Written Statement

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"Child Exploitation Restitution Following the Paroline Decision"

Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
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I. INTRODUCTION

Mr. Chairman, and members of the Subcommittee on Crime, Terrorism, and Homeland Security, my name is Jonathan Turley and I am a law professor at the George Washington University where I hold the J.B. and Maurice C. Shapiro Chair of Public Interest Law. It is an honor to appear before you today to discuss restitution for child exploitation in the aftermath of the *Paroline* decision. The subject of today's hearing represents the convergence of my academic and professional work in torts, constitutional, and criminal law. Frankly, the issue of restitution for child pornography is one of the most difficult that I have faced as an academic – at least with regard to possession offenses. We all agree on our objective in seeking compensation for these victims, including from possessors of child pornography. It is the means rather than the ends that makes this a challenging legal controversy. There is an obvious temptation to see if minimal or cosmetic changes might put this law over the legal lines for courts. However, marginal changes will inevitably embroil courts, and more importantly victims, in needless and prolonged litigation.

In my view, the years of litigation culminating in the recent Supreme Court case were the result of a well-intentioned but ill-conceived model for relief for these victims. On its face, the issue would not appear particularly challenging. The law provides at 18 U. S. C. §2259(a) that a district court "shall order restitution for any offense" under Chapter 110 of Title 18, including crimes related to the sexual exploitation of children and child pornography. Specifically, Section 2259 states that courts must grant restitution and order defendants "to pay the victim . . . the full amount of the victim's losses as determined by the court." *Id. at* §2259(b)(1).[1] The problem is not with the core culprits in these crimes: the people who commit the underlying the filming and distribution of those images. For those cases, the direct causal link between the victim and the criminals are clear and conventional. The difficulty arises in the application of such liability for the viewing or possession of these images. It is not a question of culpability but the basis for apportionment in determining restitution. The resulting litigation pushed doctrines like joint and several liability (and concepts like indivisibility of harm and proximate causation) well beyond their workable limits. Even putting aside the original demands for the liability of the "full" amount of restitution for possessors, the sheer number of viewers and possessors make divisibility of damages a task that becomes practically impossible. The end result can be arbitrary in setting a figure for the contribution of individual viewers among millions. The decision by the Supreme Court barring full restitution under joint and several liability theories affords Congress an opportunity to

[1] Congress also established that, under Section 2259(b)(2), that "[a]n order of restitution under this section shall be issued and enforced in accordance with section 3664," which in turn provides in relevant part that "[t]he burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government," §3664(e).

take an alternative and, in my view, a more sensible route for achieving the worthy ends of victim compensation.

Any discussion of restitution in an area like child pornography is obviously laden with passion and emotion. There are no advocates of child pornography on this panel or in this debate. We all start from the same foundational presuppositions. Indeed, at the outset, it may be most useful to state what we agree upon before addressing differences in our approaches to this problem. First, there is no question that child pornography remains one of the most heinous crimes under the criminal code.[2] Second, there is no question that the victims of child pornography continue to be victimized with the distribution and possession of images from their abuse.

There are also legal presuppositions that are generally, but not necessarily uniformly held. First, restitution was originally not designed as a punitive measure.[3] It is generally used to recompense for losses or damages. There are separate provisions that impose punishment in terms of incarceration and criminal fines. It is important in torts and criminal law to maintain the function of restitution in compensating for harm or injury. Restitution is a vital concept in these areas and has been carefully tailored to

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[2] Indeed, the Supreme Court reflected our shared disgust with the crime and the fact that the nature of this crime guarantees that it will continue to haunt and harm the victims:

> "The full extent of this victim's suffering is hard to grasp. Her abuser took away her childhood, her self-conception of her innocence, and her freedom from the kind of nightmares and memories that most others will never know. These crimes were compounded by the distribution of images of her abuser's horrific acts, which meant the wrongs inflicted upon her were in effect repeated; for she knew her humiliation and hurt were and would be renewed into the future as an ever-increasing number of wrongdoers witnessed the crimes committed against her."

Paroline, supra, at 1717.

[3] Clearly there are those who disagree with the clear division of restitution and punitive measures. *See, e.g.*, Cortney E. Lollar, *What Is Criminal Restitution?*, 100 Iowa L. Rev. 93 (2014).

allow for equitable and consistent payments to victims. Obviously, criminal restitution has a punitive element designed to convey the cost and gravity of various crimes. However, it has generally been tethered to the actual damages caused by particular felons. Second, the prior system of joint and several liability – allowing for full recovery of restitution even from possessors – cannot be reinstated through legislation in its prior form since it was declared unlawful by the Court. Moreover, it cannot be sustained without some adjustment in accord with the recent ruling of the Supreme Court. I previously criticized the restitution approach that led to the decision in *Paroline v. United States*, 134 S. Ct. 1710, 188 L. Ed. 2d 714 (2014).[4] While the decision itself is hardly a model of clarity, it is notable that eight justices agreed that the prior system was unsustainable and that restitution must be firmly grounded in traditional notions of causation and proportionality. For this reason, I have considerable reservations with the Senate proposed legislation, which sheds more heat than light on this problem. Rather than attempt to craft legislation to satisfy the objections laid out in *Paroline*, the Senate legislation makes more rhetorical rather than legal changes on critical points fueling this controversy. Congress should make the difficult but necessary decisions to guarantee a stable and sensible system for restitution for victims.

The progression of *Paroline* through the courts presents a telling record of a flawed foundation for recovery under the prior law. Judges and justices struggled unsuccessfully to find terra firma in the imposition of restitution demands on possessors.

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[4] *See, e.g.*, Jonathan Turley, *Court Orders Former Pfizer Executive to Pay $200,000 to Woman Photographed as a Child While Being Sexually Abused*, Feb. 24, 2009; *see also* John Schwartz, *Child Pornography, and an Issue of Restitution*, New York Times, Feb. 2, 2010*;* Karen Duffin, *New Frontiers In The Child Porn Law, National Public Radio,* Jan. 24, 2014.

This confusion was manifest around the country among the different circuits. In my view, the problem rests with the basic concept of restitution for possessors and that this confusion (and litigation) will continue with the Senate bill. I do not see how this continuing controversy advances the interests of victims or the legal system as a whole. For that reason, I support consideration of an alternative approach that would move beyond this unpromising restitution model and would establish a new compensation fund for assisting victims.

II. THE *PAROLINE* LITIGATION AND THE CONFUSION OVER CAUSATION.

I am assuming that the purpose of this hearing is not to vent disagreement with the Supreme Court's decision but to discuss the broad outlines for an alternative restitution system that would pass constitutional muster. While the vote of the Court was 5-4, the dissenting opinion by Chief Justice Roberts with Justices Antonin Scalia and Clarence Thomas maintained that restitution was categorically barred. Only Justice Sotomayor appeared to believe that restitution could be granted to the victim. Moreover, only one federal circuit ruled that full restitution could be ordered without the establishment of conventional proximate causation. Ten circuits agreed that such proximate causation had to be established.[5]

[5] The circuits differed on the imposition of a proximate causation standard under § 2259. Four circuits applied traditional principles of causation from tort and criminal law. *United States v. Monzel*, 641 F.3d 528, 535 (D.C. Cir.), *cert. denied sub nom. Amy v. Monzel*, 132 S. Ct. 756 (2011), *on appeal after remand*, No. 12-3093 (oral argument scheduled May 10, 2013); *United States v. Burgess*, 684 F.3d 445, 456–57 (4th Cir. 2012); *United States v. Aumais*, 656 F.3d 147, 153 (2d Cir. 2011); *United States v. Benoit*, 2013 WL 1298154, at *15 (10th Cir. Apr. 2, 2013). Two relied on general statutory interpretation to impose causation standards. *United States v. Kennedy*, 643 F.3d 1251, 1261–62 (9th Cir. 2011) (petition for cert. filed, No. 12-651); *United States v. McDaniel*, 631 F.3d 1204, 1208–9 (11th Cir. 2011). Three circuits offered variations, including the

The *Paroline* decision ultimately reflected the long-standing criticism of academics, including myself, that the restitution in the case lacked a viable proximate causal foundation. That opinion has already been discussed in detail so I will only discuss its most salient elements.

After his conviction in 2009 for possessing 280 images of child pornography, Doyle Randall Paroline was ordered to pay most of nearly $3.4 million in restitution for a victim identified only as "Amy." Two of the 280 images showed Amy being sexually abused by her uncle when she was eight years old. Paroline had no direct role in that abuse or the creation of the child pornography. As a possessor, Paroline challenged the imposition of the large restitution amount.

The case was ultimately heard by the United States Court of Appeals for the Fifth Circuit, which upheld the restitution. In successive decisions, however, the court deeply fractured on the question of causation and gave conflicted accounts of core concepts of joint and several liability. In the second appellate review of the case, a Fifth Circuit panel overruled earlier decisions and found that Amy would not have to prove traditional proximate causation and ordered the district court "to enforce the restitution award ... by all ... available means, [including] joint and several liability."[6] The court relied on a loose analogy to the joint and several liability system under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) but offered a highly uncertain view of the doctrine. It noted that "holding wrongdoers joint and

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use of an aggregate showing for proximate causation. *United States v. Evers*, 669 F.3d 645, 658–59 (6th Cir. 2012); *United States v. Kearney*, 672 F.3d 81, 94–95 (1st Cir. 2012); *United States v. Fast*, 709 F.3d 712, 721–22 (8th Cir. 2013). The Seventh Circuit allowed for full recovery but excluded possession offenders. *United States v. Laraneta*, 700 F.3d 983, 990–92 (7th Cir. 2012).

[6] *In re Amy Unknown*, 636 F.3d 190, 201 (5th Cir. 2011).

severally liable is no innovation" given the indivisible harm in the case.[7] Yet, it then ordered the lower court to determine divisible amounts of harm for the purposes of apportionment.

The Fifth Circuit then reexamined the case en banc and again the judges fractured on how to deal with restitution in a case of a possessor.[8] The en banc decision corrected the confusion over indivisible harm by ruling that § 2259 did not require proximate causation to be shown by Amy. As a victim, it declared that she was entitled to full restitution as part of indivisible harm under a traditional joint and several liability approach. This approach was contested by Judge W. Eugene Davis in dissent.[9] Davis offered an alternative approach, one which treated the case as a type of collective causation by multiple actors in torts.[10] Judge Davis maintained that there had to be some effort at allocating or apportioning damages among the different actors – avoiding the extreme result by the majority.

The Fifth Circuit stood alone in its extreme position on causation, though the dissenting judges showed that this position was heavily contested. As noted earlier, ten other circuits required more traditional proximate causation to be shown.

When the case went to the United States Supreme Court, it again fractured the Court as justices struggled to find a way to thread this restitution needle in a case of a possessor. The result was near unanimity that the Fifth Circuit was wrong and that a proximate causation nexus had to be established with allocation of individual

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7 *Id.*

8 *In re Amy Unknown III*, 697 F.3d 306, 330 (5th Cir. 2012).

9 For full disclosure, I had the honor of clerking for Judge Davis on the Fifth Circuit after law school.

10 *See id.* at 331-36 (Davis, J., dissenting).

responsibility by the defendant. Writing for Justices Samuel A. Alito, Jr., Stephen G. Breyer, Ruth Bader Ginsburg, and Elena Kagan, Justice Kennedy held that there had to be a showing of proximate causation by this defendant for injuries and the court would have to establish a comparative figure based on that harm. Writing for Justices Antonin Scalia and Clarence Thomas, Chief Justice Roberts took a more categorical approach and found that no restitution was possible under the statute. Only Justice Sotomayor appeared to view full restitution as appropriate under an aggregate causation approach.

The majority was correct in its rejection of the Fifth Circuit approach and its reaffirmation of the requirement of proximate causation. However, the application of restitution in a possession case still produced confusion as the Court tried to offer guidance to the lower courts. While the majority appeared confident that lower courts could figure it out, the record in this case disproved any such notion. The record was littered with failed efforts to force the square peg of restitution into the round role of a possession case. The guidance offered to lower courts promises only continuing confusion as to where to draw the line on restitution. Kennedy told lower court judges to consider factors, including but not limited to, the overall pool of individuals responsible in past cases for this ongoing injury; a projection of the number of future contributors including those who would not likely be identified; the number of images that individual possessed; and "other facts relevant to the [convicted individual's] relative causal role."[11]

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[11] Justice Kennedy specifically left lower courts with the following as guidance: "There are a variety of factors district courts might consider in determining a proper amount of restitution, and it is neither necessary nor appropriate to prescribe a precise algorithm for determining the proper restitution amount at this point in the law's development. Doing so would unduly constrain the decision makers closest to the facts of any given case. But district courts might, as a starting point, determine the amount of the victim's losses caused by the

However, the Court then simply called for a type of Goldilocks estimate: something not too high and not too low but just right. The Court stressed that "[t]hese factors need not be converted into a rigid formula, especially if doing so would result in trivial restitution orders."[12] This leaves lower courts with the Sisyphean task of establishing a single harm of apportioned contribution of one viewer among millions of past and future viewers of a given image. While the imposition of full restitution against such a viewer or possessor was rightfully rejected as "excessive," this approach promises to be arbitrary in any final calculation. As indicated in my criticism before the ruling, I agree with Chief Justice Roberts when he wrote in dissent that "[b]y simply importing the generic restitution statute without accounting for the diffuse harm suffered by victims of child pornography, Congress set up a restitution system sure to fail in cases like this one. Perhaps a case with different facts, say, a single distributor and only a handful of possessors, would be susceptible of the proof the statute requires."[13]

The majority in *Paroline* can be credited in bringing some clarity in the rejection of the joint and several liability approach as well as the requirement of a more traditional

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> continuing traffic in the victim's images … then set an award of restitution in consideration of factors that bear on the relative causal significance of the defendant's conduct in producing those losses. These could include the number of past criminal defendants found to have contributed to the victim's general losses; reasonable predictions of the number of future offenders likely to be caught and convicted for crimes contributing to the victim's general losses; any available and reasonably reliable estimate of the broader number of offenders involved (most of whom will, of course, never be caught or convicted); whether the defendant reproduced or distributed images of the victim; whether the defendant had any connection to the initial production of the images; how many images of the victim the defendant possessed; and other facts relevant to the defendant's relative causal role."
> *Paroline*, supra, at 1728.

12 *Id*.

13 *Id.* at 1733 (Roberts, C.J., dissenting).

proximate causation showing. The Court balked at the notion of a possessor being forced to carry all or most of a restitution figure. However, in the end, the majority was still faced with the same intractable problem of restitution in possession cases. The character of this crime makes such calculations more metaphysical than legal. Before the Congress continues along the same maddening path, I hope that it will consider a modest alternative that could produce great benefits for both victims and the court system as a whole.

III. THE AMY AND VICKY CHILD PORNOGRAPHY VICTIM RESTITUTION IMPROVEMENT ACT OF 2014

The introduction of Senate Bill 2301, *The Amy and Vicky Child Pornography Victim Restitution Improvement Act of 2014*, just two weeks after the decision would continue the ill-conceived approach that has led to such disarray among the trial and appellate courts for years. Indeed, the bill seems more a retort than a reform of critical parts of the federal law. This may be the intent of Congress and it certainly has every right to assert its own institutional powers in triggering further confrontations over restitution. However, I do not see why such a course is good for victims when a less controversial system is available, as discussed in the next section.

The Senate bill continues to hold possessors potentially liable for "the full amount of the victim's losses" despite the contrary view of the Supreme Court that such fines could be viewed as constitutionally excessive. The Excessive Fines Clause of the Eighth Amendment would likely be raised in such cases. While these fines are paid to victims, not the government, the Court has indicated that it would view the Clause as triggered by the fact that it comes "at the culmination of a criminal proceeding and requires conviction

of an underlying crime."[14] It is certainly true that the new legislation allows defendants to seek contribution, a missing factor noted by the Court in *Paroline*.[15] However, the allowance for contribution is a largely meaningless guarantee in this context. It is extremely unlikely that the vast majority of defendants will have the ability to seek such contribution from the thousands, or even millions, of viewers of such material, particularly while incarcerated. Moreover, there remains the issue of proportionality in such fines.[16]

Under the Senate bill, Section 2259 would be amended to still include Section 2252 among those subject to orders for "the full amount of the victim's losses," as set out in paragraph 2 (A). Section 2252 includes anyone who "knowingly receives" such material. The bill states that a defendant must pay "the full amount of the victim's losses" or at least $250,000 for production, $150,000 for distribution, or $25,000 for possession. That secondary option reflects the different culpability among different classes of defendants in these cases between distributors and possessors. Yet possessors can still be liable for the full amount. In my view, this recognition should lead to a different approach, laid out below, that would more completely separate these two groups of targeted defendants.

Finally, the law still applies joint and several liability to "[e]ach defendant against

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[14] *United States* v. *Bajakajian*, 524 U. S. 321, 328, (1998); *see also Paroline, supra*, at 1726.

[15] *Paroline, supra*, at 1726 ("The reality is that the victim's suggested approach would amount to holding each possessor of her images liable for the conduct of thousands of other independently acting possessors and distributors, with no legal or practical avenue for seeking contribution.").

[16] *Id.* ("there is a real question whether holding a single possessor liable for millions of dollars in losses collectively caused by thousands of independent actors might be excessive and disproportionate in these circumstances.").

whom an order of restitution is issued under paragraph (2)(A) shall be jointly and severally liable to the victim with all other defendants against whom an order of restitution is issued under paragraph (2)(A) in favor of such victim." The use of joint and several liability will remain highly problematic so long as possessors are included under paragraph (2) (A). The use of joint and several liability is far less controversial when applied to the more defined and causally connected group of original actors in the filming and distribution of these images.

This law offers more of a formula for restitution, including a provision for contribution, that would clearly bring the law closer to the mark for the Supreme Court. Indeed, the imposition of concrete fines in paragraph (2) (B) is a step forward in bringing greater definition to this process for trial courts. Yet it retains the most controversial elements of the prior law and will likely end up back in the courts for a new round of protracted litigation. Without predicting the outcome of such challenges, I believe that it would be far wiser to rethink the approach of Congress. The Senate bill is a striking example of what economists call "path dependence." An initial approach can become hardened in our assumptions, creating threshold conditions that limit the options in addressing problems. There can be a conceptual or political resistance to setting aside the initial reliance on such structuring doctrines like joint and several liability. If we want a stable and efficient system, we need to be willing to examine why the prior system caused such confusion and litigation. Simply put, we need a new path to the same objective.

IV. AN ALTERNATIVE APPROACH TO COMPENSATING VICTIMS OF SEXUAL EXPLOITATION

If we step back from the facts of *Paroline*, we may be able to discern a different approach to this problem. Once again, we can start with a couple of presuppositions that would likely garner wide support. First, full restitution is clearly warranted against those who produce or distribute child pornography. Accordingly, the type of high restitution figures contained in the Senate bill are not particularly problematic for such direct actors who are justifiably the subjects of high sanctions in terms of both incarceration and restitution. Second, there should be no question that the replication and continued distribution of these images represent continuing harm. The high levels of restitution do not represent a conversion into punitive measures because they represent high levels of harm. Finally, these direct actors should pay restitution directly to their victims and those victims should have the priority claim on their assets in any restitution proceeding.

Once these actors are removed, we are left with possessors. This class of actors has caused the utter confusion in the lower courts and most recently in the Supreme Court. It is not a lack of sympathy for the victims which has produced this chaos but the technological reality of the Internet. With endless replication of these images, this system will never work in a way that is both equitable and predictable. Restitution determinations for this group simply defy a consistent and coherent approach.[17] However, that does not mean that we cannot create a system to afford relief to these victims. I

[17] This is a distinction drawn by the Seventh Circuit in *United States* v. *Laraneta*, 700 F. 3d 983, 992 (7th Cir. 2012) (agreeing to full restitution for distributors "But if the defendant in this case is not responsible for the viewing of the images of Amy and Vicky by even one person besides himself, joint liability would be inappropriate.").

believe that we can create a system to deliver such relief in a far more equitable fashion while reducing both litigation fees for victims and administrative costs for courts.

I believe that Congress should remove the class of possessors from the restitution provisions entirely.[18] Instead, Congress should create a victim's fund and impose more standard criminal fines on possession offenses. Such an approach would shed the prior ill-conceived restitution model and use a fund model that has succeeded in other areas. A victim compensation fund could be created where possessors of child pornography would be subject to set fines to be paid into a central fund that would then guarantee even and equitable distribution to the victims. Such funds already exist and were created precisely to allow for such benefits in distribution to victims such as the International Terrorism Victim Expense Reimbursement Fund (ITVERP).[19] Indeed, such funds have been created for decades to distribute payments to victims in mass tort cases and settlements from Agent Orange to asbestos. More recent examples include the BP Oil Spill Liability Trust Fund and the 9/11 Victim Compensation Fund. These funds reduced the expenditure of funds on litigation and accordingly increased the amount of money actually going to victims. Direct restitution would then be available from core actors in a given case while fund compensation would be available to all victims from possessors.

The premise of such a fund would be on the recovery of individuals. This fund, which I tentatively have called "RAISE"[20] would bring a number of clear benefits:

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[18] Congress could obviously decide to use such a fund for all violators, including distributors, to simplify the system further. What I would not support is to use the fund in cases of the original actors responsible for these vile films. Victims should be able to recover directly from those who directly harmed them and produced these images.

[19] 42 U.S.C.A. § 10603c.

[20] The name, Recovery Assistance for Individual Sexual Exploitation (RAISE), serves to emphasize that such a fund need not be limited to minors. While the vast

1. *Fairness.* It would be the first nationally coordinated program guaranteeing a fair and equitable distribution of support to victims. This would allow a single, centralized office to track the payments to all registered victims to avoid under or over compensation problems.

2. *Reduced Legal Fees*. A fund would reduce the need for victims to retain lawyers and litigate over restitution – resulting in a reduction of actual support due to the payment of legal fees and costs.

3. *Reduced Judicial Administrative Costs*. Rather than have hundreds of courts trying to make the difficult and time-consuming determinations of apportioned damages in possession cases, all claims would go to a single office with the experience and resources to process such claims.

4. *Ending the Race to the Courthouse*. There would no longer be an advantage for those victims who have retained counsel and who are the most active in seeking compensation from cases.

5. *Reduction of Information and Transactional Costs*. A fund would allow for a single resource for victims to reduce information and transactional costs in learning of new cases with potential recovery for victims. The identification and collection would be done by the fund while victims would only have to establish their identity and harm from exploitation.

6. *Consistent Orders of Relief for Victims.* The United States Sentencing Commission found that "Of 1,922 child pornography cases in the federal court system in

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majority of beneficiaries would be victims of child pornography, the fund could also compensate pornography created without consent of adults including rape videos or photographs.

2013, no fine or restitution was ordered in 1,423 of those cases."[21] This, however, may reflect the intractable problems associated with the prior restitution system and the disinclination of courts to impose what they consider arbitrary or excessive orders for restitution. This system would offer a more concrete approach to fines and would also assure courts that the distribution of such funds will be addressed in an equitable and consistent way.

If a fund were created, possessors would pay a set criminal fine for possession of images. One possibility would be to simply create a range of fines for courts to consider in the specific context of a case. An alternative would be to place a specific figure on each image of child pornography found in the possession of a defendant, as the Senate bill does. A third option would be to refer the precise fine levels to the United States Sentencing Commission to determine. While such guidelines may be discretionary after *Booker*, we have seen that courts generally follow such guidelines and would likely do so in this area. Indeed, I expect courts would be relieved to have such clarity in an area of such long-standing confusion.

Regardless of the option selected for setting fines, I would also recommend that any new law afford judges some discretion in dealing with defendants who have differing levels of culpability. One of the realities of Internet pornography is that some defendants are found to have downloaded hundreds or even thousands of images in a single click. There is a considerable difference between bulk downloads of pornography which contain a small number of such images as opposed to the intentional searching and

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[21] James R. Marsh, *Federal Criminal Restitution for Child Victims*, ABA Journal, Oct. 28, 2014.

acquisition of child pornography. While no possession of child pornography is *de minimus*, courts should be able to tailor fines to reflect the level of culpable conduct.

Finally, a fund would create an option for courts ordering fines in non-child pornography cases. In some cases, courts are faced with ill-gotten gains or the need for fines that are not part of a restitution determination. In such cases, courts will sometimes order payments to charities or not-for-profit organizations as part of plea agreements (or settlements in civil cases). A fund like RAISE would be a worthy choice for such fines. It is not clear how much money would be generated in a national victim's fund but such judicial orders could augment the fund for the benefit of these victims.

V. CONCLUSION

Archimedes once said "[g]ive me a lever long enough and a fulcrum on which to place it, and I shall move the world." The instant controversy is the type of problem that unites all legislators as well as academics in seeking the right means to make a real change in this world. For these victims, a stable and equitable system for compensation can change their world. Thus far, we have collectively failed to supply them with such a system. It comes down to a question of the right lever. In my view, the prior approach was the wrong lever and only served to prolong litigation and ultimately deny restitution.

Rather than react defensively to the Supreme Court decision, I believe it would be wise of Congress to listen not just to the concerns of these justices but to the dozens of lower court judges who have to deal with the criminal cases in this area. Much of the prior system can be retained while a better system can be developed for possessors. The result would be a more equitable and stable system for victim compensation. It would sharply reduce litigation and, in my view, offer victims faster and greater compensation

on average. To put it simply, we can find a better lever that can make for better lives for these victims.

Thank you again for the honor of appearing today before you and I am happy to address any questions that you may have on my testimony.

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