

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA, Jacksonville, Florida

 Plaintiff, Case No. 3:08-cr-315-J-32MCR

vs. January 28, 2009

CHASE E. KEEFOVER, 11:17 a.m.

 Defendant. Courtroom No. 10D

SENTENCING HEARING
BEFORE THE HONORABLE TIMOTHY J. CORRIGAN
UNITED STATES DISTRICT JUDGE

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transcript produced by computer.)

P R O C E E D I N G S

1
2 January 28, 2009

11:17 a.m.

3 - - -

4 COURT SECURITY OFFICER: All rise. This Honorable
5 Court is now in session. Please be seated.

6 THE COURT: I apologize for running late. This is
7 *United States versus Chase Keefover*, 3:08-cr-315. Mr. McKay
8 represents the government. Mr. Smith represents
9 Mr. Keefover.

10 Let me make sure I'm saying the name correctly.
11 How do you pronounce it, sir?

12 THE DEFENDANT: Keefover.

13 THE COURT: Keefover. Okay.

14 Okay. We're here today for sentencing in this
15 case. I have read the PSR. I've read Mr. Smith's
16 sentencing memorandum. And I've read a report from
17 Mr. Sheridan regarding Mr. Keefover's compliance with
18 conditions of pretrial release.

19 I've also familiarized myself with some past
20 sentencings I've had in this area, just so -- I'm trying
21 to -- trying to make sure I'm, at least in some measure,
22 not -- not according unwarranted sentencing disparities in
23 these cases.

24 All of them, obviously, are unique. But they have
25 some common features to them. And I wanted to make sure --

1 I'm trying to be as consistent as I can, while still taking
2 into account individual circumstances. So let me start --
3 there are objections to the PSR that we need to work
4 through.

5 The issue of the sex offender registration, I want
6 to save that for when we get to that part of the
7 pronouncement. And we can have any discussions we need to
8 have. So I'm not going to worry about that right now.

9 The two that I thought that might need discussion
10 were the -- in paragraph 26 there's the two-level increase
11 for ten images or more. And then in paragraph 24 there's a
12 two-level increase because the images depicted a minor who
13 had not yet reached the age of 12 years.

14 Mr. McKay, I was told by the probation officer
15 that the government is not going to try to prove the ten
16 images or more. Is that correct?

17 MR. MCKAY: Yes, Your Honor. The reports that
18 probation reviewed and the evidence itself on paper
19 certainly supported the conclusion over ten.

20 But after reviewing the images themselves, we
21 believe one of them did not qualify and would not have been
22 prosecuted. So, therefore, we concur it's nine or less.

23 THE COURT: Okay. Then I'll go ahead and make
24 that adjustment, which is a two-level adjustment. So that,
25 right now, puts us at a 19/I, which is 30 to 37 advisory

1 guidelines.

2 Now, is the government maintaining the probation
3 officer's position that some of the images do involve minors
4 who are not yet 12 years old?

5 MR. MCKAY: Yes, Your Honor. After reviewing the
6 objections, I spoke to Mr. Smith. And I believe the --
7 they're going to withdraw that objection, after going over
8 the evidence with us, is my understanding.

9 THE COURT: Mr. Smith, is that correct?

10 MR. SMITH: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. SMITH: Yes, it is. As we stated in our
13 objection, the -- and now I'm trying to find it -- that we
14 would withdraw the objection to that two-level increase if
15 identifiable victims were -- who were clearly underage were
16 involved.

17 Mr. McKay and I have spoken. And he has provided
18 me with sufficient information to determine that that is the
19 case.

20 So they're not using the Tanner Scale or
21 estimating. There's actual identifiable victims. So we
22 would withdraw that objection.

23 THE COURT: All right, sir.

24 So that means that Mr. Keefover is withdrawing the
25 objection to paragraph 24 of the PSR. And I will,

1 therefore, sustain that finding. And that means that
2 there -- paragraph 24 is correctly scored, which is a
3 two-level increase.

4 So we have -- and, Mr. Smith, are there any other
5 objections to the PSR scoring?

6 MR. SMITH: Not to the scoring, Your Honor.
7 There's just the SORNA issue.

8 THE COURT: Okay. And we'll deal with that at the
9 end.

10 All right. And, Mr. McKay, does the government
11 have any objections to the PSR?

12 MR. MCKAY: No, Your Honor.

13 THE COURT: Okay. All right. Then, as amended,
14 which is to remove the -- the two-level enhancement under
15 paragraph 26 will now -- that will now be removed. And,
16 therefore, that's -- that's a zero.

17 When you carry that through, the base offense
18 level becomes 19. And the criminal history category is I.
19 As I indicated earlier, that yields 30 to 37 months on an
20 advisory guideline basis and five years -- still the minimum
21 mandatory on supervised release, up to life.

22 Mr. Coxwell, is everything else the same, the fine
23 range and the special assessment?

24 PROBATION OFFICER: The special assessment is,
25 Your Honor. The fine range is now 6,000 to 60,000.

1 THE COURT: So the fine range will be adjusted to
2 6,000 to 60,000. And without further objection those will
3 be the guidelines which will advise the court in this
4 sentencing.

5 Now, Mr. Smith, I did have the benefit of your
6 sentencing memorandum, but I'd be happy to hear from you and
7 from Mr. Keefover, and however you wish to proceed, in terms
8 of the court's consideration of the 3553(a) factors in this
9 case.

10 MR. SMITH: Thank you, Your Honor.

11 Your Honor, I will try not to cover the same
12 ground that I covered in the sentencing memorandum regarding
13 Mr. Keefover's background, his conduct, you know, since
14 being arrested, and -- and even before all of this came up.

15 And I will only mention that, as I said in the
16 sentencing memorandum, he was a law-abiding citizen before
17 this occurred and has been since. That is borne out by
18 Mr. Sheridan's report.

19 There is, in my opinion, Your Honor, very little
20 risk that he is likely to become a recidivist, and I would
21 submit very little danger to the community.

22 Your Honor, drawing the court's attention to one
23 phrase I used in the -- at page six of my sentencing
24 memorandum, we are asking that Mr. Keefover be punished for
25 the youthful indiscretion he committed, not the assumptions

1 inherent in the sentencing guidelines applicable to the
2 offense charged. And that's what we're asking the court to
3 do today.

4 Your Honor, we understand that Internet
5 transmission of child pornography is a very serious offense.
6 But there are those cases which do not fit within the
7 mainstream of cases involving Internet downloading of child
8 pornography. And we would submit that this is one of those.

9 This is a case where Mr. Keefover, while a high
10 school student, downloaded batch files from KAZAA with names
11 like Lolietta, hot young babes, and similar labels that
12 contained these photographs.

13 He told investigators when he was first confronted
14 with the information on his computer that he never
15 intentionally saved the photographs, that KAZAA did that
16 automatically on his computer.

17 And if the court is familiar with these
18 file-sharing systems -- I won't go into a lot of detail.
19 But I think it's important for the court to understand how
20 these work, in order to put context on this.

21 KAZAA, WinMX, Napster, Lime Wire -- Napster not so
22 much anymore, since they've been purchased and are now
23 proprietary.

24 They're actually a lawful, file-sharing
25 service -- are of a genre of Internet sites where they link

1 through the Internet -- through high-speed Internet
2 connections with millions of computers around the world,
3 home computers like yours or like Mr. Keefover's.

4 They use those home computers to store images.
5 And they put a description on the Web site of what the
6 images purport to be. And they store still images, which
7 are JPEGs. They store short videos which are WMV files.
8 And they store a tremendous amount of music in the form of
9 MP3 files.

10 These file-sharing services are extremely popular
11 with teenagers because they can download things like videos
12 and music, et cetera, without paying for the content.

13 And what happens is when you download the software
14 so that you can download these pictures, it sets up a
15 file -- an inaccessible file on your computer where these
16 images are then stored.

17 And you can read them, but that's -- it sits in
18 the background on your computer. And if somebody else,
19 anywhere else in the world, requests that same file from
20 KAZAA, without anything you do or without you even knowing
21 it, KAZAA may access your computer to retrieve that file.

22 That's how the files were saved on Mr. Keefover's
23 computer, automatically by KAZAA. And that's what he told
24 investigators.

25 It's one of the pernicious effects of this

1 file-sharing software, which, as the father of two
2 teenagers, I've had to deal with. That's why I educated
3 myself. And it's -- and, fortunately, in my case it was
4 music.

5 But, in any case, Your Honor, it also leaves your
6 computer wide open to viruses and other, you know, things,
7 like Trojan horses and things like that.

8 The other thing about these files is they download
9 in batches. So you may download a folder called hot young
10 babes and there may be 50 images in that folder, many of
11 which are appropriately aged individuals and many of which
12 may not be.

13 In addition, Your Honor, sometimes these files are
14 mislabeled. And while I can't think of a particular
15 instance from KAZAA or any of these others, I can draw an
16 analogy.

17 If you visit You Tube, Your Honor, there is a
18 video by Rick Astley of a disco song called *Together*
19 *Forever*.

20 And some prankster has uploaded that to You Tube
21 under President Obama's inaugural speech, John McCain's
22 concession speech, President Bush addresses the troops.

23 And you will go in to You Tube thinking -- David
24 Letterman's interview of John McCain, those kind of things,
25 and you'll go -- click on it to see that and it will come up

1 with this disco video.

2 That's the same kind of thing that can happen in
3 these file-sharing servers. You can think you're
4 downloading one thing and download something completely
5 different. They're bad news.

6 But they prey on teenagers who don't have the
7 money to go to iTunes or whatever to download these -- these
8 music videos or the songs.

9 That's how these ended up on Mr. Keefover's
10 computer. More importantly, there's no evidence that after
11 he left high school Mr. Keefover ever downloaded any
12 additional images, that he ever transmitted any of these
13 images, or shared, displayed, or otherwise in any way used
14 the images on the file.

15 In fact, Mr. Keefover will tell you that he
16 didn't, until he was confronted with them, particularly
17 remember that the images were on the file -- on the
18 computer.

19 What happened in this case was after Mr. Keefover
20 joined the Navy, he asked his parents to send him his
21 computer to use in his everyday life.

22 And while he was on leave, he had left his
23 computer in an area of his ship -- I believe it was the
24 Halyburton -- where there was some repair work going on.

25 People found his computer and looked at the

1 computer, found the images, turned them over to the Naval
2 Investigative Service. And that's how Mr. Keefover was
3 discovered.

4 He had, up until that point, a sterling naval
5 career without any problems. He's a Category I on the
6 guidelines. So the nature of this offense and the way that
7 the files came to be downloaded on his computer all indicate
8 that there is very little likelihood that he will reoffend
9 and, most importantly, virtually no danger to the community.

10 And we would ask the court to consider that in
11 fashioning the appropriate sentence. He's a good kid who
12 made a silly mistake back when he was in high school, and is
13 now paying for it, because he didn't realize the seriousness
14 of it at the time.

15 We're asking the court to find that Section 5C1.1
16 of the guidelines is advisory only and not mandatory, and,
17 therefore, the -- to impose, after consideration of the 3553
18 factors, a probationary sentence or a sentence of time
19 served followed by a period of supervised release, which is
20 mandatory in this case, Your Honor.

21 Or, in the alternative, if the court finds that
22 there is a -- that 5C1.1 must apply, to find a
23 seven-or-more-level downward departure for heartland
24 reasons, to bring the guideline sentence within Zone C, so
25 the court could fashion a sentence which would involve home

1 detention that would allow him to live with his parents,
2 work every day, continue his relationship with his fiancée,
3 and otherwise try and repair his life and regain the path he
4 was previously on, which was toward a lawful, productive
5 life as a citizen, without unduly punishing him for
6 something which clearly, while serious -- again, the
7 guidelines just seem to assume or presume that these types
8 of offenses 100 percent of the time occur as a result of
9 some kind of predatory interest. And I just don't think
10 that's here in this case, Your Honor.

11 And that's why we would submit that a sentence
12 either pursuant to a heartland departure or pursuant to the
13 3553 factors of probation or a short period of home
14 confinement and followed by the five years of supervised
15 release would be appropriate.

16 Your Honor, Mr. Keefover's mother and fiancée have
17 traveled with him to be here today. I would ask them to
18 stand so the court can acknowledge them.

19 I'm not asking them to speak. They have written
20 letters to the court, which I would ask the court to review,
21 together with his father and his sister, who is a first
22 grade teacher.

23 Chase is a decent guy who made a serious mistake.
24 But he does not pose a risk to anybody else. And I would
25 ask the court to keep that in mind when it considers the

1 appropriate sentence.

2 Mr. Keefover would also like to address the court.

3 THE COURT: Let me acknowledge the family members.

4 I appreciate you-all being here under difficult
5 circumstances. And I will read what you've written to me.
6 And I do appreciate it. Thank you.

7 Let me -- before I hear from Mr. Keefover, let me
8 go ahead and read the materials that you just provided to
9 me.

10 All right. I have reviewed the letters from
11 Mr. Keefover's sister, mother, father, and fiancée. And I
12 will make them Composite Exhibit 1 to the sentencing
13 hearing.

14 (Court's Composite Exhibit No. 1 was marked for
15 identification.)

16 THE COURT: All right, sir.

17 THE DEFENDANT: Good morning, Your Honor.

18 Okay. I understand the seriousness of this case.
19 And I don't try to downplay it at all. You know, this -- I
20 made a lot of mistakes as a teenager. This being one of the
21 biggest ones, obviously.

22 And, you know, this isn't something that, you
23 know, I did on a daily basis or anything like that. I
24 actually had two computers that were confiscated, one that
25 was new that I've had for about a year and a half or so,

1 that I used every day, which it didn't have anything on it
2 whatsoever.

3 The other computer I hadn't used in a long time.
4 It sat in my -- my rack on the ship for a lot of the time.
5 It never got turned on.

6 And, you know, I don't want -- it's a mistake from
7 a teenager. And I don't want to, you know, be judged just
8 because of something I did when I was younger.

9 You know, since all this has happened, I've had my
10 family behind me, my fiancée behind me, all the way. You
11 know, and before this happened, I was in the Navy. I was
12 talking with a police officer from back home about becoming
13 a police officer after I finished my naval term.

14 Since then -- I can't do that anymore, obviously.
15 I've been discharged from the Navy. But -- it's bad. But
16 it's not something that has ruined my life. I still have my
17 family behind me and my fiancée behind me.

18 I am sorry for what's happened. And if I can
19 change it, I would. But I can't. You know, I have -- you
20 know, I grew up in a family involved, you know. And if
21 something like this was to happen to one of them, I'd be
22 upset. I understand the seriousness of it. And I'm not a
23 bad person. I just made a severely dumb mistake when I was
24 younger.

25 MR. SMITH: Thank you, Your Honor.

1 THE DEFENDANT: Thank you for your time, Your
2 Honor.

3 THE COURT: Thank you, sir.
4 Does that conclude your presentation, Mr. Smith?

5 MR. SMITH: Yes, Your Honor.

6 THE COURT: Let me hear from the government,
7 please.

8 MR. MCKAY: Your Honor, the government is asking
9 for a sentence at the low end of the guidelines, 30 months.
10 I think the United States would be remiss if we didn't
11 acknowledge that this was a low number of images, that
12 Mr. Keefover was, in fact, a teenager when he searched for
13 these, and that after June there's no evidence that he did
14 actually search for any more images, or have anything else
15 on the secondary computer, which he mentioned.

16 Unfortunately, though, that's not the end of the
17 story. And there's a reason that 30 months here is
18 applicable and should be the sentence imposed, is that when
19 Mr. Keefover searched for these files in the term KAZAA that
20 Mr. Smith was describing, he searched for terms such as
21 preteen Lolietta, teen, and young teen.

22 And the images that responded to his search terms
23 were kinder, 16 brother and sister, 10 and 14 sex porn,
24 preteen, kiddie underage, and 13 year old spreads for you,
25 among others.

1 So it was clear when he received his hits that
2 they were, in fact -- or at least he was on notice that the
3 images were contraband.

4 Additionally, outside of the share folders, the
5 facts of the case support that when the images were first
6 discovered they were within his My Documents file, and that
7 within that My Documents file, not the shared KAZAA file,
8 there were two folders, one titled 13-year-old girl and
9 19-year-old girl.

10 So he was aware that he had these images and took
11 them with him, and certainly didn't take the steps to delete
12 them.

13 And while he has some mitigating and even
14 extenuating -- for being a teenager searching for these,
15 there's no less of an impact on the victims themselves.

16 I think the crime here is axiomatic -- it speaks
17 for itself -- that these children were prepubescent. At
18 least some of them suffered severe, sometimes physical --
19 and I think reasonably we can infer that there will be
20 emotional distress for them forever.

21 Because Mr. Keefover only looked for nine images
22 doesn't have any less of an impact on the victims in these
23 cases.

24 In addition, Congress has found that this is a
25 market and that every person that searches for these creates

1 and synergizes this market. And anything outside of 30
2 months would really deteriorate from the general deterrence
3 that we're trying to seek here.

4 And in Section 3552(a)(4), that's a significant
5 factor that we would ask the court to consider here, is that
6 we just simply can't have people searching for this stuff.
7 They must be accountable. We must set a general deterrence.

8 Additionally, Mr. Keefover was serving in the
9 Navy. And he brought these images into a closed
10 environment, a small environment with young men and women,
11 similarly situated to him, 18, away from home for the first
12 time, and they were exposed to that, as evidenced by the way
13 that these images were, in fact, found.

14 So it wasn't just isolated to Mr. Keefover. They
15 were discovered by another Navy sailer on the ship and
16 brought them into these very small spaces.

17 THE COURT: I wasn't clear -- I understand what
18 you're saying. It wasn't, though, as if Mr. Keefover
19 intentionally exposed them to it, right? They had to
20 actually go on to somebody else's computer and find it,
21 right?

22 MR. MCKAY: Well, it was his computer, Your Honor.
23 And when it was discovered --

24 THE COURT: What I meant -- somebody else's, not
25 their own, right?

1 MR. MCKAY: Yeah. It was left out in an open area
2 as Mr. Keefover was transitioning from there to the barracks
3 room.

4 And another semantic part of that, sir, is that he
5 denied ownership of the computer when he was confronted, Is
6 this your computer, no, which lends us -- lends us to
7 believe that he certainly had knowledge it was on there when
8 he denied ownership of it.

9 But anything departing below 30 months, Your
10 Honor, would be inappropriate and send the wrong message to
11 other people searching.

12 And the United States would ask for that, followed
13 by a period of ten years of supervised release, to ensure
14 Mr. Keefover has the right start when he does get out of
15 confinement.

16 Additionally, if I may take it up now, there's a
17 forfeiture provision. We've supplied the court with a
18 courtesy copy of the preliminary order of forfeiture and
19 would ask that that forfeiture be listed in the judgment and
20 commitment order.

21 THE COURT: Sure. Maybe that's not controversial.

22 Mr. Smith, I assume it's part of the plea
23 agreement. I can't recall it. I read the plea agreement.
24 But I can't recall reading it specifically right now.

25 But is there any objection to the preliminary

1 order of forfeiture which requires Mr. Keefover to give up
2 his interest in the Dell computer?

3 MR. SMITH: No, Your Honor. And I thought we had
4 executed a consent to forfeiture for Ms. Glober. But if we
5 haven't, I'm happy to do it.

6 THE COURT: Okay. Well, I'm being presented with
7 a preliminary order forfeiting the materials. And I'll just
8 go ahead and sign that.

9 It forfeits -- it gives Mr. -- it gives up
10 Mr. Keefover's interest in the Dell computer. And I'll
11 enter that at this time.

12 MR. MCKAY: Thank you, Your Honor.

13 Do you want me to take up SORNA initially, since
14 it was addressed in the defense memorandum or...

15 THE COURT: Well, that's a condition of release,
16 right -- of supervised release, correct?

17 MR. MCKAY: Yes, sir.

18 THE COURT: Okay. Let's wait until we get to
19 that. Let me figure out what the sentence is going to be
20 first.

21 Does the government have any other -- I mean, does
22 that conclude the government's presentation?

23 MR. MCKAY: Oh, I'm sorry, Your Honor.

24 THE COURT: Does that conclude the government's
25 presentation?

1 MR. MCKAY: Yes, Your Honor.

2 THE COURT: Okay. Mr. Smith, did you have any
3 concluding remarks? Or are you -- have you said everything
4 that you needed to say?

5 MR. SMITH: Your Honor, I just wanted to address
6 one point made by Mr. McKay, without belaboring it. I
7 checked with Mr. Keefover. He tells me that what actually
8 occurred was that the shipmate who hacked into his computer
9 and found the images was initially the one that asked him,
10 Is this your computer?

11 He told that person no because he had promised to
12 give the computer to yet another shipmate. But when law
13 enforcement confronted him, he immediately admitted
14 ownership and fessed up to what was on the computer. It was
15 not an attempt to minimize his involvement or to avoid
16 responsibility.

17 THE COURT: The one -- and this -- I don't know if
18 this is going to make a difference or not. But the one
19 factual disconnect that I couldn't quite -- and Mr. McKay
20 didn't really reference it, so maybe it's not a -- an issue.

21 But I noticed that in the factual basis of the
22 plea agreement it says -- let me get the exact words,
23 that -- that later -- down at the bottom of page one of the
24 factual basis, And later brought the computer with the child
25 pornography on board the U.S.S. Halyburton, the ship to

1 which he was assigned.

2 And then it says in the next paragraph, Although
3 he viewed the images of child pornography while assigned to
4 the U.S.S. Halyburton he never downloaded additional images.
5 And it goes on from the other things that you were talking
6 about.

7 Now, your sentencing memorandum led me to
8 believe -- it says he has not viewed any of the photos
9 referenced in the indictment since downloading them and he
10 never downloaded any additional images and so forth. Those
11 two things aren't exactly the same. And I'm trying to
12 figure out how to understand.

13 MR. SMITH: Well, Your Honor, I think the
14 explanation is simple. I believe that the reference to him
15 viewing them while on the Halyburton comes from an
16 investigative report that when they did a forensic analysis
17 of the hard drive it showed that the picture files had been
18 accessed while on board the Halyburton.

19 I thought we had sufficiently investigated that
20 and determined that the viewing actually took place by the
21 shipmates who were looking at the computer who turned him
22 in, not by him. But, frankly, that got by me at the change
23 of plea hearing, Your Honor.

24 THE COURT: Okay. Mr. McKay, I don't -- I mean,
25 again, maybe -- you know, maybe that's not of significance,

1 although one might think it might be.

2 MR. MCKAY: Well, sir --

3 THE COURT: What's the government's position?

4 MR. MCKAY: Mr. Keefover gave a statement to the
5 NCIS agent, indicated that, The last time I used the
6 computer was about one year ago when I first got to the
7 ship. At the time the computer did not have Internet
8 access. But I did view all the images and files, to include
9 the 15 to 20 pornographic images.

10 THE COURT: Okay.

11 MR. MCKAY: I believe that's in the factual basis.

12 THE COURT: Okay.

13 (Counsel confer.)

14 MR. SMITH: May it please the court?

15 THE COURT: Yes, sir.

16 MR. SMITH: And I'm willing to put Mr. Keefover
17 under oath regarding that portion of the statement, if the
18 courts wishes.

19 According to Mr. Keefover, what he told the
20 investigator was. He accessed every program on the file,
21 but he didn't look at everything.

22 He accessed it by running a virus scan program,
23 which essentially went through every file looking for
24 viruses, when he first used the computer.

25 It wasn't a matter of actually sitting there and

1 looking at every image. It was a matter of running software
2 to check for viruses.

3 THE COURT: All right. Thank you.

4 Any legal bar to sentence, Mr. McKay?

5 MR. MCKAY: No, Your Honor.

6 THE COURT: Mr. Smith?

7 MR. SMITH: No, Your Honor.

8 THE COURT: All right. Well, let me think about
9 this a minute.

10 I'm going to take a brief recess.

11 COURT SECURITY OFFICER: All rise.

12 (Recess, 11:54 a.m. to 12:02 p.m.)

13 COURT SECURITY OFFICER: All rise. This Honorable
14 Court is now in session. Please be seated.

15 THE COURT: Well, first of all, let me -- let me
16 try to talk for a minute about what I have to -- the things
17 I have to consider, and then to actually articulate my
18 consideration of those matters. And then, of course, I'll
19 call you up and pronounce in a moment.

20 Mr. Smith suggests that I ought to look at this
21 case under a traditional guidelines analysis and do what's
22 called a heartland departure.

23 And that is a departure that is available to the
24 court if this -- if the case is outside of the norm of
25 cases, the court can depart on that basis.

1 I don't think that's a bad suggestion. I'll be
2 honest with you, though. I have not gotten those arguments
3 too often, nor had occasion to consider them too often since
4 the *Booker* case.

5 And I think that's probably because the types of
6 things that the court is required to consider under a
7 3553(a) analysis may overlap, to a large extent, the
8 considerations the court would give in a heartland
9 departure, and that
10 the -- I, frankly, think that the 3553(a) statute gives the
11 court more guidance and gives the court a way to think more
12 clearly than perhaps the heartland departure does.

13 And so while I recognize the availability --
14 potential availability of a heartland departure, I'm not
15 going to proceed under that route. And so let me -- let me
16 remind everybody where we are and why we are where we are.

17 Mr. Keefover is -- the advisory sentence that the
18 sentencing commission, in promulgating the sentencing
19 guidelines, has recommended for this case would be a term of
20 imprisonment of 30 months to 37 months, so three years and
21 one month, up to three years and ten months, for this crime.
22 That's the recommended advised.

23 And that's based upon a number of factors. Some
24 of them empirically based. That is, the number of images.
25 That is, the more images you have, the more serious it is.

1 Some of it can be based on the -- on how graphic
2 the images are. And Mr. Keefover's crime did not require
3 application of the aggravation that occurs when the images
4 are even more graphic or violent than the images that we're
5 talking about in this case.

6 That doesn't make this case less serious, in terms
7 of the bottom-line crime, but it does -- it does make it --
8 it does say that the guidelines do treat certain types of
9 child pornography as even more serious than other types of
10 child pornography, all while being treated very seriously.

11 But Mr. Keefover does get the base offense level
12 of 18, which is a reflection of the sentencing commission's
13 view that any type of possession of child pornography at all
14 is going to be viewed very seriously, because that's a high
15 base offense level.

16 They also increase it any time you use a computer,
17 which is practically every single time. It's one of the
18 quibbles I have with the advisory guidelines.

19 It seems like you're double counting in a way,
20 because I -- at least I have not -- and I'm starting to have
21 more of these cases, unfortunately. And I've not seen one
22 that didn't involve the computer. But it is an enhancement.
23 And then Mr. Keefover gets credit for pleading guilty and
24 accepting responsibility.

25 The government, probably to its credit, has not

1 pushed the issue of the number of images. And that might
2 have been a battle that we could have had and we didn't have
3 to.

4 And I think that's -- I think that's the correct
5 way for the government to view it. But the government could
6 have pushed it and I would have had to make a decision. So
7 I appreciate that.

8 Anyway, but all of this is -- for a first-time
9 offender, all of this -- it's a relatively -- even though
10 it's not as high of a sentence as it could have been -- I
11 had a person in here two months ago who was a first-time
12 offender and had done some of the same things, but there
13 were more images involved. They were more graphic, more
14 violent. And that guideline was 57 to 71 months.

15 And so -- so even though these guidelines are
16 difficult for Mr. Keefover, they're not as difficult as they
17 might have been in other circumstances, even for a
18 first-time offender.

19 But the fact that these guidelines treat -- are as
20 high as they are for a first-time offender is a recognition,
21 as Mr. McKay indicated, of the Congressionally found
22 decision that -- and policy that this is a very serious
23 crime, that people -- even people who just view it are
24 creating the market for it, or helping to create the market
25 for it, it's degrading to the victims, and all of the things

1 that go into the discussion about child pornography and its
2 proliferation.

3 And so the fact that these guidelines are as high
4 as they are, even for somebody in Mr. Keefover's position,
5 is a recognition that I -- of the law and how -- and how
6 both Congress and the sentencing commission -- how seriously
7 that this crime is viewed. And it's not something I can
8 cast aside lightly. And so I do have to take that into
9 account.

10 Having said that, I also do not accept the view
11 which says that all of these crimes are the same and that
12 they all have to result in long prison sentences.

13 There are some cases that -- there are gradations
14 of these crimes. And I've had some that were so serious
15 that the sentences were 20 years.

16 And these were people who were either predators or
17 that they -- I had one who had hundreds of thousands of
18 images. And this was his life's work, was collecting and
19 disseminating these child pornography.

20 And those people, deservedly so, get far, far
21 greater treatment by the court. I think I had two 20-year
22 sentences in a row in cases that were highly aggravated.

23 Mr. Keefover's case, while serious, is on the
24 opposite end of that spectrum, in my view. He committed a
25 crime. It's a serious crime. He's going to have to face

1 the consequences.

2 And, indeed, he has already faced significant
3 consequences in the loss of his naval career, the loss of
4 the ability to be a law enforcement officer, a five -- a
5 minimum five-year supervised release, which I have no
6 control over.

7 And so he's already -- and he's going to be a
8 convicted felon. And he's going to maybe have to register
9 for -- in certain states and be subjected to certain
10 restrictions on his -- on his liberty that others would not
11 have.

12 And so I don't think any of that should be
13 overlooked as being a serious consequence for something that
14 he -- that he did when he was 18 years old.

15 And so when -- the question in my mind is, beyond
16 that, what's the appropriate sentence that will be in the
17 words of the law sufficient but not greater than necessary
18 to comply with the statutory purposes of sentence?

19 And when I look at the factors, the nature and
20 circumstance of the offense, again, I've already discussed
21 how seriously child pornography is taken by the law.

22 But in the gradation of offenses, I think this is
23 on the less serious side of child pornography than certainly
24 on the more serious side, which I've already discussed.

25 The history and characteristics of this defendant

1 are that other than this act, this criminal act for which he
2 is before the court, he seems to have virtually a flawless
3 record.

4 He was -- he's got good family. He's got -- he
5 was in the Navy. He was apparently well-respected and is
6 obviously well-loved by his family and friends, who all
7 think the world of him.

8 And so -- and I have to say, the government has
9 made no effort to demonstrate to me that they believe that
10 Mr. Keefover is any type of predator or pedophile or
11 something that would require the court to look at it in a
12 different way.

13 Now, of course, we don't know -- none of us knows
14 the answers to that. We certainly have no reason to think
15 so at the moment.

16 But Mr. Keefover, under any circumstances, will be
17 under the court's supervised release for a period of five
18 years, and will also be subject to counseling, that will
19 detect, hopefully, if there are more serious problems than
20 we're aware of at the moment. And so that gives me some
21 comfort.

22 But this is not a case in which the government has
23 tried to indicate to me that this is just the tip of the
24 iceberg or this is just a part of a pattern of conduct that
25 they would have expected Mr. Keefover to continue into the

1 future and perhaps turn more serious. And there's no
2 evidence before me that would justify such a belief.

3 I do question sometimes why in these cases we're
4 not getting either from the government or from the defense
5 some type of presentence psychosexual evaluation of these
6 defendants, so that the court would have at least one
7 professional's opinion as to the risk of future problems and
8 what the current status of the person is. But we don't seem
9 to be getting those from either side.

10 And so the court just has to assume that unless
11 the government comes forward and tries to prove it, or the
12 defense tries to prove the opposite, the court is left with
13 the assumption -- based on the nature and circumstance of
14 the offense and how it played out, the court is left to, in
15 essence, just take an educated view or guess about the
16 person and assume either that they are going to head in the
17 wrong direction or they're not.

18 And in this case, based on all the facts and
19 circumstances, I have no reason to think as I sit here that
20 Mr. Keefover is a future threat of being a predator or
21 pedophile or to threaten children in any -- in any
22 significant way in the future.

23 Indeed, because he'll be on supervised release,
24 and, hopefully, chastened by this event, I would think he
25 might be a person who would pose little or no risk in the

1 future for recidivism or for more serious criminal conduct.

2 Nevertheless, I do need to reflect the seriousness
3 of the offense. I need to promote respect for law. And I
4 need to provide just punishment.

5 And I -- as I said, Congress and the sentencing
6 commission both have made it clear that punishment is an
7 issue in this case.

8 Deterrence is also an issue. And deterrence,
9 simply stated, is to stop people from doing it in the
10 future. And we -- we want to stop, of course, Mr. Keefover
11 from ever doing anything like this again.

12 And I certainly would expect that he would not.
13 But we also need to send a message, as Mr. McKay said, that
14 this type of conduct is taken seriously by the courts. And
15 so that is something I have to take into account.

16 I need to protect the public from further crimes
17 of this defendant. I think I've already addressed that.
18 And I need to provide Mr. Keefover with whatever counseling
19 or other intervention is appropriate, given the
20 circumstances. I need to look at the kinds of sentences
21 available. And I need to avoid unwarranted sentencing
22 disparity.

23 So with all that said, I have -- I have not -- you
24 know, I maybe have had now -- in the last year or so, I may
25 have had ten of these cases.

1 Some of them very, very aggravated. Some of them
2 kind of in the middle. And some, recently, which are on the
3 -- on the much lesser end of the seriousness spectrum.

4 And I have to say that Mr. Keefover's case is
5 the -- is the case that I view as being on the mostly
6 serious -- or the least serious that I've had so far.

7 Again, it doesn't mean it's not serious, but I --
8 my view is that the guidelines in this case overstate the
9 punishment which is appropriate in this case.

10 Having said that, I cannot accede to Mr. Smith's
11 request that I just do a straight type of probationary
12 sentence.

13 I just think because of the nature of the crime
14 and because of the factors of just punishment and deterrence
15 that that's just simply not an option that I can exercise in
16 this case.

17 There may be a case where that's appropriate. And
18 this case comes close to it. But I just don't think that I
19 can do that in this case. And so that's my analysis under
20 3553(a).

21 And, Mr. Smith and Mr. Keefover, if you'll come
22 forward, please, sir.

23 Mr. Keefover, on October 22nd, 2008, you entered a
24 plea of guilty to Count One of the indictment, charging
25 possession of child pornography in the special maritime and

1 territorial jurisdiction of this court, and of the United
2 States, in violation of 18, United States Code, Section
3 2252(a)(4)(A). The court has accepted your guilty plea and
4 adjudged you guilty of the crime.

5 Let me -- I apologize. Let me say one other thing
6 that is on my mind. One of the reasons I don't think I can
7 consider a probationary sentence in this case is that
8 because of the -- of the Navy overlay here, that
9 Mr. Keefover, while on naval -- while a naval -- while in
10 the Navy and on active duty, brought this material on board
11 a United States naval vessel.

12 And whether he did so inadvertently or not, it's
13 hard for me to tell. But it is a fact. And -- and it's
14 just -- that's an overlay that is -- has implications that
15 are -- are something that I do need to take into account,
16 because we have had several cases involving Navy personnel.

17 And so I don't -- I think that's something that
18 I'm having to take into account as I decide a sentence. And
19 a sentence that I might have even considered Mr. Smith's
20 probationary request, I'm just -- I'm just not able to do it
21 in this case.

22 The court has already advised you-all of the
23 advisory guidelines. The court having asked Mr. Keefover
24 why judgment should not now be pronounced and no cause to
25 the contrary appearing, and the parties having made

1 statements on their behalves -- I apologize. I need to say
2 one other thing.

3 The government always talks to me about the
4 victims in these crimes. And I appreciate them doing so, to
5 remind everybody that this is not a victimless crime, that
6 these are real human beings that have been degraded by these
7 images.

8 And even though I don't have any of those actual
9 persons available to me, I've read the letters before. I've
10 read how this affects people. And I do not want by any
11 sentence I ever give to forget about the victims and to
12 forget what we're trying to accomplish by eliminating the
13 market for these materials.

14 And so I -- I don't want any sentence I give, no
15 matter what it is, to be -- to be interpreted as me not
16 fully understanding that.

17 Having said all that, I do not think that there
18 is -- that doesn't mean there's not a basis to look at each
19 individual defendant, to look what they did, to look how
20 they did it, and to -- to judge their case, even
21 understanding how it -- it still has the same impact on the
22 victim as a more aggravated case. So I do make that
23 statement. And now I am ready to pronounce.

24 I have asked you why judgment should not now be
25 pronounced. And no cause to the contrary appearing and all

1 parties having been heard, it is the judgment of this court
2 that the defendant, Chase Keefover, is hereby committed to
3 the custody of the Bureau of Prisons for a term of six
4 months. And there will be a period of supervised release of
5 five years.

6 During that period of supervised release, there
7 will be a six-month period of home detention, so that -- my
8 intent is to give a total incarcerative sentence of 12
9 months, but it will be six months BOP, six months home
10 detention.

11 And I am also -- as I'm thinking through why I'm
12 giving the sentence I'm giving, I also am taking
13 Mr. Keefover's age into account, that he was basically 18
14 years old at the time he committed the offense of
15 downloading the materials and did carry them around with
16 him. But he's still a young man. And I do think -- that
17 has some mitigation, as well, in my thinking.

18 There is a five-year period, as I said, of
19 supervised release that's mandatory. I don't think ten
20 years is required in this case, because I don't think -- I
21 don't think the things we worry about are the -- are
22 required. I have given up to life before when I thought it
23 was appropriate.

24 But there are going to be strict conditions of the
25 supervised release. And it's a five-year period, which is a

1 lengthy period. And I think that the public will be
2 well-protected by these conditions. You will have to
3 provide the probation officer access to any requested
4 financial information.

5 You'll have to participate in whatever mental
6 health program specializing in sexual offender treatment --
7 or whatever is indicated by the evaluation of the -- of the
8 mental health professionals, you'll have to strictly follow
9 their directions and participate in that programming
10 faithfully and as long as they tell you you have to. You'll
11 have to pay for it, such as you're able to, on the sliding
12 scale.

13 You will register with the -- whatever state --
14 the state requires of you -- whichever state you're residing
15 in or you visit, whatever the laws are in those states
16 regarding sexual offender registration, you must comply with
17 those laws.

18 And we'll talk about the SORNA in a minute. The
19 probation officer will have the right to restrict your
20 contact with minors.

21 I don't think that's a real issue here, but I
22 think it's a standard provision. And I think the probation
23 officer will evaluate how that fits into your life.

24 And if there's family members that are minors and
25 the families are comfortable with it, I'm sure the probation

1 officer will

2 be -- will be appropriate.

3 But there is -- but the probation officer does
4 have the authority under the terms of the supervision to
5 prohibit direct contact with minors and to require you to
6 not be in certain areas that minors might inhabit
7 frequently.

8 You are prohibited from, of course, possessing,
9 subscribing to, or viewing any -- any literature or videos,
10 magazines, depicting children in any type of sexual
11 positions or situations.

12 You'll not be allowed to use the Internet or a
13 computer with Internet access without written approval from
14 probation.

15 The probation officer will be permitted to
16 routinely inspect your computer system and any associated
17 devices for compliance with this.

18 Any employers will have to be aware of these
19 restrictions on your computer access. And those can be
20 adjusted as appropriate.

21 You are also subject to search of your person,
22 residence, place of business, storage units under your
23 control, computer, vehicles, by probation at any reasonable
24 time for -- based upon a reasonable suspicion of any
25 contraband or evidence of violations of conditions of

1 release.

2 I don't see any evidence of drug involvement. I'm
3 going to suspend drug testing based on low risk. You will
4 have to give a DNA sample. Based upon your financial
5 status, I'm waiving fines and costs. A \$100 special
6 assessment is required.

7 Forfeiture we've already taken care of. In your
8 plea agreement, you waived and gave up the right to appeal
9 either directly or collaterally the sentence I've just given
10 you unless certain things happen.

11 However, I don't think any of those things has
12 happened. However, if they have, or if you think you have
13 grounds to appeal, you must do so within ten days from this
14 date.

15 The government can appeal this sentence, as well.
16 And if they do, then you, of course, are allowed to appeal,
17 as well.

18 But failure to appeal within the ten-day period
19 will be another ground for waiver of your appellate rights.
20 You're also advised that you're entitled to the assistance
21 of counsel if you try to take an appeal. If you're unable
22 to afford a lawyer, one will be provided for you at no cost
23 or charge to you.

24 Mr. McKay -- well, let me go ahead and get the
25 objection. The court having pronounced sentence, do counsel

1 for either party wish to object to the court's sentence or
2 the manner in which the court has pronounced that sentence?

3 MR. MCKAY: Yes, Your Honor. The United States
4 would object as unreasonable under the guidelines.

5 THE COURT: Okay. Any objection?

6 MR. SMITH: No objection from the defense, Your
7 Honor.

8 THE COURT: Okay. Mr. McKay, you said you wanted
9 to talk about SORNA. And Mr. Smith wanted to talk about
10 SORNA.

11 And I have not had an issue with that yet. So
12 tell me what's on your mind, Mr. McKay.

13 MR. MCKAY: Your Honor, I -- just in responding to
14 the defendant's memorandum, there's two district courts that
15 essentially have said that SORNA is beyond the reach of
16 Congress' power under the commerce clause and that it's not
17 related to commerce in any way.

18 THE COURT: And what's -- those are judges in my
19 district, right?

20 MR. MCKAY: Yes, sir.

21 THE COURT: Who are they?

22 MR. MCKAY: Your Honor, one is the Middle District
23 in Orlando.

24 THE COURT: Is it Judge Presnell?

25 MR. MCKAY: Yes, Your Honor. And the other one is

1 Judge Clause, I believe, or --

2 MR. SMITH: Judge Zloch.

3 MR. MCKAY: Zloch, in Miami.

4 THE COURT: Oh, from the Southern District? Okay.

5 MR. MCKAY: Yes, sir. Essentially, the
6 government's first position is that -- in the plea agreement
7 that Mr. Keefover entered into with the United States, is
8 that he agreed he must register under SORNA. So, therefore,
9 if there is an objection, it seems that he would have
10 reasonably waived it.

11 Obviously, if it's unconstitutional, it would be
12 more difficult to waive. But the only appellate case law --
13 and this comes out of the Eighth Circuit, where they found
14 that there was, in fact, a nexus. It's *United States v May*.
15 And they didn't find any problems with the commerce nexus.

16 Additionally, if I could just distinguish this
17 case against the Middle District case out of Orlando, that
18 case involved a defendant who was convicted under South
19 Carolina law of a sex offense and then moved to Florida and
20 failed to register with the state of Florida.

21 This case is different in that Mr. Keefover has
22 been convicted of a federal crime with a direct nexus to
23 commerce, that he's been convicted under 2252 dealing
24 specifically with the interchange of computer files over
25 commerce, interstate, and, even here, through international

1 commerce.

2 THE COURT: And is the law -- what are you
3 actually asking the court to -- is there something you're
4 asking me to put in the judgment? Or is the law
5 self-executing? Or how --

6 MR. MCKAY: Well, the Attorney General's
7 guidelines under SORNA are that he must register with the
8 state. Now, you've already indicated he must register under
9 the state of Arkansas, where he's moving to, and the state
10 of Florida. I think that satisfies it. But we're asking
11 under SORNA --

12 THE COURT: Well, what I was intending to say -- I
13 hope I did -- is that if the state law -- if the state in
14 which he resides in or visits -- if that state law requires
15 him, because of his conviction, to take some action, I'm
16 telling him that as part of the terms of his supervision he
17 needs to take that action.

18 MR. MCKAY: Yes.

19 THE COURT: So that his failure to do so would not
20 only potentially violate state law, but might violate the
21 terms and conditions of my supervised release.

22 MR. MCKAY: Yes, Your Honor.

23 THE COURT: But I don't -- I don't have all 50
24 states' laws memorized. So I don't know whether this
25 conviction would apply or not. I assume you think it does.

1 MR. MCKAY: Yes, sir. And it would satisfy
2 Title I of the SORNA. I believe what the defense has raised
3 in the objection, though, is the enforcement of failing to
4 apply with SORNA. And that's where the unconstitutional
5 issue may come in.

6 It's not under the requirement that you should
7 register. It's whether the government has the right to
8 prosecute after. And that's where all that case law is
9 borne out of.

10 THE COURT: And I guess that would only happen if
11 there was an alleged violation and we were here. And
12 Mr. Smith could argue it was unconstitutional and --

13 MR. MCKAY: Certainly, that his failure to
14 register then was not appropriate.

15 THE COURT: Okay. Thank you, sir.

16 Mr. Smith, do you wish to be heard?

17 MR. SMITH: Briefly, Your Honor. And my
18 understanding of SORNA is imperfect, as well. But my
19 concern is this.

20 Since the time we entered in the plea agreement,
21 the two courts within the Eleventh Circuit who have
22 evaluated violations of SORNA have both found SORNA to be an
23 unconstitutional exercise of federal jurisdiction in
24 violation of the commerce clause.

25 The Eleventh Circuit has ruled one time regarding

1 SORNA. Now, it was on a completely different portion of the
2 Sex Offender Registration Notification Act.

3 But the Eleventh Circuit said that portion of
4 SORNA was vague and ambiguous and didn't put defendants on
5 notice of how they violated.

6 I, out of an abundance of caution, wanted to
7 object to imposing the conditions of SORNA on Mr. Keefover
8 in the event that somehow because of the plea agreement we
9 would have later deemed to have waived our right to file
10 motions to dismiss any subsequent prosecution.

11 Because, as I understand SORNA, it's not just that
12 violating SORNA could violate Mr. Keefover's supervised
13 release. I believe it creates a new substantive offense, as
14 well, if I understand it. And that's the problem with it.

15 Mr. Keefover will be obligated under Arkansas law
16 to register however Arkansas chooses to enforce
17 registration.

18 He'll be required as a condition of supervised
19 release to comply with Arkansas law, you know, to the extent
20 that this court could punish him for violating supervised
21 release if he didn't.

22 To add yet a third overlay in this case, subject
23 him to future criminal prosecution for a new substantive
24 offense based upon a statute which the growing body of law
25 seems to indicate is vague and may violate the commerce

1 clause seem to me to be overkill.

2 THE COURT: Well, it seemed to me -- and I'll note
3 your objection. It's certainly preserved for the record.
4 It would seem to me, though, that argument would be made
5 only if somebody tried to charge Mr. Keefover with a crime
6 under SORNA.

7 Then you would -- that's when you would make your
8 argument. But I hear you. I think you've made your record.
9 My only order right now, which the government seems
10 satisfied with, is that -- I am ordering as a condition of
11 Mr. Keefover's supervised release that he comply with state
12 law regarding registration in the state in which he resides
13 and in any states that he visits.

14 Because some states require certain things if you
15 visit for a certain amount of time. And if I were to find
16 out that he moved back to Florida and failed to comply with
17 state law, and the probation officer says that's a
18 violation, then I think we'd have to have a hearing. But
19 that's as far as I'm going right now. Okay?

20 MR. SMITH: I understand, Your Honor.

21 THE COURT: Mr. McKay, you rise for what purpose?

22 MR. MCKAY: Yes, Your Honor. There's just one
23 more layer. When anybody is convicted in a state other than
24 they reside, they're also required to register within the
25 state. So, according to SORNA, he's also required to

1 register here in Florida before going to Arkansas.

2 THE COURT: Okay. Well, all I'm doing is
3 requiring him to do what he's supposed to do. And it seems
4 to me he's represented by counsel. And I think the
5 probation officer and pretrial may have already looked at
6 some of this. I don't know.

7 But I guess the only thing, Mr. Smith, that
8 probably -- putting it in the conditions, in some ways it --
9 it requires the defendant, I would take it, to educate
10 themselves on what is required.

11 I mean, because -- but I think that would be true
12 anyway. I mean, I think -- if you're a person who qualifies
13 under state law, I don't think it's an excuse that you
14 didn't know what the law was or you didn't know it applied
15 to you.

16 MR. SMITH: I agree. But, Your Honor, Mr. McKay's
17 statement makes my point. Mr. Keefover was not convicted in
18 Florida. He was convicted in federal court in the Middle
19 District of Florida.

20 He's only back here today to face the court and be
21 sentenced. He's going to be taken into custody and moved to
22 Georgia within an hour or two. He's not planning to ever
23 come back.

24 The idea that he could be charged with a new
25 substantive offense because, in this brief time that he

1 remained in Florida in federal custody, he failed to go to
2 the local sheriff and register in Florida makes the point
3 that SORNA just doesn't put defendants on notice of what
4 they may -- what conduct may constitute a criminal violation
5 of the act.

6 That having been said, I won't belabor it any
7 longer, Your Honor.

8 THE COURT: Okay. Well, I appreciate the
9 discussion, because it -- it's helpful for the record, and,
10 also, helpful for all of our understandings. But I think
11 I'm going to leave it -- leave it at that.

12 All right. Anything else from the government?
13 You've objected. I understand that. And we've talked about
14 SORNA. Is there anything else from the government?

15 MR. MCKAY: No, Your Honor.

16 THE COURT: Mr. Smith, anything else?

17 MR. SMITH: Your Honor, I have two requests for
18 Mr. Keefover.

19 THE COURT: Yeah.

20 MR. SMITH: I would ask that the court make a
21 specific sentencing recommendation that, if appropriate, he
22 be housed in a camp facility.

23 I am concerned with him. Because I'm afraid
24 because of the nature of the offense of conviction he might
25 score under BOP guidelines for a more secured facility and

1 that would put him at risk. I would also ask that the court
2 recommend that he be housed in Arkansas, near his family.

3 THE COURT: All right. Now, what is
4 Mr. Keefover's position regarding remand?

5 MR. SMITH: Your Honor, we would like
6 self-surrender. We understand, however, it's prohibited by
7 the offense charged.

8 I don't see any way that I can responsibly ask the
9 court to allow him to do that. As much as I -- I think this
10 would be an appropriate case, I -- I'm bound by the law.

11 THE COURT: And that's because, Mr. McKay, this is
12 considered under the statute a crime of violence?

13 MR. MCKAY: Yes, sir. There's a presumption of
14 violence.

15 THE COURT: Okay. Well, if that's so -- and I
16 know we've been -- I know Judge Moore has maybe taken a
17 contrary view on that.

18 But I -- I'm not going to -- I'm not -- I'm not
19 going to litigate that. And there may be good reasons to be
20 getting on with this anyway.

21 But just for future reference -- Mr. Smith, I know
22 you know this. But the way I view that law -- because that
23 happens in drug cases, as well, as you know.

24 The way I view that law -- and it's even in my
25 order, I think. It does require remand. However, 3145 says

1 that remand can be avoided for exceptional reasons.

2 And so if there were exceptional reasons -- and I
3 don't know that there are any in this case, which I think is
4 probably why you can't argue for it. You know, I have -- I
5 have on occasion allowed voluntary surrender for exceptional
6 reasons.

7 But I don't -- I'm not really seeing them in this
8 case. And so, for the record, I guess I do need to -- let
9 me speak to you a moment, Mr. Keefover.

10 I don't know -- I don't know -- really know what
11 you're thinking right now. But I -- I'm sure the government
12 is not -- they think you should have gone a lot longer than
13 this.

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: They may not be wrong. I don't know.
16 All I can do is do the best I can to apply the law to the
17 facts before me.

18 But, obviously, part of my judgment is that -- is
19 that this was something you did, it was really wrong, you
20 shouldn't have done it, you've got to be punished for it,
21 but that you are unlikely to ever do anything like this
22 again, and that I am unlikely ever to hear about anything
23 that you've done again of this type or any other criminal
24 type. And that -- that's my judgment. And that's part of
25 the reason that I've given you the sentence that I have.

1 If I thought that there were concerns, or if the
2 government articulated additional concerns, then we might be
3 in a whole different place. But -- and so -- and you're
4 going to have to carry this around with you for the rest of
5 your life.

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And it's not going to be that easy.
8 But you've got to -- you've got to -- you've got to do it.
9 You can do it. You can be successful.

10 But do not for a minute forget how serious this
11 was and the consequences that you'll have to carry with you.
12 And make sure that you always are doing what you're supposed
13 to be doing. Because the next time -- if there is a next
14 time, it will go badly for you.

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And so I want to wish you and your
17 family the best. And I hope you understand how serious this
18 was. And I hope you thought -- I hope you think about --
19 when you're doing your time, I hope you think about the
20 victims of the crimes. Think about these children who are
21 victimized by this.

22 And by -- even by downloading this stuff and
23 carrying it around on your computer, you're -- you're
24 helping to allow that to happen.

25 And I want you to think about that and I want you

1 to remember it. And I want you to go on and live a
2 law-abiding, productive life. And I'm confident you can do
3 that. And I wish you well.

4 THE DEFENDANT: Thank you, Your Honor.

5 THE COURT: We're in recess.

6 COURT SECURITY OFFICER: All rise.

7 (The proceedings concluded at 12:40 p.m.)

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