

Remarks by Judge Theodore D. Chuang at sentencing of Antonin DeHays for theft of records from the National Archives:

*This was an egregious, morally repugnant crime. The Defendant stole from the National Archives, the repository of our nation's history. He stole irreplaceable artifacts in the form of dog tags and other personal items of members of the armed forces of the United States who gave their lives during World War II, to liberate the very nation from which the Defendant hales. The items had been recovered by German authorities at aircraft crash sites and other locations, and were later recovered by Allied authorities. These dog tags included those of a renowned member of the Tuskegee Airmen, one of the most consequential units in American military history, and other equally heroic but less well known service members. They included the dog tags of a young American soldier who carried his deceased father's World War I dog tags with him. They included personal letters, even a Bible of one of these service members.*

*These items were taken not merely for the personal viewing or possession of the Defendant, a historian, but they were sold over the Internet --- the auctioning of our history, and the personal effects of our war dead to the highest bidder. The description in one of the submitted letters of the Defendant as a "grave robber" is not far from the truth. I think it is accurate to say that all Americans, indeed, all decent citizens of the world, would be angered and disgusted by this crime. I am angry and disgusted by this crime. The question we all ask of the Defendant is the one asked by attorney Joseph Welch to Senator Joseph McCarthy during the McCarthy hearings: "Have you no sense of decency, sir?"*

*I note that the Sentencing Guidelines contemplate additional enhancements in analogous contexts. USSG § 2B1.1(b)(5) gives a 2-level enhancement when the theft involves trafficking in property from a national cemetery or veterans' memorial. USSG § 2B1.5 imposes a higher offense level for theft of a cultural heritage resource which includes items from a national monument or memorial, a National Historic Landmark, or a museum, and includes additional enhancements if the item is a funerary object, or cultural property, and if the sale was for financial gain, or repeated conduct. The National Archives is not listed within that definition -- but it should be. There is no reason that theft from the Archives should not be considered equally reprehensible as theft from a National Memorial or a museum.*

*A serious sentence is absolutely necessary to provide general deterrence, as those who would trade in our nation's history, and unfortunately there are likely others who would be tempted, given that there is an online market for dog tags and similar items. We know that to keep the Archives accessible for legitimate research, there will be limits to how much security measures can do to prevent theft. So the message must be absolutely clear that that stealing from the Archives will be dealt with swiftly and severely.*

*But before imposing an upward variance, I must also consider the history and characteristics of the Defendant. On the one hand, Mr. DeHays's background as a historian is an aggravating*

*factor. More than the average person, he should have known better. He knows that the National Archives are an irreplaceable repository of our history, that must be available not only to today's scholars, but to our children who will someday seek to learn about their nation's history. He knows that if others treated historical material as he did, he would have not have uncovered information he used in his own research. Particularly with his knowledge of World War II and the sacrifices made by both military and civilians in the European Theater, he cannot claim to be ignorant of how damaging this crime is.*

*At the same time, there are mitigating factors. Mr. DeHays was at a difficult time in his life and may have been suffering from depression. Although the impact on a family does not make this case any different than most in this court, he has family, including a young son and a wife who teaches children in our community, who will be harmed, particularly if there are immigration consequences to this conviction. Most important to consider are two factors. First, I commend his immediate cooperation with authorities, which helped to recover most of the stolen items, allowing the National Archives to mitigate the harm of the offense. Second, I would note that as much harm as he did to our history from this crime, he has a commendable record of honoring enhancing our understanding of our history. As much as he has disrespected some of our war heroes through this crime, he has at other times gone to extraordinary lengths to ensure that they are remembered and honored. In particular, I note his efforts to take a World War II veteran, Norwood Thomas, and his son, and the daughter of another veteran, Maurice Hahn, on historically significant tours of Normandy; his arrangement to have Mr. Thomas awarded the French Legion of Merit, and his work to have a commemorative plaque placed in Octeville-l'Avenel, a small village in Normandy, to honor six American paratroopers who died there during the D-Day invasion. Those efforts to honor our war heroes, and to keep alive the extraordinary contributions they made to both the history of America and of France, must be considered.*

*Because of these efforts, it is clear that the Defendant has great respect for American history and history in general, such that rather than conducting this crime out of greed or malice, he engaged in this reprehensible crime because he lost his moral compass at a time of stress. I therefore will not impose an upward variance, but will impose a guidelines sentence that, for the reasons stated above, is what is necessary to meet the purposes of sentencing.*

*Mr. DeHays, you have committed a very serious offense. Your actions were an affront not only to every American who has ever served in uniform under the flag that stands behind me, but to every American child, including those who attend your wife's school, who has ever pledged allegiance to that flag in their classroom, because it is for them that the National Archives are preserved, so that they can be inspired by our high points and learn from our low points, so as to make this nation and this world a better place in the future. We must ensure that no one will commit the same kind of crime again. So the sentence I impose, as difficult as it will be for you and your family, is necessary to address this crime.*

*I have had the privilege to spend time in Normandy, and your home city of Rouen, over thirty years ago. I have walked the beaches and have visited the American Cemetery. It is a deeply moving place that has an impact that, I now understand, lasts a lifetime. It represents all that is good about America, and also about the special relationship between our two nations that goes back to the American Revolution. And I know from my time there that the people of Normandy are wonderful people. I do hope that, as one way that you can make amends for this offense, that you will continue to share your knowledge with American veterans and schoolchildren, and that you will someday be able to play a role in keeping the history of D-Day and Normandy alive, especially when the Greatest Generation passes into history, to inspire future generations and to help keep the friendship between our two nations as strong as it was 75 years ago.*