

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

UNITED STATES OF AMERICA,	)	
	)	
v.	)	No. 1:12cr521 (LO)
	)	
CHAD DIXON,	)	
	)	
Defendant.	)	
_____	)	

**DEFENDANT’S POSITION WITH RESECT TO SENTENCING**

Comes now, the defendant, Chad Dixon, by counsel, in accordance with 18 U.S.C. § 3553(a) and the U.S. Sentencing Guidelines Manual, § 6A1.2, and submits his Position With Respect to Sentencing.

At the outset, it must be said that the government has taken a step too far, resorting to hyperbole that grossly distorts Mr. Dixon’s character and offense conduct. Most particularly, its characterization of Mr. Dixon as “having admitted to a career of criminal deceit” is a shameless attempt to prejudice him in the eyes of this Court which the Court should not tolerate.

As the government well knows, it is NOT a crime to provide polygraph countermeasures training to anyone, including convicted sex offenders, federal job applicants and members of the intelligence community who are seeking to obtain or retain security clearances. Nor is it a crime to include the completely *truthful* statement that people can be taught how to produce truthful polygraph charts even if one is “flat out lying” in Internet advertising. The government’s attempt to suggest otherwise is a deliberate effort to inflame the passions of this Court. While understandably unpopular with law enforcement and other government agencies, polygraph countermeasures training is widely available and unless the person providing the training knows that the countermeasures training will be used to commit a criminal offense (as in this case,

obstructing an agency proceeding), it is protected First Amendment speech. Like it or not, providing polygraph countermeasures training, even to the most despicable among us, is not a crime.

### **Offense Conduct**

In 2007, Mr. Dixon briefly set up a website offering polygraph training using materials offered for free on the Internet by an organization called anitpolygraph.org. He trained one person for a marital fidelity polygraph before deciding that he could not effectively provide the training or afford to maintain his website.<sup>1</sup> After seeing a news program about polygraph testing in late 2009, Mr. Dixon again began researching information on polygraph testing, including manuals issued by the Department of Defense Polygraph Institute and a report issued by the National Academy of Science (“NAS”) which was charged with conducting a scientific review of the research on the validity and reliability of polygraph examinations, particularly for personnel security screening.<sup>2</sup> Contrary to the government’s claim that Mr. Dixon “stole” these materials, (Dkt. No 19, at 8), he downloaded most of this information, including the Defense Department manuals, for free from the Internet.<sup>3</sup> The NAS Report concluded, among other things that:

*“Almost a century of research in scientific psychology and physiology provides little basis for the expectation that a polygraph test could have extremely high accuracy. The physiological responses measured by the polygraph are not uniquely related to deception. That is, the responses measured by the polygraph do not all reflect a single underlying process: a variety of psychological and*

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<sup>1</sup> The government’s attempt to characterize Mr. Dixon’s statements to the Probation Officer about the timing and circumstances of establishing his polygraph business as “misleading” is just another unwarranted attempt to prejudice this Court. (See Dkt. No. 19 at 8, n.2).

<sup>2</sup> Available at [http://www.nap.edu/openbook.php?record\\_id=10420&page=1](http://www.nap.edu/openbook.php?record_id=10420&page=1)

<sup>3</sup> Available on antipolygraph.org website at <https://antipolygraph.org/read.shtml>.

physiological processes, including some that can be consciously controlled, can affect polygraph measures and test.” (emphasis in original).<sup>4</sup> NAS Report, p. 212.

He also discovered Doug Williams’ website which offered to train people to “ALWAYS PASS YOUR POLYGRAPH TEST – NERVOUS OR NOT – LYING OR NOT – NO MATTER WHAT”. (See Website as it appeared in September 2009, available at

<http://web.archive.org/web/20090930160659/http://www.polygraph.com/>, Exhibit 1). The site

advertised Williams as:

“the only one that teaches you how to always pass every type of polygraph and CVSA (voice stress test) – including pre-employment polygraph exams for ALL local, state and federal positions, such as, DHS, FBI, SECRET SERVICE, CIA, NSA, DOD, DHS,CBP, POLICE SHERIFF, STATE POLICE, HIGHWAY PATROL, FIREFIGHTER, RCMP, as well as periodic criminal, S.O. maintenance, post-conviction testing, (PCSOT), parole and probation, specific issue, full scope, life style, sporting, and spouse/partner fidelity. It is a proven fact that Doug Williams can teach you how to pass ANY POLYGRAPH TEST given by ANYONE.” (emphasis in original).

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<sup>4</sup> See also for example, NAS Report, p. 78:

“If the assumptions about large and involuntary responses to relevant questions are true, the polygraph test would be characterized by high sensitivity and specificity—it would discriminate very accurately between deception and truthfulness—and it would be immune to countermeasures.

“Such assumptions are not tenable in light of contemporary research on individual and situational determinants of autonomic responses generally (Lacey, 1967; Coles, Donchin, and Porges, 1986; Cacioppo, Tassinari, and Berntson, 2000a) and on the physiological detection of deception in particular (e.g., Lykken, 2000; Iacono, 2000). There is no unique physiological response that indicates deception (Lykken, 1998). If deceivers in fact have stronger differential responses to relevant questions, it does not necessarily follow that an examinee who shows this response pattern was lying (see Strube, 1990; Cacioppo and Tassinari, 1990a) because differences in people’s anticipation of and responses to the relevant and comparison questions other than differences in truthfulness can also produce differential physiological reactions.”

The website also promoted Williams as a veteran of the Air Force who had been assigned to the White House Communications Agency, and a decorated veteran of the Oklahoma City Police Department where as a Detective Sergeant he was in charge of the Polygraph section of the Internal Affairs Unit. His website cited impressive credentials, among other things, that: (1) Williams has been qualified as an expert witness on polygraph testing in numerous courts and had testified before the U.S. Congress during hearings on The Employee Polygraph Protection Act which prohibits most private employers from using lie detector tests, either for pre-employment screening or during the course of employment;<sup>5</sup> (2) Williams was a member of the board of the Office of Technology Assessments, an investigative arm of the U.S. Congress impaneled to study the validity of the polygraph as a lie detector; and (3) Williams had been featured most of the major news programs on major television and cable networks including CBS 60 Minutes, CBS Nightwatch, NBC Nightly News, CNN News, Fox's Exploring the Unknown, NBC Dateline, Fox News, CNN News Stand, and others. (See Exhibit 1). Williams offered his manual and DVD training materials for sale for \$49.94 plus shipping and offered to provide individualized training for \$1,000 at his preparation training room and for \$3,000 plus expenses "at your location." (See Exhibit 1).<sup>6</sup>

During this time, Ashley Shook, Mr. Dixon's fiancé, was pregnant with their first child together and was attending school. Because of plant closings, Mr. Dixon had lost a number of electrical service contracts at local industrial plants that served as the backbone of his electrical company's business. He was already several months behind on his mortgage payments and

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<sup>5</sup> See 29 U.S.C. § 2001 et seq.; 29 C.F.R. Part 801.1 et seq.

<sup>6</sup> In February, 2013, Customs and Border Patrol executed search warrants on Doug Williams' home and office after recording an undercover training session similar to the sessions recorded in Mr. Dixon's case. Mr. Williams has been threatened with prosecution but has not been charged.

facing foreclosure. As their bills continued to pile up, Mr. Dixon looked for ways to supplement his income and allow his fiancé to remain in school. He purchased Doug Williams' manual and read it several times. After practicing the techniques that Williams taught, he hired a polygraph examiner, made up a story and passed three polygraph tests.

After almost a year of sporadic efforts to put together a website, Mr. Dixon started his polygraph business, Polygraph Consultants of America, with \$1,000 to \$2,000. He believes that he has provided training to between 50 and 70 people (as opposed to the government's estimate of 69 to 100), but no longer has access to his computer and credit card records which were seized by Customs and Border Patrol in April, 2012. Most of the people he trained sought his assistance preparing for marital fidelity polygraphs. He modeled his website on Doug Williams' site, repeated verbatim, Doug Williams' guarantees about teaching anyone how to pass the polygraph "lying or not," and followed Williams' manual when conducting his training sessions, including practice questions Williams developed as a reference for his clients. He also advised his clients do deny receiving polygraph countermeasures training. However, he told people with pending criminal charges that he would not train them if they admitted committing a crime to which they had not already pled guilty, and refused to train convicted sex offenders who told him that they were having ongoing sexual contact with minors. He was less cautious with the people seeking training in connection with pre-employment polygraph screening, having thoroughly (if erroneously) convinced himself that job applicants with undisclosed criminal backgrounds would be discovered and disqualified through routine criminal record checks that were part of the employment application process – as he believed would be the case with the first undercover agent who admitted being caught smuggling drugs into a prison where she told Mr. Dixon she had previously worked as a corrections officer. Mr. Dixon was also convinced that the second

undercover agent claiming to be the brother of a Mexican drug cartel member had no chance of surviving the routine background checks routinely performed on applicants for federal law enforcement positions. He would be the first one now to say that because of his utter disdain for the use of polygraph testing, he failed to appreciate the degree to which federal agencies might rely on polygraph test results in making employment hiring or retention decisions. However, far from embarking on “a career of criminal deceit,” Mr. Dixon was a struggling owner of a small family-owned electrical contracting company, with a third child on the way, who saw a way to stave off foreclosure and protect his family from ballooning financial debt.

Chad Dixon stands before the Court having pled guilty to obstructing a federal agency proceeding and wire fraud. His guilty pleas are based on advice he provided to two federal job applicants (Applicant A & B), and two federal contractors that they should deny receiving polygraph countermeasures training during pre-employment or security clearance polygraph examinations.<sup>7</sup> He has not been charged, nor has he been convicted of providing polygraph training to adulterers or convicted sex offenders. Hardly a mercenary, Mr. Dixon was paid \$1,000 plus expenses for providing this training. As a condition of his guilty pleas, Mr. Dixon has agreed to forfeit \$17,091.07, representing the total amount of proceeds he obtained as a result of his offenses. The government’s exaggerated attempts to lay the fate of society’s most vulnerable and the protection of our national borders at Mr. Dixon’s feet should be seen for what it is.

Similarly, descriptions of Mr. Dixon as “brazenly train[ing] members of the intelligence community . . . without regard for the threats his actions and those persons potentially posed to

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<sup>7</sup> The government has provided the Probation Officer with evidence that Mr. Dixon trained a total of seven clients associated with four federal agencies which he does not dispute.

national security,” grossly exaggerate Mr. Dixon’s mental state and presume that polygraph security screening has some scientific validity. It does not require much looking to find a respected scientist who has convincingly argued that polygraphs do not operate above chance levels and are therefore detrimental to national security because federal agencies are relying on a methodology the validity of which cannot be scientifically established. *See, e.g., United States v. Scheffer*, 523 U.S. 303, 309–10 (1998) (discussing the scientific community’s polarized views on polygraph testing).<sup>8</sup>

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<sup>8</sup> See also Opening Statement of retired Supervisory Special Agent Dr. Drew C. Richardson before the U.S. Senate Committee on the Judiciary’s Subcommittee on Administrative Oversight and the Courts (Richardson, September 27, 1997) (“There is almost universal agreement that polygraph screening is completely invalid and should be stopped.” Available at <https://antipolygraph.org/hearings/senate-judiciary-1997/richardson-statement.shtml>). Likewise, the NAS Report concluded that:

“Polygraph testing yields an unacceptable choice for . . . employee security screening between too many loyal employees falsely judged deceptive and too many major threats left undetected. Its accuracy in distinguishing actual or potential security violators from innocent test takers is insufficient to justify reliance on its use in employee security screening in federal agencies. (NAS Report at 219).

The Report similarly concluded that:

“A belief that polygraph testing is highly accurate probably enhances its utility for such objectives as deterrence. However, overconfidence in the polygraph—a belief in its accuracy that goes beyond what is justified by the evidence—also presents a danger to national security objectives. Overconfidence in polygraph screening can create a false sense of security among policy makers, employees in sensitive positions, and the general public that may in turn lead to inappropriate relaxation of other methods of ensuring security, such as periodic security re-investigation and vigilance about potential security violations in facilities that use the polygraph for employee security screening. It can waste public resources by devoting to the polygraph funds and energy that would be better spent on alternative procedures. It can lead to unnecessary loss of competent or highly skilled individuals in security organizations because of suspicions cast on them by false positive polygraph exams or because of their fear of such prospects. And it can lead to credible claims that agencies that use polygraphs are infringing civil liberties for insufficient benefits to the national security. Thus, policy makers

Mr. Dixon is prepared to testify that neither of the two people with security clearances who he trained *ever* disclosed to him that he intended to lie about or conceal material disqualifying information during his actual polygraph examination, or that they were interested in receiving the training for any reason other than being extremely nervous about a false positive outcome. Some of the other federal job applicants were nervous about failing because of past marijuana and alcohol use and wanted to improve their chances of obtaining or retaining federal employment. Mr. Dixon also estimates that he refused to conduct or complete at least seven or eight training sessions after his clients revealed that they had committed criminal acts for which they had not already been prosecuted and convicted. Although neither undercover agent admitted having committed an undisclosed criminal offense or indicated a present intent to commit future criminal acts, Mr. Dixon has made it clear that he is thoroughly disgusted with himself for providing them (and others) with the training. (See Letter from Mr. Dixon, Exhibit 3). The government has nevertheless argued for a lengthy prison sentence on the grounds that Mr. Dixon *potentially* compromised the security of our borders and *potentially* compromised our national interests, without allowing him to confront any identifiable security threat.

The government has not revealed any information it claims was actively concealed by any federal job applicant or contractor required to undergo polygraph testing other than failing to admit receiving countermeasures training. It is, therefore, impossible to assess whether potentially disqualifying information existed, or was already available to the federal agencies

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should consider each application of polygraph testing in the larger context of its various costs and benefits.)” (NAS Report at 7).

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“Overconfidence in the polygraph – a belief in its accuracy is not justified by the evidence – presents a danger to national security objectives.” (NAS Report at 210).

from other sources, or whether hiring or retention decisions were subsequently affected by the discovery that countermeasures training was received by these seven individuals. As a result, Mr. Dixon cannot confront or refute the government's characterizations and the Court cannot properly determine what weight they should be given in imposing sentence.

With one exception, Mr. Dixon is also prepared to testify that none of the convicted sex offenders he trained for maintenance polygraphs told him that he intended to conceal *current* or *future* sexual contact with minors. After the individual identified as “[a] 39-year-old man from Carrollton, TX, convicted of indecent sexual contact with a child” admitted to Mr. Dixon that he was having ongoing sexual contact with a minor, Mr. Dixon located his probation officer in Texas and reported the information.<sup>9</sup>

The government also knows from the large number of records it seized from Mr. Dixon's home, its own investigation, and approximately twenty hours of debriefings with Mr. Dixon immediately following the search and after he retained counsel that only between 10 and 20 percent of his clients were applying for federal positions or security clearances or were suspected or convicted sex offenders. Most of his clients wanted marital fidelity polygraph training.

Nor did Mr. Dixon intend to undermine the law as the government contends. His actions when confronted for the first time by law enforcement officers demonstrated precisely the opposite. During the execution of a search warrant at his home, Mr. Dixon pointed out documents to the agents that they had failed to discover during the search. Rather than being the “master of deceit” the government imagines him to be, Mr. Dixon freely volunteered the undiscovered evidence that the agents would have left behind. When requested, Mr. Dixon voluntarily submitted to lengthy proffer sessions with federal agents and prosecutors during

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<sup>9</sup> See telephone records (Exhibit 2).

which he answered detailed questions about the people he had trained, fully described how he conducted his countermeasures training, and provided detailed accountings of the individual sessions he conducted. He freely admitted teaching the techniques that he learned by studying and replicating materials sold on the Internet by Doug Williams, and he admitted advising his customers, including federal job applicants and contractors, to lie about taking his training.

### **Guideline Calculations**

Mr. Dixon submits that the Probation Officer has properly calculated the Guidelines at an offense level of 12, criminal history level I, with a resulting guideline range of 10 to 16 months imprisonment and a fine range of \$3,000 to \$30,000. Mr. Dixon further submits that Probation Officer appropriately determined that he should not receive a two-level enhancement for Mass Marketing and another two-level enhancement for Sophisticated Means, pursuant to §§ 2B1.1(b)(2)(A)(ii) and 2B1.1(b)(10) with respect to the wire fraud offense, or that he should receive a three-level enhancement for Substantial Interference with the Administration of Justice and another two-level enhancement for Extensive in Scope, Planning or Preparation, pursuant to §§ 2J1.2(b)(2) and 2J1.2(b)(3)(C) with respect to the obstruction offense. Finally, Mr. Dixon submits that a sentence of imprisonment, either within or below the properly calculated range of 10 to 16 months, does not appropriately take account of the factors set forth in 18 U.S.C. § 3553(a), and is substantially greater than necessary to achieve the goals of sentencing.

#### ***§ 2B1.1(b)(2)(A)(ii) – Mass Marketing***

The government contends that Mr. Dixon should have been given a two-level enhancement pursuant to § 2B1.1(b)(2)(A)(ii) which provides that the enhancement applies if the offense was committed through mass-marketing. Mr. Dixon adopts in full the arguments made by the Probation Officer in the Addendum to the Presentence Report as reason for rejecting the

enhancement. As the Probation Officer appropriately noted, the enhancement only applies if *the offense* was committed through mass-marketing. § 2B1.1(b)(2). The offense in this case involved the seven federal job applicants who sought out his training. The fact that Mr. Dixon taught polygraph countermeasures to as many as 69-100 customers who may have seen his website over approximately eighteen months has no bearing on the question of whether mass marketing was used to commit the instant offense.

Application Note 4 defines “mass-marketing” for purposes of subsection (b)(2) to mean:

a plan, program, promotion or campaign that is conducted through solicitation by telephone, mail the Internet, or other means to *induce* a large number of persons to (i) purchase goods or services; (ii) participate in a contest or sweepstakes; or (iii) invest for financial profit. “mass-marketing” includes, for example, a telemarketing campaign that *solicits* a large number of individuals to purchase fraudulent life insurance policies. (emphasis added).

Mr. Dixon submits that the act of creating a website designed to attract what is concededly a very limited number of customers already looking for polygraph countermeasures training through the use of keywords and phrases is not within the meaning of “mass-marketing” which requires a plan, program or campaign that is designed to reach a large number of people and induce them invest or make purchases. Although Mr. Dixon originally paid a web designer to assist him in setting up his website in 2007, the site he used for Polygraph Consultants of America (“PCA”), used no such web designer and was hosted by Intuit for which he paid a fee of \$1.99 per month plus a pay-for-click fee. The site was not professionally managed and did not make use of targeted blast emails or pop-up ads on other popular web sites that are the kinds of mass-marketing tools designed to reach large numbers of prospective customers. Nor was his website affiliated with any marketing group that sends out individualized recommendations to its users as was the case in *United States v. Bell*, 72 Fed.Appx. 25 (4th Cir. 2003) (unpublished) (upholding a mass-marketing enhancement where the defendant sold sports cards on the eBay

website, a well-known, professionally managed website that operates its own marketing by sending individualized recommendations to the users via email).

Furthermore, the fact that Mr. Dixon may have copied Doug Williams' proprietary materials and offered them for sale on his website has nothing to do with mass-marketing and adds nothing to the government's argument. Nor does the fact that he or his customers routinely traveled across the country to provide his training.

More importantly, however, the two-level increase is unwarranted because the enhancement speaks in terms of *victims*. The enhancement is intended to apply where mass-marketing was used to attract large numbers of *victims*. As noted by the Probation Officer, none of the people who viewed Mr. Dixon's website, including the seven federal job applicants who were the basis for this offense, was a *victim*. See *United States v. Lacey*, 699 F.3d 710, 716-17 (2d Cir. 2012) (interpreting subsection (b)(2) as applying to frauds in which the mass media is used to attract *victims* into schemes that will separate them from their money); *United States v. Pirello*, 255 F.3d 728 (9th Cir. 2001) (advertisements solicited customers to send money for computers that the defendant had no intention of providing). The four government agencies identified by the prosecution as victims in this case were not the targets of Mr. Dixon's Internet advertising. Accordingly, the Probation Officer correctly found that the enhancement is not appropriate and should not be applied.

**§ 2B1.1(b)(10) – *Sophisticated Means***

The government contends that Mr. Dixon should have been given a two-level enhancement pursuant to § 2B1.1(b)(10) because the offense involved sophisticated means. Mr. Dixon adopts in full the arguments made by the Probation Officer in the Addendum to the Presentence Report as reason for rejecting this enhancement.

The enhancement under § 2B1.1(b)(10) is warranted only when defendant's offense involves "especially complex or intricate offense conduct pertaining to the execution or concealment of an offense." § 2B1.1, *Cmt. n. 8(B)*. There was nothing complex or intricate about Mr. Dixon's conduct and no attempt to conceal anything in this case. Examples provided by the Application Note include locating the main office of a telemarketing scheme in one jurisdiction and locating the soliciting operations in another jurisdiction, as well as conduct such as hiding assets or transactions or both through the use of fictitious entities, corporate shells, or offshore financial accounts. Thus, the enhancement is appropriate when the offense conduct, viewed as a whole, "was notably more intricate than that of the garden-variety [offense]." *United States v. Hance*, 501 F.3d 900, 909 (8th Cir.2007).

Describing "sophisticated means" in a tax case, the Fourth Circuit has held that:

The enhancement requires some means of execution that separates the offense before us from the ordinary or generic. As the Seventh Circuit has explained, the "average criminal tax fraud ... involves some concealment; 'sophisticated' tax fraud must require more." *United States v. Kontny*, 238 F.3d 815, 820–21 (7th Cir.2001). On the other hand, a defendant need not utilize the most complex means possible to conceal his fraudulent activities in order for the court to find that he used sophisticated means. *United States v. Madoch*, 108 F.3d 761, 766 (7th Cir.1997). The court need only find "the presence of efforts at concealment that go beyond (not necessarily far beyond ...) the concealment inherent in tax fraud." *Kontny*, 238 F.3d at 821. A sentencing court should consider the cumulative impact of the criminal conduct, for the "total scheme" may be "sophisticated in the way all the steps were linked together." *United States v. Jackson*, 346 F.3d 22, 25 (2d Cir.2003); *see also United States v. Halloran*, 415 F.3d 940, 945 (8th Cir.2005) (upholding enhancement where "certain aspects of [defendant's] scheme were not especially complex or especially intricate" but "his total scheme was undoubtedly sophisticated").

*United States v. Jinwright*, 683 F.3d 471, 486 (4th Cir. 2012). Similarly, for the enhancement to apply in this case, some complex or intricate means of execution or concealment must exist.

The Government contends that the enhancement is appropriate for the wire fraud offense because the use of both physical and mental countermeasures to manipulate the outcome of

polygraph examinations is itself complex and sophisticated, as is the process of teaching polygraph countermeasures. In the government's view, the need for Mr. Dixon or his customers to travel between states and the use of hotel rooms to conduct day-long training sessions is sufficient to separate this from an ordinary and generic offense and amounts to sophisticated means. This Court could not possibly conceive of a more ordinary set of circumstances.

Mr. Dixon started his business with an investment of between \$1,000 and \$2,000 which included setting up a website and an 800 number for potential customers to use. He learned the techniques he taught to his customers without the benefit of professional training or an advanced educational background, using the materials he purchased openly on the Internet for \$49.95, and by practicing the countermeasures he was planning to teach. He never purchased polygraph equipment and did not offer his customers practice polygraph examinations. He satisfied himself that he was qualified to teach polygraph countermeasures after he was able to successfully defeat three polygraph examinations for which he paid between \$750 and \$1,000. The written materials Mr. Dixon distributed to his customers were reproductions of the teaching materials he purchased from Doug Williams over the Internet.

There was nothing complex or sophisticated about Mr. Dixon and his clients meeting in his office or a hotel room for a seven to eight hour period where they practiced the simple techniques Mr. Dixon taught himself.

Mr. Dixon also made absolutely no effort to conceal his identity as the owner of Polygraph Consultants of America, or to avoid detection. Nor did he conceal the amount or source of the payments he received for his services. He operated CPA out in the open, much like a mom-and-pop business that was anything but sophisticated and complex. A two-level enhancement for sophisticated means is therefore not appropriate.

**§ 2J1.2(b)(2) – Substantial Interference with the Administration of Justice**

The Government asserts that Mr. Dixon should receive a three-level enhancement pursuant to § 2J1.2(b)(2) which applies if the offense resulted in “a substantial interference with the administration of justice.” “A substantial interference with the administration of justice” can include “the unnecessary expenditure of substantial governmental or court resources.” § 2J1.2, *Cmt. n. 1*. Other examples of “substantial interference with the administration of justice” include “a premature or improper termination of a felony investigation; an indictment, verdict, or any judicial determination based upon perjury, false testimony, or other false evidence.” § 2J1.2, *Cmt. n. 1*.

The government claims that Mr. Dixon caused the unnecessary expenditure of substantial governmental resources because the usual number of steps and time required by Customs and Border Patrol’s Quality Control Unit are increased when countermeasures are used by an applicant during pre-employment polygraph testing. Specifically, the government claims that Mr. Dixon provided countermeasures training to CBP applicants on at least seven occasions.<sup>10</sup> The government also claims that two of those applicants confirmed using Mr. Dixon’s countermeasures training during their pre-employment polygraph examination and that the other five CBP applicants *possibly* used the techniques.

Mr. Dixon adopts in full the arguments made by the Probation Officer in the Addendum to the Presentence Report as reason for rejecting this enhancement. More particularly, Mr. Dixon agrees with the Probation Officer that any need for Customs and Border Patrol to expend

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<sup>10</sup> The Probation Officer has determined that there were a total of seven applicants associated with four federal departments and/or agencies. PSR ¶¶ 15, 91. The evidence does not indicate that Mr. Dixon provided countermeasures training to seven *CBP* applicants as the government states. (See Dkt. No. 19, p. 13).

additional resources was the direct result decisions made by the applicants, not Mr. Dixon, after being warned by the employer of the possible consequences of using countermeasures techniques. Therefore, as the Probation Officer states, the *applicants* were responsible for the unnecessary expenditure of government resources.

In addition, Mr. Dixon submits that adding an additional level of screening to an agency's employment application process is sufficiently different from the examples of the conduct constituting a *substantial* interference with the administration of justice as to preclude its application in this case. Unlike the premature or improper termination of a felony investigation, indictment or judicial determination, interfering with an agency's hiring process, even through the use of deceptive measures, does not substantially impair the administration of *justice* or require the expenditure of substantial governmental resources. Compare *United States v. Oxendine*, 237 F. App'x 852, 855 (4th Cir. 2007) (requests for new trials attributed in part to witness tampering, false statements, and false grand jury testimony was evidence of interference with the administration of justice and constituted an unnecessary "expenditure of substantial governmental or court resources" supporting an enhancement under § 2J1.2(b)(2)); *United States v. Dudley*, 941 F.2d 260, 265 (4th Cir. 1991) (perjury before the grand jury had "a substantial interference with the administration of justice," where perjurious statement resulted in additional investigation that included tracing serial numbers on a large number of bills an exhaustive review of records).

Thus, for the enhancement to apply, the unnecessary expenditure government resources must be *substantial*. § 2J1.2, Cmt. n.1. As noted in the *Background Commentary* to the Guideline, the specific offense characteristics are intended to reflect the more serious forms of obstruction. Apart from stating that further investigation is required where the use of

countermeasures is suspected, the government has provided no evidence that any federal agency actually expended any additional resources, no less *substantial* resources, confirming the use of countermeasures by the job applicants Mr. Dixon trained – two of whom apparently admitted using the countermeasures training which may have eliminated the need for much of the review process. The relatively simple review process the government described – calling for a second test and review by two quality control examiners – cannot possibly require the kind of *substantial* expenditure of government resources contemplated by the Guideline.

Finally, the base offense level of 14 for obstruction of an agency proceeding appropriately reflects the harm caused by Mr. Dixon's interference with agency hiring procedures in this case. Compare *United States v. Sampson*, 245 F. App'x 263 (4th Cir. 2007) (evidence, including law enforcement officer's testimony that as much as 1000 extra man hours were expended because of defendant's actions and false claims, supported three-level enhancement for substantial interference with the administration of justice). For these reasons, the three-level enhancement for substantial interference with the administration of justice is not appropriate.

**§ 2J1.2(b)(3)(c) – Extensive in Scope, Planning, or Preparation**

The Government contends that a two-level enhancement is warranted pursuant to § 2J1.2(b)(3)(c) because the offense was extensive in scope, planning and preparation. Mr. Dixon adopts in full the arguments made by the Probation Officer in the Addendum to the Presentence Report as reason for rejecting this enhancement.

Furthermore, the enhancement applies only to *offense* conduct that was extensive in scope, planning and preparation. The offense conduct in this case involved seven federal job applicants, not the 69 to 100 (or 50-70) individual customers Mr. Dixon trained.

Mr. Dixon submits that none of the enhancements argued by the government is supported by the law or the facts and that the Probation Officer properly calculated the offense level at 12 with a resulting guideline range of 10 to 16 months imprisonment.

**Section 3553(A) Sentencing Factors**

Since the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), district courts are required to give "respectful consideration" to both the Guidelines and the factors contained in 18 U.S.C. § 3553(a) when determining an appropriate sentence. Section 3553(a) requires the Court to impose a sentence that is "sufficient but not greater than necessary" to satisfy the statutory goals of sentencing after making an "individualized assessment based on the facts presented." *Gall v. United States*, 552 U.S. 38, 49-50 (2008); *Rita v. United States*, 551 U.S. 338, 351 (2007). The Court must begin its analysis by correctly calculating the advisory sentencing guideline range, but it is then free, in light of the other statutory sentencing factors, to impose an entirely different sentence - one which is "sufficient, but not greater than necessary to comply with" the goals of sentencing. *See Rita*, 551 U.S. at 350-51.

As a result of the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220, 226-27 (2005), the federal sentencing guidelines are no longer mandatory, but are only advisory. The guidelines are "not only not mandatory on sentencing courts; they are also not to be presumed reasonable." *Nelson v. United States*, 555 U.S. 350, 352 (2009) (emphasis in original); see also *Gall v. United States*, 552 U.S. 38, 50 (2007) (stating that judges "may not presume that the guidelines range is reasonable" in considering how the statutory factors apply to an individual defendant); *Kimbrough v. United States*, 552 U.S. 85, 101 (2007) (noting that sentencing courts may vary from the advisory guidelines based solely on policy considerations, including disagreement with the policy considerations underlying the guidelines in a case). In

other words, the advisory guidelines are only “the starting point and the initial benchmark” in determining a sentence. *Gall*, 552 U.S. at 49. Sentencing judges “must make an individualized assessment based on the facts presented.” *Id.* at 50. In order to do so, the Court is directed to consider various specific factors, set out in § 3553(a), including among other things, the nature and circumstances of the offense, the defendant’s characteristics, and the need for the sentence imposed.

#### **I. Mr. Dixon’s History and Characteristics**

Section 3553(a)(1) requires the Court to consider “the history and characteristics of the defendant.” 18 U.S.C. § 3553(a)(1). Much can be learned about Mr. Dixon’s character from his writing about his father’s death and the birth of his first child.

“Andrea (ex-wife) was almost full term with her pregnancy when the 4th of July 2001 came around. Every year we would do a firework show. Dad was one of the safest electricians you could imagine. I watched this man work on high voltage gear daily and never would he skip safety protocol. That’s what made his accident so tough to handle. We all gathered after working the 4th of July on a gas station rewire, yes we all had to work on the 4th. That was dad for you. Dad sent me and another guy to pick up some extra mortars. These are commercial grade fireworks that were 8 inch mortars. Huge powerful fireworks. We all met at dad’s house and us boys prepped the launch tubes just like we had done in the years previous. You dig a pipe deep in the ground and place the fireworks in the tube to be safely launched in the air. Dad always did the lighting of the fuse. There were probably a dozen of us there. All the family, sons and cousins, uncles, mom’s family and a few workers that worked for dad. Jimmy, Aaron, myself, and rusty a family friend who worked for dad launched one of these by ourselves before the rest of the family gathered and it malfunctioned. It went about ten feet into the air and reported a 2nd time shooting it sideways into a neighbor’s yard. We thought we messed up placing it in the tube and was worried dad would be pissed because we lit one without him. So none of us ever mentioned it. I regret that now. Maybe dad would have been more skeptical if we would have told him. So he begins lighting some of the fireworks and all was well with the 1st few. As I mentioned these are the same types of fireworks that city’s use during firework shows. They are huge. Dad lit one and nothing happened. He was standing about 20 feet away from the tube holding jimmy’s little girl’s hand. Dad walked toward the tube and the mortar reported up about 6 feet and reported a 2nd time striking dad in the jaw area. The mortar continued to report sending fireballs everywhere. Jimmy grabbed Kaylie and hovered over her

and Aaron and I went straight for dad. I remember seeing his feet flying through the air. You can't imagine the power behind these commercial grade fireworks. One of his shoes landed on the roof of my brother's house that was next door to dads. Both shoe laces were tied and snapped at the point where he tied them. His pants were shredded with holes and were being held together by the zipper. His shirt was gone and he was burnt from the secondary report showers. The yard was full of smoke from the sulfur and people were screaming. I remember reading the news paper and one of the fire man described the smoke and blood as a " war scene ". When I made it to dad he was a mess. It took about 5 seconds to recognize that it was bad and I sent rusty with specific instructions to call 911. Where the fire work struck him in the jaw there was just nothing there but mangled flesh and blood. Aaron and I both had CPR training. Dad got a discount on insurance by sending Aaron to EMT school so Aaron went to work almost immediately. We had a pulse but he wasn't breathing at all. Aaron climbed on dads legs and pumped and ordered me when to do mouth to mouth. His jaw and mouth was a mess. He had no jaw bone on one side so every time I blew the air would escape. I attempted to hold his skin together trying to get air to his body but with every breath that I would blow, the air would leak through the mangled flesh and out between the fingers in my hand. We wrapped his jaw with a shirt attempting to hold it together. Aaron and I both tried to get air to him but were unsuccessful. Rusty came back and told us that help was on the way. It seemed like an hour before anybody from the fire department or ambulance service arrived but was probably more like 10 minutes or so. Little did we know but dad needed a tracheotomy? He had a portion of his jawbone lodged in his throat that was blocking his airway. We live about a mile and a half from the hospital. I don't know why we didn't load dad up and take him straight there ourselves. I kept on thinking that help is on the way. A paramedic or a fireman or a trained professional was going to come and dad was going to be hurt but that he would live. This man was by far the toughest guy that I had ever met. I watched him cut his thumb almost off on a job, he put a McDonalds napkin around it, and taped it up with electrical tape. I remember trying to talk to him. I told him it's going to be ok and asked him to squeeze my hand. He gave a subtle squeeze only once. His eyes were glossy and half open, and the amount of damage to his face was just unbelievable. Every time I tried to hold his face together, pieces would slip through my fingers. Another dreadful circumstance took place 20 minutes before dad's accident. There was a car wreck and the only hospital paramedic was at that accident. The only people left were EMT's that were not prepared to handle that kind of trauma. He desperately needed a tracheotomy at the scene. Instead the emergency room doctor did it upon dad's arrival. I will never forget the EMT's face and comments when he first approached dad laying in the yard. He told me to stop CPR and to let go of his jaw and throat area. As soon as I did the torn flesh that I was holding together just fell apart. The EMT kept saying oh my god, oh my god and he was rubbing his hands on his pant legs. The kid was clueless on what to do first. He fumbled through his medical box trying to get an airway but had no success. My brother reacted immediately. He grabbed dad's legs and told me and jimmy to grab his arms and we put him on the stretcher and I

remember Aaron screaming to get him to the hospital. I think the EMT was relieved. Everybody was screaming and crying, mom was a wreck. It was utter chaos. En route to the hospital dad went into cardiac arrest but they used the defibrillator on him and he responded. The ER doctor worked on him until the helicopter arrived and did a good job of stabilizing him. They had a tube through his throat and told us that he was alive and stable and the trauma team in Fort Wayne was ready to go to work as soon as he landed. I was still in work clothes and had burns from the firework on my arms, neck and face. We were covered in blood and I only had one boot on. I drove back to dad's to find my boot and the yard was horrific. There was blood everywhere. My boot was lying next to dad's deck and as I picked it up I noticed a large chunk of dad's jaw bone laying there. I panicked. I grabbed my boot and ran to the car. Nobody changed we just went straight to the trauma center in Fort Wayne. I remember watching the helicopter fly overhead. I had only one contact in. At some point during the initial 2 report blasts one of mine had been knocked out. So we get to the trauma center and dad was alive but was in surgery. The first report was promising. He was stable, they sewed his jaw shut and restored his airway and there was no damage to his esophagus. This was a relief. There was so much hanging flesh and blood that we all thought there were damage to his throat. It appeared for the time being that he was going to make it. The next day dad was in trauma ward monitoring unit. They brought in a brain specialists who did some tests. This lasted pretty much the whole day on July 5th. That night around 10 pm they gave us the news that dad was in a vegetative state and that his brain cycles were well below normal. The best recovery possible would be that dad who was the most active man I had ever met was pretty much going to be brain dead. He went too long without oxygen. Had we loaded him up and taken him ourselves would have gotten him to the hospital at least 10 to 15 minutes sooner. This proved to be the deal breaker for dad. If it were one of us boys or one of his workers dad wouldn't have hesitated. He would have picked whoever it was up and went straight to the hospital without thinking.

“At any rate Andrea I and were walking to the dorm they gave us following a brief visit to dad's bed. It was tough seeing him like that. His face was swollen, he had burns all over, still had the dirt from work under his nails. Andrea stayed at the station while I went into the room to talk to dad. I told him a few things and started out of the trauma unit when Andrea's water broke. The nurses got her in a wheel chair and wheeled her upstairs to obstetrics. They get her situated and it came time for the epidural. A student from Indiana University came in and announced he was a student and that he would administer the epidural. I just assumed this was normal, I had never had a kid before and neither did Andrea. So this guy try's and try's and after about 15 minutes of not getting the needle in the right spot I lost it for a second. So I talked to the nurse and she told me to relax and sent another student who struggled as well. Out of chance the brain surgeon who was working with dad decided to come up and check on us and realized I was pissed and freaking out and was nervous about something going wrong. It was hard to control your emotions when your dad had half of his face blown off

on life support three floors down and they are sending us fucking students to deliver my son. Dad's doctor asked everybody to leave the room and told me to hold Andrea's hand until he gets back. He came back with dr. Douglas boss. This guy was a pediatric trauma surgeon that dad's doctor works with. He was about dad's size, very big guy with a deep voice and motioned for me to come to the hall way. He told me his name and announced his credentials and told me that he was a pediatric specialist and was there to make sure that my son comes into this world with no problems or worries. Before I could even speak he threw his arms around me and squeezed and I flat out lost it. This was the first time that I really broke down. We must have stayed there hugged up in that hallway for 5 minutes. I bet people who didn't know the whole situation thought that I had lost it. He told me no more students and ordered us to a private room. He came in about every half hour to check on us. As labor progressed Andrea slept the night away. He said its time and he woke her up enough to push and she would go right back to sleep. When Ethan came out he asked for me to cut the cord but by this time I had seen too much, slept too little, and ate nothing. I felt light headed and closed my eyes to regroup and I remember dr. boss telling me to keep my eyes open, keep my eyes open he said over and over. When I opened them everything was grey. No color whatsoever. Dr. Boss had Ethan in one hand and gave me a nudge to a corner in the room with the other where I slid down the wall and was out. I woke up with an IV and an oxygen line in my nose and the dr. standing over me with the news that Andrea was fine and that Ethan James Dixon was healthy and kicking. Ethan James Dixon born on 07/06/2001. We gave him dad's name, James."

Letters from family members, business associates, members of Mr. Dixon's community and friends paint a similarly compelling picture of a man who gives selflessly to others, and most particularly to children, a man who everyone seems to look to for assistance, and who doesn't make excuses for his behavior, no matter the cost. The following excerpts are just a few examples:

"I am Chad's mother Dani L. Dixon. I am 58 years old and have been on disability since 2008. I bring this to your attention only as it pertains to Chad. I draw social security disability in the monthly amount of \$785.00 for myself and in addition I draw \$875.00 monthly as a widow's pension. Before my illness I worked as an expanded duties dental assistant. I made about \$40,000 a year and with careful budgeting I was able to make it on my own. I became very sick in December of 2005. During the period of 2005 through 2008 I developed Methicillin-resistant staphylococcus aureus or MRSA. This infection spread to my bones resulting in 13 general anesthesia surgeries. Additionally it spread to my gallbladder and left me with 3 leaky heart valves. Other ailments include a chronic thyroid disease and low potassium levels. Both of these can be very

debilitating when not easily controlled by medications, which is my case. On 06/15/2010 I underwent surgery for a double mastectomy for breast cancer. All my sons were helpful but truly I tell you Chad was excellent at helping with my needs. Night after night I would awake to find Chad sleeping in a chaise lounge next to my bed. Chad would go by my house, collect mail and pay my bills; he managed to keep me afloat.

\* \* \*

“During emergencies such as severe weather Chad scurries to provide power to people without any. In a situation where Chad can’t restore the power he has often provided use of his 4 generators to get people by. Chad does other deeds such as removing fallen trees and other debris. He has many times tarped roofs for people to prevent further damage. Unfortunately at a time when other contractors take advantage of the situation by over charging people in need, Chad is proud as he helps people for free or at a reduced rate. Chad says you get what you give. Often times Chad will receive good jobs as a result of his charity.”

Letter from Dani L. Dixon (Exhibit 3).

“Chad has come to my aid numerous times when I am running behind on one of contracting jobs. At times there is wording in a contract where by if the contractor doesn’t meet a deadline, the contractor can be fined per day. I work another full time mainly because of the benefits. Sometimes I am required to work overtime on short notice, which can throw a wrench in the gears of my contract job. When asked Chad is always there.

“Since my dad died and my mom is now very sick Chad has taken the lead and has Christmas, Thanksgiving or often just family get togethers such as cook outs at his house. This really takes a load off mom since she wants us all to stay close and believes what Chad learned from her and dad, that to stay bonded closely as a family we must spend quality time together. Mom feels guilty and struggles with the idea that she can’t do what she was once able to do. Chad again in his usual style just talks to mom and tells her that it is easier at his house since it is bigger and so is the family. She will go the day before and helps and then brings a dish or two to the event. This makes her feel content. Our mother became gravely sick several years ago. As hard as she fought she could not stave off the physical damages this left her with. While me and my brother Aaron are there for her whenever we can be. This pales by comparison what our youngest brother Chad has done for her. He never begrudges the extra time reassuring Aaron and I that since he is self employed it is easier on him.”

Letter from James Wm. Dixon (Exhibit 3).

“Chad has physically and financially helped several in our family including me. My mom could not possibly survive on her own without Chad. Additionally Chad is constantly helping others, sometimes with work on their home at no or little charge. Chad’s greatest volunteer work is no doubt the time he works with children in different sporting events in this county and others. Many children who otherwise couldn’t play in sports are able to because of Chad.”

Letter from Aaron Von Dixon (Exhibit 3).

“The Chad Dixon that I know is a youth sports coach and a mentor to children in the community. He has volunteered in a number of community summer sports leagues as a coach and also acts as a personal mentor to a lot of children within our community. This man spends hundreds of hours helping these youngsters athletically, and emotionally. His conduct with these kids not only impacts them on the field and on the court, but he also preaches fundamentals such as hard work, positive attitude, honesty, and academics that many of these kids will continue to use in the years to come off the court. I know that he has positively impacted a large volume of kids in our community and I’m sure many of these kids will never forget him or his passion for teaching and aiding in their development. I know the amount of time he spends doing this has to be a huge sacrifice for him to make, but if you see him doing it, or ask him about it, you would never know it. He genuinely loves helping these youngsters excel athletically, academically, and emotionally.

“I also know Chad to be a dedicated father. When I see him the conversation almost always will turn to his children. He is such a proud father who strives for the absolute best for his children. Chad has 4 kids that I know would be absolutely devastated to not have him in their lives. Following his father’s accident in 2001 Chad worked 2 full time jobs. He would work 3<sup>rd</sup> shift and then immediately would go to his day shift job trying to provide for his children. He continued this relentless routine for more than 5 years. I don’t know of many men who could persevere through such a schedule. If you could spend 5 simple minutes watching this man interact with his children you would be as convinced as I am that this man plays such an important role in their lives. His children has always been priority one in his life.

“Chad and I spoke in length about his polygraph business and the legal problems that have arisen as result. The tone in his voice as he explained the situation to me told a tale that needed no words. I know he was embarrassed and was as humble as I have ever seen. He told me that it was one of the biggest mistakes in his life and expressed tremendous regret for the decision that he made. We talked about his financial situation prior to his polygraph business and I am convinced that the foreclosure process and the growing financial debt he was facing along with a pregnant fiancée influenced his decisions to pursue this polygraph business. The part of my conversation with Chad that has stuck with me the most is his regret for the hardship this has caused his family, fiancée, kids, and his

employees. He is truly sickened to the point of disgust with himself. He blames nobody for his legal problems but himself. Subsequently he agonizes over the consequences this will have on so many additional people but none more than his kids.”

Letter from Jason Dean McVicker, Esq. (Exhibit 3).

“I have seen him purchase ball equipment for needy kids, and he has spent hours on the ball field with me and kids without any of the kids being present. I have made long trips with him taking multiple kids home who didn’t have rides just so they could be a part of what others were doing. I have participated in many pick-up games of all sorts where we were the lone adults to referee the playing field so the kids could enjoy a fun filled game. My own kids have spent countless hours with him and have even called him their second dad.

“I have witnessed Chad help out many other people over the years. I am firmly convinced that chad could handle incarceration, however, I think it would be a harsh punishment to his own kids and many others. Justice could be served in other ways, and I am convinced Chad has learned his lesson and would never repeat these mistakes.”

Letter from Russell Davis (Exhibit 3).

“I have known Chad Dixon for seventeen years of my life. Because we both work in the construction field, Chad and I have had the opportunity to work together on some of the same job sites. His company Expert Electric is highly recommended in this community because of Chad’s integrity in the field as well as his great customer service. I also know that Chad is heavily involved in Lincoln Field youth baseball. Chad coaches his sons’ team and spends countless hours through the summer donating his time to our children in Marion. Some of the children on Chad’s team come from single parent, low income homes that aren’t able to afford to play baseball or provide transportation to and from practices and games. But because of Chad’s heart for children he is able to help some of the kids who are in need by paying for other kids to play as well as picking them up and dropping them off for games and practices. As a result of that, Chad is extending grace to children whom most people in society write off.”

Letter from Andrew H. Morrell (Exhibit 3).

“Chad has always been the one to help out the less advantaged. If it was helping the less fortunate child with new baseball equipment on the youth team he coached, or having a cookout for friends and family alike. Chad has always been a model citizen and more than once has stepped up to help those in need. I remember Chad drafting a kid on his son’s baseball team one summer that was not as talented as some other kids because he thought he could help impact the child’s life. There was a kid that was kicked off of a team because of bad attitude.

The next season the commissioner of the league wasn't going to let this kid play but chad stepped up and took him under his wing. That kid won the sportsmanship award and continues to play baseball to this day all because of how Chad is with these kids. These are just a few of the many examples of Chad's true character and kind heart."

Letter from Brad McPherson (Exhibit 3).

"When Chad started his polygraph training, we were going through some very hard times. I was pregnant with my first daughter and still in college. Due to my hours in school and the pregnancy, I was unable to work. Chad had to support me one-hundred percent. His electrical contracting business was slower than usual which made this especially hard. During this same time, Chad's house was facing foreclosure and we were worried about health care costs, where we would live and me not dropping out of school. Chad had researched the polygraph in college and came up with a plan to supplement his income and support our family. I look back at those days with some regret. I wish I helped more financially. I know deep down in my heart that if we weren't struggling financially that we wouldn't be in the mess that we are in today. I agree that a wrong is a wrong, but I do not believe that Chad would deliberately do something that he knew to be illegal. Ignorance is no excuse and Chad will be the first to explain that he has no excuse. I do feel that these are mitigating circumstances.

"I know Chad to be an ambitious, hardworking, family man who is community-minded and selfless, especially to the youth in our region. During football, baseball and basketball seasons, Chad is the dad who is at every practice and game not only helping and encouraging his own child, but the whole team. He is the dad who puts in countless after-hours giving individual help and support to the whole team. Chad not only acts as a coach to these young men but also as a mentor guiding them in the right direction for their future. Just this past summer, I received an email from an old friend asking if Chad Dixon was my Fiancé. She explained to me how her son was on his baseball team and set the following message:

"Please tell Chad I appreciate him sooo much the way he is with Logan. Logan loves him so much. I have worked with Logan myself but never had the response Chad has with him."

"That is just one point of view; I couldn't possibly recall all the children whose lives he has touched in one way or another in the past five years we have been together.

"Chad is an incredible father to not only our two young daughters (Haylee, 7 months and Gracie 3 years), but also to our two older children (Ethan 12 and Morgan 8) from his first marriage. From singing lullabies to having team parties to helping with homework to attending school programs to playing catch to

reading bedtime stories, he is everything someone could ever hope for in a father. I can't imagine any of the four kids not having him around. He means so much to them and to me."

Letter from Ashley Shook (Exhibit 3).

"Mr. Dixon has always been the type of person to help his fellow man in need. A few years ago, my family was in financial distress. My husband had cancer, lost his job and then I lost mine due to downsizing. We became 4 months behind on our house payment and on the verge of foreclosure. As I was talking to Mr. Dixon and just explaining the hard times my family was going through, he offered to loan me the money to bring the mortgage payment up-to-date. Since that time we have slowly gotten back on our feet and I have offered to pay him back but we will not accept the repayment. He states that I should keep the money and use it for my kids. I broke down and cried my eyes out. Nobody has ever helped us like this. He was truly a godsend.

"Mr. Dixon also was my youngest son's baseball coach. During that season I witnessed firsthand how involved he is with not only the success of his own son but the success of the all of the boys on the team. He always made sure that when they traveled, all of the boys had a good time. My husband and I were not in a position to be able to stay in motels or take our son to the fun centers with the team during the traveling All-Star season. So Mr. Dixon would make sure that all of the kids (including my own), were able to go along with the rest of the team. I cannot repay him enough for allowing my son to have those experiences. If you could talk to my youngest son and ask him what kind of a coach, a dad, a person Chad is, only then you would understand the kind of guy that you're getting ready to sentence."

Letter from Rachelle O'Brian (Exhibit 3).

It is impossible to believe that Mr. Dixon would have knowingly aided any individual he believed had the present intention to harm a child.

A sentencing court may impose a variant sentence if the court determines that a sentence within the guidelines range does not serve the factors in § 3553(a). *United States v. Moreland*, 437 F.3d 424, 432 (4<sup>th</sup> Cir. 2006). In this case, there are compelling family circumstances demonstrating that individuals in Mr. Dixon's family will be very badly hurt if he is not available to take care of, and provide for them. Apart from the loving and extraordinarily close relationships Mr. Dixon shares with his children and other family members, he is the provider for

four dependent children, none of whom is over the age of 12, and provides needed financial and other support to his mother who is nearly completely disabled. Mr. Dixon's mother has income of only \$1,660 per month. She suffers from Methicillin-resistant staphylococcus aureus (MRSA) which spread to her bones and gall bladder resulting in 13 surgeries and causing three leaky heart valves. She has chronic thyroid disease and low potassium levels requiring carefully controlled and expensive medication. In 2010, she also underwent a double mastectomy for breast cancer. Mr. Dixon has paid her bills and kept her financially afloat since she went on disability in 2008. He is also the person in his family primarily responsible for her care.

If Mr. Dixon is incarcerated, he will no doubt lose the electrical contracting business he took over from his father. Although he has at times struggled to keep the business going, he has put his heart and soul into making a success. He has three employees all of whom have families who are just getting by in what remains a depressed economy. The income earned by his fiancé as a new teacher is not nearly enough to support her and their two children or prevent them from losing their home. Mr. Dixon's ex-wife and two children from his first marriage are also dependent upon his regular support payments to keep a roof over their heads and food on their table, as are the families of his three employees. Mr. Dixon has also come to the aid of countless children and families who continue to depend upon his generosity and the humanitarian care he provides.

Under the current sentencing regime, this Court is free to consider the impact of removing Mr. Dixon from the community in fashioning an appropriate sentence. See e.g., *United States v. Schroeder*, 536 F.3d 746, 755-56 (7<sup>th</sup> Cir. 2008) (“[w]hen a defendant presents an argument for a lower sentence based on extraordinary family circumstances, the relevant inquiry is the effect of the defendant's absence on his family members”); *United States v.*

*Munos-Nava*, 524 F.3d 1137, 1148 (10<sup>th</sup> Cir. 2008) (*Gall* “indicates that factors disfavored by the Sentencing Commission may be relied on by the district court in fashioning an appropriate sentence,” and holding that the sentencing court’s finding that the defendant’s family circumstances were extraordinary – the defendant cared for his eight-year-old son as a single parent and had elderly parents with serious medical problems – was supported by the record); *United States v. Lehmann*, 513 F.3d 805, 809 (8<sup>th</sup> Cir. 2008) (affirming a downward variance to probation with a condition of community confinement rather than guidelines range of 37 to 46 months of imprisonment where the district court found that a prison sentence would negatively affect the defendant’s disabled son). The Court should do exactly that.

## **II. The Need for the Sentence Imposed**

Section 3553(a)(2) also requires that the sentence imposed reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, and provide the defendant with needed rehabilitation. 18 U.S.C. § 3553(a)(2)(A).

The Court should reject the government’s suggestion that a term of imprisonment is necessary to deter Mr. Dixon from committing future offenses. Apart from the fact that he has no prior criminal record, Mr. Dixon has done nothing to suggest that he is likely to reoffend or that he is attempting to avoid the consequences of his actions. Mr. Dixon voluntarily shuttered his polygraph business. To a person, he has made it clear that he blames no one but himself for the circumstances in which he finds himself and that he accepts full responsibility for his actions. (See Letters, Exhibit 3). People who know Mr. Dixon far better than the government are morally certain that he would not have engaged in conduct that he believed to be illegal. During first recorded undercover training session, the agent asked Mr. Dixon what he would do if the government found out about him. Mr. Dixon responded that he was sure that they knew all

about him and that nothing he was doing was illegal. Mr. Dixon's uncensored response is convincing evidence that a clear warning from law enforcement that his conduct was illegal and a request that he stop providing countermeasures training would almost certainly have sufficed.

Nor is a term of imprisonment necessary to promote respect for the law that has never before been enforced in this manner, or to communicate effectively that this conduct is unacceptable. As recently as June 3, 2013, the U.S. Customs and Border Patrol official who heads CBP's Credibility Assessment Division made the keynote opening presentation at the American Association of Police Polygraphists' annual seminar. He told a room full of police polygraph examiners that "[n]othing like this [legal approach] has ever been done before." (See Exhibit 4). The government has still not arrested any of the other thirty or more individuals still known to be providing the same training, including Doug Williams, the individual it has identified as having trained almost 5,000 people on how to beat the polygraph test – a person who has unabashedly advertised himself on 60 Minutes and throughout the national media as the former "Cop Turned Crusader" who can teach anyone, *lying or not*, to always pass a polygraph test. Mr. Dixon has done nothing that warrants the government's attempts to make him the poster child for its newly undertaken campaign to wipe out polygraph countermeasures training.

In this case, a sentence of probation or community confinement that includes the \$17,091.07 forfeiture and a requirement of community service will also promote respect for the law send the necessary message to people who have never before had reason to believe their polygraph businesses were illegal that there are limits to the countermeasures training they can legally provide. "Respect for the law" does not automatically require a harsher punishment. Respect for the law must be read in its broadest sense – including avoiding unduly harsh punishment when the offense and the individual defendant do not deserve it. Persons viewing

this case will see that for a crime that Mr. Dixon did not know he was committing, his reckless actions will have jeopardized his hard won reputation, put him at risk of losing his electrical contracting business, leaving his family and employees without a means of support, and most importantly, placed him at risk of being separated from his children who will never understand how their father could have done something that took him from them. See *United States v. Anderson*, 533 F.3d 623 (8<sup>th</sup> Cir. 2008) (affirming a downward variance based on “other ways in which the defendant had suffered atypical punishment such as the loss of his reputation and his company, the ongoing case against him from the Securities and Exchange Commission and the harm visited upon him as a result of the fact that his actions brought his wife and friend into the criminal justice system”).

### **Conclusion**

Sentencing courts have wrestled with the elements that make up just punishment. As one noted district court judge has commented:

[i]f ever a man is to receive credit for the good he has done, and his immediate misconduct assessed in the context of his overall life hitherto, it should be at the moment of his sentencing, when his very future hangs in the balance. This elementary principle of weighing the good with the bad, which is basic to all the great religions, moral philosophies, and systems of justice, was plainly part of what Congress had in mind when it directed courts to consider, as a necessary sentencing factor, “the history and characteristics of the defendant.”

*United States v. Adelson*, 441 F. Supp. 2d at 513-14 (Rakoff, J.). In the context of Mr. Dixon’s overall life, a sentence of probation or community confinement is “sufficient but not greater than necessary” to achieve the goals of sentencing.

Respectfully submitted,

CHAD DIXON  
By Counsel

/s/

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 23<sup>rd</sup> day of August, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the counsel of record.

I further certify that a true and accurate copy of the foregoing was sent by regular mail and e-mail this 23<sup>rd</sup> day of August, 2013 to the following:

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