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10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA, ) CR NO. 08-582-GW  
13 )  
14 Plaintiff, )  
15 v. ) GOVERNMENT'S SENTENCING  
16 ) MEMORANDUM  
17 LORI DREW, )  
18 Defendant. ) Sentencing Date: 5/18/2009  
Time: 8:00 P.m.  
Honorable George H. Wu

19 Plaintiff United States of America, by and through its  
20 counsel of record, Assistant United States Attorney Mark C.  
21 Krause, respectfully files its Sentencing Memorandum.

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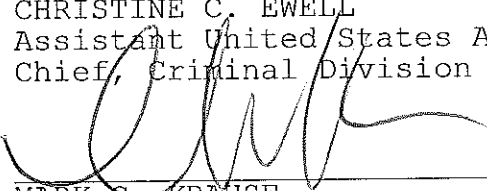
1 This filing is based on the included memorandum of points  
2 and authorities, any oral argument permitted on these issues, and  
3 all files and records of this case.

4 Dated: May 6, 2009

5 Respectfully submitted,

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1                                    MEMORANDUM OF POINTS AND AUTHORITIES

2                                    I.

3                                    INTRODUCTION

4            On November 26, 2008, defendant Lori Drew was convicted of  
5 three counts of unauthorized access to a protected computer to  
6 obtain information, in violation of 18 U.S.C. § 1030(a)(2)(C).  
7 The Presentence Report ("PSR") has determined that defendant's  
8 total adjusted offense level is 4 and her criminal history  
9 category is I, resulting in a sentencing range of 0 to 6 months.  
10 The Probation Office has recommended a sentence of probation.

11           The government respectfully disagrees with the PSR's  
12 guideline calculation and the Probation Office's recommendation  
13 of probation. Defendant's callous disregard for the consequences  
14 of her actions has been well documented. Defendant coldly  
15 conceived of a scheme to humiliate a vulnerable girl, M.T.M.,  
16 who defendant believed had wronged her daughter. Even though  
17 defendant knew M.T.M. suffered from depression, was suicidal, and  
18 was at an extremely sensitive position in her life, defendant not  
19 only initiated the scheme, but encouraged others, including  
20 minors, to participate. When the scheme resulted in M.T.M.  
21 taking her own life, defendant sought to conceal the scheme and  
22 avoid responsibility for her part in it.

23           Both the callousness of defendant's criminal conduct and the  
24 extraordinary harm it caused mandate a sentence of more than  
25 probation. Only a custodial sentence will provide just  
26 punishment, encourage respect for the law, and deter others from  
27 engaging in similar conduct. The Court therefore should sentence  
28 defendant to a thirty-six month term of imprisonment, comprised

1 of twelve months on each of counts two, three, and four, with all  
2 sentences to be served consecutively.

3 II.

4 FACTS

5 A. DEFENDANT EMBARKS ON A SCHEME TO OBTAIN INFORMATION ABOUT  
6 M.T.M.

7 As outlined at trial, for several years, defendant's family  
8 and another local neighborhood family, the Meiers, were friendly.  
9 Each family had a daughter the same age. Defendant's daughter,  
10 S.D., and M.T.M. attended school together and were friends.  
11 Their relationship, however, was, at times, rocky. M.T.M. spent  
12 a great deal of time at defendant's residence and even traveled  
13 with defendant's family. During one such trip, defendant  
14 administered M.T.M. her prescription medications. On other  
15 occasions, M.T.M. feuded with defendant's daughter. In addition,  
16 at times M.T.M. would act out and defendant would send her home,  
17 telling M.T.M. that she needed to take her medication.

18 Over time, S.D. and M.T.M. drifted apart and, in 2005, the  
19 Meiers decided to transfer M.T.M. from the local public school to  
20 a local Catholic school. Christina Meier, M.T.M.'s mother  
21 confided in defendant that she was concerned about M.T.M.'s  
22 mental health and believed M.T.M. was particularly vulnerable.  
23 Specifically, Meier told defendant that M.T.M. was suffering from  
24 depression -- so much so that Meier expressed concern that the  
25 Meiers would need to reverse the locks on the door to M.T.M.'s  
26 bedroom so that she could not lock herself in and harm herself.  
27 Meier also told defendant that M.T.M. would become distraught  
28 when defendant spoke harshly to her and sent her home.

1 Over the summer of 2006, defendant and her family became  
2 concerned that M.T.M. was spreading malicious rumors about  
3 defendant's daughter. Defendant discussed the matter with her  
4 daughter and her eighteen year old employee, Ashley Grills. The  
5 three conceived of a scheme where they would pretend to be an  
6 attractive male teenager on MySpace and approach M.T.M. through  
7 MySpace using that false identity to obtain M.T.M.'s confidence.  
8 Once they had gained M.T.M.'s confidence, the co-conspirators  
9 planned to find out what M.T.M. was saying on MySpace, including  
10 what M.T.M. was saying about defendant's daughter. Grills  
11 pointed out that there was a risk they would get in trouble if  
12 the scheme were uncovered because what they were doing was  
13 illegal; defendant, however, assured Grills that they would not  
14 and, in any event, many people created fake identities on the  
15 Internet.

16 B. DEFENDANT AND HER CO-CONSPIRATORS CREATE THE FAKE "JOSH  
17 EVANS" MYSPACE ACCOUNT AND EMBARK ON A SCHEME TO USE IT TO  
HUMILIATE M.T.M.

18 On September 20, 2008, defendant and her co-schemers created  
19 a MySpace profile under the fake name "Josh Evans." "Evans" was  
20 supposedly a teenager who was new to the area and was home-  
21 schooled. "Evans" was supposedly lonely because he did not know  
22 anyone in the area and "his" father had abandoned the family.  
23 The co-schemers posted a photograph of an attractive boy on the  
24 profile to further the fraud. On that same date, defendant and  
25 her co-schemers used the "Josh Evans" account to contact M.T.M.  
26 through the MySpace communication services. Smitten with the  
27 attractive "boy's" invitation to communicate, M.T.M. agreed to  
28 communicate with "him."

1 Although the initial communications were innocent enough,  
2 within days, defendant encouraged her co-schemers to flirt with  
3 M.T.M. Defendant also discussed using the information obtained  
4 during the scheme to humiliate M.T.M. in the real world.  
5 Specifically, when it became clear from the communications that  
6 M.T.M. was attracted to "Josh Evans," defendant proposed that the  
7 co-conspirators lure M.T.M. to a mall where they would reveal  
8 that there was no "Josh Evans" and taunt M.T.M. with the contents  
9 of her MySpace page and information learned during the scheme.

10 During this time, defendant told friends and colleagues  
11 about the scheme. For example, defendant told her hairdresser  
12 that defendant and others had made up a fake internet profile for  
13 a boy and started talking to M.T.M. using that profile. She  
14 added that M.T.M. may have had the "hots" for the fake boy.  
15 Defendant appeared to enjoy describing the scheme.

16 C. M.T.M.'S SUICIDE AND DEFENDANT'S EFFORTS TO CONCEAL THE  
17 SCHEME AND DENY RESPONSIBILITY

18 On October 15, 2006, another girl in the neighborhood, J.M.,  
19 obtained the username and password for the "Josh Evans" account  
20 from defendant's daughter and sent M.T.M. a message suggesting  
21 that "Evans" did not want to be friends with M.T.M. anymore  
22 because M.T.M. was not nice to M.T.M.'s friends. When the co-  
23 schemers resumed the on-line conversation the following day, the  
24 dispute escalated until Grills (as "Evans") told M.T.M. that the  
25 world would be a better place without M.T.M. in it. Distraught,  
26 M.T.M. responded to "Evans" that he was the kind of boy a girl  
27 would kill herself over. She then hung herself in her bedroom  
28 closet.

1 When emergency crews responded to the Meier residence,  
2 defendant instructed her co-conspirators to find out what had  
3 happened. Upon learning that M.T.M. had attempted to commit  
4 suicide, defendant and her husband directed the co-schemers to  
5 delete the MySpace account.

6 Later that evening, defendant continued to try to cover up  
7 her crime. She called the neighborhood girl who had sent M.T.M.  
8 the message on October 15. Defendant instructed J.M. to "keep  
9 her mouth shut," to "stay off the MySpace," and to avoid  
10 accessing the Josh Evans account. Sensing something was amiss  
11 because defendant never called her daughter directly, the mother  
12 of the neighborhood girl, Michelle Mulford, asked her daughter  
13 what had happened. After speaking with her daughter, Mulford  
14 subsequently confronted defendant. Defendant told Mulford that  
15 she (defendant), her daughter, and Grills had created the account  
16 to play a prank on M.T.M. and that she (defendant) caused the  
17 account to be deleted. In a subsequent phone conversation,  
18 defendant tried to disclaim responsibility, telling Mulford that  
19 M.T.M. previously tried to commit suicide.

20 III.

21 A SENTENCE OF 36 MONTHS IS APPROPRIATE

22 A. OFFENSE LEVEL CALCULATION

23 The PSR has suggested that defendant's total offense level  
24 is 6 and her criminal history category is I, resulting in a 0 to  
25 6 guideline range. The government respectfully disagrees. The  
26 government submits the following guideline factors apply:

27 Base Offense Level : 6 [U.S.S.G. § 2B1.1(a)(2)]  
28

1 Adjustments

2 Role Adjustment: +2 [U.S.S.G. § 3B1.1(c)]

3 Use of Minor : +2 [U.S.S.G. § 3B1.4]

4 There is no dispute that defendant's base offense level is  
5 six. A preponderance of the evidence, however, supports the  
6 application of adjustments related to role and use of a minor.  
7 In addition, considering the application notes to USSG § 2B1.1,  
8 as well as USSG § 5K2.1, a sentence above the guideline range is  
9 appropriate given that a primary objective of the offenses was to  
10 inflict emotional harm and the offenses both risked and actually  
11 caused substantial psychological harm and severe emotional trauma  
12 that resulted in M.T.M.'s death.

13 1. A Role Adjustment Should Be Applied

14 Section 3B1.1(c) provides that "[i]f a defendant was an  
15 organizer, leader, manager or supervisor in any criminal activity  
16 other than described in (a) or (b), increase by 2 levels  
17 [defendant's offense level]." Here, the testimony at trial  
18 established that defendant worked with two co-schemers in the  
19 commission of the offenses of conviction: Grills and her own  
20 daughter S.D. The testimony likewise established that defendant  
21 was an organizer, leader, manager or supervisor of the others.  
22 Grills described how she looked up to defendant, how the scheme  
23 was conceived while she was working at defendant's house, and how  
24 defendant was her employer. Perhaps most importantly, however,  
25 when Grills and S.D. developed concerns about the scheme, it was  
26 defendant to whom they turned to find out what to do. Tellingly,  
27 defendant told them to continue, and so they did. Consequently,  
28

1 although each co-schemer participated in the planning and  
2 execution of the offenses, defendant's role was that of a manager  
3 as she exercised "control and authority" over the others and  
4 retained the ultimate "decision making authority" on whether to  
5 end the scheme. USSG § 3B1.1 comment. (n.4).

6 The PSR declined to apply a role adjustment, assuming that  
7 defendant and Grills were "essentially equal in culpability" as  
8 both were adults and "played a mutually supportive role." (PSR  
9 ¶ 28). The government respectfully disagrees with that  
10 assessment. The PSR's assumption ignores that Grills, as a  
11 teenager who was scarcely more than a child herself, looked up to  
12 defendant and sought her approval. The PSR's position also  
13 ignores that when Grills had concerns about the plan and wanted  
14 to stop, defendant ordered her to proceed.<sup>1</sup> In addition, the PSR  
15 ignores S.D.'s participation in the criminal conduct, and the

---

16  
17 <sup>1</sup> As outlined in prior pleadings filed with the Court,  
18 defendant explicitly told Grills to proceed notwithstanding  
19 Grills' expressed statement that what they were doing was  
20 illegal:

21 Q: During the first week after you created the  
22 account did anyone raise any concerns about what  
23 you were doing?

24 A: Yes.

25 Q: And who was that?

26 A: It was both [S.D.] and I.

27 Q: And who did you raise those concerns with?

28 A: Lori.

Q: And what did you tell the defendant?

A: That we thought we would get in trouble because  
it's illegal to make a fake MySpace.

1 clear fact that S.D. acted under the direction and oversight of  
2 defendant. The Court should, therefore, apply a two level  
3 adjustment under USSG § 3B1.1(c).

4 2. A Use of Minor Adjustment Should Be Applied

5 Section 3B1.4 provides that "[i]f the defendant used or  
6 attempted to use a person less than eighteen years of age to  
7 commit the offense or assist in avoiding detection of, or  
8 apprehension for, the offense, increase by 2 levels [defendant's  
9 offense level]." Although the PSR does not address an  
10 adjustment for use of a minor, the Court should apply a two-level  
11 adjustment under that provision. Defendant used her daughter  
12 S.D. to help set up the Evans account and contact M.T.M. (PSR ¶  
13 28). After M.T.M.'s suicide, defendant also contacted J.M. and  
14 told J.M. to "keep her mouth shut" and not to access the Josh  
15 Evans account in an effort to cover up the scheme. Each of these  
16 acts independently supports application of USSG § 3B1.4.

17 3. At Least a Ten-Level Upward Departure is Justified  
18 Because The Guidelines Substantially Understate the  
19 Seriousness of the Offenses

20 Although the government agrees with the PSR that  
21 USSG § 2B1.1 is the applicable guideline provision, the  
22 application notes to that specific guideline provision explicitly  
23 recognize that it has certain limitations -- limitations that  
24 demonstrate that in this particular case, a sentence above the  
25 applicable guideline range is appropriate. In particular,  
26 Application Note 19 provides:

27 Departure Considerations. --

28 (A) Upward Departure Considerations. There may be cases in  
which the offense level determined under this guideline

1 substantially understates the seriousness fo the offense.  
2 In such cases, an upward departure may be warranted. **The**  
3 **following is a non-exhaustive list of factors that the court**  
4 **may consider in determining whether an upward departure is**  
5 **warranted.**

6 (i) a primary objective of the offense was an  
7 aggravating, non-monetary objective. For example, a  
8 **primary objective of the offense was to inflict**  
9 **emotional harm.**

10 (ii) The offense caused or risked substantial non-  
11 monetary harm. For example, **the offense caused**  
12 **physical harm, psychological harm or severe emotional**  
13 **trauma . . . . An upward departure would be warranted,**  
14 **for example, in an 18 U.S.C. § 1030 offense involving**  
15 **damage to a protected computer, if, as a result of that**  
16 **offense, death resulted.**

17 USSG § 2B1.1 comment. (n.19) (emphasis added).

18 Here, clear and convincing evidence demonstrates that the  
19 otherwise applicable guideline range under USSG § 2B1.1  
20 substantially understates the seriousness of the offenses because  
21 the object of defendant's crimes was to inflict emotional harm  
22 and the offenses in fact caused psychological harm and severe  
23 emotional trauma that resulted in M.T.M.'s death. Accordingly,  
24 at least a ten-level upward departure is warranted.

25 a. The Court Should Consider the Conduct Related to  
26 the Apprendi Factor on which Defendant Was Not  
27 Convicted

28 The government acknowledges that the jury did not convict  
defendant of a felony violation of 18 U.S.C. § 1030(a)(2)(C)  
because it could not reach a unanimous verdict that defendant's  
conduct was in furtherance of a tortious act. Both the Supreme  
Court and the Ninth Circuit, however, have determined that a  
sentencing court may use acquitted conduct to determine a  
defendant's appropriate sentence. In United States v. Watts, 519  
U.S. 148 (1997), the Supreme Court stated: "[an] acquittal on

1 criminal charges does not prove that the defendant is innocent;  
2 it merely proves the existence of a reasonable doubt as to his  
3 guilt." Id. at 155 (internal quotation and citation omitted). As  
4 a result, the Court held:

5 [A]n acquittal in a criminal case does not preclude the  
6 Government from relitigating an issue when it is  
7 presented in a subsequent action governed by a lower  
8 standard of proof. The Guidelines state that it is  
9 "appropriate" that facts relevant to sentencing be  
10 proved by a preponderance of the evidence, USSG §  
11 6A1.3, comment., and we have held that application of  
the preponderance standard at sentencing generally  
satisfies due process. . . **We therefore hold that a  
jury's verdict of acquittal does not prevent the  
sentencing court from considering conduct underlying  
the criminal charge, so long as that evidence has been  
proven by a preponderance of the evidence.**

12 Id. at 156-57 (internal quotation and citation omitted) (emphasis  
13 added); see also United States v. Mercado, 474 F.3d 654, 656-58  
14 (9th Cir. 2007) (holding, in line with "every other Court of  
15 Appeals to consider the issue," that Booker does not abrogate  
16 Watts and that sentencing courts remain free to rely at  
17 sentencing on conduct underlying acquitted criminal charges).  
18 Both Watts and the commentary to USSG Section 6A1.3 state that a  
19 sentencing court may consider acquitted conduct in sentencing a  
20 defendant as long as the conduct is proven by a preponderance of  
21 the evidence. The Ninth Circuit has also confirmed that, even  
22 post-Booker, "[a]s a general rule, the preponderance of the  
23 evidence standard is the appropriate standard for factual  
24 findings used at sentencing." United States v. Dare, 425 F.3d  
25 634, 642 (9th Cir. 2005). Pre-Booker, however, the Ninth Circuit  
26 held that due process considerations may require that particular  
27 facts be established by clear and convincing evidence when these  
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1 facts have a "disproportionate impact" on the sentence. United  
2 States v. Hopper, 177 F.3d 824, 832-33 (9th Cir. 1999); see also  
3 United States v. Jordan, 256 F.3d 922, 928 (9th Cir. 2001)  
4 (identifying non-exclusive list of factors for consideration  
5 relating to disproportionate effect to determine if clear-and-  
6 convincing standard applies). The Ninth Circuit has held that  
7 Hopper remains valid post-Booker and that, accordingly "this  
8 circuit's established rule, requiring facts found in support of  
9 Guideline enhancements that turn out to have disproportionate  
10 impact on the ultimate sentence imposed be established by clear  
11 and convincing evidence, continues to govern sentencing  
12 decisions." United States v. Staten, 466 F.3d 708, 717-720 (9th  
13 Cir. 2006). Even under a clear and convincing burden, the  
14 evidence in this case establishes both that a primary objective  
15 of defendant's conduct was to inflict emotional harm and that  
16 defendant's conduct in fact caused severe emotional harm that  
17 resulted in M.T.M.'s death; either of these factors alone, and  
18 certainly both in combination, supports a significant upward  
19 departure.

20 b. Clear and Convincing Evidence Demonstrates That a  
21 Primary Objective of Defendant's Conduct Was to  
22 Inflict Emotional Harm and That Defendant's  
Conduct In Fact Caused Severe Emotional Harm That  
Resulted In M.T.M.'s Death

23 As outlined at trial, defendant indicated to co-schemers,  
24 friends, work colleagues, and friends of her daughter, that the  
25 purpose of the scheme was to torment M.T.M. Susan Marie Prouty,  
26 Christina Chu, Corporal Edwin Lutz, and Michelle Mulford each  
27  
28

1 testified that defendant told them how she and others created a  
2 fake MySpace profile by pretending to be an attractive young boy  
3 named "Josh Evans." According to Prouty, Chu, Lutz, Mulford, and  
4 J.M., defendant told them how defendant used the Josh Evans  
5 account to contact M.T.M. J.M., Prouty, and Grills described how  
6 the profile was going to be used to harass M.T.M. in the real  
7 world. J.M., for example, described how defendant prompted S.D.  
8 to outline their plan to lure M.T.M. to the mall believing she  
9 was meeting "Evans" for a date only to learn that he was a  
10 figment of her imagination when confronted with printouts of her  
11 communications with "Josh Evans," all before her classmates.  
12 Likewise, Prouty testified how defendant planned on using the  
13 communications to embarrass M.T.M. at school. Grills testified  
14 about her concerns with the plans and that defendant overruled  
15 her.

16 Not only was the purpose of the scheme to embarrass M.T.M.,  
17 but also defendant's conduct was coldly calculated to maximize  
18 the psychological harm inflicted on M.T.M. According to the  
19 testimony at trial, defendant knew that M.T.M. was "boy crazy."  
20 It was a quality that was somewhat endearing but unquestionably  
21 dangerous as it led to her contacting unknown boys over the  
22 Internet, including while with S.D. Defendant also knew that  
23 M.T.M. was sensitive about her appearance, particularly about her  
24 weight. Knowing those vulnerabilities, defendant and her co-  
25 schemers created the "Evans" persona as an attractive older boy  
26 who was not interested in a girl's weight. When "Evans" showed  
27  
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1 interest in M.T.M., and even more so when "his" communications  
2 became flirtatious and even sexual, it was inevitable that M.T.M.  
3 would become interested and then crushed when "Evans" rebuked or  
4 ignored her.

5 Defendant also embarked on her scheme knowing that M.T.M.  
6 was a troubled girl who suffered from depression and was  
7 suicidal. Defendant, after all, knew M.T.M. for most of her life  
8 and had administered M.T.M.'s antidepressant medications when  
9 M.T.M. traveled with defendant and her family. Defendant's  
10 daughter, S.D., confided in her mother regarding M.T.M.'s  
11 precarious mental state and M.T.M.'s suicidal ideations.  
12 Defendant knew that M.T.M. was in a particularly precarious  
13 psychological state as M.T.M.'s mother told her that she was  
14 planning to reverse the locks on the door to M.T.M.'s bedroom to  
15 prevent M.T.M. from doing harm to herself.

16 Thus, clear and convincing evidence establishes either of  
17 two factors that place this case squarely within Application Note  
18 15. First, a "primary objective" of defendant's criminal conduct  
19 was "to inflict emotional harm." Second, either in combination  
20 or alternatively, defendant's criminal conduct both "risked" and  
21 "caused" "severe emotional trauma" and "physical harm," namely,  
22 M.T.M.'s death, which resulted from the severe emotional harm  
23 occasioned by the scheme that defendant initiated and encouraged.

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1 c. Defendant's Conduct Warrants At Least a 10-Level  
2 Upward Departure To a Guideline Range Encompassing  
3 the Statutory Maximum 36 Month Sentence

4 Ultimately, defendant's crimes had consequences far beyond  
5 typical offenses under Section 1030. The Guidelines explicitly  
6 recognize the limitations of Section 2B1.1 and that under such  
7 circumstances, a sentence above the guideline range is  
8 appropriate. In fact, the application notes to Section 2B1.1  
9 recognize that the section is deficient when addressing the harms  
10 associated with Section 1030 offenses that result in death. USSG  
11 § 2B1.1 comment. (n.19) ("An upward departure would be warranted,  
12 for example, in an 18 U.S.C. § 1030 offense involving damage to a  
13 protected computer, if, as a result of that offense, death  
14 resulted"). Similarly, USSG 5K2.1 provides that where an offense  
15 results in death, "a substantial increase may be appropriate" if  
16 "the underlying offense was one for which base offense levels do  
17 not reflect an allowance for the risk of personal injury, such as  
18 fraud."

19 Under USSG § 2B1.1(b)(12), defendant's offense level would  
20 increase by 8 levels (from 6 to 14, prior to adjustments for role  
21 and use of a minor) simply because her offense conduct involved  
22 "conscious or reckless risk of death or serious bodily injury"  
23 even if such injury or death did not actually occur. Under USSG  
24 2B3.1(b)(3) (applicable to bank robberies) and 2B3.2(b)(4)  
25 (applicable to extortions), the occurrence of actual bodily  
26 injury results in an offense-level increase of between 2 and 6  
27 levels, depending on the severity of the injury. In light of  
28

1 these provisions, where defendant's conduct both involved a  
2 "reckless risk" of serious harm (given defendant's awareness of  
3 M.T.M.'s depression and suicidal tendencies) and actually  
4 resulted in M.T.M.'s death, a departure of at least 10 levels is  
5 fully justified. This would take defendant's offense level to  
6 20, which, with criminal history category I, results in a  
7 guideline range of 33-41 months, a range encompassing the  
8 statutory maximum of 36 months.

9 IV.

10 A SENTENCE OF THIRTY-SIX MONTHS IN CUSTODY  
11 IS APPROPRIATE UNDER 18 U.S.C. § 3553

12 The government submits that the following factors under 18  
13 U.S.C. § 3553 apply and also support a sentence of thirty-six  
14 months in prison:

15 A. NATURE AND CIRCUMSTANCES OF THE OFFENSE

16 As outlined above, defendant's crimes were unquestionably  
17 serious. Defendant played on the insecurities of a young girl.  
18 Over a period of weeks, defendant conceived and carried out an  
19 elaborate and pernicious campaign designed to humiliate and  
20 psychically damage M.T.M. To achieve her goals, defendant caused  
21 sexually suggestive messages to be sent M.T.M., a pubescent girl.  
22 Were this not enough, defendant employed children to achieve her  
23 criminal ends, using her daughter, S.D., as part of her scheme  
24 and trying to get another girl, J.M., to work to cover it up.  
25 Defendant's use of minors is unquestionably an aggravating  
26 factor. Defendant's attempt to cover up the scheme, while  
27 perhaps not rising to the level of obstruction of justice,

likewise is an aggravating factor warranting a custodial sentence. Finally, defendant's conduct had obvious, serious consequences as her offenses resulted in the death of a little girl. The fact that defendant used a computer as a weapon and a website as a tool of torment is not a mitigating factor. But for and as a proximate cause of defendant's activities, a child died -- a fact that was altogether foreseeable given defendant's intimate knowledge of M.T.M.'s depression, suicidal thoughts, and prior suicide attempts. Anything less than a custodial sentence would understate the serious nature of defendant's offense and the serious harm that resulted from that offense.

B. HISTORY AND CHARACTERISTICS OF DEFENDANT

There is nothing about defendant's history or characteristics that warrant a lesser sentence. Defendant has been given every advantage in life. After a seemingly privileged childhood as the daughter of an executive at the Federal Reserve, (PSR ¶ 46), she lived comfortably in a suburb of St. Louis, (¶ 47). Notwithstanding those advantages, defendant -- a middle aged woman -- chose to break the law in an effort to humiliate a child, an effort that succeeded and ultimately led that child to kill herself. The normalcy of defendant's history and characteristics are not a mitigating factor.

C. NEED FOR THE SENTENCE CONTEMPLATED

Section 3553(a)(2) states that the Court, when considering what sentence to impose, shall consider the "need for the sentenced imposed":

1 (A) to reflect the seriousness of the offense, to  
2 promote respect for the law, and to provide just  
punishment for the offense;

3 (B) to afford adequate deterrence to criminal conduct;

4 (C) to protect the public from further crimes of the  
5 defendant; and

6 (D) to provide the defendant with needed educational or  
7 vocational training, medical care, or correctional  
treatment in the most effective manner.

8 Anything less than a custodial sentence would not reflect  
9 the seriousness of defendant's offense or provide just  
10 punishment. Defendant's conduct was outrageous. Moreover, a  
11 probationary sentence would hardly provide adequate deterrence  
12 for criminal conduct. Defendant has become the public face of  
13 cyberbullying. A probationary sentence might embolden others to  
14 use the Internet to torment and exploit children. Consequently,  
15 although defendant may present a limited risk of recidivism and  
16 likely does not need educational or vocational training in  
17 custody, a custodial sentence will promote the goals of  
18 Section 3553(a)(2) by reflecting the seriousness of the offenses,  
19 promoting respect for the law, providing just punishment for the  
20 offenses, and deterring others from engaging in similar  
cyberbullying.

#### 21 D. KINDS OF SENTENCES AVAILABLE

22 Custody is unquestionably an option under the facts of the  
23 case.

#### 24 E. SENTENCING RANGES AND POLICY STATEMENTS

25 Section 3553(a)(4) states that the Court, when considering  
26 what sentence to impose, shall consider the "kinds of sentence  
27

1 and the sentencing range established for -- (A) the applicable  
2 category of offense committed by the applicable category of  
3 defendant as set forth in the guidelines . . . ." Section  
4 3553(a)(5) states that the Court, when considering what sentence  
5 to impose, shall consider "any pertinent policy statement issued  
6 by the Sentencing Commission . . . ." Under the guidelines and  
7 the Commission's policy statements, similar defendants in the  
8 same circumstances as defendant would expect to serve a custodial  
9 sentence based on the circumstances described above. There is no  
10 indication that defendant is anything other than a typical  
11 defendant in these circumstances.

12 F. NEED TO AVOID UNWARRANTED SENTENCING DISPARITIES

13 Section 3553(a)(6) states that the Court, when considering  
14 what sentence to impose, shall consider the "need to avoid  
15 unwarranted sentence disparities among defendants with similar  
16 records who have been found guilty of similar conduct." This  
17 crime, and its effects, is unprecedented. Nevertheless, one  
18 would hope, in the absence of exceptional circumstances, that  
19 defendants similarly situated to defendant -- adults who used  
20 children to send sexually suggestive messages to a juvenile  
21 victim as part of scheme to humiliate her, a scheme that succeeded  
22 and resulted in the victim's suicide -- will be sentenced to at  
23 least thirty-six months.

1 V.

2 CONCLUSION

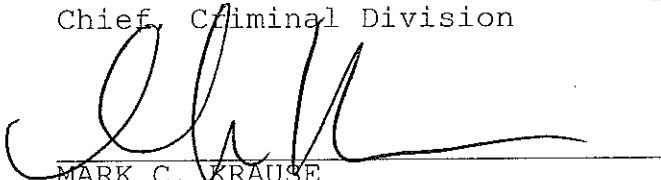
3 For the foregoing reasons, the government respectfully  
4 requests that the Court sentence defendant to a total of 36  
5 months in custody, a one year period of supervised release, and a  
6 fine of \$5,000.

7 Dated: May 6, 2009

8 Respectfully submitted,

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