Commentary provides that the cross reference applies "if the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse as defined in 18 U.S.C. § 2241 or § 2242." §2G1.1. Comment. (n.10). Section 2241 of Title 18, which is entitled "aggravated sexual abuse" essentially prohibits using force or threats to "cause [or attempt to cause] another person to engage in a sexual act""in the special maritime and territorial jurisdiction of the United States." It also prohibits the crossing of state lines with the intent to engage in a "sexual act with another person who has not attained the age of 12 years" and prohibits one from, "in the special maritime and territorial jurisdiction of the United States," engaging or attempting to engage "in a sexual act with another person who has not attained the age of 12 years." Section 2242 of Title 18 prohibits a variety of sexual acts in "the special maritime and territorial jurisdiction of the United States." Because Mr. Wilson, neither crossed state lines nor attempted to engage in a sexual act within the special maritime and territorial jurisdictions of the United States, this particular cross reference is inapplicable to him.

Section 2G1.1 also cross references "§2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts) or §2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact), as appropriate" if the other cross reference provisions are inapplicable. (§2G1.1(c)(3)). Section 2A3.2, the harsher of the two, is the appropriate section. *See* Panfil, 338 F.3d. at 1302; United States v. Miranda, 348 F.3d. 1322, 1325 (11th Cir. 2003); USSG §2A3.4(c)(2).

Using that section, the base offense level is 21 (§2A3.2(a)(2)). *See* Panfil, 338 F.3d at 1302. Two levels would be added for the use of a computer (§2A3.2(b)(3)); two levels for obstruction of justice (§3C1.1); and two levels under the grouping rules (§3D1.4). If two levels were added for unduly influencing a minor (§§2A3.2(b)(2)(B)), the total offense level would be 27 (21 + 2 + 2 + 2 + 2). With a criminal history category of I, Mr. Wilson' guidelines range would have been 70 to 87 months. If the two levels for under influence were not added, the total offense level would have been 25, producing a range of 57 to 71 months.

than fourfold increase was primarily the PROTECT Act, but beyond that, the Sentencing Commission gave little justification for the increase.[8]

Historically, sentences imposed for the offense have been dramatically less than Mr. Wilson' advisory range. Within the Eleventh Circuit, in those cases, where it is clear from the opinion the children were fictional and the defendant was speaking only with a government agent, the sentences are, typically, in the vicinity of ten years or less. *See*, United States v. Barnett, 260 Fed. Appx. 206 (11th Cir. 2007) (80 months); United States v. Thomas, 255 Fed. Appx. 422 (11th Cir. 2007) (144 months); United States v. Williams, 2007 WL 3118326 (11th Cir. October 25, 2007) (where the fictional victim was 11 years old and the defendant received 135 months); United States v. Segalla, 248 Fed. Appx. 148 (11th Cir. 2007) (120 months); United States v. Vance, 494 F. 3d 985 (11th Cir. 2007) (where the offense involved foreign commerce, four fictional children, and the defendant received 180 month sentence); United States v. Bohannon, 476 F. 3d 1246 (11th Cir. 2007) (120 months); United States v. Houston, 177 Fed. Appx. 57 (11th Cir. 2006) (60 months); United States

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[8]Amendment 664 is the one that increased the penalties. The "Reason For the Amendment" section of the Amendment states:

> This new guideline has a base offense level of level 24 to account for the new mandatory minimum terms of imprisonment established by the PROTECT Act. The new guideline provides six specific offense characteristics to provide proportionate enhancements for aggravating conduct that may occur in connection with these cases. The guideline contains enhancements for commission of a sex act or commercial sex act, use of a computer, misrepresentations of identity, undue influence, custody issues, and involvement of a minor under the age of 12 years.

Amendment 664, USSG Supp. to App. C at 62. The PROTECT Act established a 5 year mandatory minimum for the offense and increased the maximum penalty from 15 years to 30 years. *See* PROTECT Act, Pub. L. 108-21, §§ 103(b)(2)(A)(I), 103(a)(2)(B). The Adam Walsh Act subsequently, increased the mandatory minimum to 10 years and increased the maximum penalty to life. *See* Adam Walsh Act, Pub. L. 109-248, § 203.

v. Haynes, 160 Fed. Appx. 940 (11th Cir. 2005) (78 months); United States v. Scott, 426 F.3d 1324 (11th Cir. 2005) (where the fictional children were 6 and 4 years old and the defendant received a 135 month sentence); United States v. Searcy, 418 F.3d 1193 (11th Cir. 2005) (where the defendant, a career offender, received an upward departure and a sentence of 180 months); United States v. Bolen, 136 Fed Appx. 325 (11th Cir. 2005) (where the fictional child was 3 years old and the defendant received a sentence of 110 months); United States v. Panfil, 338 F.3d 1299 (11th Cir. 2003) (33 months); United States v. Root, 296 F.3d 1222 (11th Cir. 2002) (40 months).

Recent cases from the Northern District of Florida show the same sort of sentencing pattern. *See* United States v. Yilmazel, Case No. 4:06cr85 (60 months); United States v. Duke, Case No. 4:07cr65 (120 months); United States v. Liton, Case No. 4:07cr66 (120 months). These cases as well as those from the 11th Circuit, of course, differ factually from each other and, in many instances, from Mr. Wilson'. Mr. Wilson' case, for example, involves fictional children under the age of 12, as did two of the cases cited above from the 11th Circuit, but most of the cases involve fictional children who are 12 years or older. Then, too, Mr. Wilson' case involved a trial and a finding of obstruction of justice, something absent in some, but not all of the cited cases. The point, though, is that Mr. Wilson' crime of soliciting a minor, like all the others, lacks a real victim, yet his advisory range is more than twice as high as the penalty in most of the cited cases. Then, too, the circumstances that give rise to the higher score in his case are circumstances within the control of the agent. The agent in this case, for example, could have just as easily chosen a victim of 12 and could have just as easily pretended to be the mother of one child rather than two.

In modifying the guidelines to reflect the mandatory minimums established by the PROTECT Act, the Sentencing Commission followed the lead of Congress, much as they did with regard to the

crack cocaine guidelines. *See* Kimbrough v. United States, 128 S. Ct. 558, 575(2007) ("In formulating guideline ranges for crack cocaine offenses. . . the Commission looked at the mandatory minimum sentences set in the 1986 act, and did not take account of 'empirical data and national experience'"). In that the crack cocaine guidelines relied on the mandatory minimum sentences and not on "empirical data and national experience," the court concluded that it would not be an abuse of discretion to conclude that the advisory guideline range produced "a sentence 'greater than necessary' to achieve § 3553(a)'s purposes, even in a mine-run case." *Id*.

The Sentencing Commission's studies regarding the disparity between crack and powder cocaine had greatly contributed to undermining the rationale for the guidelines in the crack cocaine cases. While there is nothing similar with regard to the guideline applicable in Mr. Wilson' case, the genesis of the PROTECT Act carries with it no suggestion of the "empirical data and national experience" the court thought so important in Kimbrough. *Id.* Two attorneys at the Department of Justice simply convinced Florida Congressman Tom Feeney, who was new to Congress, to insert changes to the guidelines into a unrelated, popular bill, without notice to the Sentencing Commission. *See* Skye Phillips, *Protect Downward Departures: Congress and the Executives Intrusion into Judicial Independence,* 12 J.L. & Pol'y 947, 976-984 (2004); Laurie P. Cohen & Gary Fields, "Ashcroft Intensifies Campaign Against Soft Sentences by Judges," *Wall St. J.,* Aug. 6, 2003 at A1. The purpose of the PROTECT Act was to reconcile various bills, establish a nationwide Amber Alert system to be used in cases of child kidnapping, and to address virtual child pornography. Phillips at 967-984. As the legislation progressed, Congressman Feeney proposed an unrelated amendment to the bill that directly amended various guidelines. *Id.; see also* United States v. Detwiler, 338 F.Supp. 2d. 1166, 1170-1171 (D. Or. 2004). Representative Feeney later admitted he was just the

"messenger" for the two Justice Department officials who authored the provision and chose not to notify or consult the Sentencing Commission. Phillips at 983 n. 185, 986-987.

Debate on the amendment was limited to twenty minutes. *Id.* at 983. The House later passed a child abduction prevention act with the Feeney amendment added. *Id.* at 992-994. Despite objections by the Sentencing Commission, the Chairman of the House Committee on the Judiciary, the Judicial Conference of the United States, the American Bar Association, these changes were made without adequate review and analysis, and the PROTECT Act became law on April 30, 2003. *Id.* at 990-992, 991 n. 219.

The shortcomings in the legislative process involved in the Feeney amendment as well as the absence of a more definitive justification from the Sentencing Commission are considerations for the Court in determining how much to rely on the advisory guideline range. They enter into the determination of whether the Sentencing Commission, in amending the guidelines, acted in "the exercise of its characteristic institutional role." Kimbrough, 128 S.Ct. at 575. As explained in Rita v. United States, 127 S. Ct. 2456, 2464-2465 (2007), the exercise of this institutional role has two basic components: (1) reliance on empirical evidence of pre-guideline sentencing practice; and (2) review and revision in light of judicial decisions, sentencing data, and comments from participants and experts in the field.

The importance of whether empirical evidence of past practice was used to develop a particular guideline was repeated in both Gall v. United States, 128 S. Ct. 586, 594 & n. 2 (2007) (noting that while the guidelines are "the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions," "notably, not all of the Guidelines are tied to this empirical evidence"), and Kimbrough. It is important because the

fulfillment of the purposes of sentencing established in 18 U.S.C. 3552(a) rests upon the Commission's compliance with its institutional role. When Congress directed the Commission to design the guidelines based on the purposes of sentencing set forth in § 3553(a)(2), *see* 28 U.S.C. § 991(b), a "philosophical problem" arose when the Commissioners could not agree on which purpose should predominate. Because of that, they abandoned that approach and instead "took an 'empirical approach' beginning with an empirical examination of 10,000 presentence reports setting forth what judges had done in the past and then modifying and adjusting past practice in the interest of greater rationality, avoiding inconsistency, complying with Congressional instructions and the like." Rita, 127 S. Ct. at 2464, citing U.S. Sentencing Guidelines, Ch. 1, Pt. A(3)(1988). In short, the original Commission used past practice as a substitute for sentencing purposes, and the Supreme Court now accepts that past practice as a rough proxy for sentencing purposes, but recognizes that "not all of the guidelines are tied to this empirical evidence." Gall, 128 S.Ct. at 594 n. 2.

This all matters to Mr. Wilson' case because if the Commission did not rely upon past practice, and/or did not review and revise the guideline in response to data and feedback from judges and others in the field, it is not "fair to assume" that the guideline "reflect[s] a rough approximation" of sentences that "might achieve 3553(a) objectives." Rita, 127 S.Ct. at 2464-2465. When, as here, the guideline is not based on "empirical data and national experience," it "does not exemplify the Commission's exercise of its characteristic institutional role," and it is not an abuse of discretion to conclude that it yields a sentence that is greater than necessary even in a "mine-run case." Kimbrough, 128 S.Ct. at 575. Thus, it would not be an abuse of discretion in Mr. Wilson' case to conclude that the applicable guideline, § 2G1.3, yields a sentence that is greater than necessary.

There is, though, more wrong with § 2G1.3 than its legislative history. The arbitrary nature of section is demonstrated, too, by its failure to distinguish between the crime when it involves real children as opposed to the fictional children in cases such as Mr. Wilson'. The Commission purposely chose to define a "minor" as "an individual whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) who could be provided for purposes of engaging in sexually explicit conduct." USSG § 2G1.3, comment. (n. 1). Such an approach, though, runs contrary to the established tradition of considering the impact a crime had upon the victim. *See, e.g.,* Taylor v. Lewis, 460 F.3d 1093, 1098 (9th Cir. 2006) (in considering proportionality, court factors in "the harm caused or threatened to the victim or society"); United States v. Williams, 517 F. 3d 801, 810-811 (5th Cir. 2008) (district court was permitted to consider the number of victims and the extent of harm to individuals in deciding whether to give a sentence outside the guideline range); United States v. Garnette, 474 F. 3d 1057, 1061 (8th Cir. 2007) (upholding the district court's imposition of a severe sentence "to account for the fact that [the victim] was only four years old at the time she was [sexually] exploited by Garnette"). Mr. Wilson' advisory guideline range would have been the same had he been convicted of attempting to persuade two real children. There is, though, a significant difference between that circumstance and what, in fact, occurred. The sort of unsettling fear and insecurity that a real child would suffer is absent all together and a rational sentencing scheme should reflect it.

There is, then, more to Mr. Wilson than the conduct that was the subject of the charges in this case. He has, over the year he has been confined in what amounts to solitary confinement, developed the sort of insight into his behavior that will help him rehabilitate himself. His positive character traits that have been witnessed over the years by Ms. Stevens and her family, form a base for that

rehabilitation, as well. His mental illness that contributed to the offenses is being treated and can continue to be treated and monitored by appropriate mental health treatment and a probation officer. In that the Sentencing Commission promulgated the applicable guideline without complying with its institutional role, the advisory guideline range does not carry the sort of weight the guidelines carry even in the post-Booker era. In that the guideline fails to distinguish between those cases such as Mr. Wilson' and those involving real children, there is further reason to question whether it fulfills the goals of sentencing set forth in 18 U.S.C. §3553(a). For all of these reasons, a sentence of ten years would fulfill "the overarching provision of [18 U.S.C. §3553(a)] . . . to 'impose a sentence sufficient, but not greater than necessary, to accomplish the goals of sentencing." Kimbrough, 128 S. Ct. 570. Mr. Wilson, therefore, respectfully requests this Court to impose such a sentence.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been forwarded by electronic delivery to Mr. Robert Davis, Assistant U.S. Attorney, this 14th day of October, 2008.

Respectfully submitted,

s/Randolph P. Murrell

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