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**SEXUAL  
JUSTICE**

**Written Testimony of Galen Baughman  
Board Member of the Center for Sexual Justice**

**Before the  
Charles Colson Task Force**

**March 02, 2015**

**Galen Baughman** is a Member of the Board of Directors for the Center for Sexual Justice, a 501(c)(3) non-profit organization that strives to change the cultural beliefs leading to unjust sex laws that effectively target sexual minorities and to nurture a community of sexually diverse populations and families adversely affected by public persecution.

Mr. Baughman is an organizer, national spokesperson, and trainer focused on the most pressing civil rights challenge of our time: ending mass incarceration. He works at the intersection of human rights, restoration, and a deep belief in the possibilities of redemption. He was imprisoned for nine years, including four and a half years in solitary confinement, starting when he was a teenager. Today, he brings his harrowing experiences to audiences around the country, speaking to lawmakers, criminal justice stakeholders, and members of the public. Mr. Baughman is currently the communications director of CURE, a national grassroots organization, where he is focused on policy analysis, direct advocacy, messaging strategies, and grassroots organizing. He has lectured, led conferences, and written about corruption in the prison-industrial complex. Galen lives in Arlington, Virginia.

## TESTIMONY

Thank you for the opportunity to address the Task Force on one of the central issues fueling the expansive growth of our criminal justice system in the United States and its impact on the Bureau of Prisons and society more broadly. The single fastest area of growth in the federal criminal justice system has been prosecutions for sexual offenses, resulting from tougher and tougher sanctions being imposed with no direct correlation to improvements in public safety. The number of people serving time in federal prison for a non-contact online offense (usually illicit images of children) has risen 60 times between 1996 and 2010; during that same period drug offenses rose only 80 percent. Federal child pornography cases have skyrocketed, both in terms of the number of cases and the length of sentences, with mandatory minimums of as much as 5 years in prison. The vast majority of these cases are for receipt or possession, not for production or distribution.<sup>1</sup>

Writer Marie Gottschalk has observed that the focus of efforts to stem sexual abuse in America has increasingly been on “[t]he incapacitation, containment, and banishment of convicted sex offenders.”<sup>2</sup> However, the stunningly low rate at which those convicted of sexual offenses re-offend – just 5.3% according to the Bureau of Justice Statistics – suggests that such a focus on those who have offended does little or nothing to address the real problem of child sexual abuse in America.

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<sup>1</sup> Calculated from Administrative Office of the U.S. Courts, “Judicial Business of the United States Courts: 2013 Annual Report of the Director,”

<http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/1997/appendices/d02sep97.pdf>

<sup>2</sup> Gottschalk, Marie. “Caught.” Princeton University Press, 2014.

A hallmark of this astronomical growth in the warehousing of people in our prison system for sexual offenses, as with the War on Drugs, has been the federalization of matters that were once handled by the state, if prosecuted at all. The federal government has launched joint operations with state and local law enforcement authorities, as well as nongovernmental organizations, to foster increased prosecution of sexual offenses. The rate of sex crimes dropped even while convictions for sexual offenses increased four fold between 1993 and 2000.<sup>3</sup>

The way the federal government punishes the purchasing, downloading, possession, or distribution of child pornography has become increasingly draconian. According to [Families Against Mandatory Minimums \(FAMM\)](#), the length of federal child pornography sentences has increased 500-percent in the last 15 years. The federal mandatory minimum is five years for receipt, distribution, possession with intent to distribute or sell, transportation, or production of child pornography -- per image. This conduct could range anywhere from producing explicit images of the violent abuse of children to accidentally clicking on the wrong link or inadvertently downloading a video on a file-sharing network. Yet law enforcement (and society generally) [conflates](#) these situations; child pornography becomes a loaded and intimidating institution that needs to be crushed.

The legislative scheme underlying current child pornography laws in the U.S. goes much further than addressing the actual harm caused by viewing or possessing such images. Rather, these sentences address imaginary assertions that those who view or download such illicit images are

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<sup>3</sup> "Sex Offenders: Will Tough New Laws Do More Harm Than Good?," CQ Researcher 16.31 (2006): 721-44 in Tracy Velazquez, "The Pursuit of Safety: Sex Offender Policy in the United States" (New York: Vera Institute of Justice, September 2008), 8.

also guilty of undiscovered abuse in the past or will commit heinous contact offenses in the future.

In 2011 a federal appeals court called into question the justice of current federal sentences for child pornography possession. Current sentencing rules routinely result in prison terms that meet or exceed the 20-year statutory maximum for the charges, regardless of whether the person has done anything more than just look at the wrong photo online. The appeals court viewed such punishment as "outrageously high."

In a statement from the United States Sentencing Commission last February announcing their report on child pornography, Judge Saris concluded, "Because of changes in the use of Internet-based technologies, the existing penalty structure is in need of revision." Despite the strong evidence calling into question the rationale and effects of current U.S. sentencing policy, thousands of people continue to be sentenced under these extreme penalty schemes every year.

At the dawn of the digital age, sex offender hysteria has fueled a new form of witch hunt. Such has historically been the case for groups identified as an emerging threat to society, whether they are composed of the namesake "witches," who were actually mentally ill or socially ostracized women, gay men in the mid-20th century, or alleged [satanic child molestation cultists](#) decades later. Traditional subjects of witch hunts are easy targets: Already marginalized and disliked by society, they become demonized and portrayed as evil on an unearthly plane. People can slip into this category quickly; with today's Internet, it's as easy for a person to download a sexualized image or video of a minor as it is for law enforcement to track down and identify those doing the downloading.

As with the war on drugs, the lowest-hanging fruit is easiest to pick. Law enforcement has found it far easier to track down low-level users and dealers than to stem the large-scale creation and distribution of narcotics. In the war on sex offenders, it's easier to prosecute teens for sexting or someone for looking at the wrong image online than it is to address the contact sexual abuse of children. At a time when parents [feel more insecure than ever](#) about the dangers facing their children, the prospect of the Internet -- a space new to this generation, full of dark places and unknown threats – has inspired genuine [fear](#), born perhaps of ignorance more than anything else.

The United States is running the risk of replacing one decades-long fear-driven focus on one type of crime with another. The Center for Sexual Justice would strongly encourage a careful examination of the recommendations set forward by the United States Sentencing Commission to reshape federal sentencing policy to reflect our present understanding of the actual risk of those convicted of viewing illicit images, along with the broader ramifications of federal policies that have begun to dramatically increase the number of persons imprisoned by the government for certain types of offenses.