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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

THE HON. MICHAEL R. HOGAN, JUDGE PRESIDING

UNITED STATES OF AMERICA,	)	
	)	
Government,	)	
	)	
v.	)	No. 6:10-cr-60066-HO
	)	
STEVEN DWIGHT HAMMOND and DWIGHT	)	
LINCOLN HAMMOND, JR.,	)	
	)	
Defendants.	)	
_____	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EUGENE, OREGON

TUESDAY, OCTOBER 30, 2012

PAGES 1 - 34

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1                                   TRANSCRIPT OF PROCEEDINGS

2                                   TUESDAY, OCTOBER 30, 2012

3                   THE CLERK: Now is the time for 10-60066, United  
4 States of America versus Steven Dwight Hammond and Dwight  
5 Lincoln Hammond, Jr., time set for sentencing.

6                   THE COURT: Good morning, gentlemen.

7                   With regard to our schedule, first, I have read  
8 all the materials that have been submitted and -- including  
9 all of the letters. I just read the last one just now. And  
10 what -- there are quite a few issues that we can talk about  
11 today. I am going to take your input, your argument on  
12 those, and then I am going to take a break in this  
13 sentencing. I have a couple of civil motions to hear and a  
14 break so that I can organize some thoughts on paper. Much  
15 of my reading of this material has been on airplanes the  
16 last couple of days, so I want to make sure that I  
17 communicate as clearly as I can.

18                   So with that in mind, Mr. Papagni, do you have  
19 something more you wish to say that's not in your papers?

20                   MR. PAPAGNI: I suspect the last letter you read  
21 was the one from Steven Hammond's wife.

22                   THE COURT: It is.

23                   MR. PAPAGNI: That's the one I just read too. My  
24 comments are going to be kind of in the order of the issues  
25 so I don't have to spend much time with them.

1 I want the court to know that my cocounsel,  
2 Ms. Sgarlata, is not present today because she is very sick  
3 with the flu and she's home in bed. Her role, as the court  
4 knows, in this prosecution focused on the damages or loss.

5 THE COURT: Yes.

6 MR. PAPAGNI: The paralegal, Ms. Root, is also not  
7 present. She is stuck in Virginia because of Hurricane  
8 Sandy. I relied upon her quite heavily in this case because  
9 she was the only member of the original prosecution team who  
10 had been involved in this case from the beginning, and her  
11 input to me was pretty important.

12 So you are stuck with me today.

13 What I am going to try to do is go through the  
14 issues that were raised by the defense lawyers. I should  
15 comment that the defendants have been very ably represented  
16 by Mr. Blackman and Mr. Matasar. They certainly have raised  
17 every issue they thought appropriate, and they certainly  
18 have made me do my job, as I am supposed to.

19 In the past five days, they have raised some  
20 issues that I have to respond to. First, after speaking  
21 with Ms. Zusman in our office, our appellate chief, it's  
22 important to point out in this case the government did not  
23 waive its right to appeal as they contend. The Supreme  
24 Court in *United States v. Benchimol*, B-E-N-C-H-I-M-O-L, at  
25 471 U.S. 453, a 1985 case, which was cited in *United States*

1 v. *Anderson*, 921 F.2d 335, a First Circuit case, 1990, made  
2 it clear that the court cannot imply such a waiver in terms  
3 of the plea agreement.

4 In fact, the *Anderson* court held that the  
5 government could appeal an illegal sentence notwithstanding  
6 the fact that it did not expressly reserve its right in a  
7 written plea agreement.

8 Moreover, Judge, I have known, in the years I have  
9 been an AUSA, that I cannot waive the United States' appeal  
10 rights. That right to waive such rights is with the  
11 solicitor general, and that's established by law,  
12 28 CFR 0.163 and that was recognized in *U.S. v. Hare*,  
13 H-A-R-E, 269 F.3d 859 (7th Cir. 2001).

14 So that's all I have to comment on the  
15 government's waiver issue.

16 Second, the suppression costs. This court has  
17 spent a lot of time dealing with that issue as has pretrial.  
18 I think Mr. Davis should be complimented for the work he's  
19 done in trying to give the court an outline of what the  
20 sentencing guidelines are.

21 In the government's sentencing memo we have  
22 concurred with Mr. Davis's, I guess you'd call it original  
23 calculations. He has come up with some other ex post facto  
24 concerns that the defendants have raised, and I think those  
25 can be dealt with by the court.

1           Suffice it to say, the government is comfortable,  
2 based upon the testimony of Jeff Rose at trial and the  
3 figures he has provided, that what we put forth in our  
4 sentencing memo are accurate and reasonable under these  
5 circumstances.

6           Mr. Rose is available by phone to testify, but  
7 quite frankly, I'd hate to waste the time to do so. I think  
8 defense counsel has heard the testimony, and I think the  
9 court knows his thoughts on the matter.

10           The third issue is that the defendants have  
11 acknowledged that the jury verdicts were factually and  
12 legally sufficient, albeit for different reasons.

13           There can be no doubt in this case, and I think  
14 the parties and the court knows that some jurors traveled, I  
15 think it was up to 180 miles to attend each day of trial  
16 that lasted, I think eight, nine days. And there's no doubt  
17 they worked hard to return their verdicts, both the guilty  
18 ones and the not guilty ones. Indeed, they were hung on  
19 some. That fact weighs heavily in the government's mind as  
20 to what should be done today.

21           The government maintains, however, the testimony  
22 of the defendant's grandson and nephew, Dusty Hammond,  
23 coupled with the corroborating testimony and physical facts,  
24 coupled with the reasons that the defendants seem to rely  
25 upon in their sentencing memo on Page 5 all together

1 supported the jury's verdicts of guilty on Count 2 and  
2 likewise on Count 5 when there was testimony from a non-BLM  
3 employee Brett Dunten, coupled by Steven Hammond's admission  
4 as far as the fire was concerned. In short, the guilty  
5 verdicts here, Judge, relied, I'd have to say, almost  
6 entirely on non-BLM employees.

7 Mindful in Count 2, there was the testimony of  
8 some BLM employees. The court will recall, however, the  
9 government did not argue those facts in its closing argument  
10 of that testimony.

11 Fourth, the defendants have submitted numerous  
12 letters from community members attesting to their high  
13 character. I have read all the letters. I have no doubt  
14 whatsoever to doubt -- or no doubt of their sincerity of the  
15 citizens who wrote them. It is true, and it can't be  
16 contested, I have spent a lot of time in Burns, that the  
17 Hammonds both -- that you are to sentence both have done  
18 wonderful things for their community and those deeds are  
19 recognized in these letters. And his wife's letter has to  
20 be the most heartfelt, certainly, the one you just read.

21 But my obligation as a prosecutor is to point out  
22 not just one side of the equation. And that involves Dusty  
23 Hammond. This court has seen the photographs of Dusty  
24 Hammond's abuse at the hands of Steven Hammond. Those  
25 aren't addressed.

1           This court has also heard the testimony or at  
2 least was aware of how Dusty Hammond was involved and almost  
3 burned up in the fire in Count 2. Those facts aren't  
4 addressed in these letters.

5           The court is aware of the testimony of Gordon  
6 Choate, a hunting guide, who perhaps like the hunting guide  
7 that Steven Hammond interfered with in 1999, had just as  
8 much right to public land as any of the Hammonds did.

9           I have to balance that out in evaluating the  
10 Hammonds' conduct in this case. This isn't to distract  
11 their good deeds. They have done wonderful things. There's  
12 no doubt about it. But they have done things when they have  
13 caused problems for citizens using public lands, and they  
14 have endangered their own family member that has to be also  
15 weighed into the equation.

16           Mr. Steven Hammond has in fact, as the court  
17 knows, been convicted of two offenses, one for  
18 unsworn falsification. That was a jury verdict in Harney  
19 County. And he was also found guilty by a U.S. magistrate  
20 for interference with public lands in which the magistrate  
21 thought a probation sentence was appropriate. Somewhat  
22 unusual, as the court knows, having dealt with CVB cases.

23           But all of these issues now addressed here, Judge,  
24 and I am not even going to talk about the 3553(a) issue  
25 raised by the defendants, it's pretty clear that that



1 statute doesn't trump the mandatory minimum.

2 The most important issue for this court is what's  
3 the appropriate sentence here.

4 I have done this for a few years. Unfortunately,  
5 in this case, maybe some would say tragically, that this  
6 case has not been resolved before trial. I think the  
7 parties, the lawyers, I think, tried hard for that, but it  
8 seemed that both sides had their heels dug in. And that's  
9 unfortunate, and I think that's tragic.

10 Now the defendants have been found guilty of  
11 offenses that Congress has mandated a five-year prison term  
12 for. The defendants have asserted such punishment is  
13 unconstitutional under the Eighth Amendment cruel and  
14 unusual punishment clause. I have found no Supreme Court  
15 authority or even appellate court authority that says that a  
16 mandatory five-year sentence is a cruel and unusual  
17 sentence. I don't think that's a great -- good argument.

18 I have also already addressed the 3553 argument.

19 Perhaps the best argument, Judge, the defendants  
20 have in this case is the proportionality of what they did to  
21 what their sentence is. Perhaps that's the most troubling  
22 for the court. It is for the prosecutor who tried the case.

23 Nevertheless, as I told the defendants shortly  
24 after, I think it was midnight, in Pendleton and after you  
25 accepted their appellate waivers, I said, quote:

1           "I want to make sure the Hammonds understand  
2           that under the statute, the government is  
3           obligated to recommend a five-year mandatory  
4           minimum term of imprisonment. I think your lawyer  
5           has told you that, but I wanted the record to  
6           reflect that you gentlemen have been so warned  
7           what sentence is going to be -- that I am going to  
8           be asking for."

9           I felt obligated to tell them that night because  
10          that's what they were facing. The jury returned verdicts of  
11          guilty for offenses with those five-year mandatory minimum  
12          sentences.

13          That being said, I have done my job as I see it.  
14          I think it is lawful. I think it is also ethical what I  
15          have recommended to the court.

16          The proportionality issue is one, however, that I  
17          think our constitution gives to our courts. Congress has  
18          told you what they think the mandatory sentence should be.  
19          I have done my job as the prosecutor trying the case and  
20          presenting the evidence the best way I could, and now it's  
21          the judiciary's job to impose a sentence that it thinks  
22          just. We have made our recommendation of five years as the  
23          statute says.

24          Those are all the comments that I intend to make.

25          THE COURT: Thank you. For the defense.

1 MR. BLACKMAN: Your Honor, we have provided the  
2 court with an awful lot of information in writing, and with  
3 respect to Dwight Hammond, I don't really think there's any  
4 material disagreement, for example, about the guideline  
5 calculation. I think there's a point question in terms of  
6 whether there was any loss of more than a hundred dollars in  
7 connection with the 2001 fire. I think the court will  
8 recall that the testimony from the BLM range con at trial  
9 was that the portion of the public land that burned as a  
10 result of that fire was improved, not damaged, by the fire,  
11 and there were no suppression costs.

12 So I believe that the base offense level that we  
13 are recommending of 6 as opposed to 7 for the more than a  
14 hundred dollars is correct. But again, it's really not  
15 material since I don't think it affects where it places  
16 Mr. Hammond under the guidelines.

17 The only other two things I really would like the  
18 court to consider, if the court is considering, which we  
19 certainly trust that you are, that it would in fact be --  
20 and I think proportionality is a part of the Eighth  
21 Amendment. If a sentence would be disproportionate to the  
22 offense and the offender, at least the extremes as the  
23 courts have said, including the Ninth Circuit on at least a  
24 couple of occasions, then the proportionality acknowledgment  
25 by the government I think demonstrates that imposing a

1 60-month sentence on Dwight Hammond for an offense that  
2 under the guidelines would be a maximum six months with  
3 the -- probation is basically the recommended sentence as a  
4 Zone A offense with a person who is 70 years old and has  
5 never been convicted of a crime in his life, who has the  
6 kind of respect and appreciation of his community that I  
7 don't think anyone is disputing about Mr. Hammond, that that  
8 really would shock the conscience, frankly. I just think it  
9 shocks the conscience to think that it would be permissible  
10 to condemn this man to 60 months in prison when all those  
11 things are undisputed and true.

12           If the court is considering, and, again, I think  
13 the government's acknowledging that it's the court's  
14 responsibility to consider its constitutional obligations  
15 under the Eighth Amendment in fashioning a sentence, then  
16 with respect to the 2001 fire, as we say in our memorandum,  
17 the facts that support that verdict are the admission that  
18 occurred at the time. There's no dispute that the Hammonds  
19 called in to the BLM dispatch and checked to see if a fire  
20 could be set that day.

21           It's not disputed that there had been a fire that  
22 got off their land two years earlier and they had received a  
23 stern warning from the BLM that if fire set on their private  
24 land escaped onto the public land again, there would be  
25 legal consequences, so they were warned.

1           The evidence as to where ignitions were set on the  
2 private land and adjacent to the fence line with the public  
3 land permits, certainly the jury's conclusion, that they  
4 intended that fire to cross over into the public land.

5           And those facts are sufficient to support the  
6 verdict. And we would urge the court to make those findings  
7 as the basis and that it is not sufficiently reliable to  
8 conclude that the Dusty Hammond version of that event is  
9 more likely than not correct.

10           We have -- I am not going to rehash it all, but  
11 his testimony was completely inconsistent with the testimony  
12 and the records of the hunting that was done on Section 16  
13 in 2001 by Mr. Gustafson, by Mr. Taylor, by the Fish &  
14 Wildlife records.

15           So we would urge, if the court is considering  
16 looking with favor at our Eighth Amendment argument, that  
17 you specifically find those -- that the facts that support  
18 that jury verdict are the facts that I have just recited.

19           I don't know if you have any questions that would  
20 be of any assistance to you in all the legal stuff we have  
21 thrown at you in the last week, but if you have any  
22 questions, I would be more than happy to address them.

23           The only other thing I would say, and this is  
24 really a practical request, it's if you would in fact find  
25 that the nature of this offense was in fact a business

1 regulation offense so that these convictions do not prohibit  
2 these men from possessing firearms, which, you know, the  
3 only reason they have rifles is because you can't really run  
4 a ranch unless you are able to have some opportunity to keep  
5 some varmints at bay. So we would ask for that finding as  
6 well.

7 Other than that, I think I have said it all more  
8 than once in our memoranda. But if you have any questions,  
9 I would be happy to address them.

10 THE COURT: Thank you, Mr. Matasar.

11 MR. MATASAR: Your Honor, just a few things about  
12 Steven Hammond. As far as the fire suppression costs, we  
13 provided a memo late yesterday which explains our position  
14 on that. I won't go over that, although I would ask that  
15 you make a finding.

16 I agree with what Mr. Blackman said about the  
17 basis for the 2001 fire, and so I won't address that but  
18 just ask that you make a finding.

19 Steven Hammond has some criminal history issues,  
20 which I will just ask the court to make a specific finding.  
21 We have argued in the memo about the Fish & Wildlife  
22 exception to the -- to one of his convictions.

23 THE COURT: Had you ever heard of a landowner's  
24 permit before this case?

25 MR. MATASAR: I had not, but obviously you have.

1 THE COURT: Any of the lawyers ever killed an  
2 animal on a landowner's permit?

3 MR. MATASAR: I have not.

4 THE COURT: Your judge has.

5 MR. MATASAR: Yes. And as I found as I was  
6 looking into the landowner permit rules, everybody else  
7 knows about them before I did. So it's quite common, as you  
8 know, Your Honor.

9 THE COURT: It's not common in big cities.

10 MR. MATASAR: Yes. It's not.

11 I would say that -- sorry, Your Honor. I'm  
12 resting here. I hurt my back the other day, so that's why I  
13 am resting a bit on the table.

14 THE COURT: If you need to be seated, go ahead.

15 MR. MATASAR: No. I think I can stay. There is --  
16 There is -- I think maybe I will.

17 Your Honor, I have known Steven Hammond and Dwight  
18 Hammond for nearly 20 years, and I think you know them now  
19 as well. You know them from the community's letters that  
20 you have gotten. People like 84-year old Ellington Peek who  
21 runs the video market, from the Farm Bureau, from people who  
22 know his kids at school, from people who know him at school.  
23 There are people who were at Crane when Steven Hammond was a  
24 student. You know, from what you have read, people who know  
25 him at church; people who know him from his volunteer work

1 in the community.

2 And I have been here enough times in the last four  
3 years, Your Honor, on this case and one other case to know  
4 that you read the material that we put in front of you.

5 And Earlyna Hammond was going to read her letter.  
6 The reason why I gave it to you late was not because we were  
7 lazy but because she had planned to read it, but I think she  
8 would have had trouble getting through it, and so we  
9 provided it to the court this morning.

10 I would ask Your Honor, as Mr. Blackman did, that  
11 you go along with our memo. That you feel -- I believe that  
12 under the proportionary principles explained by Mr. Papagni,  
13 which are based on the Eighth Amendment, that Mr. Steven  
14 Hammond belongs in what the guidelines calls Zone B, which  
15 allows for a probationary sentence. We think the difference  
16 and one of the reasons why the proportionality principle is  
17 important is the difference between a probationary sentence  
18 and the mandatory minimum is so great.

19 As far as the other issues raised by Mr. Papagni,  
20 the notice of appeal and such, I will rely on our memo, the  
21 Fourth Circuit case, the undecided situation in the  
22 Ninth Circuit.

23 So other than that, Your Honor, like Mr. Blackman,  
24 we are ready to answer questions from you if you have any  
25 either now or after you come back, but we ask you to



1 sentence our clients in the -- along the lines we have  
2 suggested in our memorandum.

3 THE COURT: I do have this question: We had  
4 argument on it, but is -- what indication, if any, do you  
5 have more than I have that when this five-year mandatory  
6 minimum was put in in the Terrorism Act that this sort of  
7 activity is what was anticipated? Is there anything?

8 MR. MATASAR: I can only say, Your Honor, that my  
9 understanding, from what I included in the memo, was that,  
10 you know, this statute is about through fire or explosives.  
11 I think the focus of the statute seemed to be the explosive  
12 part, the intentional aspect of it. I indicated all the  
13 other sections here, they talk about foreign nationals, they  
14 talk about terrorism this and terrorism there. But I see no  
15 indication that this -- that this kind of activity was  
16 intended in that statute.

17 MR. BLACKMAN: And Your Honor, I think the most  
18 significant, if you are looking, really, at the legislation,  
19 the most significant indication of that is in the definition  
20 of federal crime of terrorism, which explicitly does not  
21 include the 844(f)(1).

22 THE COURT: I read that in the memo.

23 MR. BLACKMAN: So I mean, it does strike us as one  
24 of those legislative -- I mean, it's a huge bill. Sometimes  
25 I think the Congress does things that it's not intended, and

1 the best indication that that's not what they intended is  
2 that.

3 THE COURT: All right. We'll come back at  
4 12:30 for the actual sentencing, but I do have these  
5 comments:

6 The attorneys in this case are all remarkable.  
7 The -- you do your job. But the argument Mr. Papagni made  
8 on proportionality was highly moral. I appreciate that.

9 And this sort of -- I have been doing this for 39  
10 years, and this is my last sentencing. I will impose a  
11 sentence that I believe is defensible under the law but also  
12 one that is defensible to my conscience.

13 And this is not about me, although there's a  
14 couple of indicatings here that I have a -- just a -- a  
15 little comment about. I didn't -- I was halfway through  
16 this before I realized my entire family is here -- I am just  
17 taking a moment to get through some of the emotion -- along  
18 with loved ones from the court, and I wouldn't have had this  
19 opportunity without each of you. I appreciate it.

20 I love this country. All of us have  
21 responsibilities which can't be defined without our --  
22 people talk about rights. That's only one side of the coin.  
23 Years ago I heard Bishop Fulton Sheen. He gave a wonderful  
24 address on that in Washington, D.C.

25 And so we have our role to play in a wonderful

1 legal system, and unlike some of my colleagues who will have  
2 people make these sort of comments after they are no longer  
3 here, I get to make it today. I am grateful.

4 We'll come back to your case at 12:30.

5 Thank you.

6 MR. BLACKMAN: Thank you.

7 *(Recess.)*

8 THE COURT: Thank you. Be seated.

9 Counsel, anything further?

10 MR. MATASAR: No, Your Honor.

11 THE COURT: And Mr. Dwight Hammond and Mr. Steven  
12 Hammond, have you read the presentence reports in the case?

13 MR. MATASAR: There was no formal presentence.

14 THE COURT: All right. Have you talked to your  
15 lawyers about all the issues we have been talking about here  
16 today?

17 DEFENDANT STEVEN HAMMOND: Yes.

18 DEFENDANT DWIGHT HAMMOND: Yes.

19 THE COURT: All right. If you have a statement  
20 that you wish to make, before I impose sentence, now is the  
21 time to do that. All right? So if either of you do, you  
22 decide who speaks first. I don't really care.

23 DEFENDANT DWIGHT HAMMOND: I really don't have  
24 anything other than what my counsel would fill in.

25 THE COURT: All right.

1           DEFENDANT STEVEN HAMMOND: And likewise, I  
2 appreciate all the time that's been spent on this.

3           THE COURT: All right. There are a number of  
4 issues that need findings, and these could be organized a  
5 little better than they are.

6           First, the government has objected to me advancing  
7 the sentencing to today, and I understand that.

8           The objection is denied. The last of these events  
9 happened in 2006, and I am so familiar with all of the facts  
10 here and this situation that it would be not appropriate to  
11 burden some other judge with handling the sentencing here.

12           MR. MATASAR: Your Honor, I am going to be seated,  
13 if I may.

14           THE COURT: Excuse me?

15           MR. MATASAR: I am going to be seated, if I may.

16           THE COURT: You may, of course.

17           MR. MATASAR: I'm sorry, Your Honor. I just  
18 can't --

19           THE COURT: You can all be seated as far as I am  
20 concerned. That's all right.

21           MR. MATASAR: Thank you.

22           THE COURT: Now, whether the government waived its  
23 right to appeal is frankly not a matter for me. That's a  
24 question for the Ninth Circuit, and I am not going to make  
25 any findings on that.

1           With regard to suppression costs, the 15,000 and  
2 change that the government has in their -- I think Page 11  
3 of their memo, the argument is there, but the evidence  
4 supporting it is not.

5           And frankly, if this would be another situation  
6 and the government had a motion to postpone to be able to  
7 submit its materials, it probably would be a good motion.  
8 We don't have it here. I am not going to extend this, but  
9 nevertheless, I am not going to count that as part of the  
10 loss.

11           With regard to the sufficiency of the jury  
12 verdicts, they were sufficient. And what happened here, if  
13 you analyze this situation, if you listened to the trial as  
14 I did and looked at the pretrial matters, there was a --  
15 there were statements that Mr. Steven Hammond had given that  
16 indicated he set some fires, and the jury accepted that for  
17 what it was.

18           There are other evidence that was significant, and  
19 none of us know, in the minds of each juror, what is  
20 significant. That's part of the jury system. But that was  
21 really the key thing that happened here.

22           With regard to character letters and that sort of  
23 thing, they were tremendous. These are people who have been  
24 a salt in their community and liked, and I appreciate that.

25           In looking at Dusty Hammond's testimony, he was a

1 youngster when these things happened. I am sure he  
2 remembered things as best he could. There was, frankly, an  
3 incident, apparently it was removal of tattoos, that would  
4 have colored any young person's thinking, and if that's what  
5 happened, it can't be defended, of course, but that's not  
6 what's before the court today.

7 Now, I will take up the matter of the mandatory  
8 minimum in a moment.

9 In looking at Dwight Hammond's case, the base  
10 offense level here is either -- well, it's either -- the  
11 offense level is either a 6 or a 7, and it depends on  
12 whether or not I find there was at least a hundred dollars  
13 in damages. Well, the damage was juniper trees and  
14 sagebrush, and there might have been a hundred dollars, but  
15 it doesn't really matter. It doesn't affect the guidelines,  
16 and I am not sure how much sagebrush a hundred dollars worth  
17 is. But I think this probably will be -- I think mother  
18 nature's probably taken care of any injury. I don't think  
19 that's the question. There would be -- you know, as far as  
20 some of these civil matters, there's a civil proceeding  
21 going on in Pendleton. That can take care of that. There's  
22 also administrative proceedings. There's going to be a  
23 fearsome penalty paid by these two gentlemen for the  
24 decisions they made and the actions they took.

25 At any rate, I find that Dwight Hammond's

1 guideline level is from 0 to 6 months.

2 With regard to Steven Hammond, there are some  
3 interesting findings there because the guidelines talk about  
4 using the guideline in effect at the time of an incident, so  
5 in this case, the latter one, the 2006 fire.

6 Well, those would be the 2005 guidelines because  
7 that's when the -- those are the ones in effect at the time.  
8 And the guidelines are pretty clear that that's to happen.  
9 And then on the other hand, the Ninth Circuit made itself  
10 one of two circuits in the *Ortland* case that said, well,  
11 there's an ex post facto constitutionality problem with  
12 that. And therefore, I am going to use the 2000 guidelines,  
13 which reflected back to the 2001 fire for that one. Well,  
14 if -- that results in a -- I believe a level 10.

15 And then we look at the criminal history category.  
16 The landowner preference violation, there's no question for  
17 anyone who is an outdoors person that that has to do with  
18 the fish and game matter. Nevertheless, the allegation was  
19 an unsworn falsification, which is -- can apply to lots of  
20 things.

21 Well, whether it's a fish and game matter or  
22 whether it just overstates the criminal history, I am going  
23 to find the criminal history category for Steven Hammond to  
24 be a III.

25 And with regard to the sentences, I --

1 MR. MATASAR: Your Honor, from what you said, it  
2 sounded like you would have meant II, if you were  
3 considering the overstating.

4 THE COURT: And that's 10 to 16? I may have --

5 MR. MATASAR: Yeah. A level II -- a 10/II would  
6 be 8 to 14.

7 PROBATION OFFICER DAVIS: If you drop down to II,  
8 that's correct. If it remained at a III, it would be 10 to  
9 16.

10 THE COURT: Okay.

11 PROBATION OFFICER DAVIS: So if you drop down to  
12 II, it would be 8 to 14.

13 THE REPORTER: You need to turn your mike on.

14 THE COURT: I am dropping down from -- I  
15 apologize -- from a IV to a III.

16 MR. MATASAR: I think it's from a III to II. I am  
17 not --

18 PROBATION OFFICER DAVIS: Hold on. We are talking  
19 apples and oranges. He is talking about the amount of  
20 points and you are talking about a category.

21 MR. MATASAR: Oh, yes. So --

22 PROBATION OFFICER DAVIS: So three points puts us  
23 in category II.

24 MR. MATASAR: Okay. I'm sorry, Your Honor.

25 THE COURT: And the guideline range there is?



1           PROBATION OFFICER DAVIS: At a level 10, would be  
2 8 to 14.

3           THE COURT: Thank you.

4           PROBATION OFFICER DAVIS: You are welcome.

5           THE COURT: I am not going to say that the  
6 firearms are a business -- fit under the business  
7 requirement exception. I understand the problems in running  
8 a ranch out there without a firearm. In fact, I think the  
9 other name for a Ruger .223 is a farm gun, and for predators  
10 that certainly comes into play, but nevertheless, I am not  
11 going to include that. I am not going to make that finding  
12 under that exception.

13           So I find that the guideline range for Steven  
14 Hammond is a level 10 with a criminal history category of II  
15 for 8 to 14 months.

16           Now, with regard to the mandatory minimum, I don't  
17 need to repeat that -- this, but you all know that -- and  
18 because you are experienced before me that I think  
19 Mr. Lessley told me a short time ago that he and Mr. Papagni  
20 came in about the same time to work both sides of these  
21 cases, and I have been a -- I have been a pretty faithful  
22 observer of the guidelines when they are required to be and  
23 their requirements and have been working with sentences for  
24 39 years.

25           I remember my first sentence for a petty offense,

1 and I knew what I wanted to do. I just didn't know how to  
2 say it. And that was a different problem back then.

3 I am not going to apply the mandatory minimum and  
4 because, to me, to do so under the Eighth Amendment would  
5 result in a sentence which is grossly disproportionate to  
6 the severity of the offenses here.

7 And with regard to the Antiterrorism and Effective  
8 Death Penalty Act of 1996, this sort of conduct could not  
9 have been conduct intended under that statute.

10 When you say, you know, what if you burn sagebrush  
11 in the suburbs of Los Angeles where there are houses up  
12 those ravines? Might apply. Out in the wilderness here, I  
13 don't think that's what the Congress intended. And in  
14 addition, it just would not be -- would not meet any idea I  
15 have of justice, proportionality. I am not supposed to use  
16 the word "fairness" in criminal law. I know that I had a  
17 criminal law professor a long time ago yell at me for doing  
18 that. And I don't do that. But this -- it would be a  
19 sentence which would shock the conscience to me.

20 So I have considered these guidelines and the  
21 sentences in this case.

22 Well, first of all, are there other findings,  
23 gentlemen, that you require?

24 MR. PAPAGNI: Not by the government.

25 MR. MATASAR: No, Your Honor.

1 MR. BLACKMAN: No, Your Honor. Thank you.

2 THE COURT: With regard to Dwight Hammond, I have  
3 given you the guidelines which I am applying, and I have  
4 considered the guidelines and the 3553(a) factors, and based  
5 on these comments I have made, as to Count 2 -- that's the  
6 correct count number, right?

7 THE CLERK: Yes.

8 THE COURT: The defendant is committed to the  
9 Bureau of Prisons for confinement for a period of three  
10 months.

11 Upon release, the defendant shall serve a  
12 three-year term of supervised release subject to the  
13 standard conditions and the following special conditions:

14 The defendant shall cooperate in the collection of  
15 DNA as directed by probation.

16 The defendant shall disclose all assets and  
17 liabilities to probation and not transfer, sell, give away,  
18 or otherwise convey any asset with a fair market value in  
19 excess of \$500 without approval of probation.

20 The defendant shall not make application for any  
21 loan or credit arrangement or lease without approval of  
22 probation.

23 And the defendant shall authorize release of -- to  
24 probation a financial information by appropriate means.

25 No fine is ordered.

1           The defendant shall pay a fee assessment in the  
2 amount of \$200 due immediately in full.

3           Now, Mr. Hammond, you have the right to appeal  
4 from this sentence under certain circumstances. Any notice  
5 of appeal must be filed within 14 days of entry of judgment,  
6 and that will be no later than tomorrow when that judgment  
7 is entered. If you are unable to pay the costs of an  
8 appeal, you may apply for leave to appeal in forma pauperis,  
9 and if you request, the clerk will prepare and file a notice  
10 of appeal on your behalf.

11           Do you understand, sir?

12           DEFENDANT DWIGHT HAMMOND: Yes, sir.

13           THE COURT: Now, with regard to Steven Hammond, I  
14 have also considered the guidelines as I have commented this  
15 morning and considered the 3553(a) factors.

16           And I have one question for probation here before  
17 I do this.

18                           *(Conferred with probation.)*

19           THE COURT: As to Count 2, the defendant is  
20 committed to the Bureau of Prisons for confinement for a  
21 period of 12 months and one day.

22           As to Count 5, the defendant is committed to the  
23 Bureau of Prisons for confinement for a period of 12 months  
24 and one day, said sentence to be served concurrently with  
25 the sentence imposed in Count 2.

1           The defendant shall cooperate in the collection  
2 of --

3           First of all, the defendant shall serve a  
4 three-year term of supervised release subject to the  
5 standard conditions and the following special conditions:

6           The defendant shall cooperate in the collection of  
7 DNA.

8           The defendant shall disclose all assets and  
9 liabilities to probation and not transfer or convey any  
10 asset with a fair market value in excess of \$500 without  
11 approval of probation.

12           The defendant shall pay full restitution to the  
13 victims identified -- I'm sorry. I have eliminated that  
14 from the sentence. I'm sorry.

15           The defendant shall not make application for a  
16 loan or credit arrangement or enter into a lease agreement  
17 without approval of probation.

18           The defendant shall authorize release to probation  
19 a financial information by appropriate means.

20           No fine is ordered.

21           The defendant shall pay a fee assessment in the  
22 amount of \$200 due immediately in full.

23           Mr. Hammond, you have the right to appeal from  
24 your sentence under certain circumstances, and a notice of  
25 appeal must be filed within 14 days of the entry of

1 judgment. If you are unable to pay the costs of an appeal,  
2 you may apply for leave to appeal in forma pauperis, and if  
3 you request, the clerk of court will prepare and file a  
4 notice of appeal on your behalf.

5 Do you understand that, sir?

6 DEFENDANT STEVEN HAMMOND: Yes.

7 THE COURT: Now, gentlemen, the decisions you made  
8 because you couldn't comply with requests from government  
9 agencies, whether they were justified in every instance or  
10 not, are going to result in grievous losses to you and your  
11 families. And that's how you end up in a place like this.

12 I won't be the judge on any potential supervised  
13 release violation. I will be gravely disappointed if you  
14 end up before the court again in that regard. People have  
15 said a lot of nice things about you. You have a lot to live  
16 up to, quite frankly.

17 And I know that for -- you know, it's one thing to  
18 have the -- as one letter said, the cowboy code of ethics or  
19 the Wyoming code and all that, but we are all a part of one  
20 country, and it's a great country. And even when there are  
21 requirements that seem inappropriate, I'm not saying that  
22 all of them were; they weren't, we have to learn to live  
23 within them or sometimes the consequences are deep.

24 Anything further?

25 MR. BLACKMAN: Your Honor, just a couple technical

1 things.

2           Number one, would the court authorize voluntary  
3 surrender?

4           THE COURT: Yes. How long do you request?

5           MR. PAPAGNI: I think the sentencing was set for  
6 December 11th. I would expect we could set it over until  
7 after the first of the year.

8           THE COURT: All right.

9           MR. BLACKMAN: If we could have an early January  
10 surrender date.

11           THE COURT: You may.

12           MR. BLACKMAN: And would you please recommend the  
13 Sheridan Camp.

14           THE COURT: Yes.

15           MR. BLACKMAN: Then the only other thing, I think  
16 you said the fee assessment in Dwight Hammond's case was  
17 \$200. I think technically it's 100.

18           THE COURT: It should be 100.

19           MR. BLACKMAN: 100.

20           THE COURT: Yeah. I was using the same form. I  
21 only had one of them, and that's what happened. It should  
22 be 100.

23           MR. MATASAR: Your Honor, could we confer with the  
24 family about perhaps staggering Steven Hammond's turn-in  
25 date? Mr. Dwight Hammond, if he surrenders in January, may

1 get out in a few months.

2 THE COURT: Any objection?

3 MR. PAPAGNI: No.

4 THE COURT: All right. Now, I want you to do it  
5 today so that I can -- because I am going to have these  
6 judgments prepared today.

7 MR. MATASAR: I think that makes sense, Your  
8 Honor. We will do it. We will confer now, and before we  
9 leave the courthouse, we will get word to your staff.

10 THE COURT: That's fine. All right. Anything  
11 further?

12 MR. PAPAGNI: I was going to point out what  
13 Mr. Blackman did about the assessment. We caught that one.

14 And of course, the defendants have waived their  
15 appeal rights, and I think the court said to the extent they  
16 have appeal rights that are limited, that applies, so that's  
17 all I have, Judge.

18 THE COURT: They are. You have waived most of  
19 your appeal rights.

20 The other thing is I find that both defendants  
21 have waived the preparation of a presentence report.

22 All right?

23 MR. BLACKMAN: And Your Honor, we would stipulate  
24 that through the trial and all the submissions you had more  
25 than sufficient information to proceed to sentencing without



1 a presentence report.

2 MR. MATASAR: Yes, Your Honor.

3 MR. BLACKMAN: We stipulate.

4 MR. MATASAR: For Steven Hammond too.

5 THE COURT: Thank you.

6 MR. MATASAR: Thank you, Your Honor.

7 THE COURT: All right. We are in recess. I would  
8 like to see just counsel over at the sidebar for a minute.

9 THE CLERK: Court's in recess.

10 *(The proceedings were concluded this*  
11 *30th day of October, 2012.)*

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1           I hereby certify that the foregoing is a true and  
2 correct transcript of the oral proceedings had in the  
3 above-entitled matter, to the best of my skill and ability,  
4 dated this 20th day of November, 2012.

5  
6 /s/Kristi L. Anderson

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Kristi L. Anderson, Certified Realtime Reporter

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