

1 get around whatever the obligations to the court and the
2 obligations of the forfeiture agreement. And I can't speak
3 to the reasons why it's happening now. I mean, they've been
4 living in that property for the approximately two years while
5 this case has been pending and haven't encountered these
6 issues. In fact, the very same property they want to swap
7 was one we've rejected, previously rejected. So that caused
8 great alarm by us and led to the filing of the motion.

9 MR. GENSON: Your Honor, may I make a point?

10 THE COURT: Yes.

11 MR. GENSON: Your Honor, the defendant -- the
12 defendant in this case does not own the house. The wife
13 does. The wife believed that she needed to downsize because
14 she expected that it was just a much too expensive house.
15 She believed that she had permission to sell the house. The
16 house is in her name. She proceeded to try to sell the
17 house, thinking she had permission and that everything was
18 taken care of. Now, there was no jeopardy here in this case
19 to the government because they had already filed a lien. And
20 there was a quit claim deed given to them and a lien was
21 filed. So there was no danger given what really -- that
22 there wasn't any removal of the house being sold. No one is
23 going to buy a house when there is a lien on it and a deed
24 both filed. So there is -- in order to sell the house, she
25 needed the permission. She believed she had the permission

1 because of some inadvertent miscommunication. And so the
2 issue is whether her equity in the house should be
3 forfeited based on what someone else did and what she didn't
4 do. And what I'm asking is, with regard to this motion, no
5 harm was done, the place wasn't sold. It could not have been
6 sold without the removal of the lien and the quit claim deed,
7 which were filed. And as a result, as a result, there was no
8 sale. This was not -- this was not the fault of the -- of
9 the owner of the house. This was not the fault of the wife.
10 She was not trying to breach an agreement that she had signed
11 because she believed that she had permission. And as a
12 result of that -- and I understand -- I understand the
13 prosecutor's concern, and I understand what he did, but I
14 think in the light of all the facts, this should not be held
15 against her and that house.

16 THE COURT: Well, I'm not sure what the government
17 is actually asking at this point. I can't imagine this --
18 the initial appearance, and all, looked like it was before
19 Judge Brown. I've known Judge Brown most of my adult life.
20 I can't imagine that she didn't carefully go over with
21 Mrs. Allegra what the repercussions could be if she violated
22 the order. I'm sure there is a transcript some place that
23 would actually show that. So I don't understand how she can
24 conceivably have thought she could go ahead and put this on
25 the market. But -- and I can't imagine her attorneys telling

1 her that she could do that. But I don't know if the
2 government is actually seeking forfeiture of any assets at
3 this point.

4 MR. OTLEWSKI: Your Honor, what we are asking for
5 is what we asked for at the change of plea hearing, which is
6 that the defendant, his bond be revoked today.

7 THE COURT: Yeah, that's a different story. But
8 we'll talk about that in terms of the sentencing. Okay.
9 Let's go on.

10 MR. STEINBACK: Thank you, your Honor.

11 THE COURT: Okay. Who wants to speak? Apparently
12 all of you.

13 MR. GENSON: One second. Your Honor, one other
14 thing, there were two briefs -- mitigation briefs filed on
15 behalf of defendant.

16 THE COURT: Correct.

17 MR. GENSON: With regard to the second brief, the
18 one that was filed by Mr. Steinback and Ms. Gurland, we would
19 wish to withdraw at least the nature -- the nature -- the
20 first part of the brief that talks about the nature of the
21 brief; or perhaps we would withdraw the whole brief. And
22 with regard to those portions that are relevant, we can have
23 Ms. Gurland state that in her -- in her part of the
24 presentation.

25 THE COURT: All right. So you want to withdraw

1 this brief?

2 MR. GENSON: Yeah. I've already informed the
3 prosecutor I was going to do it.

4 MR. OTLEWSKI: Yes, your Honor.

5 THE COURT: Okay.

6 MR. GENSON: Are we ready to proceed?

7 THE COURT: Yes, I believe so.

8 MR. GENSON: Okay. Thank you. Monday is always my
9 worse day for walking. I'm a little better by about Friday.
10 So if I can do my just brief words here?

11 THE COURT: That's fine. This is Wednesday.

12 MR. GENSON: I will do it into the microphone, your
13 Honor.

14 Your Honor, the defendant in this case, Robert
15 Allegra, is a man who I have been at the time friendly and
16 acquainted with over a period of about 20 years. Maybe a
17 little bit farther than that. It had nothing to do with what
18 I do for a living. I wanted to -- I just wanted both the
19 prosecutor and your Honor know that. It happened to be a
20 social circumstance. Your Honor, there is no issue here with
21 regard to the sentence guideline. And so I'd like to just
22 point out a few things and rely on Ms. Gurland and
23 Mr. Steinback relative to the -- relative to the arguments in
24 this case in mitigation. Ms. Gurland is going to deal
25 primarily about people who know him and the things he has

1 done in his life. Jeffrey is going to talk about other
2 aspects of 3553.

3 But I would point out to your Honor that the facts
4 as set out in the government's brief, and I assume the facts
5 he is going to set out in his argument, are pretty much
6 un-rebutted. He did what he did, and it was a terrible thing
7 he did. It was, in fact, opposite the life that he has led.
8 And what we're trying to show and bring in to your Honor is
9 purview and emphasize the person and the family he has, the
10 circumstances of his family, the blameless record he had.
11 His accomplishment in the community as a pilot, his charity,
12 his charity that set out, as we set out and will be set out
13 by Ms. Gurland, the letters that were offered on his behalf.
14 And all of this we hope will mitigate as best it can be
15 mitigated the offense committed.

16 This is an exceptional case and exceptional
17 circumstances. Your Honor is going to hear about
18 Mrs. Allegra and her health situation. You are going to hear
19 about the close relationship and the relationship they have
20 with regard to their child, he has with regard to his child.
21 And we hope that, when you hear all this -- and I know a good
22 deal of it was set out in the briefs that were filed. We
23 hope that when you hear all this, your Honor is going to
24 consider -- consider a significant drop in what the
25 guidelines say.

1 Now, the guidelines say on the bottom I think 70 to
2 84 months, or whatever. But the point of the matter is I
3 think the recommendations of the probation person in this
4 case were initially 60 months when they were higher, and I
5 believe they are at this point 48 months. And I would think
6 that you might -- your Honor will consider even lowering it
7 lower than that.

8 And I am -- I was tasked with arguing -- when I was
9 told what I was supposed to say with arguing a question of
10 the guidelines. That doesn't matter anymore. The nature of
11 the offense is set out in the case. The fact of the matter
12 is, it's a man who never did a thing wrong in his whole life,
13 who basically got put into the position where he just lost
14 control. And as a result of losing control, he committed a
15 crime here. The crime here that's charged specifically talks
16 to an attempt to bring drugs from one place to another. It
17 never was consummated, but that's what we're charged with.
18 There is going to be, I guess, statements by the government
19 relative to his prior relationship with the people in this
20 case. We recognize that. We understand that we don't -- we
21 don't give you excuses about it, but I think with a man of
22 his age and his situation, with regard to his wife, with
23 regard to his child, that your Honor hopefully will consider
24 those facts in order to go below the recommendation of the
25 probation person.

1 In light of that, I'm going to have Mr. Steinback
2 and then Ms. Gurland give to your Honor their summaries and
3 their position relative to the case.

4 THE COURT: Thank you.

5 MR. STEINBACK: Your Honor, I'm grateful for the
6 opportunity to address the court. The first issue that I'd
7 like to address is in connection with 3553(a)(6) concerning
8 the need to avoid unwarranted sentencing disparities. And
9 while we do not have multiple defendants in this case, we
10 have a related case referenced on Page 2 of the pre-sentence
11 report with respect to an individual by the name of Aurelio.
12 His case is pending before Judge Tharp as a plea of guilty
13 that has been entered. No sentencing has been yet imposed.
14 I'm familiar with the sentencing provisions and
15 recommendations contained in that plea agreement. And I
16 would like to address both that, as well as the government's
17 general comments with respect to the need to avoid
18 unwarranted disparity as they argue it in Pages 4 through 6
19 of the memo.

20 Your Honor, in the government's discussion, they
21 have cited the Supreme Court decision in *Gall*, G-a-l-l, for
22 the proposition that, while the guidelines are merely
23 advisory, they still remain the starting point and initial
24 benchmark. And we certainly have no dispute with that. It
25 has become the understood framework for all sentencings in

1 the federal system, and certainly in this circuit. The fact,
2 however, is that *Gall* goes a great deal farther than that in
3 saying that, while they are the initial benchmark, they are
4 by no means presumed to be reasonable, nor may a court
5 presume them to be reasonable. *Gall* specifically said that,
6 as your Honor is well aware, each court must make an
7 individualized assessment. Each court must, what it was
8 characterized in *Gall*, undertake the uniform and constant
9 federal judicial tradition for sentencing judges to consider
10 every convicted person as an individual and every case as a
11 unique study in the human failings that result in the
12 commission of any given offense. The District Court
13 sentencing in *Gall* is one of the premiere illustrations of
14 the application of these various principles. And the
15 resulting sentence imposed after that sentencing hearing
16 reflects that individualized assessment. *Gall* was an
17 individual who participated in an ongoing drug conspiracy.
18 The drug conspiracy that was being distributed was ecstasy.
19 *Gall* had originally been a long-time user of -- well,
20 continual user of drugs: Ecstasy, cocaine, marijuana. And
21 his responsibility in the conspiracy was to pick up
22 quantities of ecstasy from one of the suppliers and
23 distribute them to other co-conspirators, who in turn sold
24 them to consumers. *Gall* was involved in this conspiracy for
25 about seven months. And he was held accountable under the

1 guidelines solely for the amount of ecstasy he personally
2 picked up from one place and distributed to another, which
3 was found to be at least 2500 grams. Gall had only a minor
4 record. He had a prior possession of marijuana, maybe a
5 speeding ticket, but nothing significant. And his resulting
6 guideline range was 30 to 37 months.

7 In our case, your Honor, we have a 62, I think soon
8 and at the end of August to be 63-year-old, non-violent first
9 offender who was neither a source for drugs, nor had he been
10 a distributor of them. Now, I make great care to derive the
11 facts that I reference here from documents that were received
12 from the government, arguments made by the government, or the
13 plea agreement itself, in which there are stipulated facts.
14 Also in connection with the safety valve proffer, which I was
15 party to by way of telephone. So those are the sources of my
16 facts.

17 The connection to drugs that Eddie spoke about
18 briefly, and I have no doubt will be discussed in much more
19 detail by Patrick, arose through individuals, clients, who
20 hired Bob as a pilot to fly them from one point to another.
21 He generally makes his living doing that, and he does so for
22 a fee. In these cases, the people who were involved in drugs
23 came to be known to him as people being involved in drugs,
24 and he had an arrangement with them, as I understand it, and
25 I'm taking this from the government's recitation of facts and

1 stipulations, that some of the people for whom he flew one
2 place to another were transporting large sums of money, which
3 he -- which he, Bob, knew to constitute drug proceeds. And
4 in those cases, he would hire -- he would charge a flat fee,
5 and there would be some percentage, apparently, six or seven
6 percent, of the amount of money that was transported as his
7 fee. The government says, in a nutshell, Mr. Allegra was a
8 pilot, and this is my paraphrasing from their brief, who
9 helped individuals transport large sums of money and did so
10 on the basis of the amounts charged. In this way, the
11 government makes clear Mr. Allegra assisted others in their
12 narcotics trafficking activities.

13 Now, the only instance that I'm aware of from
14 anything that's been provided in which drugs themselves were
15 ever to be contemplated for transportation by Bob Allegra was
16 the instance that is charged here and gives rise to the
17 charge of possessing with intent to distribute. And as I
18 understand it, the source for those drugs was not Bob Allegra
19 or someone Bob independently arranged. And if and when those
20 drugs ever were transported to a location that they were
21 intended, they would be removed and distributed by people
22 that were not arranged by Bob Allegra. But Bob Allegra did,
23 and I give my own understanding of how and why that happened,
24 agree, in that particular instance, while dealing with people
25 that he did not know to be confidential informants or

1 | undercover agents, to distribute an amount of drugs which he
2 | believed he was led to believe existed, which never, in fact,
3 | existed. And when Eddie says it never happened it's because
4 | there were not really any drugs. Mr. Allegra was confronted
5 | at the time that he was going to make that flight with, I
6 | believe, heavy bags filled with what he perceived to be
7 | drugs, which, in fact, were filled with just waste of some
8 | sort.

9 | In other words, unlike Brian Gall, Bob Allegra had,
10 | and I repeat this because I think it is an important
11 | distinction, no independent source or sources for drugs. No
12 | customers for drugs. And he, himself, was not a drug user.
13 | Now, when Brian Gall left the conspiracy that he was involved
14 | in, he went back to school. The rest of the conspiracy
15 | carried on and the co-conspirators carried on, and it was
16 | several years later that Gall was charged and then later
17 | sentenced for his involvement with the ecstasy conspiracy.
18 | And in ensuing years, he was found to have led a law-abiding
19 | life. He ceased his illegal use of drugs, went on to gainful
20 | employment and start his own business and generally
21 | demonstrated some significant rehabilitation.

22 | The Supreme Court in Gall noted, just like in this
23 | situation, that Gall, like Bob, was not an organizer, leader
24 | or manager; that his offense not involve the use of weapons,
25 | nor did it contemplate the use of any violence or the threat

1 and use of any violence. And, like *Ga11*, Bob and Carolyn
2 will address this, I'm not going to repeat those things, has
3 been an individual who worked hard his whole life and who had
4 founded businesses that were not predicated on drug monies
5 but predicated on hard, honest work. Both *Ga11* and Bob
6 Allegra have an extraordinary work ethic. And I think the
7 letters that -- and other comments that Carolyn are going to
8 make will address that.

9 The last similarity between Brian *Ga11* and Bob
10 Allegra I wish to raise is the fact that each of them had
11 conversations with the government about their own misconduct,
12 fully acknowledging what they had done. But in the words of
13 the Supreme Court in *Ga11*'s case, his evidence was not useful
14 because he provided no new information to the agents.

15 In our pre-sentence report, in Bob's case, in
16 Paragraph 13, Bob participated in a safety valve interview,
17 at which time he admitted his conduct in its entirety with
18 respect to the charged offense, as well as the related
19 matters. I have a copy of the report of that particular
20 interview. It is -- it comports with everything I understand
21 that the government alleges, whether specifically in
22 connection with the days involved in this particular
23 purported delivery, or any of the other background
24 information he acknowledged and admitted to it. But as noted
25 by the probation officer, and also I believe one of the case

1 agents, while Bob admitted his conduct in the instant
2 offense, he did not provide any other significant information
3 useful to this investigation. He and Gall were in the same
4 situation. The probation officer further notes that Bob was
5 cooperative with her during the pre-sentence interview.

6 So there you have the situation between Gall cited
7 by the government and also by us in our brief. And those
8 specific facts which are obviously cited by me because I
9 believe they have a great deal to do --

10 THE COURT: Wait a minute. I thought you told me I
11 was going to disregard that brief and you were withdrawing
12 it.

13 MR. STEINBACK: No, not that brief, the previous
14 brief.

15 THE COURT: Okay.

16 MR. STEINBACK: The fact is that we are talking
17 about fairly similar situations. Gall had an argument going
18 for him that he was a young fellow when he got involved in
19 this. Bob, as I say, going to be 63. And there are
20 arguments about the indiscretions of younger people, and
21 there are many arguments that concern the lack of likelihood
22 of recidivism the older one gets. The likelihood that a
23 63-year-old man who has gone through what Bob has gone
24 through will offend again, while we may have endless
25 disagreements about that, but it's as close to nil as anybody

1 could predict.

2 THE COURT: Except in this case his crimes took
3 place when he was 60.

4 MR. STEINBACK: His -- there has been about two
5 years and four months since the last -- since he was
6 confronted, and there has been nothing whatsoever thereafter
7 that remotely relates to drugs or anything like that.

8 So in addition to decades before he ever met these
9 fellows who were in the drug business and the
10 two-and-a-half -- not quite two-and-a-half -- years since he
11 was confronted about his misconduct here, he has a Criminal
12 History I for a very good reason. That's where he properly
13 and appropriately belongs.

14 He has a ticket, which is the subject of something
15 that was before your Honor and before I was involved in this
16 case. He has nothing that would suggest that he ever again
17 is going to do anything other than keep his nose to the
18 grindstone and continue to work hard.

19 I think it is important at this point to make clear
20 that because somebody has amassed what others would regard as
21 wealth -- a very substantial house, expensive automobiles and
22 a sizable income -- does not mean that they derived it
23 through illegal means. He bought his businesses through
24 honest, hard work. I, since I have known him, have had to
25 reschedule probably a half dozen meetings because last-minute

1 calls came in where he needed to drive or fly somebody from
2 one place to another, and he just flat out needed the money.
3 Pre-sentence report in the case reveals an extraordinarily
4 handsome monthly cash flow. You look at this year's income,
5 a combination of word getting around about his situation in
6 the case before your Honor, and other major clients unrelated
7 to these fellows, confidential informants, getting older, not
8 needing his services, just in the natural attrition of
9 certain significant clients, his -- his base business has
10 gone from something that would be the envy of almost all of
11 us to something that is more often in the negative. I don't
12 have the specifics on that, but I saw his year-to-date
13 numbers, and the reversal in his business form is
14 staggeringly negative.

15 And I just think that because he has worked hard
16 and he has earned significant sums of money and he has
17 invested as wisely as he knows, he built up businesses,
18 should not be a factor held against him any more than
19 someone's poverty should be an excuse for something. We have
20 an issue that we need to deal with with respect to greed and
21 the allegation that this was all purely done for the sake of
22 greed. I want to address that a little bit later. But if
23 you look at the objectives, you say, all right, he has got
24 this wonderful home that maybe would have a million dollars
25 in equity, and he has got these monies in the bank, although

1 most of those cash amounts have been depleted. But,
2 nonetheless, he has good businesses. He had a very expensive
3 car. I should say to your Honor that that vehicle, a
4 Bentley, I believe, is subject to and will be forfeited.

5 THE COURT: He has a few Mercedes, too, I see.

6 MR. STEINBACK: All of which were -- no one
7 suggests were obtained any -- by any other means but through
8 honest, hard work and legitimate monies.

9 THE COURT: Okay. So you can address the greed
10 issue.

11 MR. Steinback: I'm sorry?

12 THE COURT: So you'll address the greed issue,
13 then, since he had all this money?

14 MR. Steinback: Yes, I will. What I wish to say,
15 and I think it important to emphasize, there is no -- there
16 is no lack of drive, effort, or is there any sense of
17 entitlement that Bob Allegra has ever indicated to me. I
18 know that Eddie Genson has known him socially and has the
19 same impression I do. If the phone rings and you have the
20 opportunity to fly somebody from here or there, you take it.
21 You don't know when it's going to ring again. And that's
22 life and that's business. And those are the obligations he
23 has. And there are other things that will weigh into that.
24 But he is a -- I've seen it. I've been privy to it. I guess
25 you could say I've been part of it in the sense that I've had

1 to reschedule with him because Thursday comes around, we're
2 supposed to meet Friday, he got a call last minute, he is
3 going to take somebody from Newark to Newark and then some
4 place else in Oklahoma, and he is going to be gone the
5 weekend. And that's who he is and how he is. And it's an
6 apology, but, I've got to go.

7 Now, that's not the behavior of an entitled
8 individual who sits back and says, they come to me, and I
9 charge them whatever I want, and I've got all this -- this
10 money that's sitting around. I don't need to work anymore.
11 Sixty-three, he works as hard as anybody I know.

12 Now, the prosecution talks again, and I want to go
13 back to unwarranted disparities because the -- they talk
14 about it in terms of the fact that the guidelines provide, in
15 the prosecution's view, the best way to avoid sentencing
16 disparity. They cite *Booker* in support of that view. We
17 also cite *Booker* in the original brief, not the one we've
18 withdrawn. And *Booker*, of course, as everyone knows,
19 practices in this area, is also the very case on which the
20 Supreme Court determined that mandatory application of the
21 guidelines is unconstitutional. And the unwarranted
22 disparity doctrine, which the government speaks of, really
23 begins to look a little bit like contending for a rule that
24 would require extraordinary circumstances to justify a
25 downward departure. And that's something that was explicitly

1 rejected in *Gall*. *Gall* said that, to do so, would be to come
2 too close to creating an impermissible presumption of
3 unreasonableness for sentences outside the guideline range.

4 The prosecution's second reason for urging your
5 Honor to consider the guidelines heavily is because the
6 guidelines are a byproduct of empirical study. And I know
7 that to be the case because for two years I sat on a board
8 that was one of the many advisory boards to the guidelines
9 and the sentencing commission. I testified before them on a
10 number of occasions. The rationale that somehow because
11 there is some empirical evidence with respect to most of the
12 guidelines, not all, including the drug guidelines, by the
13 way, pointed out in *Gall*, but the fact that, for the most
14 part, there is empirical evidence that helps to come up with
15 a rationale is very much like a mathematical formula, which,
16 in fact, the guidelines are. The application of a two-axis
17 grid on which an effort is made to try to figure out in
18 relatively tight ranges where an individual should be
19 sentenced. That formula, likewise, in *Gall* was rejected
20 because it says that it relies on a percentage of a departure
21 as the standard for determining the strength of the
22 justification required for a specific sentence. And that is
23 something that courts should not do.

24 So while the empirical evidence and objectivity is
25 one factor, it is by no means the factor. 3553(a) and its

1 various subsections make it perfectly clear that the standard
2 by which one is sentenced is to be sentenced to a sentence
3 that is sufficient but not greater than necessary, which is
4 borrowing and putting into words the rule of lenity, rule of
5 parsimony. When we are talking about liberty, we are talking
6 about erring on the side of caution at all times. And if
7 there was ever a doubt about the lack of empirical evidence,
8 *Gall* itself says, notably, not all the guidelines are tied to
9 empirical evidence. For example, the sentencing commission
10 departed from the empirical approach when setting the
11 guideline range for drug offenses, the very offense that
12 we're dealing with in this particular case.

13 And so that empirical study, to the extent it has
14 any sway whatsoever, certainly doesn't have any in drug
15 offenses, where they deferred instead to Congress, doing the
16 best they could to tie their guidelines to the mandatory
17 minimums and to work as hard as they could to keep within
18 those. Not to say, and I know this firsthand, that the
19 commission or all of the commissioners are necessarily happy
20 about that effort. Many of them are not and have been
21 outspoken against it. But, nonetheless, it remains the
22 standard by which drug tables are enacted, not empirical
23 data.

24 Now, *Gall* ultimately received probation. I
25 obviously spent the time I did because it was important to

1 find a case we both cite on which we both can find things
2 that work pro and against us, but ultimately in which an
3 individual who knowingly involved himself in the actual
4 distribution on an ongoing basis of a very substantial amount
5 of ecstasy and distributed it to others who then further
6 distributed it to the end users, that individual was deemed
7 to be worthy of and, in fact, received probation. Now, the
8 appellate court disagreed, but the Supreme Court ultimately
9 agreed with the District judge and affirmed the District
10 judge's determination that probation was a reasonable
11 determination in that case.

12 Now, every case stands on its own bottom. We could
13 debate all day long the nuances between precision of what
14 happened in *Gall* and what happened here with Bob. And I'm
15 not trying to advocate that there is a one-to-one parallel.
16 I would be wrongheaded to try to do so. But what I am trying
17 to say with respect to *Gall* is that it happens. It happens
18 in drug cases, that probation-type of a sentence is imposed
19 and deemed appropriate by the Supreme Court of the United
20 States. And no one has questioned the authenticity, validity
21 or strength of the determinations that Supreme Court made in
22 *Gall*. If anything, they had been furthered and advanced,
23 particularly along the lines of individual sentencing.

24 Now, one of the most noteworthy aspects in the
25 prosecution's discussion with respect to the need to avoid

1 unwarranted disparity is something that wasn't mentioned in
2 their analysis or argument, but something that was discussed
3 at length in *Gall*. And that is this: The prosecutor in
4 *Gall*, the decision cites the transcripts, at least parts of
5 them, where prosecutor is arguing, do not give defendant,
6 *Gall*, probation, your Honor. A co-defendant, who is
7 similarly situated to him in terms of culpability, received a
8 36-month sentence. And in light of that alone, probation is
9 not an appropriate consideration. And there was more to his
10 argument, but that was the essence of it.

11 And the sentencing Judge -- the co-defendant in
12 that case name was Jodar (phonetic). The sentencing judge
13 said, well, you might be roughly culpable, but there are
14 other considerations that are involved, one of which is that
15 *Gall*, the young man, and *Gall* left the conspiracy to go back
16 to school and then went on to lead a law-abiding life. And
17 those are things which that judge, and ultimately the Supreme
18 Court, embraced and said that, by itself, warrants upholding
19 the reasonableness of the District court's decision.
20 Reversing the Appellate Court's determination, which was
21 effectively attempting to substitute its judgment for the
22 sentencing judge to say, no, the sentencing judge is well
23 within its discretion to make that determination. And it
24 didn't have to do so on a mathematical,
25 tied-directly-to-the-guideline basis. It did so on the basis

1 of considering the facts and circumstances of that
2 individual's life. The same thing that Carolyn will point
3 out in more detail to your Honor.

4 The other thing that I think is worthwhile to
5 discuss is that the -- when we look at what the government is
6 in terms of the agreement, it has not been -- there is no
7 sentencing on it, the plea agreement was entered, and I
8 suppose it has been delayed by agreement so that whatever
9 cooperation Aurelio agreed to enter into would continue and
10 he would be sentenced at the conclusion of whenever that
11 ended. I don't know for certain, but having been on the
12 other side of things, I know that that's generally a policy
13 for people who cooperate. And Aurelio did cooperate.

14 But I ask your Honor to please consider this: That
15 the facts in Aurelio's plea agreement demonstrated that,
16 between approximately 2003 and 2010, Aurelio was involved in
17 continual drug dealings. He didn't just deal cocaine, he
18 also dealt marijuana, and there was one other substance. In
19 fact, there was a fairly complicated determination resorting
20 to the rules of 3(d) in which you make everything equivalent
21 to marijuana, and ultimately the equivalency of marijuana was
22 something like 11,000 plus kilos, or an overall guideline
23 base offense of 36. The guy was also charged additionally
24 with another involvement, I'm not sure because the people are
25 not identified by name, but by either letter or number to an

1 additional conspiracy involving additional drugs. And the
2 sum total of the drugs that this individual dealt with
3 throughout his career as a long time, longstanding,
4 substantial drug peddler, importer, dealer with significant
5 sources, caught up in a hard-working investigation into
6 international importations involving, apparently, a Mexican
7 cartel, was that he got arrested, and he did the smart thing
8 with himself, and he determined to cooperate. And I don't
9 know the length, breadth or scope of his cooperation, but I
10 know that entailed Bob Allegra. And he told Bob -- the
11 government the things that he and Bob had done, which were
12 essentially that Bob flew money which Bob understood was drug
13 money, and that he charged a particular fee for that. And it
14 was -- the reason that I bring this up in this fashion
15 because I'm having a hard time getting my arms around the
16 fact that a career drug trafficker, importer, who apparently
17 dealt with some of the higher levels, in huge,
18 mass-accumulated quantities, who, according to the
19 government's plea agreement stipulations controlled
20 transportation, whether it be by plane or by truck,
21 controlled the storing a particular business that the drugs
22 were from time to time stored, and did a variety of other
23 coordinations, although not held accountable as a manager,
24 nonetheless held accountable as someone who is deeply
25 involved. And for this individual, the recommendation,

1 according to the plea agreement, provided he continues to
2 cooperate, and he would be absolutely out of his mind not to,
3 that he gets 50 percent off the low end of his guideline
4 range, at least in part for cooperating against the pilot
5 that flew some of his money. We know he didn't fly his money
6 from 2003 to 2010, or whenever it was. He didn't,
7 apparently, have much if anything to do or even know of one
8 another then.

9 THE COURT: How did they meet?

10 MR. STEINBACK: I'm sorry?

11 THE COURT: How did they meet?

12 MR. STEINBACK: I think they met -- and I'm not
13 absolutely certain about this. I think they met because Bob
14 is a pilot and Bob meets lots of people. And at some point
15 you come to realize that, hey, these guys are not on the up
16 and up, and then you step over that line, say, I'm going to
17 continue to fly them any way, and I'm going to make some
18 extra money on it.

19 MR. GENSON: Your Honor?

20 MR. STEINBACK: And I may be --

21 MR. GENSON: He met him at an auto dealership that
22 he used to do car sales for.

23 MR. STEINBACK: Okay. I stand corrected.

24 MR. GENSON: The auto dealership introduced that
25 man to him, the owner of the auto dealership.

1 MR. STEINBACK: So the point I'm trying to make is
2 this with respect to this, your Honor, the government thinks
3 that a 67-month sentence, 67-and-a-half month sentence, is
4 appropriate for a career drug dealer who they identify, and
5 the defendant there, Aurelio, stipulates, is, in fact,
6 someone who was involved in a seven or eight-year conspiracy
7 and then involved in another two-or-three-year conspiracy and
8 involved in thousands of kilos of different quantities of
9 drugs, buying them from sources, distributing them to other
10 sources, coordinating their importation and their
11 transportation and their storage, and that that's a fair
12 sentence for him. And we've got a guideline sentence of 70
13 to 87 months. And the government is talking in terms of at
14 least your Honor considering a guideline sentence. To me,
15 the staggering aspect of the need to avoid unwarranted
16 disparity is the one that was ultimately pointed out but
17 missed in the government's discussion, which is the avoidance
18 of unwarranted disparity by imposing similar sentences on
19 dissimilarly situated individuals. The belief that because
20 he has got 67 months coming to him that Bob should get
21 something like that. That's apples to oranges, no matter how
22 much I try to give the government credit for the strongest
23 arguments they can make about Bob's wrongdoing. He was not a
24 dope source. He was not a dope distributor. That's not what
25 he did, not what they even allege him to do. They allege him

1 to have assisted drug dealers by knowingly flying their money
2 around. Now, that is not something I expect your Honor to
3 give him any sympathy or credit for. It is why he pled
4 guilty, and he acknowledged it, and why he proffered to the
5 government in his safety valve proffer and acknowledged again
6 his wrongdoing and did so down-the line. And there is not
7 going to be dispute with respect to the facts. They are what
8 they are. And my respect for Patrick is such that, if I have
9 minimized in the slightest, I'm sure he will point it out. I
10 was not involved in this case from the beginning, but I have
11 studied the transcripts, and I have studied the information
12 such as I've been able to master it.

13 So the need to avoid unwarranted disparity thrusts
14 both ways. It is both the need to avoid unwarranted
15 disparity where someone gets a hefty sentence and someone
16 gets a very light sentence, and the need to avoid unwarranted
17 disparity where people get similar sentences for very
18 different conduct.

19 Now, the other thing that I'd like to discuss, and
20 I think is important, it has to do, your Honor, with an
21 argument made by the government, which is that there are, in
22 the government's words, I'm quoting here from their brief at
23 Page 7, their sentencing memorandum, "There are no
24 explanations or mitigating factors for defendant's Bob's
25 behavior that would allow this court to sentence him to a

1 below guideline sentence."

2 I read that many times. And I kept, wound up -- I
3 kept scratching my head. There is no mitigating
4 circumstances? He is not a non-violent, 63-year-old first
5 offender? He is not someone who has worked his whole life
6 from nothing to something based on honest, hard-working
7 ethic? He is not somebody who has done the hundreds of
8 decent and kind things that he has done that reflect on his
9 character? The thing that is missing from that particular
10 conclusion is that we do not just sentence crimes, we
11 sentence the people who commit them. And that has been
12 translated directly into the statute, 3553(a), to say courts
13 shall consider the nature and circumstances of the offense
14 and the history and characteristics of the offender, and one
15 is not promoted above the other. They stand side-by-side in
16 the statute. And the strength of the history and
17 circumstances of an individual in simplest terms can trump
18 the nature and circumstances of the offense. And the case
19 that I want to just briefly reference in relationship to that
20 is case of *United States vs. Warner*, Ty Warner. Two years
21 ago --

22 THE COURT: I know about that case.

23 MR. STEINBACK: Your Honor knows that case. And in
24 that case the -- and the Seventh Circuit observed this, the
25 sole basis for the departure from 46 to 57 months was the

1 nature of the individual's charitable good works. There was
2 no mitigation in the sense the government references in that
3 case either. The defendant was a multibillionaire who got
4 caught using a shell corporation to siphon off several
5 millions of dollars, and without penalties or interest, wound
6 up owing \$5.6 million. And, by the way, I've read that
7 decision a number of times. I can't find a single
8 explanation as to why that happened. It's not in there. May
9 well have existed and been understood in the case, but it
10 didn't seem to drive the issue. The issue was this
11 individual, for a good portion of his life, had done
12 charitable good works, many of them anonymously, not seeking
13 attention, with the good fortune that he made in his business
14 life and that that made him, in the court's mind, unique in
15 that respect. And it was solely by virtue of his generosity
16 that the panel opinion said, we are going to affirm the
17 sentence of probation that was imposed on that individual and
18 did not get sidetracked by saying, what's a billionaire
19 doing -- using a Swiss bank account to cheat on his taxes?
20 And I make that point not because your Honor is unfamiliar
21 but because of the startling bright, neon light shining on
22 the issue of history and characteristics and the strength of
23 the mitigation that can emanate therefrom, notwithstanding a
24 serious offense and one that the Seventh Circuit found to be
25 not unreasonable.

1 So now I think it important to tie in my discussion
2 concerning relative perceptions of wealth and what happened.
3 And this is my own take on it. I've talked to Bob Allegra.
4 I've talked to Lisa Allegra. I tried to understand what made
5 him cross that line, sink below the Plimso11 line and agree
6 to this proposal by Aurelio to transport these drugs. What
7 was it?

? THE COURT: What about the money before? I mean,
8 it's not like this was the one and only time. ?

10 MR. STEINBACK: No, and that's -- to the extent
11 that there was an implication of that and other things in
12 that brief that we withdrew, that's out. That's not --
13 that's not what we contend here. What we're contending here
14 is that, yes, he did bad things when he made that decision.
15 Sort of say, look, that's your business. If I can make some
16 extra money on it, I'm going to. That was wrong. And it's
17 serious. But it's not drug trafficking. Without the
18 individuals who are flying with him, he doesn't know how to
19 set up sources or where to distribute these drugs. And the
20 government doesn't allege that he does. And there is a
21 quantum leap in the levels of misconduct between assisting
22 others in doing something that's very wrong and in the
23 process doing something very wrong yourself and being the
24 force behind it generating that wrongdoing and that
25 opportunity. He wasn't the generator of that opportunity.

1 He took advantage of it. He was wrong to do so. That's his
2 crime.

3 He did it on a number of occasions. I don't know
4 exactly how many. The government says five or six, I think.
5 Maybe there is more, maybe there is an approximation. So I'm
6 not saying this is a one-off. I'm not saying that at all.
7 I'm not saying he shouldn't face consequences for what he
8 determined to do. And I'm certainly not saying that he
9 hasn't already.

10 Now, you say about a wealthy man. Well, you lose a
11 Bentley, buy another one. What's the big deal? Well, that
12 Bentley, for example, because it's a part of this case, is to
13 be forfeited, it's worthy of some discussion. That Bentley
14 was pretty much leveraged to the hilt. Didn't have much
15 equity in it, the subject of seizure two years and
16 four months ago. And Bob has taken the responsibility to
17 maintain the asset every month for the last 28 months, some
18 astronomical sum per month, knowing that the car is not his.
19 Knowing the responsibility is his to maintain it until
20 ultimately it's forfeited. Knowing that he doesn't have the
21 ability to drive it or have it, you've got to pay for it.
22 And a person who works hard can drive whatever they want.
23 They have that right. Personally, I think all cars are just
24 hunks of tin to get you from A to B. But I know a whole lot
25 of friends who feel very differently about that.

1 THE COURT: Probably most of them aren't driving
2 Bentleys.

3 MR. STEINBACK: No, but most of them hadn't worked
4 as hard or hadn't been as successful in business as Bob
5 Allegra. And he bought this Bentley because, in part, many
6 of the high-line people who he legitimately flew from Points
7 A to B were big deals, relatively speaking. Socialites and
8 major athletes and people who have some name recognition.
9 And you impress those people by showing up in such things.
10 And it was worthwhile for him to pay that to purvey that
11 image, going first class with a first class guy. That was
12 the whole idea behind it. It wasn't: Everybody is going to
13 see how wealthy I am by driving this thing. Those people who
14 were important to maintain his business were going to see
15 that. He has lost that, and he has lost a whole lot more
16 besides it. He has lost an immeasurable amount of business.
17 And I'm not saying it's not self-inflicted, but it doesn't
18 make the loss sting any less.

19 And now I need your Honor to get to the point with
20 respect to what it is that occurred in Bob's life that
21 ultimately I think, in my view, led to this decision which
22 brought him here to your Honor, which was the agreement,
23 ultimately, to transport what he was led to believe was a
24 large quantity of drugs.

25 There are statements that I've pulled out of

1 letters that I've asked Bob to put together for me, or
2 statements that Bob has shared with me, or that Lisa Allegra
3 had shared with me. And they relate to something that
4 involves money but isn't entirely about how much money one
5 can make, but whether one's life is being turned around by
6 virtue of what it is that they've done. Now, I ought to be
7 specific.

8 Mrs. Allegra, in her own right, had been an
9 extraordinarily successful woman. A trader who made a lot of
10 money and had done well. They met late in life. Bob married
11 for the first time at the age of, I think, 52 and waited
12 until he found what he perceived to be the perfect woman in
13 every way. Companion, wife, hopefully mother of a child one
14 day, however late in life. And a series of bad luck, bad
15 timing, bad health, combined in a way that uniquely cost Lisa
16 Allegra her bearings in life, her equilibrium. And this is a
17 quote from Robert. "I was watching my wife have a nervous
18 breakdown. She lost her job. She didn't know how or why or
19 where she was going to be able to take care of her son. She
20 lost her identity. She had always been independent and
21 capable, and suddenly it was just lost."

22 Another comment: I would rather be dead than watch
23 my wife crying and shaking like she was. I have no idea why
24 I ultimately agreed to fly the drugs. I knew that --
25 summarizing -- was a bad guy and this was wrong thing to do.

1 But maybe I could say that I had a sale of an airplane.
2 Because he brokered airplanes, and he made money doing so
3 legitimately. Maybe I could come back from this illegal deal
4 and say I had a legal deal and look, honey, we have a
5 success, just made 180,000 on this sale and things are
6 better, they really are. We're going to be better. That
7 bath we took down in Florida with that property and all that
8 money we lost in 2008, things are going to turn around.
9 Business is going to pick up for you. You're going to make
10 it in the real estate area. Your health is going to improve.
11 Her diabetes is the most severe kind, and it's almost
12 uncontrollable. No matter how hard doctors work at trying to
13 find a balance in her pancreas, they're not successful in
14 being able to do so, to the point where she is susceptible of
15 passing out just about anywhere. And that is a frightening
16 reality to live with. And it has only gotten worse over
17 time. You wouldn't know it by looking at her, but it is a
18 cruel, harsh reality. Health is the most precious thing we
19 have. And I'm here to tell you, when it starts to leave, it
20 hurts, and it scares you. And all sorts of other things can
21 happen: Depression, anxiety. Just all-and-all fear.

22 And Lisa Allegra was scared all the time. She was
23 angry all the time. Angry at herself. Misplaced anger
24 directed at her husband. If he was out there succeeding,
25 that meant she was failing. Couldn't see it in any other