

May 25, 2010

The Honorable John Cornyn
United States Senator
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Cornyn,

I am writing in response to your letter of May 24, which contains supplemental questions relating to child pornography sentencing.

Questions 1-3

1. I do not believe that individuals who view images of child pornography pose no threat to children.

2. I do not believe that enforcing child pornography laws destroys lives unnecessarily.

3. I do not believe that possessors of child pornography should receive at most treatment and supervision.

Question 4

In *Polizzi*, the Second Circuit stated, "Our precedent forecloses the conclusion that Polizzi had a Sixth Amendment right to trial by a jury that had been instructed on the applicable mandatory minimum sentence." *United States v. Polouizzi*, 564 F.3d 142, 161 (2d Cir. 2009). I will faithfully follow Supreme Court and Second Circuit precedents in this area in cases that come before me.

Question 5

I have never asked jurors whether they would have voted to convict a defendant had they known about the minimum sentence. I cannot comment on the propriety of Judge Weinstein's doing so because this is an issue that may come before me if I am confirmed to the Second Circuit. For the same reason, I am unable to comment on whether a judge should overturn a verdict if jurors state they would have changed their votes had they known about the minimum sentence.

Question 6

I cannot comment on the defendant's statements but I do believe it is important that a defendant see a federal district judge as a "judge," rather than a father figure.

Question 7

I cannot comment because Judge Weinstein's rulings may come before me if I am confirmed to the Second Circuit.

Question 8

I cannot comment specifically on the propriety of the sentence imposed by Judge Graham. My 2003 remark was merely intended to suggest that a sentencing decision should reflect consideration of all the relevant facts and circumstances.

Question 9

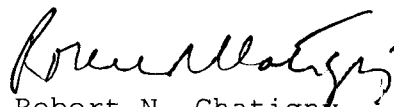
Yes, I believe that federal child pornography laws, and the criminal penalties associated with them, do deter individuals from producing, distributing and possessing child pornography.

Question 10

In the case you inquire about, the defendant pleaded guilty to possession of child pornography. The advisory guideline range suggested a minimum sentence of imprisonment of 21 months. The defendant sought a sentence of probation based in part on his mental and emotional condition resulting from abuse he experienced as a child. I sentenced him to 18 months in prison followed by 3 years of supervised release subject to numerous special conditions. The sentence was justified by a combination of factors, specifically, the defendant's reduced capacity to control his offense conduct, progress he had made in treatment, and the substantial length of time that had elapsed since his offense conduct.

Thank you for your consideration.

Very truly yours,


Robert N. Chatigny