

1           Looking at the 3553(a) factors, your Honor, his  
2 collection was vast. This is a serious offense that deserves  
3 serious punishment. The Court must send a message to the  
4 community. I submit to you a sentence of five years in prison  
5 does not do that. Your Honor, we are asking that the Court  
6 sentence the defendant to the low end of the guideline range.  
7 Thank you.

8           THE COURT: I don't disagree with most of what the  
9 government has said. Except that it doesn't really help the  
10 Court in determining what is a proper sentence. Under the law we  
11 are supposed impose a sentence that is sufficient, but not  
12 greater than necessary under the circumstances.

13           I want to look at the history of this particular  
14 section. In 1987 the guidelines were established. I was already  
15 a Judge for a year by that time. We got into new territory. But  
16 the Commission felt that a base level offense for this was 13.  
17 That base level was translated to 12 to 18 months. Through the  
18 years Congress has injected itself into the Commission. And why  
19 are they motivated to do so. Yes, these are serious crimes.  
20 Also very popular with the electorate. I mean if you could say I  
21 helped raise the standards, get a lot of people to vote for you  
22 because you are not dealing with individual cases. So in '91  
23 they increased it by two points to 15, which is eighteen to  
24 twenty-four months.

25           In '95 they raised it an additional two points to use a

1 computer. As we know in almost a hundred percent of the cases  
2 involve a computer. A computer has been a wonderful device and  
3 the Internet. It's amazing, I have two granddaughters in  
4 college. They are sending me pictures of their activities all  
5 the time to really keep up with them. But other people are  
6 sending other kinds of pictures. With every good invention,  
7 there is probably an evil that comes out of it.

8 But, to add two points for computers seems to me that  
9 should be factored in. Getting back to the base level, now the  
10 base level is 22. So what we are saying is the sentencing  
11 commission was wrong by nine levels, yeah nine levels in '87.  
12 And the commission denies that it's their decision. They say  
13 that we are being forced by Congress without empirical evidence  
14 to the contrary to raise these levels. Well, if you take the  
15 base level now at 22, you are talking about 41 to 51 months. Not  
16 even the mandatory minimum. Of course Congress injected itself  
17 further by putting that mandatory minimum in.

18 Now, if you start at 22 in this case we have 16  
19 additional levels built in. The one I've already commented on is  
20 use of computers. I don't know that anybody goes to a store and  
21 buys this stuff. We used to think of almost cartoon like  
22 characters of a guy in France opening his coat and saying dirty  
23 pictures. To me it's free. You can just get all you want. It's  
24 a sad situation.

25 But I'm not impressed with the two points for use of

1 the computer, because what is it ninety something percent involve  
2 a computer. One thing the government said, this is at the  
3 heartland of these cases. If this is at the heartland, why isn't  
4 that at the top of the scale. Is every heartland case at the top  
5 of the scale. Apparently that is the kind of way this plays out.

6 Material involvement of prepubescent minors two points.  
7 It's seems like all of this at some point, whether you are  
8 looking for it or not, will involve that. What was the  
9 percentage that we had on that, 94.8 percent of all cases have  
10 enhancement for prepubescent minor. With regards to use of a  
11 computer, 97.2 percent involve computers. So I think in trying  
12 to fashion a proper sentence, the Court has to take into  
13 consideration some of these factors.

14 Looking at some others here. The recent of a thing of  
15 value three points. I think that is a valid consideration.  
16 Material involving SM four points. My experience has been all of  
17 this stuff at some point has some SM in it. The number of images  
18 starts at 600. Admittedly this is a large collection. But from  
19 the standpoint of the viewer, if you have 20,000 or if you have  
20 ten and you spend all your time looking at ten, does it make any  
21 difference. Well, it makes a difference to I guess the people  
22 who are victims of this. But when it is all free and you can  
23 download it with such ease, the overall number doesn't seem to be  
24 a compelling factor.

25 We know that we have to start at sixty months, because

1 that is the statutory mandatory minimum. Then allow some other  
2 factors here. The 3553 factors include the fact that the man is  
3 62 years old. Some of these sentences would be life sentences,  
4 would be far more drastic for more serious crimes. There is no  
5 evidence he has ever touched anyone or any inclination that he  
6 would. Those are really serious offenses when there is actual  
7 child abuse.

8 I guess a countervailing consideration is that many  
9 people who get involved in this come from abusive backgrounds to  
10 start with or a dysfunctional family. And you would think that  
11 someone who has achieved the educational level of Dr. Stewart  
12 would be able to deal with this. He can't fall back on an abused  
13 childhood or dysfunctional family.

14 I assume what Congress is trying to do by intervening  
15 with the sentencing commission and adding all of these conditions  
16 without empirical evidence is trying to send a message that this  
17 kind of conduct will not be tolerated. I don't that message has  
18 been received. We are getting more and more of these cases.  
19 It's like the argument that the death penalty deters murder. It  
20 seems like the murder rate just keeps going up. So sending a  
21 strong sentencing message doesn't necessarily deter the  
22 activities.

23 I don't think that the mandatory minimum sentence would  
24 be appropriate here. But I think there should be some  
25 enhancements, but no where near what we are talking about under

1 the guidelines now it would be 151 to 188.

2 Taking all these factors into consideration, the 3553  
3 factors, the history of this, there seems to be a minor rebellion  
4 among Judges lately on this particular issue. Some have given in  
5 serious cases as low as 60 months. Some have given much more  
6 lower sentences. The appellate courts seem to be agreeing with  
7 it. The Eleventh Circuit, not from this district, has certainly  
8 affirmed some of those cases. I do think that the language that  
9 one of the courts said, I guess this is from the Doherty  
10 (phonetic) case. Commission did not use this empirical approach  
11 in formulating the guidelines for child pornography. Instead at  
12 the direction of Congress, the sentencing commission has amended  
13 guidelines under Section 2D2.2 several times since their  
14 introduction in 1987, each time recommending harsher penalties.

15 I feel that a sentence to be sufficient, but not  
16 greater than necessary in this case should be 84 months and that  
17 is the sentence that I will give. The Court has considered the  
18 statements of all the parties, the pre-sentence report that  
19 contains the advisory guidelines, the statutory factors. Based  
20 upon the nature of the case, the defendant's background, the  
21 Court will give a variance beyond the advisory guideline range.

22 It is the finding of the Court that the defendant is  
23 not able to pay a fine, as well as restitution. It is the  
24 judgment of the Court that the defendant William Kenneth Stewart  
25 be committed to the Bureau of Prisons to be imprisoned for 84