SCENARIO NO. 7
United States v. Lester Carlson

Read the following materials, which are abbreviated from the presentence report. Then, view the accompanying video. After completing your review, you will be asked to determine an appropriate sentence for this defendant.

Offense(s) of Conviction/Penalty

Count 1:   Distribution of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(2)(A), a Class C felony.

Plea Agreement Summary

The parties entered into a plea agreement under Fed. R. Crim. P. 11(c)(1)(C), which is binding upon the Court if accepted. The parties agree that the Total Offense Level is 37 and jointly recommend a 5-year term of imprisonment and the statutorily required 5-year term of supervised release.

The Offense Conduct

The FBI identified an IP address engaged in the electronic sharing of child pornography via peer-to-peer file-sharing software. An undercover special agent had connected to the Internet and when "Lots2Luv" logged on, the agent established a connection and viewed and downloaded several shared folders from "Lots2Luv's" computer. Via online chat, the agent requested a password from "Lots2Luv" for remaining files, which was provided. This gave the agent access to multiple directories which the agent browsed and downloaded. Video files were named in a fashion that was indicative of child pornography content. In a purported exchange, the agent sent corrupted files to "Lots2Luv" which gave the false impression that they were items of child pornography. The Internet service provider was served a subpoena and identified their subscriber as Lester Carlson.

The downloaded images and videos were forensically examined and did contain child pornography. Some of the files depicted a lascivious exhibition of the genitals of minor-aged children, sodomy of prepubescent children, and penile penetration of infants. Several known series were identified by authorities, including the "Sara Series."

In a review of the defendant's computer, more than 900 graphic images of child pornography and 10 videos containing child pornography were located. Approximately 75 chat logs were recovered, all with child pornography being the exclusive topic. The National Center for Missing and Exploited Children was able to identify several known series of child pornography; one of those is referred to as the "Sara Series."

Victim Impact

That victim of the "Sara Series" will be present at the defendant's sentencing hearing and wishes to address the Court about the impact the crime has had on her life. The victim reported she was sexually molested by a relative from the ages of 5 to 11. To learn that her sexual molestation was videotaped and freely traded on the Internet, where it is permanently available, is traumatic for her and causes her substantial anxiety.

Offense Level Computation

The Base Offense Level for distribution of child pornography is 22 (USSG §2G2.2(a)(2)). The following increases are applied: depictions of a prepubescent minor (+2), distribution for receipt of a thing of value (+5), portrayals of sadistic conduct or violence (+4), use of a computer for distribution (+2), and more than 600 images (+5). The defendant demonstrates acceptance of responsibility for a 3-level reduction (USSG §3E1.1). The Total Offense Level is 37.

Criminal History & Category

Mr. Carlson has no prior criminal history. The Criminal History Category is I.

Offender Characteristics

The defendant, Lester Carlson, age 48, is one of four children. Both parents are now deceased, but he maintains close contact with his siblings, all of whom maintain successful careers and marriages. The defendant advised that he was sexually molested by his paternal grandfather from the ages of 8 to 10. The perpetrator forced him to view adult pornography with him. Mr. Carlson has been married for 18 years, has two stepsons, and strong family support.

The defendant has a Master's degree in Social Work and has been employed for 18 years as a social worker with his state's department of child protective services. Following his plea of guilty, he was terminated from his employment. Mr. Carlson had been well-regarded by his supervisor and colleagues, and all had difficulty conceiving that he would engage in this conduct. Mr. Carlson consistently told them and family members that the offense had been inadvertent.

Mr. Carlson's wife is devastated by his arrest and conviction and has been on leave from work for several months due to depression. She revealed that she had asked her husband to research mortgage refinance options on the Internet. After Mr. Carlson was arrested, he told his wife that he accidentally had encountered the child pornography while he was searching for the information she had requested; therefore, his wife blames herself for his circumstances.

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Sentencing Options

TOTAL OFFENSE LEVEL:	37	CRIMINAL HISTORY CATEGORY:	I
		ZONE:	D

	Statutory Provisions	**Guideline Provisions**
CUSTODY:	Not less than 5 years nor more than 20 years	210 to 262 months, restricted to 210 to 240 months by statutory maximum
SUPERVISED RELEASE:	Not less than 5 years nor more than life	5 years
PROBATION:	Prohibited by mandatory term of imprisonment	Prohibited by mandatory term of imprisonment

Factors That May Warrant a Guideline Departure

There are no factors which would warrant a departure from the guideline range.

Factors That Relate to 18 U.S.C. § 3553(a) and/or May Warrant a Variance

The guideline computation has an unreasonable result that even exceeds the statutory maximum penalty. Some of the enhancements, such as the 2-level increase for use of a computer, should not be applied. The fact that a computer was utilized should be inherent in the Base Offense Level. Other adjustments are excessive or altogether unnecessary. For example, the way in which peer-to-peer file sharing works does not allow for "picking and choosing." Therefore, Mr. Carlson did not have the ability to eliminate portrayals of sadistic or violent conduct, which results in a 4-level increase, unless he eliminated them one-by-one from his computer, after the fact. Another aspect is the large number of images (more than 600) which requires a 5-level increase. The method of gathering the materials results in large numbers of files so in nearly every instance, this increase would be applicable.

Mr. Carlson has been law abiding his entire life. He has held responsible employment. There are no indications of having hands-on victims. However, he was himself a victim of sexual molestation as a child.

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Government's Recommendation

Imprisonment	Supervised Release	Probation

Defendant's Recommendation

Imprisonment	Supervised Release	Probation

Your Sentence

Imprisonment	Supervised Release	Probation