

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 : CR NO. 16-067
 v. :
 :
 NEIL STEWART :
 :
 Defendant. :

TRANSCRIPT OF SENTENCING

BEFORE THE HONORABLE KETANJI BROWN JACKSON

UNITED STATES DISTRICT JUDGE

Tuesday, February 21, 2017

APPEARANCES:

For the Plaintiff: ANDREA LYNN HERTZFELD, AUSA
United States Attorney's Office
Washington, D.C.

For the Defendant: CARLOS J. VANEGAS, ESQ.

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PROCEEDINGS

DEPUTY CLERK: Okay. Your Honor, this is Criminal case 16-067, United States of America v. Neil Stewart. We have Andrea Hertzfeld for the government, Carlos Vanegas for the defendant and Crystal Lustig, probation officer.

THE COURT: Good afternoon to all of you. We are here for the sentencing of the defendant, Mr. Neil Stewart, who has pled guilty to unlawful possession of child pornography that has been transported in interstate commerce in violation of Title 18, Section 2252A(5) of the United States Code.

The Court has received and reviewed the presentence report and sentence recommendation from the probation department and also various other documents that were submitted by counsel in advance of the hearing; the sentencing memoranda from the government and from the defendant; and various letters of support, sentencing exhibits that were submitted by defense counsel.

The Court also received just this morning a document that is titled Presentence Mitigation Report in Aid of Sentencing. It purports to be from a forensic mitigation specialist. It appears to read like a

1 sentencing memorandum. I understand that counsel from
2 neither side at this point has actually received this
3 document, so I've had copies made which we will
4 distribute now.

5 And perhaps, Mr. Vanegas, I don't know if you
6 are aware of this, but once I give it to you, maybe you
7 can come forward and tell me whether you have any idea
8 of the genesis of this document and information about
9 it.

10 MR. VANEGAS: Thank you, Your Honor.

11 THE COURT: Yes.

12 MR. VANEGAS: I have been provided information
13 regarding the possibility of this memo back in December,
14 and that's why I filed the second motion to continue
15 sentencing. And this was something that acquaintances
16 of Mr. Stewart had voluntarily approached him indicating
17 that they would like to assist him with his sentencing
18 and that I believe it's another inmate, and the inmate
19 indicated that that individual had resources and would
20 be able to contact professionals outside of the federal
21 defender office who were versed in mitigation reports,
22 and that was the reason I asked for that continuance.

23 At that time I didn't really have many details
24 regarding who these individuals were, what was going to
25 be kind of the structure of the report, where the

1 information was going to be based on. And as the
2 sentencing approached, I asked Mr. Stewart if he had
3 more information regarding whether this was actually
4 going to be filed or not. And he told me that it was in
5 the works.

6 And so yesterday I received both in email and
7 also a phone call by a person named Tom J. Ryan of the
8 Constitutional Law Advocates -- I had never heard of
9 them -- and he wrote to me from a linked, professional
10 email indicating that they had filed this on PACER. And
11 yesterday when I was at home I looked up the
12 Constitutional Law Advocates. I didn't find anything.

13 THE COURT: Yes, there's nothing filed, as far
14 as I can tell. This document arrived at the Court
15 through the regular mail process. It went to the United
16 States Court of Appeals for the District of Columbia
17 Circuit, which is the title, and apparently it was
18 received by the Court of Appeals on the 15th, but
19 because of the misrouting, given where it was sent, it
20 didn't get to me until this morning. No cover letter,
21 no indication of who filed it or what the source of it
22 was other than the statement made in terms of the
23 certificate of service and the signature.

24 And so what I'm struggling with right now is a
25 couple of things. First, since counsel hasn't seen it,

1 I don't know whether this is something that you can
2 subscribe to in any respects; it's not as though you
3 commissioned it I hear you saying. You didn't really
4 even know this was happening. And second, to what
5 degree do I rely upon it, if any. Might you have some
6 thoughts about that, and then I'll let government
7 counsel approach.

8 MR. VANEGAS: Yes, Your Honor. Because I knew
9 that this was in the works and I indicated to
10 Mr. Stewart and I also filed a motion basically
11 referencing this, that I certainly did not dissuade him
12 from that.

13 My view was that if anyone could help him in
14 the dire situation that he was, that I was offering, I'm
15 not the gatekeeper of getting mitigation information for
16 him, but that I definitely wanted to see it and in
17 advance of what was going to be filed. It was just
18 yesterday when I finally got the communication from
19 Mr. Ryan indicating that it had been filed on PACER.
20 That's what I was told, and when I looked on ECF it
21 clearly was not filed.

22 And then I got a phone call this morning
23 saying that the motion, the mitigation report had been
24 filed and that it had nine points of variances that I
25 could use in order, in my presentation, that's exactly

1 the kind of wording that was used on the voice message.

2 Regarding whether the information here can be
3 used or that I wanted the Court to consider, my first
4 view would be that I would need to read it and review it
5 and see whether, in fact, it's based on case law,
6 whether it's based on an understanding of 3553(a) and
7 that it takes into account the conduct.

8 If it is kind of a generalized kind of blanket
9 statement in which variances are referenced but there's
10 not substance or details that goes -- circles back to
11 Mr. Stewart, then it would be memorandum that -- while
12 not really helpful because it would be in a vacuum.

13 THE COURT: Well, I don't want you to
14 speculate because you haven't seen it. Here is what I'm
15 thinking. First of all, it reads like a legal brief,
16 all right, as opposed to some other information that is
17 submitted at sentencing. So I'm not even sure whether a
18 person who is not a lawyer representing Mr. Stewart is
19 entitled to file a legal brief regarding -- you know, I
20 just don't even know as a legal matter.

21 On the other hand, at sentencing, you know,
22 everything comes in. I suppose this was a letter in
23 support just like any other letter, I, you know, would
24 look at it. I don't see anything in it that offers
25 information outside of some legal analysis based on what

1 this person appears to think about the facts of this
2 case, but there's certainly nothing that is new in terms
3 of facts that I can ascertain from this.

4 So I sort of am thinking maybe I just treat it
5 like the letters of support that came from Mr. Stewart's
6 family members and friends and not really focus on its
7 legal analysis as being the crux of what it is that the
8 defense is wanting to put forward.

9 In other words, you have submitted a brief
10 that has asked the Court for a particular sentencing
11 range and made it a legal argument, as is your
12 responsibility as Mr. Stewart's counsel. And this
13 document, which is making another legal argument, you're
14 saying you have not yet been in a position to ascertain
15 whether you adopt it.

16 I will say in it it talks about departures and
17 not variances, which I think would contravene your plea
18 agreement in terms of asking for departures in that
19 sense, but it also indicates that the person who penned
20 it is not all that familiar with the way in which our
21 process works and the extent to which the law now
22 proscribes Mr. Stewart's ability to ask for departures
23 in light of what he agreed to in his plea agreement.

24 So I'm not at this point inclined to put that
25 much stock in it, although I don't want to exclude it

1 formally because of the way sentencings work, but it
2 doesn't seem to add much, I think, to the overall
3 analysis.

4 MR. VANEGAS: That's fine, Your Honor. And
5 then my view is that obviously we can continue the
6 sentencing hearing. This can be a submission that the
7 title can remain the same but it can just be a letter, a
8 report of mitigation report in aid of sentencing by, you
9 know, another party. However it is categorized we can
10 just move on and just -- I would like to just take me a
11 few minutes to read it.

12 THE COURT: Sure. Let me have government
13 counsel approach while you thumb through it and we'll
14 see where we are.

15 MR. VANEGAS: Sure.

16 MS. HERTZFELD: Thank you, Your Honor. So
17 first just to take one step back, I just want to
18 apologize to the Court for getting delayed being here.
19 I was stuck downstairs in magistrate court, so I
20 apologize to the Court and everybody else for keeping
21 you waiting.

22 THE COURT: It's all right.

23 MS. HERTZFELD: I have sort of paged through
24 it, and I have the same impression as the Court, which
25 is to say that there is quite a bit of legal analysis in

1 here and I do think that -- I haven't read it carefully
2 enough to know yet whether or not it's really being
3 talked about in terms of actual bases for departure.
4 Obviously that would be in contravention of the plea
5 agreement versus just a mischaracterization of the
6 variants language. I'm not sure yet from what I've
7 seen.

8 I think I'm fine with the idea of treating it
9 as just a submission. I'm not sure I necessarily
10 understand exactly who the submitting party is. So I
11 think to the extent the Court wants to consider it just
12 as a submission in support of the defendant, I don't
13 have any objection to that. I would want some time to
14 just look through it and see if there's any other
15 issues.

16 One thing just by looking at it on its face,
17 there's a couple references with respect to 5K1 and some
18 things that happened that would potentially support a
19 departure on that basis.

20 THE COURT: Yes.

21 MS. HERTZFELD: I don't know that that's
22 necessarily appropriate for the record at this stage or
23 if Mr. Vanegas had an opportunity to review that with
24 his client and get his comfort level with some of the
25 things addressed with respect to that. I think maybe

1 the parties should discuss that and whether or not --

2 THE COURT: So here is what I'll do. What I
3 think what I will do is let's go through our ordinary
4 sentencing steps, and then before I hear from the
5 parties, we'll take a 15-minute break, you can look at
6 the document. Mr. Vanegas, you can talk to your client,
7 and we can see whether anybody intends to argue anything
8 related to it or whether it's just a submission for the
9 record.

10 MS. HERTZFELD: Thank you, Your Honor.

11 MR. VANEGAS: That's fine, Your Honor.

12 THE COURT: Okay. Thank you.

13 So with respect to the other materials that
14 the Court has received, it appears as though the
15 presentence report has been reviewed by the parties and
16 that the final report is complete. The Court has also
17 reviewed data from the Sentencing Commission on
18 sentences imposed on offenders convicted under the same
19 statutory provision with similar guideline calculations,
20 and I did post that data that I received from the
21 Sentencing Commission on the docket.

22 Mr. Stewart, this sentencing hearing will
23 essentially proceed in four steps. The first step of
24 this hearing is for me to determine whether you have
25 reviewed the presentence report in this matter and

1 whether there are any outstanding objections to the
2 facts and the calculations set forth in the PSR. And if
3 so, I will resolve those objections.

4 The second step is for the Court to determine
5 what sentencing guidelines and sentencing range applies
6 to your case based upon your criminal history and
7 considering any mitigating or aggravating factors that
8 might warrant a departure under the guidelines manual.

9 The third step is to hear from the government
10 and from your counsel, from any victims the government
11 would like to put forward and from you, if you wish to
12 be heard about the sentencing in this case. And, of
13 course, any other witnesses that you might have to speak
14 on your behalf.

15 And the last step requires the Court to
16 fashion a just and a fair sentence in light of the
17 factors that are set forth in a statute, 18 U.S.C.
18 3553(a). As part of this last step, the Court will
19 actually impose the sentence along with other required
20 consequences of the offense.

21 Now, I realize that it is sometimes hard for
22 nonlawyers to follow some of the more mechanical
23 procedures that we have to go through at sentencing, but
24 as you listen, I want you to keep in mind why we are
25 here at this moment and the gravity of the situation.

1 We are here because you have committed and
2 pled guilty to conduct that constitutes a federal crime.
3 Today's proceeding is a serious matter because it is
4 fundamentally about the consequences that you will face
5 as a result of your decision to engage in criminal
6 behavior in violation of federal law.

7 Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You may be seated.

10 The first step in our process is to analyze
11 the presentence report. The final presentence report
12 and sentencing recommendation were filed in this matter
13 on October 20, 2016.

14 Let me start by asking government counsel
15 whether you have any objection to any of the factual
16 determinations that are set forth in the presentence
17 report.

18 MS. HERTZFELD: No, Your Honor, thank you.

19 THE COURT: All right. Let me ask about the
20 status of the pending state case that is mentioned in
21 the PSR. Do you have any information about that case?

22 MS. HERTZFELD: Your Honor, my understanding
23 is that that case has remained stayed because the
24 defendant is in this jurisdiction and hasn't been
25 writtten back for any determination. My understanding is

1 nothing has happened essentially pending the resolution
2 of this case before he can be taken back to that
3 jurisdiction to have it dealt with there.

4 THE COURT: All right. So it's not that it
5 has been dismissed or anything at this point?

6 MS. HERTZFELD: That's my understanding.

7 THE COURT: Thank you. Let me turn to the
8 defense. Let me ask you, Mr. Stewart, are you fully
9 satisfied with your attorney in this case?

10 THE DEFENDANT: Yes.

11 THE COURT: And do you feel that you've had
12 enough time to talk with him about the probation
13 department's report and the papers filed by the
14 government in connection with this sentencing?

15 THE DEFENDANT: It was a while ago that we
16 did -- it was a while ago that we did review it, so I
17 don't remember all of the details. I do know that we
18 did go through it fairly thoroughly.

19 THE COURT: At that time?

20 THE DEFENDANT: Yes.

21 THE COURT: Mr. Vanegas, maybe you can speak
22 with your client during the break that I anticipate
23 having and just refresh his memory as to what everything
24 is about.

25 MR. VANEGAS: Yes, Your Honor.

1 THE COURT: Okay. Let me ask you,
2 Mr. Vanegas, did you and your client read and discuss
3 the presentence report at the time that you were
4 counseling him?

5 MR. VANEGAS: Your Honor, Mr. Stewart reviewed
6 the presentence investigation report with former staff
7 investigator Santa Lopez, and then afterwards more
8 recently I went to the jail on two occasions to speak to
9 Mr. Stewart about sentencing. And we certainly reviewed
10 both my recommendation -- well, we reviewed the
11 government's recommendation and my recommendation and
12 essentially what would happen at the sentencing hearing.

13 So we did review the PSR but not as thoroughly
14 as it was reviewed back when the first time around with
15 Ms. Lopez.

16 THE COURT: Has it changed since Ms. Lopez
17 reviewed it with the defendant?

18 MR. VANEGAS: No, Your Honor.

19 THE COURT: And are you aware of any disputed
20 issues of fact related to what is stated in the PSR?

21 MR. VANEGAS: No, Your Honor.

22 THE COURT: All right. So I think that means
23 that neither side has any objections to the factual
24 representations.

25 MR. VANEGAS: That's correct, Your Honor.

1 THE COURT: All right. So hearing no
2 objection, the Court will accept the factual recitation
3 in the presentence report regarding the circumstances of
4 the offense, which I will say are pretty much copied
5 verbatim from the statement of offense regarding -- to
6 which your client pled guilty.

7 MR. VANEGAS: Yes, Your Honor.

8 THE COURT: They are copied into the PSR. So
9 I will find that those facts as stated will be my
10 findings of fact for the purpose of this sentencing.

11 All right. Thank you. The presentence report
12 also lays out the probation office's calculation of the
13 advisory guideline range that applies in this case.
14 This calculation was done using the 2015 guidelines
15 manual, and it is as follows:

16 Beginning with the guideline offense level,
17 the applicable guideline in this case, according to the
18 PSR, is 2G2.2, which proscribes a base offense level of
19 18. Then according to the presentence report, several
20 specific offense characteristics also apply under the
21 circumstances in this case.

22 First, Mr. Stewart possessed pornographic
23 material depicting a prepubescent minor, which leads to
24 a two-level increase under 2G2.2B(2).

25 Second, the offense involved distribution of

1 child pornography, which leads to a two-level increase
2 under subsection B(3)(f).

3 Third, the offense level involved material
4 portraying sadistic or masochistic conduct or other
5 depictions of violence which leads to a four-level
6 increase under subsection (b)(4).

7 Fourth, the offense involved use of a
8 computer, which leads to a two-level increase under
9 subsection (b)(6).

10 And fifth, the offense involved at least 600
11 images of child pornography, which leads to a five-level
12 increase under subsection (b)(7)(d). The government has
13 also represented that Mr. Stewart has demonstrated
14 acceptance of responsibility in a manner that entitles
15 him to a two-level reduction under 3E1.1(a) and that
16 Mr. Stewart timely notified the government of his
17 intention to plead guilty in a manner that entitles him
18 to an additional one-level reduction under 3E1.1(b).

19 Therefore, prior to the consideration of any
20 departures or variances, Mr. Stewart's total offense
21 level is 30. Is there any objection to this calculation
22 of the offense level?

23 MS. HERTZFELD: No, Your Honor.

24 MR. VANEGAS: No, Your Honor.

25 THE COURT: All right. Turning to the

1 applicable criminal history category, the presentence
2 report has found that Mr. Stewart has no prior
3 convictions that receive criminal history points in the
4 guidelines manual. This means his criminal history
5 subpoint total is zero, and it puts Mr. Stewart in
6 criminal history category I.

7 Are there any objections to this criminal
8 history calculation?

9 MS. HERTZFELD: No, Your Honor.

10 MR. VANEGAS: No, Your Honor.

11 THE COURT: All right. So as reflected in the
12 PSR, given a criminal history category of I and an
13 adjusted offense level of 30, the applicable sentencing
14 range in this case per the guidelines is 97 to 121
15 months of imprisonment. Is this an accurate guideline
16 calculation?

17 MS. HERTZFELD: It is, Your Honor.

18 MR. VANEGAS: Yes, Your Honor.

19 THE COURT: All right. So having determined
20 the applicable guideline range, the next step is for the
21 Court to consider departures. As I mentioned, the
22 parties in their plea agreement addressed departures,
23 agreeing that none would be raised. And the PSR does
24 not include any departure grounds. And of course,
25 departures are distinct from variances, which we will be

1 addressing later.

2 But I just want to ask whether there's any
3 basis for departure as distinguished from a variance
4 that the parties wish to assert at this time.

5 MS. HERTZFELD: No, Your Honor.

6 THE COURT: Mr. Vanegas?

7 MR. VANEGAS: Your Honor, I'm precluded from
8 the plea agreement of raising them, but if there is a
9 departure that would be available, one that there is
10 some likelihood of not necessarily success but that
11 applies, it would be the 5H on mental health. And that
12 is something that has come, comes up in the presentence
13 investigation report and also in the report that was
14 filed by Lisa Hunt.

15 And so -- but, again, you know, I'm precluded
16 from raising them, and that's fine. I can -- I've used
17 that information in reference to the history of
18 Mr. Stewart and the reason why I saw a sentence below
19 the applicable guideline.

20 THE COURT: All right. So I will hear your
21 argument related to mental health history in the context
22 of your discussion of 3553(a) factors. Just checking
23 the PSR to see whether -- the PSR does not specifically
24 identify any circumstances that warrant departure as
25 distinct from variance.

1 The particular departure that you were talking
2 about is one that exists in the guidelines, but as you
3 know, the line language is pretty restrictive when it
4 comes to departures, and they have to be of such a
5 degree that is extraordinary or some such language --
6 I'm not finding the particular provision -- but the
7 Court did look at departures and agreed with the
8 probation officer that given the facts as I understood
9 them in this case that a departure was not warranted.

10 MR. VANEGAS: That's fine, Your Honor. I only
11 made that response basically whether I thought that one
12 would apply.

13 THE COURT: Yes.

14 MR. VANEGAS: And if there was one, that would
15 be the only one. But as I said, I'm precluded from
16 raising them, and I think it's one that I think maybe
17 about three years ago was actually a departure on the
18 mental health issue that now can be considered.

19 And I think it's a little more open, but I
20 agree that the probation officer in looking for the
21 departure language I think towards the end of the PSR
22 indicated that no departures apply. So I'm fine with
23 that.

24 THE COURT: All right. Thank you. For the
25 record, the particular departure provision under

1 discussion was -- is 5H1.3, mental and emotional
2 conditions. And again, the Court did consider the
3 guideline policy statement which says that mental and
4 emotional conditions may be relevant to determining
5 whether a departure is warranted if such conditions,
6 individually or in combination with other offender
7 characteristics, are present to an unusual degree and
8 distinguish the case from the typical cases covered by
9 the guidelines.

10 All right, moving beyond the departures,
11 Section 3553(a) requires the Court to consider a variety
12 of factors, including the sentencing range that the
13 guidelines proscribe. As I said, we have addressed the
14 applicable sentencing range under the guidelines, and
15 the statute also indicates that the Court needs to
16 consider the applicable penal statutes.

17 So as is my ordinary practice, I typically
18 take a moment to describe generally what the applicable
19 statutory and guideline penalties are for the offense of
20 conviction.

21 The charge of possession of child pornography
22 in violation of 18 U.S.C. Section 2252(a) (A) (5) carries
23 a maximum penalty of 20 years of imprisonment. Whereas
24 here, the material depicts prepubescent minors. Given
25 the charge in this case as stated in the information, no

1 mandatory minimum is applicable. And although a
2 sentence of probation is not prohibited by statute, a
3 probationary sentence would constitute a significant
4 departure from the guidelines.

5 The statutes provide that Mr. Stewart faces a
6 supervised release range following imprisonment of five
7 years to life, and that is also the range that is
8 prescribed in the guidelines.

9 Furthermore, the statute of conviction sets a
10 maximum fine of up to \$250,000, while the guideline fine
11 range is between 15,000 and \$150,000.

12 Finally, the statutory and guideline
13 restitution provisions are inapplicable as far as the
14 Court is aware, because the government has stated that
15 no victims have come forward.

16 Have I stated accurately the statutory and
17 guideline framework under which we're operating?

18 MS. HERTZFELD: Yes, Your Honor.

19 MR. VANEGAS: Yes, Your Honor.

20 THE COURT: All right. So this is the point
21 in the sentencing in which I typically invite the
22 parties to come forward and to discuss the sentencing
23 factors that they believe bear on the Court's final
24 decision. Let's take a 15-minute break so that the
25 counsel can review the document that was submitted this

1 morning, and then we will return and have the government
2 begin by addressing the 3553(a) factors.

3 MS. HERTZFELD: Thank you, Your Honor.

4 (Recess)

5 THE COURT: All right. We're back. We have
6 reached the point in the sentencing in which the Court
7 invites the parties, any witnesses that they would like
8 to present and the defendant to discuss the factors that
9 will bear on the Court's final determination.

10 So, Ms. Hertzfeld, does the government wish to
11 speak about the application of the factors or any other
12 information?

13 MS. HERTZFELD: Yes, Your Honor, thank you.
14 So, Your Honor, as an initial matter I'll just say one
15 of the things that comes up in these cases has to do
16 with the victims in the case and whether or not they
17 have victim impact statements.

18 In this case, as is our normal procedure, we
19 submitted the images to the National Center for Missing
20 and Exploited Children to try to identify the victims
21 that we could so that they could be notified that they
22 were the subject of this case and provide any impact
23 statements or restitution requests they may have.

24 In this case the national center was not able
25 to identify any of the victims depicted. And so there

1 are no victim impact statements to provide the Court or
2 restitution requests at this time. There's the 90-day
3 statutory period after the sentencing where someone
4 still could come forward, but I don't expect, given our
5 inability to identify those people, that that's likely
6 to happen.

7 The reason I'm raising this now is because,
8 you know, there's a couple mentions, both in the
9 submission we just all had an opportunity to read now
10 and in the sentencing memo, where it's talked about that
11 this is a case almost as if it's a mitigating factor
12 that has no victims.

13 And, you know, in every one of these cases I
14 always try to make sure the Court appreciates,
15 especially where we don't have the benefit of victim
16 impact statements, that these are cases where there's
17 victims. And just because there's not actual hands-on
18 abuse of children in this case by the defendant, it
19 doesn't make this a victimless crime.

20 Every one of those kids that's pictured in
21 those pictures that the defendant both obtained for
22 himself and possessed and also in this case distributed
23 to other people is a child who was, first of all,
24 victimized as a sexual abuse victim and second of all,
25 had that moment of abuse captured and is revictimized

1 every time another person like Mr. Stewart looks at that
2 picture, sends it on to somebody else, uses it for their
3 own gratification.

4 And I'm not sure, I think the Court has
5 probably seen victim impact statements in other cases of
6 this sort where we've had them submitted. We do get the
7 same victim impact time and time again in these cases
8 that we submit to the Court.

9 And one of the consistent themes in those
10 victim impact statements, when we have them available
11 from the children who have been identified, and there's
12 many, many, many more who haven't been, is that they
13 feel that victimization every time they get a letter
14 from the U.S. Attorney's Office saying you've been the
15 subject of another case where someone else has
16 downloaded your image, someone else has distributed your
17 image. They do feel victimized every single time this
18 happens. And that's the consistent message that they
19 provide to courts when they have the opportunity to do
20 so.

21 And I think it's such a consistent message
22 across the victims that we know about that I think it's
23 fair to impute to the many victims that haven't been
24 identified and don't have the opportunity to make those
25 statements to the courts in cases like this.

1 So I just want that message to be heard on
2 their behalf that, in fact, they are real victims, they
3 are real victims who, of both the sexual abuse and in
4 many cases decades and decades and hundreds and hundreds
5 of cases where this comes up for them over and over
6 again. And one of the things they say is the biggest
7 problem with these kind of cases is they never have the
8 opportunity to really put this behind them.

9 So I just want, that's something that the
10 Court keeps in mind when thinking about what an
11 appropriate punishment is for someone like Mr. Stewart
12 who perpetuates these kind of victimization on these
13 people over and over again.

14 With respect to Mr. Stewart, I will say, you
15 know, I'll move on to just a couple of things from the
16 presentence report that I wanted to comment on and the
17 defendant's sentencing memo. You know, there are some
18 things in both those submissions that I think are really
19 unfortunate. It sounds from what we know about
20 Mr. Stewart that he himself has had some issues in his
21 past that are particularly troubling.

22 It's always hard to know, and I think as we
23 stand here as lawyers it's hard to sort of correlate for
24 the Court the connection between some of the traumas
25 that Mr. Stewart has experienced and the conduct that

1 happened in this case and whether those things are
2 really connected. It's almost impossible to know.

3 I do think that they are -- people end up the
4 products of the experience they have, so I think they
5 are obviously relevant considerations for the Court.
6 It's hard to know exactly how, what the causality is
7 there.

8 But I do think it's clear that Mr. Stewart has
9 had some experiences that have been difficult, and there
10 are some things that it's clear from the presentence
11 report and the defendant's memo are to his credit. He
12 has had virtually -- well, part of this, almost no
13 contact at all with the criminal justice system.

14 It does weigh in his favor that I think he's
15 been someone who has managed, despite some difficulties
16 in his upbringing and his past life, to make some
17 positive contributions. He's maintained his employment.
18 And he is somebody who from the beginning of this case
19 did accept responsibility early on, and those are
20 certainly things that weigh in his favor.

21 That being said, those are all also things
22 that the defendant was given the benefit by the
23 government at the outset of this case in terms of what
24 the plea offer that was extended to him was. He was
25 permitted to plead guilty to possession of child

1 pornography, but as the Court knows from the sentencing
2 memorandum and the statement of offense to which
3 Mr. Stewart admitted, the conduct was more than that.

4 He was actually distributing child pornography
5 in the context of a conversation with an undercover
6 agent where he was discussing traveling to meet the
7 undercover agent's young daughter for purposes of
8 engaging in sexual acts with her.

9 That didn't come to fruition, thankfully, but
10 it is important to recognize that this isn't just
11 someone who found images on his computer. This is also
12 someone who is trading in those images, trafficking in
13 those images and using them for the purpose of
14 attempting to secure an opportunity for sexual contact
15 with a child.

16 And so it is a benefit for Mr. Stewart that he
17 was permitted to plead to possession in the first
18 instance. And the reason I'm raising that is because it
19 goes to this question that I think in all of these
20 possession of child pornography cases is raised time and
21 time again with the Courts, especially here in D.C.
22 where we've seen pretty wide disparities in terms of the
23 sentences that are given even just within this
24 courthouse.

25 I know the Court submitted to the parties the

1 statistics with respect to the sentences that have been
2 imposed from 2011 to 2015 on 2252A, (A) (5) (b) cases both
3 here and nationally and those are helpful statistics.
4 They have some limitations obviously.

5 One of the things that is a limitation for
6 statistics like this is that they don't tell us which of
7 these offenders are people who possessed child
8 pornography, pled to that offense and were sentenced on
9 conduct that just included that possession conduct
10 versus individuals who distributed child pornography or
11 engaged in some other criminal offense, I'll say as a
12 higher level of criminal offense, pled down to
13 possession as part of the benefit of their plea and then
14 are being sentenced.

15 And so I mean in the end I think, you know,
16 I'm sure Your Honor has heard in other cases the many,
17 many arguments about how the guidelines should apply and
18 that various sentencing enhancements and it's -- you
19 know, speaking frankly, it's kind of a mess in terms of
20 how they've been applied, in terms of what people think
21 about how they should apply.

22 The fact of the matter is as we stand here
23 today, the guidelines, while they've been criticized
24 including by congressional committees and et cetera,
25 they do stand as they are and they've been applied, the

1 government applies them when thinking out these pleas as
2 they stand, because that's what we have to work with,
3 even though there has been some critique of them.

4 Normally what I try to think about when I'm
5 expressing to the Court the government's views is how
6 they, in any given case, even those enhancements that
7 are more often critiqued than others, how they kind of
8 fit within the context of the facts of this case.

9 And I think across the board in almost all
10 these cases the two enhancements that are most often the
11 subject of a lot of critique from the defense and I
12 think oftentimes even courts at sentencing are less
13 willing to apply the additional points that have to do
14 with the use of the computer for purposes of the
15 possession or even in distribution cases the
16 distribution and the number of images.

17 And the reason that I think those two come in
18 to play so often is because I'm sure you've heard
19 counsel -- me and Mr. Vanegas will say this too --
20 everybody uses a computer now to get child pornography
21 or to distribute child pornography. And everybody now,
22 because of the way that defendants tend to get child
23 pornography, has a lot of images.

24 This is not the days of the postal inspector
25 cases where it was really hard to get 600 images of

1 child pornography. Now it's the touch of a button and
2 you can get 600 in the same way you get 100.

3 So what's the sort of reason for applying five
4 points as opposed to two, and I certainly understand all
5 of those critiques. That being said, we have the scheme
6 we have and I think that we try to differentiate as best
7 we can in cases. Here there are some cases that I have
8 come into the court and said, Look, I don't think these
9 necessarily in this case should apply. Sometimes I'll
10 have a defendant who's got thousands of images and has
11 one image of a prepubescent minor, and I've got the
12 defense saying to me, Does it really make sense to give
13 this person extra points? That doesn't seem to be their
14 real interest. They've got one image of a prepubescent.

15 Here, you know, with respect to the fact to
16 the enhancements that apply, this defendant -- I'll take
17 the prepubescent minors enhancement, for example -- **this**
18 **is somebody who not only has a bunch of those images in**
19 **the context of thousands of images on their computer,**
20 **but is actually using those images as part of a**
21 **distribution to barter with the undercover to try to get**
22 **access to a child.**

23 So here I think applying those two extra
24 points in this case really does make sense, and it's not
25 the case that it should all be just thrown out, that we

1 shouldn't look at those because everybody has
2 prepubescent minors. I think here it really does
3 reflect something about what this defendant was
4 interested in and what he was using in order to engage
5 in the trafficking of images and the bartering.

6 With respect to the number of images, this is
7 also somebody who didn't have, you know, the images all
8 from one day, a huge number of them downloaded. This is
9 somebody who's got child pornography images collected
10 over time across multiple devices.

11 And to me that reflects somebody who is much
12 more of a real collector who is showing interest in this
13 over and over and over again as opposed to somebody who
14 we say, Well, maybe they shouldn't get the enhancement
15 because they just pushed the button once and they got
16 600, not 100. There is an intentionality here that I
17 think makes those enhancements more applicable than they
18 are in other cases.

19 With respect to the statistics that the Court
20 provided, I'm not necessarily sure what to make of the
21 statistics in the District of Columbia. I'm not even
22 sure I necessarily understand these numbers because at
23 least it seems to me, and maybe I'm -- between 2011 and
24 2015, we've certainly had a lot more of possession of
25 child pornography come through this Court than these

1 numbers reflect, so I don't exactly know how much, which
2 ones come in to play.

3 It is the case I think both anecdotally and I
4 think what I've seen in the statistical reports over
5 time that, in D.C. we do tend to have both a very wide
6 disparity in the sentences on these kind of cases and
7 also sentences that tend to go below some of these
8 average national numbers. I don't know why that is
9 exactly, and I'm not going to stand here and try to
10 guess at that.

11 THE COURT: Let me just clarify because I did
12 request the statistics.

13 MS. HERTZFELD: Yes.

14 THE COURT: The footnotes make clear that the
15 pool of offenders who were requested in this case are
16 ones who were not only sentenced under 2G2.2 but who
17 also had applied to them in the guideline analysis all
18 five SOCs that applied to Mr. Stewart in this case.

19 MS. HERTZFELD: Yes.

20 THE COURT: So it's going to be substantially
21 smaller than the total number of child pornography
22 offenders and I believe also who then as a result came
23 out to be a level 30. Maybe it doesn't say that, but I
24 mean, I was surprised that as many as there were
25 nationally came out that way because I asked for

1 everybody who was sentenced under this guideline with
2 all five of those SOCs applied.

3 MS. HERTZFELD: And I agree with Your Honor.
4 I would have thought, I was surprised by the numbers.

5 THE COURT: Yes.

6 MS. HERTZFELD: I would have thought even in
7 D.C. it does tend to be the case. We don't get a lot of
8 these where somebody is possessing child pornography and
9 has less than 600 images. Frankly, most of the time all
10 of these apply.

11 THE COURT: Yes.

12 MS. HERTZFELD: That's why we're having this
13 conversation about when the specific offense
14 characteristics really make sense and when they don't,
15 and I think it's why in sentencing memos it becomes
16 incredibly difficult.

17 I don't even really provide a section on the
18 different cases in terms of sentencing disparities,
19 because even in the cases I mentioned in my memorandum
20 we have cases where all of these will apply; you'll have
21 an offense level of 30 and guidelines with no criminal
22 history, you know, in this ballpark. And we've had
23 people who get 12 months and we've had people get 108
24 months. And it really becomes difficult to sort that
25 out.

1 And so I think that, you know, really a
2 conversation about the guidelines generally and these
3 sort of general arguments that get made about whether or
4 not these specific offense characteristics make sense or
5 they don't, that conversation is losing its
6 meaningfulness, I think, it's really about sort of how
7 does this play out in any given case, where what you can
8 really look at is, you know, how with respect to what
9 this person did do, does this make sense. And I guess
10 what I want to convey in this mush of stuff is that I
11 think what's important for the Court to know is that,
12 you know, there are cases where I would stand in front
13 of Your Honor and say, Look, technically this falls in
14 this, these statistics and it's a, you know, an offense
15 level of 30 because we apply the two points for
16 prepubescent minors. But the fact is there's only one
17 such image in here, and I don't think that in thousands
18 of images, and I don't think that those two points
19 really capture anything. I think here it does capture
20 something meaningful.

21 And so for those reasons I think that the
22 guideline range was appropriate here. I don't think
23 there's anything that takes this out of the heartland of
24 those guidelines, even assuming that there are some, you
25 know, potential issues that get thrown out sometimes

1 with the way that the specific offense characteristics
2 apply.

3 If -- the two I think that become the most
4 often controversial are the number of images and the use
5 of the computer. Without either one, you get down to a
6 guideline range that's in the, I want to say it was 40
7 to -- I calculated it out. I think it was 46 to 57. I
8 think the number of images here does make a little bit
9 more sense than it does in many cases. It gets you up
10 higher.

11 I think however the Court parses this in terms
12 of how the Court applies the specific offense
13 characteristics, certainly what we have is someone who,
14 as I mentioned at the beginning, is distributing these
15 images, is engaged in the actual trafficking market for
16 child pornography, who's already gotten some benefit.
17 But I think getting out from under an even higher
18 guideline range with the distribution and all these he
19 would be looking at an offense level of 34 and even
20 higher guideline range.

21 He's gotten out from under a lot of that. I
22 think the distribution mandatory minimum at 60 months is
23 a reasonable one. I think that however you slice the
24 specific offense characteristics here, going below that
25 is something that I don't think makes a lot of sense in

1 the case here where we've got the kind of conduct that
2 we do.

3 And all that together leads me to recommend a
4 sentence at the bottom of the sentencing guideline range
5 that we have, which I think is appropriate, accounts for
6 the acceptance of responsibility early on and the other
7 mitigating factors that have been pointed out. So for
8 those reasons that would be the government's
9 recommendation followed by the period of supervised
10 release that I recommended as well as the treatment
11 protocols that are laid out in the presentence report.

12 And I will say just with respect to those, I
13 think it's clear that Mr. Stewart is somebody who has
14 some significant issues that have remained unaddressed.
15 I think one of the things that's clear from his other --
16 this pending case he has and the other conduct that was
17 reflected at the time of his arrest is he's somebody who
18 has a substance abuse problem. It appears he's had some
19 fairly significant mental health issues over time. I
20 think those are all things that needs to be addressed
21 and maybe things that underlie the conduct here. I
22 don't know.

23 But I think certainly the Court's sentencing
24 order should include a requirement that those underlying
25 issues be addressed along with the sex offender

1 treatment if we're going to hope that when the day comes
2 that Mr. Stewart is released that the situation
3 improves. So I would ask that those be implemented as
4 well by the Court.

5 THE COURT: Thank you.

6 Mr. Vanegas.

7 MR. VANEGAS: Yes, Your Honor. Your Honor,
8 from the first time that I started practicing in federal
9 court, this is in 2002 in the District of Maryland, and
10 in the pre-*Booker* sentencing regime, I always seen the
11 government essentially always make the same sentencing
12 allocution with respect to the guidelines.

13 That is that the guidelines are the product of
14 an independent agency, that they've done research as far
15 as putting together a structure of sentencing that takes
16 into account what is in 3553(a). And that is the goals
17 of rehabilitation, incapacitation and deterrence.

18 *And post-2005 in the Booker decision, it*
19 *seemed that the decision and the decisions that followed*
20 *thereafter, that is whether it's Gall, or it's*
21 *Kimbrough, whether it's Pickett or Pepper, that those*
22 *decisions don't seem to make an impact on the*
23 *government's view or the Department of Justice view of*
24 *how we should look at sentencing with respect to the*
25 *child pornography cases.*

1 Now, clearly with *Gall* and *Kimbrough*, you did
2 see a measure of modification of review with respect to
3 the drug sentencing guidelines because of the fact that
4 there was stark differences between whether someone was
5 sentenced, whether it's five -- probation or five
6 mandatory years or 48 months or ten years.

7 And so there was a view there that with
8 respect to the sentencing guideline that those mandatory
9 minimums were severe, they were draconian and that they
10 wreaked havoc on communities, especially communities of
11 color, whether it was Latino communities or
12 African-American communities.

13 And therefore, there was a push to look at
14 these guidelines and to try to make a fair assessment
15 whether, in fact, they were valid -- I don't want to use
16 the word "legitimate," that they were -- they provided
17 an accurate assessment as to whether this particular
18 individual who was selling this amount of crack cocaine
19 should be sentenced so harshly.

20 So then we have the Fair Sentencing Act, and
21 there was a redress of that. The sentencing scheme was
22 addressed in order to basically look at what the
23 mandatory minimums had done to these communities.

24 Now, I don't see the -- why that view
25 shouldn't apply to the child pornography guidelines.

1 And clearly what I think of with respect to the child
2 pornography guidelines is an article by then Judge Nancy
3 Gardner, who now is a professor at Harvard Law School,
4 talking about the Protect Act and that the child
5 pornography crimes were the crime of de jure, the crime
6 of today.

7 And that those, this category of crimes that
8 deals with children are kind of off-limits. That is,
9 that with these type of -- with this category of crime
10 you can be as harsh, as draconian as you want to be,
11 because who is going to defend those individuals who
12 abuse children, who memorialize their abuse or assault
13 and afterwards either possess or distribute it.

14 But what you have seen is that in the course
15 of the history of the Sentencing Commission and the
16 corresponding sentencing guidelines is this increase in
17 the enhancements. And I won't go too much into that
18 because I already addressed it in my memorandum, and
19 Your Honor is an expert on this because Your Honor was a
20 commissioner.

21 But what I see as fundamentally problematic
22 and unfair is that when you think about sentencing
23 reform and how you basically remove individuals from
24 their communities and also that you essentially do
25 another disservice to the community because you're

1 taking the possibility of someone who is productive,
2 someone who is working and you warehouse them -- and
3 that was another phrase that -- I forget who it was used
4 by, but I think it was a judge from the District of Iowa
5 who's been very critical of the sentencing guidelines
6 with respect to child pornography -- is that you
7 basically are taking an individual who has something to
8 offer to the community. And someone who has something
9 to offer the community, you can look at that not
10 necessarily in a vacuum but you can look at the person's
11 history.

12 And so we come to Mr. Stewart. And
13 Mr. Stewart is someone who has persevered through a lot
14 of obstacles of hardships. He doesn't fit the paradigm
15 that we see on many occasions, that is of a
16 drug-addicted parent who is incarcerated, who leaves, or
17 a single mother.

18 It's a single paradigm because he's basically
19 living this impoverished existence, nomadic. That is
20 they do from state to state and the family gets stuck in
21 New Mexico. And they get stuck in New Mexico for two
22 years because they don't have enough funds in which to
23 continue their journey to North Carolina.

24 As a young child Mr. Stewart was -- he
25 encountered some assaultive behavior. Other teenagers,

1 other sibling who was there did not protect him, and who
2 had an incapacitated mother because she had her own
3 medical conditions and she was -- she didn't really care
4 for Mr. Stewart. And in that place what we have is this
5 very abusive stepfather.

6 And if the history of the defendant is going
7 to mean something, it should take into account what
8 someone has suffered and what someone can -- how someone
9 can take on that challenge and be a productive citizen.
10 So years later what we see is that Mr. Stewart goes to
11 school, does very well, notwithstanding that he is a
12 depressed child, notwithstanding the fact that he is
13 assaulted by his stepfather. Notwithstanding that he
14 doesn't know the reason why his own father left him.

15 He does well, and he's also put in a position
16 where he's having to care for his younger siblings. So
17 as a teenager who has to shoulder all these burdens,
18 he's doing all of these positive and wonderful things.
19 He graduates from high school.

20 Now, one thing that that sentencing submission
21 did reference, which I didn't and I'm embarrassed by
22 that, is that Mr. Stewart is an artist, and that is he
23 can do murals, he can do anything that's with visual
24 arts. And so I just learned that, in fact, he has sold
25 pieces of artwork and that he has done so in the D.C.

1 jail.

2 So he's someone, he's a go-to artist, so that
3 other inmates when they want a portrait of themselves
4 with a child or they want a portrait of themselves that
5 they can send to their family member, they go to
6 Mr. Stewart and he makes small pocket change.

7 And so we know that Mr. Stewart does have a
8 talent. He was never able to take that talent beyond
9 high school because he did not have the means to go to
10 college. But we also know that Mr. Stewart has been
11 gainfully employed for at least eight years and that he
12 has won the respect of his colleagues, that they saw him
13 as someone who is very helpful, who is very honest and
14 was trying to do the right thing.

15 Now, clearly Mr. Stewart was someone who was
16 keeping these dark secrets, these dark illegal secrets,
17 and that as the government said, there are victims to
18 these crimes and I've read those submissions, that is
19 victim impact statements in other cases, and there's no
20 need to hide from them because that is the truth. That
21 is what happens to these children that they suffer
22 life-long debilitation because of what's happened to
23 them.

24 However, that should not be how we just fully
25 only define Mr. Stewart, and that is the nature of the

1 offense. And if we take into account the nature of the
2 offense and that he does have to be punished, I don't
3 agree that, with the sentencing submission that he --
4 that a fair sentence is 24 to 30 months. I didn't ask
5 for that.

6 I asked for 48 months, and in looking at two
7 reports that Your Honor sent to us, it seems that my
8 recommendation is actually even on the higher end than
9 what some courts have sentenced. And if I'm not
10 mistaken, it seems that quite a number of sentences
11 imposed was in the 40- or 41-month range. So lower than
12 what I've asked.

13 If I'm asking for 48 months, it's also looking
14 at what is it about Mr. Stewart's history to give some
15 level of assurance that in the future Mr. Stewart will
16 not engage in this criminal conduct again. Well, one
17 thing that I'm asking for, and which is greater than
18 what the government is asking for, is a period of
19 supervised release of 15 years.

20 And that is a very rigid encumbrance that
21 involves -- it's a whole page of conditions of
22 monitoring, that is it's of computer monitoring, it is
23 monitoring of who he's able to have contact with. It
24 also implicates that he's going to have register as a
25 sexual offender.

1 So at the time that Mr. Stewart is released
2 from prison, it's not as though he's walking out into a
3 society where he can roam freely and can go anywhere.
4 Far from it. He's going to have to be monitored in such
5 a strict way such that regardless of where he is he's
6 going to have to register. His computer, his access to
7 a computer is going to be monitored, and so that should
8 give some comfort that there is going to be very tight
9 supervision of Mr. Stewart.

10 What I also know about Mr. Stewart is that
11 when he first got to the D.C. jail because of the nature
12 of the crime, he asked for protective custody. At the
13 D.C. jail, as the Court knows, everyone charged with
14 every type of serious and violent local D.C. crime is at
15 the D.C. jail. People charged with armed assaults,
16 people charged with rape, people charged with homicide.
17 They are all in there.

18 And to be in the D.C. jail charged with a
19 sex-related crime as to children is basically like
20 having a concentric circle on your chest. It's almost
21 like, you know, here I am, I am today's vulnerable
22 target. Because no one likes people who are charged
23 with this crime.

24 So in the jail he's had to basically stay to
25 himself, do his artwork and make up some elaborate lie

1 as to why he's in there for, at all times very fearful
2 of the fact that if anyone finds out what he's in there
3 for, he's going to have to ask for protective custody
4 again.

5 His life going forward into the Bureau of
6 Prisons is going to be one like that. He's not someone
7 who can just be out openly and talk about who he is and
8 about his crime. Obviously who would want to talk about
9 that crime even if there was not a safety factor. He's
10 humiliated, he's embarrassed, he's ashamed, and he's
11 also brought that type of level of shame to his family.

12 The point of that is that that begins to
13 basically have a preclusive effect as to what are the
14 consequences for when you engage in this behavior. He
15 knows that if he were to come into a courtroom again,
16 upon revocation of supervised release or if he were to
17 engage in new criminal conduct that, in fact, the
18 sentencing scheme would be -- would double. He would
19 face ten mandatory years. At that point there would not
20 be a discussion about variances or about departures. He
21 would start at ten years, but the guideline would
22 actually be much greater.

23 Has Mr. Stewart been specifically deterred?
24 Based on his limited history and the fact that he
25 engaged in this conduct at age 30 or 31, there's some

1 sense based on his history to show that he is not
2 someone who is out there violating the law nonstop, that
3 he is someone who is responsible. And we know that he's
4 responsible by the fact that he can keep a job.

5 Now, that may not sound much to, you know,
6 maybe to us in the professional field, whether it's me,
7 whether it's deputy marshals, whether it's
8 Ms. Hertzfeld, because we've been doing our professional
9 job on and on for a good amount of time and we take it
10 as second nature, this is what we do.

11 But in looking at someone in the future and
12 whether we can have some assurance that he's going to
13 follow through with what is expected of him, we know
14 that he can, for example, comport himself to at least a
15 job. And that we know that based on the fact that he
16 can go to a job, he can also report to a probation
17 officer, and he will also report for sex offender
18 registration and that he is not someone who is
19 antisocial in nature. Yes, he committed a crime and he
20 deserves to be punished.

21 So you look at the history of Mr. Stewart,
22 then whether he's specifically deterred, I believe he's
23 been specifically deterred. Whether he's been generally
24 deterred, whether there's going to be a general
25 deterrence, that's a question that's up, it's open.

1 And the reason why it's open, because it seems
2 that at least from the Sentencing Commissions, we don't
3 have the statistics to show that when X number of
4 offenders are released what is the -- what is the
5 percentage of recidivism. How often do they reengage in
6 similar conduct.

7 It seems that we don't have a quantum of
8 percentage to provide that, that assessment for us.
9 However, based on the age of Mr. Stewart, in his early
10 thirties and the fact that his criminal conduct --
11 contacts are not of a violent nature and that he has a
12 work history, there is something hopeful about him
13 there. And actually it's not just something hopeful.
14 There is something hopeful about him because he brings
15 the proof to the Court. He brings the proof, his life
16 is the proof.

17 I just want to read a letter that was given to
18 me. This is from a colleague who is in the courtroom,
19 and it's sort of just -- reading the full, I'll just
20 read one paragraph. And it says, that is written by
21 Ms. Ashley Cohort [phon.], it says, "I first met Neil
22 when I began working at the Olive Garden as a server.
23 He was one of the first servers to help me. He gave
24 many tips and tricks and went beyond what anyone had
25 asked from him.

1 For instance, did you know that you should
2 always place the salt on the right side of the table?
3 It's done that way so that guests who are blind are able
4 to grab the right seasoning. There are so many other
5 things like that that people wouldn't have even
6 considered to teach me. But Neil made every effort to
7 include them to me so that I can have the most success
8 in a field that is so incredibly overwhelming. He was
9 always kind, never angry and never complained. In the
10 serving industry it seems impossible, yet somehow he
11 always succeeded with a smile on his face. He made me
12 feel comfortable and accepted. I knew I could always
13 rely on him."

14 Now, that is just a small snippet of who
15 Mr. Stewart is. But it's one that provides an insight
16 into -- he is a gentle person. Clearly there's an irony
17 here. I cannot go too far from the facts of the violent
18 conduct or the intent that was expressed.

19 However, there's more to the conduct to
20 Mr. Stewart, and that is a full history of a person who
21 has done quite a bit of good, who has overcome a lot of
22 hardships and something that I now think about is that
23 being a parent, I wasn't a parent until just a few years
24 ago. I didn't think was going to happen.

25 Being a parent you see what you have to do in

1 order for your child to do the right thing. And when
2 you have a parent who is missing, another parent who's
3 basically just out of it because of her physical
4 condition or because she's medicated and that who comes
5 into the void as someone who is violent, you wonder
6 where is that child going to go? What's going to happen
7 to that child? Is he going to be a burden on society?
8 Is he going to be this very destructive person?

9 Luckily Mr. Stewart is not all that. Clearly
10 he has problems, he does need help. But he's never been
11 someone to reject help. He recognizes that things
12 haven't gone well for him. From the time that he was
13 arrested with this charge, he admitted his conduct. He
14 never denied that he had done these things. Clearly you
15 cannot deny it, especially because you're faced with
16 your own texts. And he did try to provide substantial
17 assistance.

18 In fact, there is a recording of about 48
19 minutes that took place immediately after his arrest and
20 I believe before he was presented in magistrate court.
21 And he answered all the questions. I don't think he
22 denied anything. He didn't try to de-emphasize what he
23 had done. He tried to be helpful. His tone is the same
24 as he's always spoken: Soft spoken, seems earnest,
25 seems honest. And that's the Neil Stewart that I have

1 come to know through the course of these proceedings.

2 So in looking at what I believe are hard
3 sentences, I think that sentence reform means allowing
4 someone with such a limited criminal history, someone
5 who has done something very wrong but who shows the
6 promise of the potential to do something right that he
7 merits at least consideration for a lower sentence and
8 that if he doesn't abide by the conditions the Court
9 will always have at its disposal to essentially impose a
10 very severe sentence upon revocation.

11 Your Honor, based on those considerations, I
12 ask Your Honor to impose the sentence of 48 months. I
13 think it's consistent with some of the sentences that
14 have been imposed in this court, and it's not that far
15 off from the nationwide -- some of the sentences that
16 have been imposed. I think the average is 60 months, if
17 I read it correctly. I feel like I'm not that far off
18 from what I'm asking.

19 When I met Mr. Stewart, I told him you cannot
20 expect 24 or 36 months. I think that's a reasonable
21 sentence, something that I think that makes sense
22 because of the egregious conduct is a sentence of 48
23 months. I think that's what I think is reasonable based
24 on the history, based on my view of the sentencing
25 guidelines. So that's what I'm asking, Your Honor.

1 THE COURT: Thank you, Mr. Vanegas.

2 Mr. Stewart, would you like to say anything
3 that you would like for the Court to consider before
4 imposing sentence?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You may approach.

7 THE DEFENDANT: Your Honor, I can't stand here
8 and make a whole bunch of excuses and do what all of the
9 inmates try to tell you, cry, give them tears. I've
10 cried so much over the last 14 months that I can't
11 describe the feeling.

12 Ms. Hertzfeld has mentioned the victims. I
13 would like to mention some victims that weren't
14 mentioned: my family, my friends, my wife who have to
15 know the shame of what I've done. And -- okay, trying
16 not to -- who have to see me here in orange hearing all
17 these numbers and this situation. Thank you. Who know
18 that just being associated with me comes with a social
19 taint and who still choose to love me, still choose to
20 be in my life.

21 My wife, who is currently living out of her
22 car and God bless her, she looks beautiful for it, I
23 don't know how she does it. Without me around, she
24 doesn't have the financial support that she had before.
25 My friend, my best friend who I haven't met her husband

1 yet, this is the first time I've seen him, God bless him
2 for following her all the way to a situation like this.
3 I love the guy already. I haven't even shaken his hand
4 yet.

5 All of these people are also victims. And I
6 have wronged them. And some day I pray to make it up to
7 them. Whatever you choose for me, I understand. I just
8 hope that I can make it up to everybody else that I've
9 harmed.

10 THE COURT: Thank you, Mr. Stewart.

11 After calculating the sentencing guidelines
12 and hearing the statements made by counsel and by
13 Mr. Stewart, the Court must now consider the relevant
14 factors set out by Congress in 18 U.S.C. 3553(a) in
15 order to ensure that it imposes a sentence that is
16 sufficient but not greater than necessary to comply with
17 the purposes of sentencing.

18 These purposes include the need for the
19 sentence imposed to reflect the seriousness of the
20 offense, to promote respect for the law and to provide
21 just punishment for the offense.

22 The sentence should also deter criminal
23 conduct, protect the public from future crimes by the
24 defendant and promote rehabilitation.

25 In addition to the guidelines and the policy

1 statements, the Court must consider the nature and
2 circumstances of the offense; the history and
3 characteristics of the defendant; the types of sentences
4 available; the need to avoid unwarranted sentencing
5 disparities among defendants with similar records who
6 have been convicted of similar conduct and where
7 necessary and appropriate the need to provide
8 restitution to any victims of the offense.

9 This Court has considered all of these factors
10 when deciding what the appropriate sentence should be in
11 this case; and as is my usual practice, I will not
12 detail my considerations with respect to each of the
13 factors orally here.

14 But I do want to provide remarks for the
15 record and for you, Mr. Stewart, about my considerations
16 with regard to the nature of the offense, your history
17 and characteristics as an offender and the need to avoid
18 unwarranted sentencing disparities.

19 Let me begin with my considerations regarding
20 the nature of this offense. As Ms. Hertzfeld mentioned,
21 courts seem to vary with regard to how they treat child
22 pornography offenses. You heard her say, and it is the
23 case, that in the District of Columbia you have judges
24 who look at a child pornography offense and say 12
25 months of imprisonment. You have judges who look at a

1 similar offense and say 108 months. And that same sort
2 of dynamic is happening nationwide.

3 I'll talk about unwarranted judge sentencing
4 disparities in a minute. But you should know that I
5 consider possession and distribution of child
6 pornography to be an extremely serious crime. The
7 question is why. Why.

8 Because it involves people who are out there
9 somewhere considering taking pictures and videos of real
10 children while those children are being sexually abused
11 and then putting those pictures on the Internet for
12 other people to see.

13 The children in those pictures are not willing
14 participants in the conduct that you witnessed,
15 Mr. Stewart. They were being forced to commit
16 unspeakable acts of sexual violence for the pleasure of
17 the person who was filming and for the gratification of
18 other people, sick people everywhere. People who
19 apparently have very little empathy for what this must
20 be doing to the children who are abused in this way.

21 Ms. Hertzfeld talked about statements from
22 victims in child pornography cases. I don't know
23 whether you've ever heard from victims of these sorts of
24 offenses, but I have. And their stories are harrowing.
25 Some of the children that you saw in those pictures will

1 never have normal adult relationships. Some of them
2 will turn to drugs, to prostitution and to other vices
3 to try to deal with the emotional pain that results from
4 the torture that they have experienced.

5 Even those who manage to lead something of a
6 normal adult life say that they live in constant fear of
7 being recognized. Some of those people won't even leave
8 their houses because once those pictures are put out on
9 the Internet, they are there forever. And those victims
10 can't do anything without worrying that every person
11 that they meet has seen them in their most vulnerable
12 state at the most horrible time in their life.

13 Now, there is no evidence in this record that
14 you actually took any of the child abuse pictures that
15 you possessed and distributed. And I've taken that into
16 account. Lawyers and judges and others who deal with
17 this crime sometimes distinguish between those who take
18 the pictures and those who merely look at them, and
19 there is a distinction.

20 But in my view, that distinction may not be as
21 great as people make it out to be. And here is why:
22 Because the market for producing pictures of children
23 being molested and raped is driven by those who want to
24 see those pictures.

25 If the lookers weren't there, there would be

1 fewer child victims, which is what I believe motivated
2 Congress to make possession of child pornography a
3 federal offense, to make a 20-year maximum for a crime
4 like this one that involves prepubescent minors.

5 And the record here, as Ms. Hertzfeld
6 indicates, suggests that you were not just a casual
7 looker, someone who happened upon various images and
8 downloaded a few of them. It appears that you had at
9 least six electronic devices that contained illicit
10 images, including two cell phones, a laptop, several
11 thumb drives.

12 In your conversations with the undercover
13 officer you talked about having many flash drives of
14 photos that you could bring to a meeting with the
15 officer and his fictional nine-year-old daughter. And A
16 forensic examiner found well over 6700 images and
17 additional videos. Government's brief said there were
18 thousands.

19 A report that the Sentencing Commission has
20 issued and that your counsel discussed at length in his
21 memoranda found that many of the people who searched
22 for, possessed and distributed child pornography become
23 serious collectors who sometimes have thousands of
24 images that they classify and catalog and cherish.
25 These serious collectors sometimes also form

1 communities. They gather in online chat rooms to trade
2 images and encourage new submissions, and some even
3 escalate to molesting children or using photos to lure
4 children into inappropriate sexual situations.

5 The Court has also taken into account that the
6 record does not indicate that you were necessarily in
7 any online communities to advance your collection. It
8 does demonstrate, however, that you were amassing this
9 stuff, perhaps for your own personal use, that you had
10 thousands of disturbing images, and you freely shared it
11 with the undercover officer while you discussed your
12 fantasies and provided tips about how to pull off
13 unspeakably horrible acts with children.

14 Thus, although this is not necessarily an
15 atypical case, your child pornography possession crime
16 was egregious in this Court's view. And for the reasons
17 I've already stated, it was by nature extremely serious.

18 Your counsel has suggested that I discount
19 substantially the guideline assessment because the child
20 pornography guideline is not the product of the
21 commission's empirical assessments and judgments, and it
22 includes and emphasizes certain factors that have been
23 widely criticized even by the Sentencing Commission
24 itself.

25 This Court is not inclined to make findings or

1 express general policy disagreements with the
2 guidelines, but I am going to make some adjustments to
3 the calculation in this particular case because I do
4 think that certain guideline factors are outdated and no
5 longer adequately distinguish the more serious child
6 pornography offenses from the less serious child
7 pornography offenses.

8 For example, as Ms. Hertzfeld discussed, there
9 is a two-level increase in the guidelines for the use of
10 a computer. There's also a focus on the number of
11 images. These really, given the nature of electronic
12 communications, aren't true aggravating factors in the
13 same way today as they once were.

14 A computer is used in nearly all possession
15 cases today, and it is so easy to receive, possess and
16 distribute child pornography electronically that the
17 numbers of images and the use of an electronic media no
18 longer signal inherently an especially heinous and
19 egregious child pornography offense.

20 The long and short of it with respect to the
21 first factor of the nature of the offense is that I do
22 believe you have committed a very serious crime and that
23 your sentence needs to reflect that. And it's also
24 clear that the current guideline offense levels include
25 certain enhancements that I believe do not adequately

1 differentiate offenders and that will not be given full
2 life in the context of your sentence, at least as
3 reflected in the record before this Court.

4 Turning to your history and characteristics as
5 an offender, it appears and everyone agrees that you
6 have no prior criminal history, which I will add is not
7 all that unusual for cases of this type.

8 It's also clear to the Court that you have
9 held a job. Mr. Vanegas says that you are an artist,
10 all of those are positive criteria. But again, this
11 notion of holding a job while engaging in a child
12 pornography offense is not unusual.

13 What is somewhat unusual is the fact that in
14 this case there don't appear to be the kinds of extended
15 and prolonged sexual abuse in your own past that this
16 Court has seen and that comes up frequently in child
17 pornography cases.

18 Many child pornography cases involve very
19 tragically people who as children are themselves
20 seriously serially sexually abused or they are the
21 victims of incest, and that kind of behavior comes up in
22 the context of their report. This Court read the
23 presentence report, the facts about your upbringing.

24 I do recognize what Mr. Vanegas said, which is
25 that you certainly did not have an easy time as a child.

1 You were raised at or below the poverty level by a
2 disabled single mom. You've had to overcome significant
3 hardships, including being exposed to things of a sexual
4 nature through your relationships with your older
5 brother and his girlfriend.

6 But these sorts of things, although they are
7 somewhat mitigating and the Court has taken them into
8 account, they don't rise to the level of a departure
9 status, for example, nor do they necessarily seem to
10 predispose you to engage in this kind of behavior.

11 Now, you mentioned when you came up the people
12 in your life who have supported you, who continue to
13 support you. You talked about your wife, your friends
14 who are here. And I appreciate the fact that you have
15 such supportive family members and friends. I read the
16 letters from your wife, from your grandmother, your
17 friends.

18 I've considered their statements, and they do
19 give me a sense of who you are beyond the crime of
20 conviction. I have no doubt that they are earnest and
21 accurate when they say that you are kind and thoughtful
22 and reliable, and I have taken that into account.

23 Your wife apparently told the probation
24 officer that she intends to remain supportive of you
25 throughout this process, which makes you a very lucky

1 man, because there are not many criminal defendants who
2 are able to count on the support of a spouse. There are
3 not many who have people come to the courtroom in
4 support of them, especially under these circumstances.

5 One thing that jumped out at me, though, was
6 your wife's statement to the probation officer that with
7 her love and devotion she's confident that you will
8 overcome any of the urges that led to the criminal
9 behavior at issue in this case. I am sure that her love
10 and devotion will be helpful to you and that those
11 things are going to be critical to your rehabilitation.

12 But you also are going to need treatment,
13 Mr. Stewart. Mental health treatment. Substance abuse
14 treatment. The Court has reviewed the psychological,
15 psychosexual risk assessment report that your counsel
16 submitted.

17 It states that you are at a, quote, relatively
18 low risk of committing a contact offense and that your
19 risk of offending would most likely be in the form of
20 pornography rather than in a contact offense, which is
21 good to know. It means that you do have a shot at
22 becoming once again a full and productive member of
23 society.

24 But even if your risk is only to recommitting
25 pornography offenses, you're going to need intensive

1 mental health treatment, because collecting and viewing
2 child pornography is itself deviant behavior for which
3 you have to have professional help if you intend to
4 overcome it.

5 You will also need treatment for drug and
6 alcohol abuse. There is some information about your
7 taking drugs that led to other pending charges in
8 another jurisdiction. I don't really know what to make
9 of that information.

10 It appears from the government counsel that
11 that case is on hold while we continue here today, but I
12 do wonder whether the substance abuse is part of an
13 ongoing series of problems that you appear to have had
14 recently.

15 The PSR in this case discusses a recent
16 incident prior to your arrest in which you may have
17 attempted suicide pursuant to or after a narcotics binge
18 and you were hospitalized. The probation office said
19 you struggled with alcohol and marijuana use and that
20 you have a history of depressive disorder.

21 I have taken your entire history into account,
22 including your recent contact. And I will say in
23 response to Mr. Vanegas that these matters are certainly
24 relevant to the Court's consideration, but they don't
25 mitigate what I believe to be the seriousness of your

1 underlying offense.

2 These mental health struggles and your recent
3 drug use may, in fact, in some sense even be aggravating
4 to the sentence to the extent that unless you get
5 treatment the Court has to be concerned that you may
6 engage in this kind of behavior again.

7 The third and final consideration that I will
8 discuss and that has turned out to be very significant
9 with respect to the sentence to be imposed in this case
10 is the need to avoid unwarranted sentencing disparities.
11 This is a factor that is often very important in my
12 decision-making with regard to how to sentence a
13 defendant. And I tend to do my research, which is why I
14 contacted the Sentencing Commission to look into the
15 relevant statistics regarding how child pornography
16 possession defendants are being sentenced.

17 Mr. Vanegas mentioned *Booker*, which was a
18 decision by the Supreme Court that rendered the
19 sentencing guidelines advisory rather than mandatory.
20 Prior to *Booker*, all courts were required essentially to
21 sentence people within the guideline range. So you had
22 rough uniformity with regard to how sentences were being
23 imposed, and you didn't really need statistics to sort
24 of give you information about what was actually
25 happening.

1 Well, today post-*Booker* when courts can and
2 often do vary from the guideline range, if one is going
3 to figure out what similarly situated defendants
4 actually receive, you need information like that, the
5 Sentencing Commission provides.

6 As I mentioned to Ms. Hertzfeld, I try to be
7 as specific as possible when I approach the commission
8 to ask for information. I'm looking for similarly
9 situated defendants, defendants whose offense level
10 under the guidelines, whose specific offense
11 characteristics indicate that their conduct of
12 conviction is similar to the defendant that I'm
13 inquiring about.

14 And so I asked, as the statistics sheet
15 indicates, for people who had been sentenced under the
16 guideline that you were sentenced with, who had received
17 the various sentencing enhancements that you received
18 per the PSR.

19 So these are people who distributed child
20 pornography. These are people who had prepubescent
21 minor photographs, used a computer, had more than 600
22 images. All of those things I wanted to make sure to
23 isolate similarly situated defendants.

24 And in doing so, the statistics show us, first
25 of all, that there are a fair number of cases over the

1 last four years, 345 nationwide that fit into that
2 category. Of that big number, once everything is taken
3 into account, the average sentencing length that people
4 received was 61 months of imprisonment.

5 The same analysis was applied to D.C. I am
6 not that surprised that a substantial smaller number of
7 defendants exhibited those many characteristics in this
8 jurisdiction, which is pretty small. And of the nine
9 offenders who fit all those criteria, the average
10 sentence length here in D.C. was 42 months.

11 When I compared these actual sentencing
12 outcomes to what the guidelines proscribe, my analysis
13 is that it appears that judges are sentencing similar
14 defendants to a range of punishment that is closer to
15 offense levels 22, 23, 24 than offense level 30, which
16 is what the statistics demonstrate.

17 I think what may be happening is something
18 that Ms. Hertzfeld talked about, which is that judges
19 are discounting the guideline calculation based on their
20 policy disagreements about enhancements such as the use
21 of the computer and the number of images.

22 And in this very case if I take off two points
23 for the computer use and I account for the number of
24 images by imposing only a two-level increase in your
25 offense level because of the size of your collection

1 rather than a five-level increase for more than 600
2 images because those two enhancements really no longer
3 distinguish or turn out to be aggravating factors that
4 warrant substantial increases, then you would be at an
5 offense level 25 with a guideline range of 57 to 71
6 months.

7 This Court finds that looking at the
8 guidelines, the factors that they capture, the way in
9 which certain enhancements no longer adequately
10 differentiate, the facts in this case which indicate
11 that you were more of a collector of child pornography
12 than many typical cases, that you did freely distribute
13 very serious images regarding and involving prepubescent
14 minors, things that are aggravating conduct in the
15 possession realm and that in your communications with an
16 undercover officer you actually planned to meet a child,
17 all of those things taken into account, this Court finds
18 that the 57- to 71-month range of imprisonment is
19 appropriate and more appropriate for a possession crime,
20 this possession crime than the range that the guidelines
21 otherwise prescribe and than the amount of time that has
22 been suggested both by your counsel and by the amici
23 brief or advocacy brief that was submitted to the Court.

24 So as I take into account everything, the
25 statements of counsel, the defendant, the letters, the

1 probation office's recommendation, the nature of this
2 crime, including the concrete plan and the defendant's
3 need for treatment and all of the other 3553(a) factors,
4 this Court believes that a penalty of 57 months of
5 imprisonment is sufficient but not greater than
6 necessary to reflect the seriousness of the instant
7 offense; to promote deterrence; to protect the public
8 from future crimes that may be committed by the
9 defendant; to avoid unwarranted sentencing disparities
10 among defendants convicted of similar crimes and along
11 with a period of 120 months of supervised release the
12 Court believes that the defendant will be in a position
13 to rehabilitate himself fully and integrate himself back
14 into society.

15 Therefore, based on my consideration of all
16 the factors I will now state the sentence to be imposed.
17 Mr. Stewart, please stand.

18 It is the judgment of the Court that you, Neil
19 Stewart, are hereby committed to the custody of the
20 Bureau of Prisons for a term of 57 months on Count I
21 with credit for time already served since your detention
22 on the charge in this case.

23 You are further sentenced to serve a term of
24 120 months of supervised release on Count I and to pay a
25 \$100 special assessment. The Court finds that you do

1 not have the ability to pay a fine and therefore waives
2 imposition of a fine in this case.

3 The special assessment is immediately payable
4 to the Clerk of the Court for the U.S. District Court of
5 the District of Columbia. Within 30 days of any change
6 of address, you shall notify the Clerk of Court of the
7 change until such time as the financial obligation is
8 paid in full.

9 The Court waives any interest or penalties
10 that may accrue on unpaid balances.

11 Within 72 hours of release from custody you
12 shall report in person to the probation office to which
13 you are released. While on supervision you shall commit
14 to the collection of DNA. You shall not possess a
15 firearm or other dangerous weapon. You shall not use or
16 possess an illegal controlled substance and you shall
17 not commit another federal, state or local crime.

18 You shall also abide by the general
19 conditions, as well as the following special conditions
20 which I will state and then describe the reasons for as
21 the D.C. Circuit requires.

22 Mental health treatment. You shall
23 participate in a mental health treatment program which
24 may include outpatient counseling or residential
25 placement as approved and directed by the probation

1 office. Given the connection between your mental health
2 issues and the crime for which you have been convicted,
3 this condition is the least restrictive means possible
4 of protecting the public from future offenses, deterring
5 you from committing future offenses and ensuring that
6 you remain in good mental health in the name of
7 rehabilitation.

8 Substance abuse treatment and substance abuse
9 testing: You shall participate in and successfully
10 complete an outpatient substance abuse treatment
11 program, which may include drug testing and
12 detoxification services as approved and directed by the
13 probation office.

14 You shall also submit to substance abuse
15 testing as approved and directed by the probation
16 office. Given your history of drug use, imposing
17 substance abuse treatment as a condition of supervised
18 release is the least restrictive means of furthering
19 your rehabilitation so that you can move beyond drug
20 issues.

21 Sex offender registration. You shall comply
22 with the sex offender registration requirements for
23 convicted sex offenders in any state or jurisdiction
24 where you reside, are employed, carry on a vocation or
25 are a student. Imposing registration as a condition of

1 supervised release is the least restrictive means of
2 protecting the public from future sex crimes.

3 Sex offender assessment and treatment: You
4 shall participate in a program of sex offender
5 assessment and treatment as directed by the U.S.
6 Probation Office. At the direction of the probation
7 office, you shall pay for all or a portion of any
8 treatment program.

9 You shall waive your right of confidentiality
10 and treatment and shall sign any necessary releases for
11 any records imposed as a condition in this judgment, to
12 allow the U.S. Probation Office to review your course of
13 treatment and progress with the treatment providers.

14 This condition is imposed because it is the
15 least restrictive means of providing you with treatment
16 to rehabilitate yourself so that you can move forward
17 from your underlying offense, and it will also deter
18 future conduct involving sex offenses.

19 Contact restrictions: You shall have no
20 intentional direct or unsupervised contact with minors
21 under the age of 18 more than momentary in duration
22 unless approved in advance by the U.S. Probation Office.
23 This restriction including work in any facility for the
24 care and education of children as well as employment in
25 any capacity or any volunteer activity.

1 In light of the nature of your crime,
2 possession of child pornography, this is the least
3 restrictive means necessary of protecting the public
4 from future sex crimes against minors, of deterring
5 future offenses and of encouraging registration. This
6 no-contact restriction is warranted because the record
7 in this case indicates that you made a plan to meet with
8 an undercover officer and engage in sexual conduct with
9 the officer's fictional minor child.

10 Computer Internet search monitoring: You
11 shall identify all computer systems, Internet-capable
12 devices and similar memory and electronic devices to
13 which you have access and allow installation of a
14 computer and Internet monitoring program. This
15 condition is the least restrictive means of protecting
16 the public from future offenses, deterring you from
17 committing future offenses and aiding in your treatment
18 and correctional needs.

19 Search and seizure: Pursuant to the Adam
20 Walsh Child Protection and Safety Act of 2006, you shall
21 submit to a search of your person, property, house,
22 residence, vehicle, papers, computer, other electronic
23 communication or data storage devices or media at any
24 time with or without a warrant by any law enforcement or
25 probation officer with reasonable suspicion concerning

1 unlawful conduct or a violation of a condition of
2 supervision.

3 This condition is expressly authorized by
4 statute, 18 U.S.C. 3583D(3). The Court find this
5 condition to be reasonably related to the nature and
6 circumstances of your offense, the need to deter
7 criminal conduct, protection of the public and treatment
8 of your correctional needs because the nature of your
9 offense indicates some degree of risk of recidivism and
10 because any repeated criminal conduct of this nature
11 could well be carried out in a residence. Permitting
12 searches upon reasonable suspicion will help deter
13 future criminal conduct, protect the public and aid your
14 rehabilitation.

15 The probation office shall release the
16 presentence investigation report to all appropriate
17 agencies in order to execute the sentence of the Court.
18 Treatment agencies shall return the presentence report
19 to the probation office upon the defendant's completion
20 or termination from treatment.

21 Mr. Stewart, you have a right to appeal the
22 sentence imposed by this Court under the limited
23 circumstances laid out in your plea agreement. If you
24 choose to appeal, you must file an appeal within 14 days
25 after the Court enters judgment. If you are unable to

1 afford the cost of an appeal, you may request permission
2 from the Court to file an appeal without cost to you.

3 Finally, in accordance with D.C. Circuit
4 precedent, let me ask the parties are there any
5 objections to the sentence imposed that are not already
6 noted on the record?

7 MS. HERTZFELD: No, Your Honor.

8 MR. VANEGAS: No, Your Honor.

9 THE COURT: That concludes the Court's
10 judgment in this case. Let me also ask counsel whether
11 there are anything -- whether there's anything else we
12 need to address, including recommendations for an
13 incarceration facility.

14 MR. VANEGAS: Yes, Your Honor. May I just
15 have a brief moment to consult with Mr. Stewart?

16 THE COURT: You may.

17 (Discussion held off the record.)

18 MR. VANEGAS: Yes, Your Honor. Thank you. I
19 have two requests. One is based on what's been
20 discussed, which is found in the PSR and also pursuant
21 to the Court's recommendation regarding his history of
22 substance abuse. I'd ask for a recommendation to the
23 residential treatment substance abuse program, the
24 500-hour program.

25 THE COURT: Yes. I will make that relating to

1 BOP.

2 MR. VANEGAS: Yes, Your Honor. And then as
3 far as designation, this is based on family
4 considerations, so he can be as close as possible to his
5 wife. The first request would be for FCI Petersburg,
6 Virginia. The second one would be FCI Cumberland,
7 Maryland. And the third one would be FMC Butner.

8 THE COURT: All right. So I have Petersburg,
9 Cumberland and Butner, and I will make that
10 recommendation in that order.

11 MR. VANEGAS: Thank you, Your Honor.

12 THE COURT: You're welcome. Anything else?

13 MS. HERTZFELD: No, Your Honor.

14 MR. VANEGAS: No, Your Honor.

15 THE COURT: All right. Thank you.

16 Mr. Stewart, good luck.

17 (Proceedings adjourned at 4:52 p.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

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I, Barbara Moore, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

SIGNATURE OF COURT REPORTER

DATE