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MR. GARDINER: Your Honor, could I just get one

fact on the record with respect to the date of the

Government's response?

I received it-- It was mailed on the 29th. I

don't think I got it probably until the next day. And then I

had to photocopy it, although they faxed it to me on the

29th. I immediately mailed a copy of the faxed version to

Mr. Smith down in Warsaw. And that took two or three days

for him to get it. And then we had to speak by phone. And

that's why we ended up as pressed for time as we were because

of the fact that I had to get the document to him.

THE COURT: But you certainly did know as of April

17, which is the date on the presentence report, that this

enhancement was being given.

So, I mean, it is not like the enhancement for the

automatic weapon or the machine gun is something new.

MR. GARDINER: Well, actually, Your Honor, the

enhancement originally was for a destructive device--

THE COURT: And that was changed.

MR. GARDINER: And the Government, to its credit,

pointed out that that was not correct. But we didn't receive

information concerning this Miss Campbell and the factual

statements until this document of May 29.

THE COURT: All right. The guideline calculations

then of an offense Level 34 in the Court's view are correct

1 and fully supported by a preponderance of the evidence.

2 The defendant's Criminal History I have already
3 determined is a Level VI. He qualifies as an armed career
4 criminal.

5 The sentencing range is 262 to 327 months. There
6 is a period of two to three years of supervised release. A
7 fine range of 17,500 to \$175,000. And since there are two
8 counts of conviction, there is a total of \$200 in special
9 assessments.

10 Does the United States want to be heard in terms of
11 the sentence within those ranges?

12 MR. GAUL: No, Your Honor. We defer to the
13 discretion of the Court within the guidelines range.

14 THE COURT: All right. Mr. Gardiner, I will hear
15 from you.

16 MR. GARDINER: Clearly, Your Honor, with the
17 sentence being so very high, 262 months, the bottom of the
18 guidelines -- we would urge the Court to go with the bottom
19 of the range. That still is going to put him in jail for
20 over 20 years.

21 THE COURT: All right. Is there any recommendation
22 you want to make to the Court as to a designation? Is there
23 a particular location your client would prefer?

24 MR. GARDINER: May I ask him?

25 THE COURT: Yes.

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committed to the custody of the Bureau of Prisons for a

period of 262 months. You will get credit for the time you

have been serving on this case against that sentence.

The sentence is imposed on each count concurrent

with one another.

At the conclusion of the 262-month sentence, you

will serve three years of supervised release on each count

concurrent with each other.

The terms and conditions of the supervised release

are, first of all, your uniform good behavior. That means

you are not to violate any federal, state or local laws while

on supervision.

Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: You have to follow all the general

conditions of release that will be printed on the judgment

order. And they will also be explained to you by the

probation officer.

Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: You must be drug free while you are on

supervision. You will have to submit to drug testing, for

which you will have to pay, and such inpatient or outpatient

drug treatment as your Probation Officer directs.

Do you understand that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Now, you are, as you know, a convicted

3 felon. That means you cannot possess any firearms. It will

4 be printed on the judgment order, but I am just telling you

5 again, you can't be around firearms.

6 If they are within your custody or control,

7 ownership is irrelevant in the eyes of the law, you will be

8 in violation of supervision and you could commit new federal

9 felonies.

10 Do you understand that?

11 THE DEFENDANT: I just won't date women who have

12 weapons.

13 THE COURT: That's right, or anybody else who has

14 weapons.

15 The court finds that you are financially unable to

16 afford any fines, the costs of supervision or the costs of

17 incarceration. So, none of those monetary penalties will be

18 awarded against you.

19 However, there are \$200 in special assessments,

20 that is \$100 per count of conviction. Those are due and

21 payable immediately.

22 Do you understand all that?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Now, Mr. Smith, I want to advise you

25 that you have a right to appeal both your conviction and the

1 sentence. If you plan to appeal, you must notice your appeal

2 in writing with the Clerk of the Court within ten days.

3 If you are unable to afford to hire an attorney to

4 represent you on appeal, the Court will appoint counsel for

5 you.

6 Do you understand that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: All right. If there is nothing further

9 then, the defendant is remanded.

10 Anything further?

11 MR. RICH: Thank you, Your Honor.

12 THE COURT: Thank you.

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14 HEARING CONCLUDED

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20 I certify that the foregoing is a true and
21 accurate transcription of my stenographic notes.

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COPY

Norman B. Linnell, CP, CM, CE