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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
THE HON. ANN AIKEN, JUDGE PRESIDING

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EUGENE, OREGON
WEDNESDAY, OCTOBER 7, 2015
PAGES 1 - 57

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PROCEEDINGS

WEDNESDAY, OCTOBER 7, 2015

THE CLERK: This is the time set for sentencing in United States of America versus Hammond, Case No. 10-60066.

THE COURT: Mr. Papagni.

MR. PAPAGNI: Please the court, I know that you read all of the materials before we have these proceedings.

Thank you.

And this one is a little out of the ordinary because it's a resentencing. The way I am going to present our arguments for everyone present is to start off by reading what the defendants are recommending. In the letter of September 30th, 2015, Mr. Matasar and Ms. Matthews -- Ms. Matthews replaced Mr. Blackman, who passed away. He was a very fine lawyer.

What they wrote was, "Considering all the facts and circumstances, including the Ninth Circuit's ruling, we," that being the defendants, "urge this court to conclude that a sentence of 60 months for each defendant is the reasonable sentence."

The government agrees. In my opinion to you, Judge, I said 60 months. I recommended 60 months when I was before the trial judge back in October 2012. And in June of 2012, just shortly before midnight in the courthouse in

1 Pendleton above the post office before Dwight Hammond and
2 Steven Hammond agreed to accept the verdicts that found them
3 guilty, I warned them, I gave them fair warning, I said,
4 This is a sentence that I'd recommend. And they agreed to
5 that. They knew that.

6 Since then there's been a lot written by people
7 who weren't in that courtroom who didn't know what happened
8 in that trial.

9 But these two men stood up. They knew what their
10 sentence was going to be. They accepted it. They were men
11 about it. I respected that.

12 Here we are again.

13 Now, there's been a lot said by some folks about
14 the government in this case, and at no time have I ever
15 called these two men terrorists. Never. They committed
16 arson, two arsons, Mr. Steven Hammond; one arson, Dwight
17 Hammond. There's been attacks on the BLM. Well, in this
18 country you can attack anybody you want. That's fair.
19 That's what we call, in this country, freedom of speech.

20 BLM was sitting in a situation in Eastern Oregon,
21 the court's aware of it, where you got naturalists who want
22 to lock everything up, you got hunters who like to hunt
23 public lands, you got recreationalists that want to be on
24 those public lands, and you have ranchers who live there all
25 year long trying to take care of their property and have

1 grazing leases on those public lands. But those grazing
2 leases do not give them the right to exclusive use of those
3 lands.

4 Now, they may think BLM mismanaged them, and I
5 know Steven Hammond said that repeatedly, and they are
6 entitled to their opinion. But they are not entitled to
7 burn the property. It's not theirs. It's the public's.
8 And that's why they are here today.

9 Now, back in October 2012, I stood up and said
10 good things about these men because you can tell by all the
11 folks in the courtroom, they have done wonderful things for
12 their community. They are hard-working people. 4-H. They
13 have done -- they have donated some of their beef. They
14 have had Oregon State folks come out. For most people in
15 Burns, they are spoken of highly, and I have spent a lot of
16 time in Burns. I also spent a lot of time above and on the
17 land.

18 And I also spent a lot of time talking to BLM
19 firefighters, the young ones, not the management. These are
20 people in their 20s who -- you know, contract firefighters
21 that go out there and endanger their lives fighting these
22 blazes.

23 So here we are today. So how did we get here?
24 Well, there was a jury of seven men and five women that
25 found these two guilty of committing arson. They also found

1 them not guilty of committing other arsons. And as you will
2 find out shortly, that's one of the reasons why I am not
3 agreeing with the probation office.

4 Now, some folks don't know it, but the U.S.
5 Probation Office is recommending the 70-month sentence,
6 which is longer than I am recommending of 60, for Steven
7 Hammond, and the probation office here, who looked at this
8 case, is asking for Dwight Hammond to serve three months
9 longer than 60 months, which I am not agreeing to.

10 The government's recommending less than the U.S.
11 Probation Office thinks these men should get for their
12 crimes. We think the probation office -- with all due
13 respect to Ms. Robb, the probation officer is wrong. And I
14 gave you my reasons in my sentencing memo, and I will touch
15 upon them as I go through my argument.

16 60 months is enough. It's the minimum that's
17 mandated by a statute that Congress passed, the President
18 signed, and the U.S. Attorney's Office is obligated to
19 enforce.

20 And if that wasn't clear enough, Judge Murphy said
21 that in the Ninth Circuit, and the Supreme Court did not
22 reverse the Ninth Circuit.

23 Now, these two men could not have been better
24 represented at trial. Mr. Matasar did a phenomenal job of
25 defending his client to the best of his ability. He got

1 acquittals on some counts. And Mr. Blackman, likewise, when
2 he was here and tried the cases, was a worthy adversary,
3 good advocate. They were well represented at trial.

4 So people who write about this being a case about
5 some back-burns that go astray apparently weren't in that
6 courtroom for two weeks listening to the testimony. The
7 testimony, well, let's talk about that for a second. The
8 jury convicted both the Hammonds of using fire to destroy
9 federal property for a 2001 arson known as the
10 Hardie-Hammond fire located in the Steens Mountain
11 Cooperative Management and Protection Area. Well, that was
12 kind of the formality of it.

13 But why did they get convicted? Was it some BLM
14 employee who testified that said that they did it? No, it
15 wasn't. It was Dusty Hammond, their grandson and uncle, who
16 said how this fire occurred. Was it some BLM employee who
17 witnessed it? No, it wasn't. It was a hunting guide and a
18 father and son from Utah that were hunting. Those were the
19 government witnesses that testified against these two men.

20 And what did they have to say? Well, Dusty
21 Hammond, along with Gordon Choate, the hunting guide, the
22 hunter and his father from Utah testified the arson occurred
23 shortly after Steven Hammond and some of his hunting party
24 illegally slaughtered -- that was the description by Gordon
25 Choate, the hunting guide -- slaughtered some deer that were

1 on BLM property, and they didn't have a hunting license to
2 do that. Steve Hammond hid behind a rock after he was seen
3 by the hunting party, Mr. Choate, and the young man and the
4 father. And Dwight Hammond knew this hunting party was in
5 the area because he had mentioned it to Dusty.

6 Mr. Choate recognized Dwight Hammond because
7 Mr. Choate had been on a previous hunting expedition a year
8 or two earlier, had come across Dwight Hammond, and shortly
9 afterwards there was a fire and he had to leave the area, so
10 that stuck out in his mind.

11 Two years before this fire that they are to be
12 sentenced for, Steven Hammond was convicted of interfering
13 with a lawful use of public land. In October of 1990, he
14 confronted another licensed hunting guide and his group that
15 were on public lands, told him that he was concerned that
16 they might shoot onto his property even though they were on
17 BLM property, and the next day he fired several shots from
18 his firearm that the hunting party heard about, but he said
19 was shooting at rabbits.

20 Now, the interpretation the government gives this
21 is that these two men thought that their grazing leases gave
22 them exclusive rights to BLM property. But it's public
23 property, not BLM property. It's public property. These
24 hunting people had a right to be there, and Mr. Steven
25 Hammond was convicted of that, as the presentence report

1 points out.

2 But the most crucial evidence in that case, Judge,
3 and you weren't the trial judge, was that the then
4 13-year-old Dusty Hammond, who testified when he was about
5 21, said that Steven Hammond, after slaughtering the deer,
6 handed out Strike Anywhere matches and told the 13-year-old
7 to drop the lit matches because they were going to light up
8 the whole country on fire. That's the testimony from the
9 trial. And the teenager testified that he barely escaped
10 from the eight- to ten-foot-high flames by taking refuge in
11 a creek.

12 Now, upon seeing the smoke in the area where the
13 deer were slaughtered, the hunting guide, Mr. Choate, he
14 experienced this before after meeting Dwight Hammond, got
15 his hunting party out of there, and the father and son went
16 back to Utah. They testified at the trial.

17 Now, after the fire was started and the smoke was
18 seen by the guide and these two men from Utah, Steven
19 Hammond called up the BLM and said he was going to do a
20 back-burn and burn the invasive species. That was his claim
21 for setting this fire. The problem was the timing didn't
22 work. He called up after the fire was already burning.
23 Smoke was seen by the hunting guide and the two men.

24 Now, as Mr. Matasar is writing down, this was
25 hotly disputed at trial. But the testimony of the teenage

1 relative, the government would submit, was the most
2 convincing than the story given by Steven Hammond.

3 The 139 acres of public land destroyed all the
4 evidence of the deer and the game violation. The game
5 officer couldn't find any after the fire had died down.

6 And where the presentence report writer is wrong,
7 she wants to increase the sentence on these two guys because
8 she says that that created a substantial risk that
9 endangered BLM people or other folks. The answer is it
10 didn't. Can't count Dusty. He was an accomplice because he
11 did what his uncle and grandfather told him to do. And the
12 hunting guide and his two people, you know, two men, they
13 got out of the area before they were endangered. So with
14 all due respect to Ms. Robb, we don't agree with that
15 enhancement.

16 Now, in 1999, Steven Hammond was warned by BLM not
17 to set fires which could burn the public lands. There had
18 been an ongoing problem. Now, the Hammonds, especially
19 Steven, thinks that burning this land, and they even offered
20 the exhibit that shows that the BLM burns it to get rid of
21 invasive species. That's true. We didn't dispute that.

22 And there is a lot of folks that want to argue BLM
23 did a bad job burning that property when they are trying to
24 make it better, and they can argue that all they like.
25 Maybe they are right. That didn't concern us for the fire

1 that took place in 2006.

2 In 2006, that arson was known as the Krumbo Butte
3 fire located in the Malheur National Wildlife Refuge and the
4 Steens Mountain Cooperative Management and Protection Area.
5 And what happened, Judge, was that through that area they
6 have these what they call dry lightening storms. The
7 court's aware of this, I know. And an August lightening
8 storm had started numerous fires and a burn ban was in
9 effect. They call it a red flag warning, burn ban.
10 Everyone in that community knows what it means. You are
11 nodding your head. You know what it means. It means you
12 don't start fires. Steven Hammond knew that.

13 But what was more important and what concerned the
14 government wasn't the acre that got burned by Mr. Hammond,
15 but he knew that BLM firefighters were in the area. He made
16 it a point of calling the sheriff and wanted to prosecute
17 the BLM firefighters if they trespassed on his property. He
18 knew they were in the area.

19 So he went out and he decided to start what he
20 thought, his own back-burn to save his winter feed.

21 Now, some ranchers would say that's pretty
22 reasonable under the circumstances. After all, the BLM does
23 back-burns all the time. You know, a man, a woman have a
24 right to go ahead and protect their property in these dry
25 lightening storms. Okay. Let's accept that to be true.

1 So Steven Hammond, of course, called up the BLM or
2 the county fire marshal or someone else and said, By the
3 way, I know there's BLM firefighters in the area. I am
4 going to be doing this. I know there's a burn ban in
5 effect. I know there's a red flag warning, but I want you
6 to tell your firefighters be careful because this is where I
7 am going to do it and you are on notice.

8 That's what a good neighbor does. He didn't do
9 that, and the jury found he didn't do it. They found him
10 guilty. They found him guilty because he started the
11 backfires, and the backfires were seen because you had a
12 group of young contract firefighters, a captain named Brett
13 Dunten, who was in his early 20s. He's in his early 20s and
14 he's a captain. And he looks down from the butte and he
15 sees these fires and they are separate fires. He's got his
16 crew to worry about. He's looking at that and this is not
17 right. This is not right.

18 And so he does the responsible thing. Without
19 knowing who was doing it or why he was doing it, he moved
20 his crews; made sure they camped in a site where they could
21 not be endangered.

22 Now, Ms. Robb here, she wants to increase the
23 sentence for Mr. Hammond to 78 months, in part, under the
24 guidelines because she said that endangered those
25 firefighters. Well, Mr. Matasar is scribbling. He is going

1 to stand up and we are going to both agree they weren't
2 endangered. The difference is Mr. Hammond didn't do
3 anything not to endanger these firefighters. They did it
4 themselves. Young captain did his job right. And by doing
5 that, that enhancement, that increase in Mr. Steven
6 Hammond's sentence, is not appropriate, and we oppose it.
7 We disagree with Ms. Robb, respectfully.

8 Now, two things happened after each fire. After
9 the fire in which they were covering up the slaughter of the
10 deer, according to Dusty Hammond's testimony at trial, which
11 there wasn't many people there to listen to it, what he
12 testified was that Dwight and Steven told him to keep his
13 mouth shut, as did another relative who is in this
14 courtroom, and not to tell anybody about it and nobody
15 needed to know about the fire because they'd go to jail. So
16 they knew what they did was wrong. We call that an
17 incriminating statement. And Dusty Hammond testified about
18 that, 13-year-old boy at the time and 21-year-old man who
19 testified.

20 Now, some people might say, Why did this young man
21 wait so long before he disclosed what his grandfather and
22 uncle had done illegally? Well, at trial it never came out.
23 Mr. Matasar and Mr. Blackman correctly, in my opinion,
24 tactically speaking, did not go into that subject.

25 But in the presentence report, Paragraph 46a, and

1 in 2012, in October, I mentioned it during the sentencing.
2 And the very first filing on the subject was done by the
3 defendants, ECF 100. In that was the fact that Steven
4 Hammond, in 2004, had taken sandpaper to the chest of Dusty
5 Hammond because as a kid he had done something stupid and
6 carved some initials into his chest, a girlfriend or
7 something, not clear. So Mr. Steven Hammond took sandpaper
8 to the boy's chest to get them off. And according to Dusty
9 Hammond, he said if that didn't work that they'd fillet them
10 off. He talked about kids being -- raising kids like
11 raising cattle and dogs. He was a frightened --

12 MR. MATASAR: Your Honor, I have a matter for the
13 court about this. I'd like to address it before Mr. Papagni
14 goes further.

15 MR. PAPAGNI: Well, I can stop. I think the court
16 knows it's in the presentence report. I am just explaining
17 why it's going to take eight years for this young man to
18 finally disclose it.

19 MR. MATASAR: I will readdress it after he's
20 finished, if that's okay.

21 THE COURT: It's right in the report. I have read
22 it.

23 Go ahead.

24 MR. PAPAGNI: Let me address that, at least the
25 legal argument that's coming. The *Johnson* decision makes it

1 clear, and this court knows the *Johnson* decision, that if a
2 prosecutor stands up and tries to break his plea or her plea
3 agreement, they are trying to influence the court with
4 information that would increase the plea bargain agreement;
5 in this case, 60 months, that that's a grounds for appeal,
6 and that's a grounds for reversal on appeal if the
7 Ninth Circuit says that's how the court was influenced.
8 That's what that's all about.

9 Now, in fairness to Mr. Matasar and Ms. Matthews,
10 we have kind of communicated on this subject. The court
11 knows we do that. Mr. Matasar doesn't like me referring to
12 this, and I can understand why. But at trial, the reason
13 for offering it was to explain why it took Dusty eight years
14 before he disclosed what happened to that fire and his fear
15 of his Uncle Steve.

16 So it was disclosed pretrial. Discovery was
17 provided in April of 2000 -- I think it was '11. But I cite
18 that in my pleading. It's cited in the presentence report,
19 although we didn't have one in 2012, but Judge Hogan knew
20 all about it.

21 And you are here to resentence these men, and even
22 though you weren't the trial judge, you are entitled to know
23 what went on at trial, at least the best we can put it
24 together. And I imagine we are going to have a difference
25 of opinion here in a moment.

1 But the point of fact is is Dusty Hammond was a
2 key witness, and the point of the fact is is the Hammonds
3 have put down a lot of information, which I know you have
4 read, I think it was over 199 pages, saying what great
5 citizens they are and what dedicated family men they are.
6 And in 2012 and today they are. I am not saying that they
7 are perfect. I am not saying they are bad. I am saying
8 that you are entitled, as the judge, to have a complete
9 picture of their character and history under 18 U.S.C. 3553.

10 I am also saying that the government is urging,
11 asking, telling you that the deal that was made, telling you
12 that what I am going to quote you in a second from Judge
13 Murphy is the sentence that should be appropriate in this
14 case is 60 months, no more, no less. That's what I told
15 them in 2012, that's what I told them twice at the
16 sentencing in 2012, and that's what I am saying today.

17 And since I have appeared in this court since
18 1990, I keep my plea bargains. I don't think there's any
19 question about that.

20 But the court knows you are entitled to all the
21 facts. And who knows. Maybe they want to say that Dusty
22 Hammond made this testimony up because of that incident in
23 2004. And keep in mind it was 2004. That's 11 years ago.
24 That's an old incident.

25 And he went into diversion. Steven Hammond went

1 into diversion as reported in the presentence report, and I
2 have no evidence he's done anything wrong since then to any
3 of the children or any of the people that he did. Quite the
4 contrary, since we are on the topic, of all the character
5 letters and history letters that you have got, and there are
6 a lot of folks here that said great things about these guys,
7 and, you know, I have read them all myself, and whether you
8 are in a little cafe coffee shop in Burns, people think
9 pretty highly of the Hammonds that way. And many times the
10 media has commented about, well, the prosecutor even
11 acknowledged they are good people. Well, I did. I did.
12 But some of these folks don't acknowledge that I also
13 pointed out in 2012 this incident with Dusty. Kind of left
14 that out. Not today.

15 Perhaps the most heartfelt letter that you should
16 have read is the letter by Steven Hammond's wife. I see the
17 court nodding your head. It was a wonderful letter. And I
18 have looked in the back of the courtroom. I sat outside the
19 courtroom looking at folks. And I have watched his kids
20 grow. They have gotten big, especially his son; almost as
21 big as he is now.

22 This is a tough sentence for everybody. This is a
23 tough sentence for everybody.

24 But they are here today because they violated the
25 law, and the law says something very specific. And in this

1 courtroom, as I understand it, we follow the law.

2 So Dusty was told to keep his mouth shut, and he
3 did for eight years. Now, I have given you the reason why
4 we think he did.

5 As far as the 2006 fire was concerned, the young
6 firefighters told their boss, a guy name Lance Okeson, a big
7 boy from Idaho, he was kind of the lead firefighter in the
8 area, couldn't make it today, told him about these fires.
9 And Lance came across Steve while he was out fighting
10 another fire, and Lance told Steve Hammond that he needed to
11 alert BLM when he was starting fires because he could kill
12 someone.

13 So what did Steve do? Did he apologize? Say, you
14 know, I am sorry. I forgot. I was in such a hurry. A lot
15 of things going on. I didn't have my cell phone. Did he
16 offer an apology like a good neighbor would? Say, oop,
17 slipped my mind? No. What he said was, Well, maybe you
18 guys had just better clear out, and he drove away.

19 Now, as I said back in October 2012 before the
20 trial judge, we recommended the five years, as I told them a
21 little before midnight in October -- or excuse me -- June of
22 2012. I tried to show their good deeds and agreed they had
23 done them. I commented on the letters then, especially his
24 wife's letter, which really touched my heart. I commented
25 about Steven Hammond's criminal mistreatment of his nephew,

1 which I did so again. Never called them a terrorist; called
2 them arsonists.

3 Judge Hogan, the judge who heard the trial, told
4 him what the law was. The sentencing memo we prepared the
5 court, I am sure, read. It's pretty similar to the one I
6 wrote here this last time. And we kept our promise. We
7 asked for the five years. The trial judge disagreed. He
8 thought it was unconstitutional. He thought it violated the
9 Eighth Amendment, and he imposed a much lesser sentence. He
10 imposed a sentence that he said at the time that he thought
11 was appropriate. The government did what we are supposed to
12 do when someone doesn't follow the law, be it a judge or be
13 it two ranchers in Eastern Oregon. We appealed. We said he
14 was wrong.

15 Ms. Zusman, sitting to my left here, she handled
16 the appeal. Some people think I did the appeal. They are
17 wrong. Someone better than me did the appeal.

18 And the Ninth Circuit got that appeal, and
19 Mr. Matasar and I think Mr. Blackman back then, it could
20 have been Ms. Matthews, who is here today, they argued, and
21 then what they said was, first, that we shouldn't have been
22 able to appeal. They said that the government, by making
23 this agreement, wasn't allowed to appeal.

24 So Judge Murphy, writing for the court, said
25 on Page 884, 742 F.3d Page 884, "The Hammonds

1 negotiated for favorable recommendations from the
2 government and the dismissal of charges. Such
3 benefits are consideration enough to support a
4 plea agreement. Finally, contrary to the
5 Hammonds' assertion, the record leaves no doubt
6 that the government preserved the objection to the
7 sentences that it raises on appeal.

8 "In its sentencing memorandum and at
9 sentencing, the government argued that the trial
10 judge lacked discretion to deviate from the
11 statutory minimum."

12 So Mr. Matasar had some problems with us
13 appealing, as did Mr. Blackman and Ms. Matthews, and the
14 Ninth Circuit said no. You are wrong. The government had
15 the right to do it because it was an illegal sentence.

16 Then Judge Murphy turned to the sentences
17 that were imposed, and he says the following,
18 quote, same page, Turning now to the merits, we
19 hold that the district court illegally sentenced
20 the Hammonds to terms of imprisonment less than
21 the statutory minimum. A minimum sentence
22 mandated by statute is not a suggestion that
23 courts have discretion to disregard.

24 I omit the citation.

25 This is the quote that I want the court to

1 hear and underline and follow: Quote, The court
2 below was bound to sentence the Hammonds to
3 five-year terms of imprisonment. See the statute
4 cited that they violated.

5 It doesn't say sentence them to more than five
6 years. It doesn't say sentence them to less than five
7 years. Judge Murphy and that panel were very clear. And
8 the government follows the court's direction.

9 And with all due respect to Ms. Robb, while she
10 may think longer sentences are appropriate for these two
11 men, the government does not. Dwight Hammond has never been
12 convicted of anything before he got convicted in that
13 courthouse in Pendleton and a jury found him guilty.

14 By all accounts, he's a pretty good man and he
15 loves America. I know that from some of the 4th of July
16 stuff he did for the community. I am not saying he doesn't.

17 But I am saying that when they burned those deer
18 and they started that fire, that was an arson, and you are
19 here to pay the price like I told him he would back in June
20 of 2012.

21 And Steven Hammond, a lot of people probably agree
22 with him that BLM management doesn't really help the
23 ranchers a whole lot, and that's fine. But he had no right
24 to burn that public property. It's not his. It's the
25 public's.

1 And I respect Steven Hammond because he's always
2 stood up and took it like a man. He didn't complain about
3 the sentences at the time.

4 So we think that Judge Murphy got it right. Well,
5 the Hammonds did what they are entitled to do. They
6 appealed to the Supreme Court, and the solicitor general
7 wrote a brief and so did the Hammonds. The Hammonds pointed
8 out all the mistakes they thought were made and how they
9 thought the trial judge's sentence was appropriate. And the
10 Supreme Court simply denied cert., which is a fancy way of
11 saying they rejected the argument. It goes back to the
12 Ninth Circuit. It comes back to this court. The trial
13 judge is retired, and here we are. It's been a long
14 journey.

15 The last comments I need to make are along the
16 lines of the findings the court needs to make regarding the
17 presentence report.

18 In addition to the substantial risk, which we
19 disagree --

20 THE COURT: So I'd like to interrupt.

21 MR. PAPAGNI: Yes.

22 THE COURT: I want Ms. Robb to have a chance to
23 address before you give your calculations --

24 MR. PAPAGNI: Fine.

25 THE COURT: -- the process that probation had to

1 go through, both at the time of the sentencing before and
2 what Ms. Robb has had to do to put together the presentence
3 report that I have read.

4 Ms. Robb, would you talk about that?

5 MS. ROBB: Yes, Your Honor.

6 Originally when the defendants were sentenced, a
7 presentence report was not ordered and, instead, the
8 probation office did a preliminary calculation.

9 THE COURT: And how did that happen?

10 MS. ROBB: That was requested by the court that it
11 be provided to the parties, and it was sent by e-mail to the
12 parties and provided to Judge Hogan with a waiver
13 specifically saying this is a preliminary calculation and
14 subject to change upon a full investigation ordered by the
15 court. That full presentence investigation was not ordered,
16 and so a preliminary calculation was used originally to the
17 court.

18 THE COURT: And when this case came back to you,
19 what did you do?

20 MS. ROBB: Your Honor requested a full presentence
21 investigation be completed, and so we requested to interview
22 the defendants, to have full review of discovery, and to
23 offer a chance for both parties to provide full insight on
24 their views of the case and the facts. And we took all that
25 into consideration.

1 THE COURT: And did that happen?

2 MS. ROBB: We did have full review of the facts,
3 but the defendants did not participate in a presentence
4 interview. And so the probation office was not able to
5 consider any sort of variance because we have no -- we have
6 had no personal contact with the defendants to consider
7 those factors. And that information was provided to counsel
8 as well as to why we are not weighing in on a variance.

9 So we proceeded with our presentence
10 investigation. It was reviewed through our review process,
11 and we subsequently had different calculations than the
12 preliminary one provided for the original sentencing. The
13 parties have different calculations, and they provided those
14 to the probation office and have had a chance to object to
15 the report. The difference in all of those calculations are
16 outlined in the addendum of the presentence report. And
17 they have been responded to, and now they are before the
18 court to make a decision on different findings.

19 THE COURT: Now walk through your calculations, if
20 you wouldn't mind, Mr. Papagni.

21 MR. PAPAGNI: Please the court, the government did
22 talk to Ms. Robb and provide her with our files. I think
23 there were about -- I think there was three, maybe four
24 filing cabinets full of reports and transcripts and things.

25 Ms. Robb does a thorough job, and, as I said,

1 nothing I am saying today is disrespectful to her. We
2 simply disagree. We agree with the defense.

3 Now, back in 2012, as Ms. Matthews points out in
4 the joint sentencing letter, the government did not object
5 to Judge Hogan's calculations. We did object to speeding up
6 the sentencing 45 days, and we did not have a presentence
7 report, as the court's pointed out.

8 And when I spoke to Ms. Robb, my obligation as a
9 prosecutor, as I see it, is if it benefits a defendant, you
10 say it does; if it doesn't, you say that too. I tried to do
11 that today by saying what's good about these men and what's
12 not so good.

13 We disagree with Ms. Robb. In the two fires they
14 were convicted of, not the other conduct, but the fires they
15 were convicted of, no one was endangered.

16 THE COURT: Okay. I don't have a problem with how
17 you analyzed it. I am just having Ms. Robb explain that she
18 was much after the fact and looking at this case, as is
19 expected, objectively and with cooperation factored in.
20 People made decisions about how to participate. So simply
21 just get me to your numbers --

22 MR. PAPAGNI: Thank you.

23 THE COURT: -- because I don't disagree how you
24 have approached it. But she didn't have the benefit of the
25 time up front involved and neither did Jed Davis, who is an

1 extraordinary lawyer/presentence writer, who I had the
2 privilege of working with for many, many difficult mortgage
3 fraud cases, and he was in a very difficult situation. He
4 actually works now no longer. He went back to Hawaii. But
5 his work is excellent, and I know he actually would be here
6 standing with Ms. Robb over these calculations because I
7 suspect he was uncomfortable not doing a full presentence
8 report under the time lines of the statute.

9 So both Mr. Davis and his excellent work,
10 Ms. Robb's need to be underscored in terms of what we expect
11 in this courtroom.

12 So give me your calculations --

13 MR. PAPAGNI: Thank you.

14 THE COURT: -- because I have known since I walked
15 in here what the Court of Appeals said. I knew before I
16 walked in here what's in all these papers. So just help me
17 make the findings that I need to make so I can impose the
18 sentence that will be imposed.

19 MR. PAPAGNI: I am going to make it as easy as I
20 can, then. We disagree with the obstruction of justice. We
21 concur with the calculations that Ms. Matthews has put
22 forward as far as the advisory guidelines. And we then
23 conclude that under U.S. Sentencing Guideline Section
24 5G1.1(b), which is on Page 13 of the government's sentencing
25 memo --

1 THE COURT: Um-hmm.

2 MR. PAPAGNI: -- that trumps those calculations
3 and requires that the mandatory minimum of five years be
4 imposed.

5 Now, with that said, Judge, I conclude, as I
6 began. The government's deal with these two men was five
7 years. I have said it to you, I think, what? Eight, nine
8 times now?

9 THE COURT: And if you want to say it so somebody
10 remembers, it's really only three times. If you need to do
11 it five times or six or eight or nine --

12 MR. PAPAGNI: Well, I can say it six times more if
13 the court would like, but the fact of the matter is, Judge,
14 is that we stand by our deal. We made it at midnight in
15 June. We make it again here now in October 2015.

16 And that's all I have to say.

17 THE COURT: Thank you.

18 Mr. Matasar, Ms. Matthews, however you want to
19 proceed.

20 MR. MATASAR: Your Honor, we have kind of divided
21 this up, but we want the court to be clear that we are
22 joining in each other's objections.

23 THE COURT: It's clear in every way, shape, or
24 form.

25 MR. MATASAR: Okay. And I am not going to say

1 much except, first of all, to say not just today but
2 throughout this case, Mr. Papagni has behaved in an
3 extraordinary manner for a prosecutor. We have no problem
4 with how he's handled the case. This is the only trial I
5 have had of more than one day in my life where there weren't
6 discovery fights. You know, we got everything we wanted.

7 THE COURT: You need to be down here more often.
8 I was just going to say we don't have those same problems.

9 MR. MATASAR: Okay. Well, that's great. I didn't
10 mean federal court. I meant state.

11 THE COURT: Oh, let's always blame state court.

12 MR. MATASAR: I am not criticizing the people. I
13 have had my share in federal court in this building, though,
14 also on another case.

15 THE COURT: I understand. Thank you for that
16 courtesy.

17 MR. MATASAR: Just extraordinary.

18 THE COURT: Ms. Robb, can I see you a second.
19 Go ahead. Keep talking.

20 MR. MATASAR: He has been extraordinary throughout
21 this case and showed it again when he talked about both the
22 obstruction enhancement and also the calculation.

23 So he -- it sounds to me -- and by the way, he's
24 doing this all while watching to see if I am writing
25 something down. So that's a higher degree of difficulty, I

1 think.

2 But I sense that he's feeling that he's being
3 criticized or whatever. That's not coming from me,
4 Ms. Matthews, and certainly it didn't come from
5 Mr. Blackman, my closest friend, with whom I tried this
6 case.

7 THE COURT: So I would just say to everybody, we
8 spend a lot of time in these courtrooms, those of us on this
9 side of the bar. There are a lot of people here who aren't
10 generally in the courtroom, and there's certainly coverage
11 under that First Amendment that gets out, and people need to
12 understand that how this process, which is dynamic, needs to
13 take place is sometimes the statements are made not for the
14 purpose of in one way or another making people uncomfortable
15 but to try to frame the issue as it's more likely accurate
16 from the work that we do as opposed to what people want to
17 think it is when they hear snippets.

18 MR. MATASAR: Understood.

19 And I think the court and Mr. Papagni also know
20 that as part of my duty as defense counsel, I must raise
21 objections to things that are possible errors either for
22 appeal or otherwise.

23 So in that spirit, there are simply two things I
24 want to mention.

25 First of all is Mr. Papagni, in his first

1 supplemental sentencing memo, attached the defense counsel's
2 letter to Ms. Robb. Okay? The complete letter. In our
3 view, the same local rule, which is 3003, which protects the
4 presentence report itself from the public record, which
5 makes it confidential, should also make defense counsel's
6 letters to the presentence writer, the draft presentence
7 writer, confidential.

8 So we would ask the court, and there's no need to
9 do this -- to make a ruling now, you can if you'd like, we'd
10 ask the court to seal the letter.

11 THE COURT: I am fine to do that.

12 MR. MATASAR: Okay.

13 MR. PAPAGNI: No objection.

14 MR. MATASAR: Second --

15 THE COURT: If we need to do something more to --
16 as set out in the local rule, we have tended to try to give
17 that heads-up to lawyers and to -- as you know, the rule
18 changed recently.

19 MR. MATASAR: Right. Right.

20 So the second thing is what Mr. Papagni called a
21 *Johnson* question, which is the recommendation -- essentially
22 keeping with the recommendation but bringing up negative
23 facts. In our view, despite his wholehearted support of the
24 60-month recommendation, when we are in a context where the
25 probation office has recommended 78 months for Steven

1 Hammond, 63 months for Dwight Hammond, in our view, he
2 should not be saying, in effect, bad things about them and
3 what they have done in the past.

4 In our view, that's the whole purpose of these
5 cases, of *Johnson*. The cases don't say the prosecutor can't
6 give false information. They don't say that. It's all
7 expected that it's true information.

8 But by giving incendiary or emotional information
9 that impacts negatively on the defendants by reciting that
10 with their recommendation, in our view, is not correct and
11 we object, and we ask the court not to consider those sorts
12 of things. I understand his point. I understand the
13 court's point when you say it's in the record.

14 Nonetheless, in our view, the spirit of that case
15 is you can't say, and I will take a different case, you
16 can't say, for example, Your Honor, I come into this
17 courtroom, I am going to stick with my recommendation of the
18 low end of the range of 28 months, but really the defendant
19 beats, you know -- kicks his dog and has 24 felonies and all
20 this stuff. In our view, it violates the spirit of this
21 *Johnson* case and other cases.

22 THE COURT: Let me just, for the record, because I
23 will do this while I go, just let me point out the
24 following:

25 Our obligation at sentencing is accountability

1 and -- hope and accountability and conditions that are
2 geared toward assisting in preventing re-victimization in
3 the community.

4 And if I find somebody who is on a particular case
5 who, through the process, even though there's an agreed-upon
6 recommendation, who has an underlying mental health issue, I
7 am not going to ignore that and I am going to address that
8 with a recommendation for the likelihood that this person
9 may have other pressure points and needs to deal with mental
10 health.

11 In this instance, the way to look at this in terms
12 of fashioning a reasonable but not greater than necessary
13 sentence with a post-prison supervision period is to look at
14 what's needed. The fact that it's called out to my
15 attention that he has some, shall we say, parenting issues,
16 perhaps, to deal with or how he handled people might be
17 something that would matter to me in a sentence.

18 It's not in any way, shape, or form going to
19 affect this sentence. I know what will affect my sentence.
20 But that's just a piece of information in trying to do
21 better work at the back end.

22 So I just, for the purposes -- there are purposes,
23 and sometimes narrow cases don't give us all the
24 information, and we can take this one up on appeal and find
25 out. I have another one that's sort of up there that I am

1 an not particularly concerned about that may guide that.

2 But that's the problem with sentencing. It's a
3 dynamic process. Every person is unique. And what our goal
4 should be is to hold the person accountable for the crime
5 before us and to prevent the community from being
6 re-victimized in the future by issues that we can address
7 through supervision.

8 So that would be what would be my statement later.
9 I might as well make it now because I think you will have
10 more.

11 MR. MATASAR: No, not that much more. What I want
12 to tell the court about this incident is that it was fully
13 investigated, the district attorney for Harney County
14 himself was involved with the case. I have the OJIN record,
15 which at one point I was thinking of introducing but I don't
16 think it's necessary. The case was fully investigated and
17 then dismissed pursuant to diversion.

18 I want to also tell the court, which isn't in the
19 file, that Dusty Hammond was having a lot of problems at the
20 time. His parents could not handle him. They asked the
21 Hammonds, especially his mother, asked the Hammonds to take
22 care of him. They just didn't know what to do. What they
23 did was they -- among other things, they sought mental
24 health counseling for him. He was started on medication.
25 They were doing everything they could to try to help their

1 nephew and grandson. That is the context for what happened.
2 And I think that's -- perhaps their extraordinary efforts
3 are what resulted in dismissal of the charges and a
4 diversion.

5 It's a long time ago. I'd just ask the court not
6 to overweigh that incident from a long time ago.

7 THE COURT: I am not weighing it at all. I mean,
8 I just think Mr. Papagni highlighted it to say that there
9 might -- from his vantage point, there was an explanation
10 why it took him so long to come forward. That was handled
11 at trial. I am not even -- it's such a collateral issue
12 that it's really -- you are beating a drum that doesn't need
13 to be beaten.

14 MR. MATASAR: Great. Great. I am just touching
15 the drum that's been beaten before. That's how I am looking
16 at it here. It's been beaten pretty hard earlier today, so
17 I am just touching on it and explaining it.

18 THE COURT: Got it.

19 MR. MATASAR: As far as the other matters, as
20 Mr. Papagni said when I was writing, we disagree with a lot
21 of that on the fires, which fires were set by whom. That's
22 all in our papers.

23 I am going to let Ms. Matthews talk about the
24 calculations. But I did want to say that I think as part of
25 Mr. Davis's work, there was a full and complete interview of

1 both defendants. Okay. The court needs to know that.
2 There was a full and complete interview by him before he
3 made his recommendation. I was there. Mr. Blackman was
4 there.

5 Second of all, until I got the presentence report,
6 I had no idea that Ms. Robb wanted to talk to my client. I
7 may have missed an e-mail. I have may have missed a phone
8 call. I am not saying that's not possible. But I simply
9 did not recall and didn't know that. So -- and I am sorry
10 for that. Frankly -- well, so I will leave the -- let me
11 just have one more second here.

12 Oh, one more thing about the appeal. Of course we
13 respectfully disagree with Judge Murphy. I am sure the
14 court and Mr. Papagni, that's never happened to you, you
15 have disagreed with the Ninth Circuit, but one thing,
16 though, I think is important about the procedure, and that
17 is we did say they couldn't appeal. We did say that. But I
18 want the court to understand that the basis for that is a
19 line of cases in the Fourth Circuit and which is clear and
20 not a lot of other circuits have talked about this, they say
21 that when the government requires a waiver of appeal by the
22 defense, that that means the defendant cannot appeal. So
23 this was not some sour grapes or made up or difficult
24 argument. This was based on a line of authority in the
25 Fourth Circuit and for which there was no authority in the

1 Ninth Circuit. We also had some factual aspects of that.

2 So with that, I will let Ms. Matthews continue.

3 MS. MATTHEWS: Thank you, Your Honor. And I will
4 just touch on the point that he made about us not realizing
5 that the PSR writer wanted to contact us. I apologize, Your
6 Honor. I looked -- my last message was in April, I believe,
7 and I didn't mention it in writing because I didn't want, in
8 writing, the tone to come across that this was something
9 more than a miscommunication.

10 So I just wanted to note that I thought about that
11 and I thought about scrambling and calling her and saying do
12 you want to talk now because they had done an interview
13 previously and I would not have stopped my client. We had
14 these visions about how sentencing would work, and I think
15 it was a miscommunication.

16 THE COURT: Well, and I think also that maybe
17 Mr. Davis had an opportunity to talk to them in an
18 abbreviated fashion. But when we don't do the process, we
19 can't recreate what was happening on an expedited basis.
20 That really, you know, isn't our practice.

21 MS. MATTHEWS: And we tried in tone to convey that
22 we were not being critical of Ms. Robb's process in this
23 point in our letter even though we disagreed on so many
24 points.

25 I would be happy to walk through the guidelines

1 with the court, although I had not made a presentation
2 because we did put so much in writing. And my -- what I
3 anticipated saying to the court was very much the point that
4 the court was just referencing, which is the Hammonds have
5 been on supervised release for these past few years.

6 Mr. Hammond has been on for almost 31 months. And they have
7 continued to ranch. They have continued -- they have worked
8 with the government in a variety of collaborative ways that
9 is required by ranching. They have a fire truck posted at
10 the end of their driveway so that they are available to help
11 the state deal with fires.

12 They have approached -- there's a new approach in
13 ranching. The origin of this dispute is the use of fire in
14 ranching to protect land, to improve the land. There is a
15 new approach that has come through habitat creation. So
16 there's the sage-grouse habitat and the -- I have forgotten
17 the other -- mule deer habitat, and they are working with
18 state and federal agencies. It's a very collaborative
19 process where ranchers on their private property are
20 clearing the land through chainsaws and other mechanical
21 devices, which is multiple points, I think, that are
22 relevant for the court in considering sentencing, which one
23 is the issue that led us here is not just a nonissue because
24 they have learned their lessons and are not going to behave
25 that way but also because the culture has changed in terms

1 of how things are being handled; and two, that they have
2 been on supervised release and been engaging with all of the
3 governmental agencies that they need to engage with to do
4 their ranching. And so I think the court should at least
5 consider the resources of whether or not there is a
6 supervised release term needed with the understanding that
7 if it was imposed, I think they would do fine on it and they
8 would get credit for the time they have already served.

9 Sentencing practicalities, I would ask the court
10 to recommend FPC Sheridan for both defendants and that the
11 court explicitly note in each of their judgments that the
12 court didn't see a reason that they couldn't be housed
13 together. We have explained to them the limitations of the
14 court's influence in that regard, but we'd appreciate an
15 explicit statement in the judgment.

16 They have -- I think the judgment would
17 automatically say it but I will say out loud -- credit for
18 the time they have already served in custody.

19 They have already paid their assessments, and we
20 can navigate that with the clerk's office, however that
21 works out, but those assessments have been paid.

22 And I would ask -- everybody has recommended their
23 continued release until the execution of the sentence. In
24 2012, they were sentenced on October 30th, and the judge set
25 the January 4th, 2015 [sic] date. I would ask the court to

1 consider that -- 2015. 2013. I would ask the court to
2 consider a January 4th, 2015 [sic] date, which is a
3 Monday -- 2016, change of year, for the obvious reasons.

4 Mr. Hammond is a 73-year-old man. He's been
5 married for 55 years. He has no criminal history. I think
6 all of the materials we have submitted have suggested why we
7 ultimately say that paragraph that Mr. Papagni read at the
8 beginning, which was, we believe, that in light of the
9 Ninth Circuit's ruling, which we cannot ignore and this
10 court cannot ignore, we believe that that 60-month sentence
11 is reasonable.

12 And then, as I said, if you would like to walk
13 through with me my analysis of the guidelines, I would be
14 happy to do so, but I have put it in writing.

15 THE COURT: I know. I saw it in writing and
16 Mr. Papagni concurs, and I will make my findings according
17 to that calculation. Frankly, that's a mathematical
18 situation. If I had to rule on a disputed calculation, I
19 would do that. I don't need to in this instance. So I am
20 going to adopt in total your calculation and not go through
21 that process.

22 MS. MATTHEWS: I appreciate the statement, Your
23 Honor.

24 THE COURT: Thank you. Anything else?

25 MR. MATASAR: Given your statements about the

1 guidelines, Your Honor, I don't think I am going to say
2 anything further. We appreciate that.

3 THE COURT: I am happy to go forward and I am
4 doing this together.

5 So gentlemen, you have each heard your lawyer's
6 respective presentations, correct?

7 DEFENDANT DWIGHT HAMMOND: Yes.

8 DEFENDANT STEVEN HAMMOND: Yes.

9 THE COURT: And you have heard the government,
10 obviously, make their recommendations, correct?

11 DEFENDANT STEVEN HAMMOND: Yes.

12 THE COURT: Both of you have read the presentence
13 reports and all the filings by your lawyers?

14 You need to answer out loud --

15 DEFENDANT STEVEN HAMMOND: Yes.

16 DEFENDANT DWIGHT HAMMOND: Yes.

17 THE COURT: -- because the court reporter takes it
18 down.

19 Any additions or corrections you want to call the
20 court's attention to at this time?

21 DEFENDANT STEVEN HAMMOND: No.

22 DEFENDANT DWIGHT HAMMOND: No.

23 THE COURT: I am happy to hear anything either of
24 you or both of you wish to say, and I will let you decide
25 who would like to go first.

1 DEFENDANT STEVEN HAMMOND: I have nothing to say,
2 Your Honor.

3 DEFENDANT DWIGHT HAMMOND: I have got nothing to
4 say.

5 THE COURT: Really? That's so unusual. I always
6 have people who want to talk, but then that's your choice.

7 So here's the irony of this particular case: I am
8 a second generation Oregonian from Ontario, which is
9 130 miles from Burns. I know that area incredibly well.
10 Okay? Been here a long time.

11 I have also had the advantage of having another
12 couple of cases that kind of feed into this whole bigger
13 process, and they are called the ecoterrorism cases where
14 the government made some decisions in that case that perhaps
15 people agreed with or didn't agree with, but we had to
16 follow the law.

17 They didn't necessarily like how the government
18 was handling things either. I think that's a fair
19 statement, general but fair. And they took action on their
20 own; caused a lot of damage. Many of them have served
21 substantial time. Some of them are out, and I see them on a
22 regular basis. And I wrote to one of them back and forth
23 for the entire time he was in custody. They served very
24 long sentences for a decision they made.

25 Most recently I had the -- I don't even know how

1 to describe it -- responsibility of sentencing --
2 firefighters who were killed, young kids signing up to be a
3 firefighter heading out to a very dangerous fire, and the
4 helicopter they were in wasn't adequate. They all died. I
5 had to sentence those people.

6 We all have obligations in this world. And then
7 we are a rule of law country. I am sitting here. I don't
8 have to make a decision. I follow the law. It's not
9 whether I agree with it or not. I will follow the law.

10 So you have a legislative body and a congress to
11 make those laws or the initiative process.

12 But when the law is in place, we are going to
13 follow it. That's just how it is. And I can tell you there
14 are prosecutors and defense attorneys here that we go round
15 and round on different issues, and they have their job, I
16 have my job, and we do the best work we can in here.

17 Hold people accountable for the crime they
18 committed and then look at how to fashion a supervised
19 release period that will do the best we can to make certain
20 that they are law abiding, are not back in court, address
21 their criminogenic needs, their risk factors, their
22 criteria. There's a lot of science that we are using to
23 help individually address behaviors that perhaps put the
24 community at a position of being re-victimized.

25 I am not particularly concerned that you are going

1 to do this again. And I think Ms. Matthews has articulated
2 some of the precautions that you have taken. I also think
3 isn't it interesting that science has helped us understand
4 how better to manage land, how better to manage the
5 resources, and to understand that this state has
6 63 million acres, land-based public lands, the entire state,
7 48 percent, 48 percent in the public's interest and trust of
8 that 63 million acres. We have a huge responsibility in
9 this state, unlike many others, because we are so heavily a
10 public lands state.

11 So the laws and how it's governed, everybody's
12 doing the best they can. And as we know, we have all been
13 through budget shortfalls and sequestration and very
14 difficult times to manage the agencies that are responsible
15 for 48 percent of the lands and waters and resources of this
16 particular state.

17 They are stretched. Were they perfect? Probably
18 not. Were they doing their best work? Were they trying?
19 Yes, they probably were. Are people perfect? No, they are
20 not.

21 But you don't have the right to make decisions on
22 public lands when it's not yours and there are processes and
23 laws in place that give you an opportunity to engage the
24 governmental bodies to preserve that land.

25 Now, I don't subscribe to the theory that we just

1 get to own everything. We hold it as people in public trust
2 for the next generations.

3 Now, there are decisions. The congress and the
4 legislature and the initiative process make a lot of
5 decisions and we are obligated to follow those. But when I
6 think back of what really this is all about is we hold all
7 these resources in trust for the next people to come after
8 us, and are we leaving them with as many opportunities as we
9 have all had? How are you?

10 So when you celebrate -- and by the way, I can
11 think of another three or four cases where people think they
12 don't have to follow the rules for hunting and fishing. In
13 fact, the only cases my children were interested in when I
14 came home after going on the bench were the Fish and
15 Wildlife cases where they put a decoy deer out, right? You
16 know. Or goggles, people who go up with goggles over the
17 fish ladders and the sportsmanlike conduct was, you know,
18 what sportsmanlike conduct. So I had dozens of those cases.

19 So in every way, shape, or form people don't
20 understand the rules are there for a reason. Can you
21 imagine how you'd feel if somebody had died in that
22 instance? This would be a very different case.

23 That's why Ms. Robb's calculations, I understand
24 why she made them. I understand exactly why she made them.
25 In any moment you don't know who is -- where they are, and I

1 remember very vividly in the ecoterrorism cases that if
2 there had been a caretaker sleeping in the Oakridge building
3 or if there had been a caretaker at the glue slaughterhouse
4 or if there had been some somebody up in the ski lift
5 sleeping there that night and they died, different cases.
6 There's no -- there's no difference. You don't play with
7 fire in that instance when you don't have it in place. Any
8 rancher, person of the land, respected person who goes into
9 the forest knows that.

10 Right?

11 You could have made this so much easier by
12 understanding that the deal was the deal was the deal. I am
13 sorry it wasn't what happened and where you are and this has
14 dragged on for an enormously long time. I am not belaboring
15 this or doing anything that isn't what was called for in
16 this case and I am not going to do anything other than yes,
17 you are, in so many ways, like many human beings,
18 complicated, more angel probably than clay, but you got some
19 clay that went sideways and caused a lot of damage, and I
20 bet you wish you could go back and do it differently. But
21 here you are.

22 So the Ninth Circuit had the opportunity to take a
23 look at this. They made their decision, and they sent it
24 back to me. I have read everything. You know, I have been
25 here. I read everything in this case.

1 And I would have understood the other factor, and
2 that is it wasn't a jury of people from Eugene. It wasn't a
3 jury of people from Portland. It was a jury out of
4 Pendleton that made this decision. Your peers. Your peers.
5 They found what they found in the case. They were very
6 clear about taking a look and being selective about what
7 charges they convicted you on. But they gave the
8 information to the court, and we stand by the jury system.
9 You asked those important questions to a jury of your peers,
10 and you got the answer. And so all we are doing today is
11 imposing the sentence that is reasonable but not greater
12 than necessary and comports with the statute and what's
13 called for in this particular case.

14 I can tell you there's lots of cases where I sit
15 here, and not all the prosecutors are in this room, but they
16 know I bridle at and cajole and try to get some concessions.
17 And when they stand up and say here's the law and here's
18 what you got to do, and the defense counsel tries their
19 best, but they know, we all know what we need to do in this
20 room.

21 Again, we are a system of laws, system of laws,
22 and if we are given discretion, we will use it, but in this
23 instance I don't feel I have that discretion.

24 So I suspect you are going to make contributions
25 when you go back into the community that perhaps you will be

1 able to talk to people about making better choices and to be
2 respectful and to build relationships with those
3 organizations, those governmental agencies, those
4 individuals who are trying their best to do what's expected,
5 and that is be great stewards for the next generation of the
6 lands. Need I say more than the Steens Mountain, that whole
7 area, is one of the most precious, beloved parts of this
8 state; not often seen, but those who see it, it's to be
9 cherished and protected and the lands around them. What if
10 it had gotten out of -- all of this had gotten out of
11 context? You know, I still drive around the State of
12 Oregon. I remember the big fires when I was little. They
13 are still burned. They have not been replaced. That damage
14 is huge, and this state has suffered under those.

15 So you don't celebrate by dropping matches
16 anywhere, if that's what happened. You don't just drop
17 matches everywhere. You know that. But more importantly,
18 you have respect when you have the privilege, the privilege
19 of using public lands to make a livelihood.

20 So for the record, I have adopted the
21 calculations. I am looking first to Steven Hammond. Your
22 total offense level is a 10.

23 Your criminal history is a III, I believe; is that
24 right?

25 MS. ROBB: II if you go with counsel's argument.

1 THE COURT: Counsel's argument. I will go with
2 his at II, which is a guidelines range of 8 to 14 months?

3 MS. ROBB: Yes, Your Honor.

4 THE COURT: Taking all those factors into
5 consideration and looking at what trumps this guideline is I
6 am going to impose on Count 2, you are committed to the
7 Bureau of Prisons for confinement for a period of 60 months.

8 Upon release from confinement from the
9 institution, you will serve a three-year term of supervised
10 release. I am willing to take a look at that down the road.

11 Those terms and conditions are general and they
12 are set by probation.

13 The special conditions are as follows:

14 You shall disclose all assets and liabilities to
15 your probation officer and shall not transfer, give away, or
16 otherwise convey any asset with a fair market value in
17 excess of \$500 without approval of the probation officer.

18 You shall not make application for loans, enter
19 into any credit arrangement, or enter into a residential or
20 business lease agreement without approval of your probation
21 officer.

22 You shall authorize to the U.S. Probation Office
23 any and all financial information by executing a release of
24 financial information form or by any other appropriate means
25 as directed by your probation officer.

1 You shall cooperate in the collection of DNA as
2 requested by your probation officer.

3 Next, you shall have no contact with the Bureau of
4 Land Management employees in person, by telephone, through
5 correspondence or a third party or enter land owned by the
6 Bureau of Land Management without prior approval of your
7 probation officer. If you have a need, you certainly need
8 to make contact, and that will be, I am sure, afforded you
9 for the purpose requested.

10 Am I right about that, Mr. Papagni?

11 MR. PAPAGNI: Yes, Your Honor.

12 MS. MATTHEWS: And Your Honor, might I note that
13 that was not a condition of their original judgment. And I
14 have no doubt that they will be able to --

15 THE COURT: What wasn't?

16 MS. MATTHEWS: The no contact with BLM was not a
17 special condition that was imposed in the original judgment.
18 And I appreciate that.

19 THE COURT: Until we kind of get everybody working
20 together, I think let's --

21 MS. MATTHEWS: And I appreciate that, Your Honor.

22 The only other thing I wanted to note, and it's a
23 little awkward because this is obviously Mr. Hammond,
24 Steven.

25 THE COURT: That's fine.

1 MS. MATTHEWS: That the Ninth Circuit has held
2 that you are also entitled to credit for time served on
3 supervised release.

4 THE COURT: I am not done.

5 MS. MATTHEWS: Thank you.

6 THE COURT: Maybe I should finish.

7 MS. MATTHEWS: I appreciate it.

8 THE COURT: Next, you are to abide by a civil
9 settlement with the Bureau of Land Management; in this case,
10 specifically payment of \$400,000, the balance of which will
11 be paid in full -- is that --

12 MS. MATTHEWS: December of 2015.

13 THE COURT: Right. And that's still agreed to is
14 my understanding.

15 MS. MATTHEWS: That is still agreed to and
16 anticipated.

17 THE COURT: Okay.

18 With regard to Count 5, you are committed to the
19 Bureau of Prisons for confinement for a period of 60 months
20 to be served concurrent -- that means at the same time --
21 with the sentence imposed in Count 1.

22 I am not imposing a fine. You have the
23 restitution obligation that you need to pay.

24 You have paid the fee assessment, so I will just
25 note for the record because I -- again, so that it's

1 applied. It's more of a detail for our finance office that
2 the amount of \$100 per count of conviction, it's \$200, is
3 due and owing. It's been paid, and if it hasn't been
4 applied, this should trigger that application.

5 You entered into a plea agreement that waives all
6 or a part of your appeal rights, so to speak.

7 MR. MATASAR: Or not.

8 THE COURT: Or not. You are certainly entitled to
9 file a notice of appeal. The Ninth Circuit will tell us if
10 we have done it all right.

11 It's not personal to anybody. No judge or lawyer
12 or anyone should take their rulings as personal. We all get
13 mixed messages, shall we say, from the Ninth Circuit.

14 So regardless, they have the obligation to correct
15 any record or problem in this particular case, and they will
16 have it again. But you have to file that notice within 14
17 days of today's date.

18 You will get credit for time served. That will be
19 calculated.

20 I will certainly make a recommendation for
21 Sheridan for the camp.

22 And I will also recommend that the court has no
23 objection, if you are both willing and able and interested,
24 to serve that sentence in the same facility. That's a
25 bigger decision made by the Bureau of Prisons, and generally

1 they barely listen to us on some of those recommendations
2 except when there's medical needs, and then they are
3 generally pretty attentive.

4 Anything else? Did I miss anything?

5 MR. PAPAGNI: If he can voluntarily surrender.
6 Ms. Matthews requested that.

7 THE COURT: It was January 4th?

8 MS. MATTHEWS: January 4th.

9 THE COURT: I don't have a problem with that. I
10 generally allow that.

11 MR. MATASAR: Your Honor, Ms. Matthews is going to
12 talk about the conditions, but there was just one that I
13 wanted to raise, and that is when you say enter on BLM land,
14 their land is --

15 THE COURT: Property is going everywhere.

16 MR. MATASAR: Yes. Checkerboard thing, so they
17 will be driving on roads. As long as they could either ask
18 their PO, we would probably appreciate it if simply driving
19 through BLM land with no contact with people is okay.

20 THE COURT: I don't have a problem with that. I
21 impose that all time when I have people who violate the
22 Native Americans' rights on their tribal properties as well,
23 and just generally they can drive on those roads, but they
24 are not to sort of use those properties without giving some
25 notice and some obligation to let people object.

1 MR. MATASAR: Thank you.

2 THE COURT: So I understand how that patchwork is
3 done out there.

4 Any questions?

5 MR. MATASAR: Not from me, Your Honor. Go ahead.

6 THE COURT: And turning to Mr. Dwight Hammond.
7 Same calculations in place.

8 Your offense level is a 6.

9 Your criminal history is a I. 0 to 6 months.

10 Looking at the factors -- I am not going to even
11 address those because, again, it's trumped by the mandatory
12 minimum in this particular case.

13 I am committing you to the Bureau of Prisons for a
14 period of 60 months.

15 Upon release from confinement, you will have a
16 three-year term of supervised release subject to the
17 standard conditions of supervision adopted by this court and
18 the following special conditions:

19 Mr. Hammond, they are identical to the ones I just
20 recited. Do you want me to read those out loud again for
21 you, or do you understand and acknowledge that I did that?

22 DEFENDANT DWIGHT HAMMOND: I understand.

23 THE COURT: Thank you. I will note that for the
24 record.

25 Again, I am told that you have paid your \$100 fee

1 assessment. Again, for purposes, it's a \$100 per the count
2 of conviction, and it will be applied and then transferred
3 in our finance office to effectuate that obligation.

4 You entered into a plea agreement that waives all
5 or part of your appeal rights. If you wish to file a notice
6 of appeal, you may do so. It will be governed by that
7 agreement unless we are told otherwise.

8 And you have 14 days in which to do that. If you
9 can't afford to do it, contact the clerk's office. It will
10 be done for you for free.

11 I recommend the camp at Sheridan.

12 You will get credit for time served. All that was
13 served ahead of time will be applied.

14 And I don't have any objection to you being placed
15 in the same facility with your relative or your codefendant
16 in this particular case. In fact, I will make sure, Kellie,
17 we say that with regard to both relatives.

18 Is there anything I missed?

19 MS. MATTHEWS: The self-surrender date for him.

20 THE COURT: Same date. Same date. I don't have
21 any problem with that. You know, I don't generally have a
22 problem. It's rare that I take people into custody.

23 For those of you who are attending, I want to say
24 a couple of things.

25 Number one, excellent lawyering done by everybody,

1 all the preparation, it was excellent work. We are here
2 because the Court of Appeals took a look at something, as
3 they are bound to do, and they sent this case back for the
4 court to follow the law, which is what I believe I did
5 today.

6 But it's important that you are here because a lot
7 of times miscommunication about what really takes place in
8 the courtroom has any number of the players who are actually
9 doing the work frustrated with no way to respond to the
10 miscommunication or the misstatement.

11 What I would do is I want to underscore how much
12 it meant for Mr. Matasar to step right up and acknowledge
13 the work that Mr. Papagni has done and how these lawyers
14 have worked together and agreed to disagree in a
15 professional way. That's what we expect in this courtroom.
16 Not personal. No attacking here was in any way other than
17 what they are obligated to do on behalf of their clients,
18 which is respected. None of this is done for any way,
19 shape, or form other than to apply the law to the facts that
20 we have and to walk through this process.

21 So that's a big deal for those of you who are not
22 yet generally in the courtroom to have the lawyers step up
23 and do the kind of courtesies that they extended today.

24 Now, Mr. Papagni, I knew, today would come in here
25 and he had a lot to say. I knew that. And I know that it

1 was frustrating because when you don't get the chance and
2 you are painted in a particular way, you want to make sure
3 that everybody knows you have done your job well, and
4 especially if you have done it over decades because
5 reputation is all really lawyers have.

6 So what I would tell you is all the lawyers who
7 are here today have excellent reputations, and their work is
8 such that I can read it. And there isn't going to be a
9 difference between what I read about and what I see when
10 they present. And that's, in so many ways, just an
11 incredible professional joy to have that privilege to be in
12 a courtroom where that's practiced.

13 So for all three lawyers, four lawyers here today
14 who have worked on these cases and to Mr. Blackman,
15 everybody did excellent work. We don't always agree, but
16 this is how we resolve our disputes. We resolve them in the
17 courtroom. We don't resolve them out in the land. We don't
18 resolve them out with self-help. We don't resolve them with
19 guns and weapons that are not applicable. We resolve them
20 in the courtroom or where people can agree.

21 So good luck to both of you. That's all.

22 MS. MATTHEWS: Thank you, Your Honor.

23 *(The proceedings were concluded this*
24 *7th day of October, 2015.)*

25

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 5th day of November, 2015.

5
6 /s/Kristi L. Anderson

7 Kristi L. Anderson, Certified Realtime Reporter
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