

EXHIBIT

A

MICHAEL BRADLEY WESTOVER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

17-7607

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF WYOMING

3 -----
4 UNITED STATES OF AMERICA,
5 Plaintiff, DOCKET NO. 04-CR-171-B
6 vs. CHEYENNE, WYOMING
7 MICHAEL BRADLEY WESTOVER, July 28, 2006
2:15 p.m.
8 Defendant.
9 -----

10 TRANSCRIPT OF SENTENCING PROCEEDINGS
11 BEFORE THE HONORABLE CLARENCE A. BRIMMER
12 UNITED STATES DISTRICT JUDGE

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25 Proceedings recorded by mechanical stenography, transcript
produced with computer.

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P R O C E E D I N G S

(Proceedings commenced 2:15 p.m., July 28, 2006.)

THE COURT: Case of United States versus Michael
Bradley Westover.

Mr. Anderson.

MR. ANDERSON: We're here for purposes of sentencing
in Docket 04-CR-171-B, as the Court said, United States versus
Mr. Michael Bradley Westover.

As the Court will recall, Mr. Westover was indicted by
the federal grand jury for the District of Wyoming on September
21st, 2004, with four counts in a twelve-count Indictment.

He was charged in Counts 7 and 12 with being a felon
in possession; Count 9, conspiracy to use a firearm in
violation of 924(c); and Count 10, an actual 924(c) count, that
is, use of a firearm in the course of a drug trafficking
offense.

The defendant initially pled guilty to this charge.
However, pursuant to a written plea agreement, the defendant
entered a plea of guilty to the charge on May 12th, 2006. The
plea agreement provided that the defendant would plead guilty
to Count 12. In exchange for the defendant's plea of guilty to
Count 12, the United States agreed to dismiss Counts 7, 9 and
10 of the Indictment.

The Court ordered a Presentence Report to be prepared.
That Presentence Report has, in fact, been prepared. Both

1 parties have reviewed the Presentence Report. On behalf of the
2 Government I would submit that the United States does not have
3 any material objection to the information or calculations
4 contained within the Presentence Report.

5 The Presentence Report provides that the defendant's
6 final offense level is a 30, that his criminal history results
7 in the attribution of 13 points to him, resulting in a
8 recommended sentencing guideline range of 168 to 210 months.

9 However, because the defendant is subject to the
10 statutory provisions of 18 United States Code Section 924
11 paragraph (e), the actual sentencing -- recommended sentencing
12 guideline or advisory sentencing guideline range is 180 months
13 to 210 months. The defendant, as I said earlier, has lodged
14 material objections to those calculations.

15 I would also note for the Court's information, the
16 young man seated at Government's counsel table is Mr. Prentice
17 Olive, related to Mr. John Olive. I asked that John -- I asked
18 Prentice if he wanted a better seat. He said he would sure
19 like a better seat and so he's seated at counsel table.

20 THE COURT: I hope he's satisfied with his seat. I
21 think it is a pretty good one.

22 MR. ANDERSON: Thank you, Judge.

23 THE COURT: All right. Thank you, Mr. Anderson.

24 Please come forward, Mr. Serelson, and tell me if you
25 have any objections to the Presentence Report, sir.

1 MR. SERELSON: First of all, I'm glad someone is
2 keeping an eye on Mr. Anderson here. I feel much better about
3 it now.

4 Your Honor, I did receive the Presentence Report that
5 was done by Mr. Olive who always does a very thorough, complete
6 job in his reports.

7 There were objections that I did file in this case
8 that Mr. Olive notes in his addendum. I've reviewed that and
9 reviewed Mr. Olive's responses to those objections.

10 I understand that Mr. Olive and the United States
11 Attorney are on sound legal ground in their determination that
12 those objections in many ways are moot or irrelevant as a
13 result of the statutory mandatory minimum of 180 months
14 pursuant to the armed career offender statute.

15 Mr. Westover is asking the Court to go beyond and I
16 guess below the statutory mandatory requirements.

17 THE COURT: I can't do that.

18 MR. SERELSON: I know that, Your Honor. I guess
19 sometimes the law clashes with justice and isn't always the
20 same, and in this case we believe that justice is not served by
21 a sentence of 180 months, even though the law calls for that.
22 And I know that the Court is bound to follow the law.

23 THE COURT: I agree that 180 months is a long, hard
24 sentence. And I am not in favor of giving sentences that long,
25 but in this case I have no choice. If I don't do it, the Court

1 of Appeals will order me to do it.

2 MR. SERELSON: We're prepared to give them that
3 opportunity, Your Honor. Regardless, I understand and I
4 understand your limitations. You do not have the ability to do
5 whatever you want whenever you want. And I understand that.
6 Mr. Westover does want the Court to know that.

7 First of all, the Court should be aware he does have
8 family members here in the courtroom.

9 THE COURT: So I see.

10 MR. SERELSON: His three sisters, Kim, Pam and Diane,
11 are all in the courtroom, as well as his daughter Kara. He has
12 people supportive of him. And Diane is actually -- Diane
13 actually traveled here from Canada to show her support for
14 Michael.

15 I believe the Court would have received a letter from
16 Pam. I'm not sure --

17 THE COURT: Yes, I have it right here and I have read
18 it, of course. But if any of them wish to come forward and
19 speak on the subject, I will be glad to hear them.

20 MR. SERELSON: I appreciate that, and I will inquire
21 of them if they wish to do that. What Mr. Westover would like
22 the Court to know is that even though under the law he
23 qualifies technically as an armed career offender, he does not
24 believe that it is appropriately applied in his case because
25 the prior offenses for which he qualifies consist of a drug

1 delivery of approximately 3 grams of cocaine, an escape, an
2 attempted escape, but nothing of actual --

3 THE COURT: As I understand it, there's two pending
4 escape charges now.

5 MR. SERELSON: There are, Your Honor, out of the state
6 of Colorado. To be honest, I think that all plays in the issue
7 of his mental health. He has been diagnosed and his records do
8 support somewhere between a 70 and 75 IQ. I've talked to his
9 counselor down at the Sterling jail, Denise Rogers, who has
10 diagnosed him with posttraumatic stress disorder.

11 And, as the Court could see from the sister's letter,
12 Michael went through tremendous trauma as a child, starting at
13 about age 6. So it would be no surprise that he suffers from
14 posttraumatic stress disorder, borderline and other personality
15 disorders, depression. He has been suicidal. He has medical
16 problems, hepatitis C. He is a man who for all of his life has
17 been beaten and abused and battered. He's not big of stature.

18 THE COURT: His case is a prime example of the truth
19 of the old saying as the twig is bent, so grows the tree.

20 MR. SERELSON: And his was bent, or broken, for that
21 matter. And so he is a man now at 41 years of age who was
22 punished for all of his prior criminal conduct, and not
23 lightly. He has spent significant time incarcerated, but yet
24 today he's again being punished for that prior criminal act,
25 being punished both as it applies to career criminal offender,

1 being punished a third time as it gets added to his criminal
2 history points. I understand the law doesn't support that's
3 double jeopardy to continue to punish a man for crimes that
4 he's already been punished for. Maybe some day justice will
5 catch up with the law and once you're punished, you've paid
6 your price and you get to start fresh. But that is not the
7 current state of the law.

8 If he was not a career offender, I believe he would
9 have a base level of 24. I do not believe he should qualify
10 for an additional two points for the .22 Jennings because I
11 don't know that it was stolen and that charge was dismissed in
12 this case.

13 He received two additional points for obstruction of
14 justice in regard to this attempted escape charge, which is
15 only a charge. He pled guilty to this case. If he was -- if
16 he remained at a level 24 and if he had a criminal history
17 which I believe would be most appropriately, with nine points,
18 the burglary convictions, I believe he should receive three
19 points for the controlled substance felony charge, three points
20 for the escape charge, and three points for the attempted
21 escape charge, or a total of nine points.

22 And if he had nine points he would be in category IV,
23 level 24, minus three points for acceptance of responsibility
24 would be level 21, category IV, and he would be facing 57 to 71
25 months.

1 The underlying offense in this case is possessed a
2 firearm.

3 THE DEFENDANT: Didn't even work, Dave.

4 MR. SERELSON: Didn't even work. And there was
5 ongoing drug use, which is not unusual with someone with his
6 mental health problems to engage in some self-medication. So
7 he was using some drugs. He had a gun. Again, no violence.
8 Nobody got hurt. No intention to hurt anybody.

9 THE DEFENDANT: That was Bridget's gun.

10 MR. SERELSON: And based on the underlying offense, 57
11 to 71 months seems like a just, fair and reasonable disposition
12 and one for which Mr. Westover asks this Court to sentence him.

13 We also are asking the Court to allow him to receive
14 whatever medical and mental healthcare is available. I don't
15 know what his options are in terms of placements in federal
16 facilities. I don't know if Florence is a possibility. I
17 don't know what Florence has to offer in terms of medical and
18 mental healthcare. But he needs a facility --

19 THE COURT: Florence basically has, as you know, three
20 institutions there.

21 MR. SERELSON: Right.

22 THE COURT: I don't think that Mr. Westover, even
23 though he has this history of attempted escapes -- I doubt if
24 he would make Super Max, but I think that he could very well
25 get to the Florence penitentiary.

1 MR. SERELSON: And, Your Honor, that would be closer
2 to his family, would still allow some contact. And so if
3 that's available, we would ask for that recommendation.

4 And the last thing I would say, Your Honor, before
5 seeing if any of the family members wanted to speak, was that
6 he would like to have some time to be with his family.

7 THE COURT: Well, this address of yours is really on
8 the subject of objections to the Presentence Report, and I
9 think, with due respect to your arguments, Mr. Serelson, I'm
10 going to -- for reasons stated by the probation officer in
11 response to your objections, going to sustain his views of the
12 matter and overrule your objections.

13 MR. SERELSON: I understand, Your Honor.

14 THE COURT: All right. Mr. Westover, you're here, of
15 course, for purposes of sentencing. And I must point out to
16 you that you pled guilty on May 12th of this year, and by doing
17 so, you waived your rights to a speedy and public jury trial at
18 which you're presumed to be innocent, and you also have a right
19 to confront the witnesses against you, to have your own
20 witnesses subpoenaed at Government expense for the purposes of
21 a trial.

22 And at that trial you're entitled to have 12
23 disinterested citizens selected with your help as fairly as we
24 can do it.

25 THE DEFENDANT: But he told me I'd get 25 years.

1 THE COURT: What?

2 THE DEFENDANT: I would get 25 years if I went to
3 trial.

4 THE COURT: I don't know that. But I'm pointing out
5 to you that you waived those rights. But I have always, ever
6 since I first mounted this bench, allowed a man the opportunity
7 to withdraw his plea if he wishes and avail himself of these
8 rights that he waived. I think they're important rights. And
9 if you desire to withdraw your plea, I will offer you that
10 opportunity at this time.

11 MR. SERELSON: Your Honor, I believe what Mr. Westover
12 was referring to was -- and it is pointed out in the
13 Presentence Report as well -- that he was facing additional gun
14 charges which would have included the reasonable likelihood
15 that he would have faced an additional consecutive term of
16 approximately 30 years.

17 And so I think that's the consideration that
18 Mr. Westover was referring to in regard to his decision to
19 plead guilty.

20 THE COURT: Well, I'm not going to act as his
21 attorney. I merely offer him the opportunity and you must tell
22 me what you want to do.

23 THE DEFENDANT: Proceed.

24 THE COURT: What?

25 THE DEFENDANT: Proceed.

1 THE COURT: You're going to stand on your plea?

2 THE DEFENDANT: (Defendant nods head.)

3 THE COURT: All right. Have you read the Presentence
4 Report?

5 THE DEFENDANT: I can't read.

6 THE COURT: Is it substantially correct?

7 THE DEFENDANT: No.

8 THE COURT: In what ways do you feel it is incorrect?

9 THE DEFENDANT: There's a lot of stuff that's not
10 correct in there, and I feel that if such a thorough job was
11 done on it that a lot of other truths would have come out and
12 stuff like that, you know, that never.

13 MR. SERELSON: Like what? Tell him.

14 THE DEFENDANT: Like, you know, the way I grew up or
15 why I was shoplifting, because I didn't have no food, just
16 stuff like that. And the crimes, burglaries and stuff, they
17 weren't -- they weren't dwellings. They weren't houses. The
18 paperwork says that, and he put in there that they are anyways
19 and stuff like that.

20 And the violent crimes, I've never hurt nobody in my
21 life.

22 THE COURT: Well, I have your sister Pamela's letter
23 before me and I have read it in which she points out the
24 problems that you had growing up and were constantly beaten and
25 stripped naked and various things that I think are

1 reprehensible. I sympathize with you.

2 But yet, you are faced here with an armed career
3 criminal punishment. This is a punishment that the United
4 States Congress has specified, and they in their wisdom, the
5 people in the House of Representatives and the Senate, have
6 passed the law that says that a man that qualifies for that
7 shall be subject to these increases.

8 And I'm at a point here today where you have an
9 offense level of 30 and a criminal history category of VI. It
10 results in a guideline provision of 180 to 210 months. And by
11 law, by the acts of our Congress, I am prohibited from going
12 lower than 180 months because of a mandatory minimum.

13 I don't like mandatory minimums either because I feel
14 it takes away from me the discretion that I need to have where
15 I can see and talk to the person being sentenced and know what
16 his situation is. But Congress has passed these laws and we
17 have to obey them.

18 Well, Mr. Westover, at this point I realize you
19 believe that the Presentence Report is not correct. I will
20 consider it to be amended to show the problems that you had as
21 a youth. And as I remarked to Mr. Serelson, this is a classic
22 example of the twig being bent and the tree grows the wrong
23 way, and that's exactly what has happened to you, for which I
24 am sorry. It shouldn't have happened.

25 But there's nothing that I can do about it except, of

1 course, hear you. And so at this time, Mr. Westover, I will be
2 glad to hear whatever else you wish to say on your own behalf
3 as to why you should not be sentenced or in mitigation, or
4 lessening, of sentence.

5 THE DEFENDANT: Well, it says that I had a .22 and
6 everything, and what it was was somebody had lived in the
7 apartment had left that thing behind. It was in a bowl. It
8 wasn't even put together or nothing. And I didn't think
9 nothing of it. Nobody told me I couldn't have it. And then
10 people started coming over and saying, "Mike, you got to get
11 rid of that. You got to get rid of it. You can't have that."

12 So this guy Bill Mair comes over and says, "I'll take
13 that," and I gave it to him. I just gave it to him. I said,
14 "I don't care. Everybody says I can't have it." And I guess
15 he shot himself later or something with it, you know, in the
16 hand. He put it together -- it wasn't even put together. I
17 didn't even know if it worked.

18 And then on this other stuff, when -- it was the same
19 guy, he gets in my van with the gun and he goes and sells it,
20 and because he was in my van, it is -- something. But I didn't
21 even touch that gun. And at that time I didn't even know I
22 couldn't -- I didn't never done nothing to not be able to have
23 a gun before. I ain't never done nothing. I ain't even shot a
24 gun since I was 12.

25 THE COURT: Well, these are arguments that one would

1 logically make to a jury as to why you're not guilty, but you
2 have pleaded guilty in this case and I can't change your plea.
3 You have elected to stand on your plea. I offered you the
4 opportunity to withdraw it.

5 THE DEFENDANT: Should I withdraw it? But I didn't
6 know I couldn't have it. Nobody never ever said I couldn't
7 never have that. Then they come over to the house and say,
8 "You got to get rid of that, Mike," and then I got rid of it.
9 I gave it away. I got rid of it because I -- they said I
10 shouldn't have it, even though I never -- I don't even know if
11 it even worked. It didn't work when I had it, when it was at
12 the house, when it was left with my girlfriend.

13 But I didn't -- I'm not some gun person, you know, or
14 something like that or shooting guns or anything like that.
15 And I never hurt nobody with a gun. I never even hurt nobody,
16 period.

17 THE COURT: I think your record does show that.

18 THE DEFENDANT: I don't know what to do.

19 THE COURT: All right. Mr. Serelson, I will be glad
20 to hear any of the family members that wish to come forward.

21 MS. LEPORE: Your Honor, my name is Kim Lepore. I'm
22 Mike's oldest sister, and I would just say I know that you know
23 how he grew up. Well, you can't imagine. Being the oldest of
24 three boys and then two older sisters, because he was the
25 oldest boy, he took the brunt of everything. And I know, but

1 he's been running his whole life from someone who had hurt him
2 and from himself. And I really believe that all of this is
3 just beating himself down. He has -- from -- from someone who
4 loves him and knows him all of his life, he has no sense of
5 self-worth, and it just seems like everything he can do to hurt
6 himself.

7 And then it is just -- I know he wants a life. With
8 all of his hurt -- we have talked so many times about
9 possibilities. His daughter -- he has a grandson and he's
10 forever feeling like he doesn't deserve, and so things -- he
11 makes things so hard on himself. And he doesn't know any
12 different. He's never had good and he doesn't know how to
13 accept good.

14 And so I just -- just that you would know if he is
15 able to go to somewhere that could possibly help him get rid of
16 what he holds constantly, the nightmares and everything that
17 goes with that.

18 THE COURT: I agree completely with what you're
19 saying. I think that he needs psychiatric and mental
20 counseling.

21 MS. LEPORE: So badly.

22 THE COURT: And I will strongly recommend that to the
23 Bureau of Prisons.

24 MS. LEPORE: Thank you.

25 THE COURT: Anything else?

1 MS. MOODY: Yes, my name is Pamela Moody. I am the
2 second-to-the-oldest sister.

3 THE COURT: You are Pamela?

4 MS. MOODY: I am the one that -- I apologize. I
5 didn't realize I would have an opportunity. I wrote the
6 letter.

7 THE COURT: It was a nice letter.

8 MS. MOODY: Thank you so for taking the time to read
9 that and take that into account. That has a lot to do with
10 what I had written. Sir, that is true. I lived in the
11 household, and we all did, with the abuse and all of the things
12 that took place, the stealing and what one would call juvenile
13 delinquency. We stole to eat. If I wasn't stealing money out
14 of my mom's purse to buy groceries, we stole from the grocery
15 store.

16 The abuse was incredible. The alcohol abuse was
17 incredible. The conditions in which we lived were incredible.
18 Today, you know, you will just rip kids out of the home left
19 and right. Back then they just -- people closed an eye and
20 this abuse went on, as I stated in my letter, 12 to 14 years
21 minimum. These are things that we grew up with.

22 And Mike again still has had one kind of abuse in one
23 form or another and now abuse comes in one form or another. I
24 am a little upset with the PSI investigation. They never
25 contacted me. They never asked anything. I had -- ten years

1 ago when Mike was in Rawlins I pleaded with Department of
2 Corrections, "Please, please, he needs other help. He needs
3 additional help. He needs psychiatric help."

4 They just said, "Never mind." They give me a file on
5 him or a folder. They just shut the door on me. Again, I
6 don't want Mike to have that. He's never had the peace and
7 love my sister and I have maybe I've gotten from God. I know
8 we did. That's -- for us to let go of the nightmares,
9 incredible nightmares I've grown up with in my life, even
10 raising my own children, and if it hadn't been for the love of
11 God and his support and my faith in him that I don't know how
12 or where I would be at, and sane.

13 I know what it was like for Mike to be on drugs
14 because you're going to run. You need to escape the life that
15 we were living in one form or another. And these are all
16 issues that still brings Mike here today before you. And
17 again, I pray, you know, with your leniency on him, I don't --
18 he's done so much time, his whole life. He's done 35 years of
19 his time already.

20 THE COURT: I realize that.

21 MS. MOODY: And I have been praying to God to
22 please -- he needs to have peace and he needs to know love and
23 a life in this system or additional abuse that goes on, that's
24 all there is to it. There is additional abuse in prison. When
25 does it quit for him?

1 THE COURT: Well, Pamela, I think there's wisdom in
2 all that you have said to me. And as I said, I will strongly
3 recommend that he receive treatment, and I think that they will
4 do that. The federal system is pretty good in those ways. So
5 I believe that you will see and hear about it in time.

6 As far as -- I do really -- I liked your letter. I
7 think you are right, but you are writing to the wrong guy. The
8 guy that you have got to write to is your congressman and even
9 now my colleague, Judge Johnson, was just in Washington at the
10 beginning of this week, and we learned from the Department of
11 Justice representative that they are going to submit
12 legislation that will restore all of these mandatory minimums
13 and will deny to district judges the right to go below the
14 guidelines.

15 I'm sure that in the present frame of mind that
16 Congress is, they might very well pass it. And that will be a
17 great travesty of justice. It just isn't right.

18 And yet Congress, not the judges of our land, is the
19 one that is doing this to people. And I'm sorry that that's
20 happened.

21 MS. MOODY: Then I will do that, sir.

22 THE COURT: Write your congressman.

23 MS. LEPORE: Thank you, Judge.

24 MS. MOODY: Thank you.

25 THE COURT: All right. Thank you, ladies.

1 Mr. Serelson, did you have any more you would like to
2 say?

3 MR. SERELSON: Just finally, Your Honor, do appreciate
4 the Court's intention to strongly recommend the psychiatric
5 treatment that Michael needs. It is clear from his history and
6 from his diagnosis of many mental health issues that that is
7 the primary concern that his family has and I have and that he
8 has. He wants to be a contributing member of society. He
9 wants to have a life and to be with the people who love him and
10 to make good decisions in his life. He doesn't have the skills
11 to do that right now and hasn't and despite his many
12 incarcerations has never been provided the opportunity to learn
13 those.

14 So we take to heart that the federal system will more
15 seriously provide the care and treatment and therapy and
16 medication -- he's on antidepressants, antipsychotic
17 medication -- that the federal system will provide to Michael
18 probably for the first time an opportunity to work through
19 these issues and to come out of prison a much different man
20 than the one that's going in.

21 THE COURT: Mr. Serelson, I have been to nearly every
22 one of the prisons west of the Mississippi, and in every one I
23 have found both vocational and avocational programs. I have
24 found medical care, concerned treatment. I think the federal
25 system does do it. I know that the state penal systems don't,

1 at least they didn't used to.

2 And there was a time that -- when I first got on this
3 bench I had to stay away from Rawlins because if I officially
4 knew what was going on there, I would have to close it. And
5 instead, the warden and I made a pact that we would try to get
6 a new prison, which we did, but -- and I think conditions there
7 have improved substantially. But it is an uphill fight.

8 MR. SERELSON: Yes, sir, and we appreciate those
9 comments and those efforts. Michael believes he does suffer
10 from a diminished capacity, does believe that that should be
11 considered by the courts as well as by the facilities, both in
12 terms of his treatment and in terms of his sentence, and asks
13 the Court to grant whatever leniency the Court can, make
14 whatever recommendations the Court can to recognize his
15 posttraumatic stress disorder, personality disorder, attention
16 deficit-hyperactivity disorder, the findings of his therapist
17 down at the Sterling jail. I think she's worked hard to try
18 and provide care to Michael and does understand the serious
19 mental health problems that he has and spoke to me about those.

20 And we appreciate any help and any leniency. Thank
21 you, Your Honor.

22 THE COURT: All right. Thanks very much,
23 Mr. Serelson.

24 I will, indeed, recommend mental health counseling and
25 will recommend that he receive psychiatric and psychological

1 care.

2 Mr. Anderson.

3 MR. ANDERSON: Very briefly, Your Honor. I note --
4 and I apologize. I can't remember which of Mr. Westover's
5 sisters said this, but they mentioned that he has spent more
6 time inside facilities since age 15 than outside. If you look
7 at his record, he just never has been able to function on the
8 outside of an institutional setting at any time in his life for
9 any extended period of time.

10 I'm afraid that Mr. Westover may very well be -- if he
11 has not already become he will become an institutional man or
12 institutionalized man very shortly.

13 I would recommend to the Court that in addition to
14 psychiatric treatment that Mr. Westover also be -- that the
15 Court recommend that he be considered for the Intensive
16 500-hour substance abuse treatment program. I think these gun
17 transactions that he was involved in to a certain extent
18 revolved around substance abuse and/or his attempts to obtain
19 controlled substances. Guns are easily exchanged for drugs.

20 And so I think that that's the other recommendation
21 that the Government would make.

22 We would also note that in our concern that he has
23 become an institutionalized man --

24 THE COURT: I agree with that recommendation too, and
25 I will recommend it.

1 MR. ANDERSON: I would point out for Mr. Westover and
2 his family, we really -- the most important part of this
3 sentence for Mr. Westover will be the supervised release to
4 follow up. He's just going to have a tough time in supervised
5 release. Probation recognizes he will be a tough case given
6 his inability to survive on the outside. We recognize his
7 continued support from his family, and we hope it is there from
8 his family.

9 I know the Court feels that this is a stiff sentence.
10 I know his sisters and daughter think this is a terribly long
11 sentence. All I can say, as soon as Mr. Westover was around
12 those guns, he sealed his fate. Whether or not he pled to
13 these charges, the other charges contained in the Indictment,
14 or if he had gone to trial, he would have been looking at the
15 same amount of time, and if he went to trial would have been
16 looking at much greater period of time. That's what Congress
17 has mandated.

18 THE COURT: He wouldn't get the three points for
19 acceptance of responsibility, and that would increase the
20 sentence, of course.

21 MR. ANDERSON: Exactly.

22 MR. SERELSON: We appreciate the Government's
23 recommendation for the 500-hour drug treatment program and join
24 in that recommendation.

25 THE COURT: That will be recommended.

1 Well, Michael, it is a difficult thing to impose a
2 mandatory minimum on a man. And yet I have no choice. Your
3 offense level is a 30, and you've got a criminal history
4 category of VI, and the armed career criminal statute says that
5 I must sentence you to at least the low end of the guideline,
6 so I've got to give you the 180 months, which is a lot longer
7 than I really think is necessary under these circumstances.

8 You have got a -- you had a gun and you were a felon,
9 and there's just no doubt about it. So I will sentence you --
10 let me say this. Your two escape attempts really make it
11 almost mandatory that you should receive an increased sentence,
12 to be honest with you, and the probation officer and I have
13 talked about the fact that you ought to get 200 months. But I
14 think 180 months is an awful long time, and I'm not going to go
15 to the 200 under any circumstances.

16 So for all of these reasons, it is the sentence and
17 judgment of this Court that you be committed to the custody of
18 the Attorney General of the United States to be confined in an
19 institution to be designated by him for a term of 180 months.

20 And that upon release from imprisonment, you shall be
21 placed on supervised release for a term of five years. Now let
22 me say something there. They do have programs in federal
23 prisons to teach a man a skill. You don't know how to do a
24 darned thing that would get you a job after you get out. You
25 have got to learn how to earn your daily bread peaceably

1 without going to jail for it. And that -- you can't be a
2 criminal anymore. You're not a good criminal. You're not very
3 successful at it. And you have got to figure out how you can
4 get a job welding or laying bricks or doing things that you can
5 earn your living with. And I hope you will. The opportunity
6 will be there for you to do it, and you must take advantage of
7 it.

8 Now, continuing, within 72 hours of release from
9 imprisonment, you shall report in person to the probation
10 office in the district to which you're released. And on
11 supervised release you shall obey these conditions: You shall
12 not commit any other crimes, federal, state or local.

13 You shall abide by the standard conditions of
14 supervised release.

15 You shall not purchase, use or possess firearms,
16 ammunition or explosives.

17 And you shall not illegally use or possess controlled
18 substances, and revocation of supervised release and a
19 mandatory additional one year in prison is required for either
20 guns or drugs. You just can't have them.

21 And you shall submit to one drug test in 15 days of
22 release from imprisonment and at least two periodic drug tests
23 thereafter.

24 Under the DNA collection requirements law you shall
25 submit to DNA collection while incarcerated in the Bureau of

1 Prisons.

2 And you shall make any special assessments,
3 restitution and fine payments as ordered by the Court. You
4 must advise the probation office of your economic circumstances
5 as it affects your ability to pay your obligations. And you
6 shall pay your obligations promptly. Any not paid shall be
7 paid through the Inmate Financial Responsibility Act.

8 Now, I'm going to, on that subject, give you a small
9 fine. And the wardens of these penitentiaries have advised us
10 that's what you should do so you can get a job while you're in
11 prison and it will help pass the time.

12 And under the Inmate Financial Responsibility Program
13 you will pay a little bit on your fine and you will have some
14 money left over for your personal necessities.

15 You shall participate in programs of testing and
16 treatment for drug and alcohol abuse until released from the
17 program by your probation officer.

18 You shall during the period of supervised release also
19 seek and obtain mental health counseling until released by your
20 probation officer from that program.

21 And you shall take any medications that are prescribed
22 for you.

23 You shall refrain from use or possession of alcohol,
24 and you shall not frequent places where it is bought and sold.

25 And you shall submit your person, residence, office or

1 vehicle to a search conducted by your probation officer at any
2 reasonable time and reasonable place and manner based on the
3 suspicion of contraband or evidence of violation of a
4 condition. And you should warn other residents that the
5 premises may be subject to such a search.

6 I realize that you don't have an ability to pay a fine
7 within the guideline range, but you do have an ability to pay a
8 reduced fine, and I'm going to assess you a fine of \$400 which
9 is inclusive of interest and penalties, and that shall be paid
10 through the Inmate Financial Responsibility Program.

11 Restitution is not applicable in this case.

12 I am also compelled by law to assess you \$100 for a
13 fund for the benefit of the victims of crime, and I do hereby
14 so assess it.

15 And I find that the sentence imposed is the most
16 reasonable sentence upon consideration of all of the factors
17 enumerated in 18 U.S. Code Section 3553, and that the same
18 sentence would be imposed even if the advisory guideline range
19 was improperly calculated.

20 I recommend that you be designated to the USP at
21 Florence.

22 And, of course, you have ten days from the entry of
23 judgment to file a Notice of Appeal.

24 With that, Michael, you're committed to the custody of
25 the Marshal.

1 MR. SERELSON: Your Honor -- I'm sorry.

2 MR. ANDERSON: I would ask that the Court dismiss
3 Counts 7, 9 and 10 of the Indictment on file against the
4 defendant.

5 THE COURT: Counts 7, 9 and 10 are each dismissed.

6 MR. ANDERSON: Thank you, Your Honor.

7 MR. SERELSON: Would the Court consider any time with
8 his family?

9 THE COURT: I will ask the Marshals if they can
10 provide some time with Mr. Westover for his family.

11 MR. ANDERSON: Could we do that in the courtroom,
12 perhaps, after the next hearing? And the reason we request
13 that, I talked to the Marshal Service before the hearing. As
14 the Court may recall, Mr. Westover cut himself down in the cell
15 block the last time he was placed in our cell block. We don't
16 know how he did it. And so we would prefer perhaps if there's
17 going to be any visitation, briefly here in the courtroom after
18 the hearing.

19 THE COURT: Would that be all right, Jerry?

20 MARSHAL LANDRUM: Yes, sir. We don't want him in our
21 cell block. He came straight from a vehicle and will go
22 straight to a vehicle once he leaves the courtroom.

23 THE COURT: Let's keep him in the courtroom and you
24 can let him visit with his family after the -- after we finish
25 the next case.

1 MARSHAL LANDRUM: Thank you.

2 THE COURT: All right.

3 MR. SERELSON: That's all, Your Honor. Thank you very
4 much.

5 THE COURT: Good luck, Michael.

6 (Proceedings concluded 3:05 p.m., July 28, 2006.)

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C E R T I F I C A T E

I, JANET DAVIS, Federal Official Court Reporter for
the United States District Court for the District of Wyoming, a
Registered Merit Reporter and Federal Certified Realtime
Reporter, do hereby certify that I reported by machine
shorthand the foregoing proceedings contained herein on the
aforementioned subject on the date herein set forth, and that
the foregoing pages constitute a full, true and correct
transcript.

Dated this 6th day of March, 2014.

/s/ Janet Davis

JANET DAVIS
United States Court Reporter
Registered Merit Reporter
Federal Certified Realtime Reporter