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4 MR. STEVENS: Good morning.

5 THE COURT: This is United States v. Mario
6 Claiborne. There were some objections to the Presentence
7 Report, which I think we probably need to talk about first.
8 And I have the government's response as well as the
9 defendant's sentencing memorandum. I should also mention
10 that this morning a letter that was addressed to Judge Stohr
11 was forwarded to me. It is a letter written from a
12 Miss Reed, I believe -- Arlene Reed. And she wrote in
13 support of Mr. Claiborne.

14 I don't know if you brought this over Mr. Dwyer, but
15 I did have a chance to read this this morning.

16 MR. DWYER: Thank you, Your Honor, I did. When the
17 Court referred to our Sentencing Memorandum, was it referring
18 to the reply to the government's response that we filed?

19 THE COURT: Yes. It was in reply to the
20 government's response.

21 MR. DWYER: Thank you, Your Honor.

22 THE COURT: I guess it was the government who filed
23 the Sentencing Memorandum, and you filed a reply to that
24 okay. Yes, this is the one that you filed yesterday.

25 MR. DWYER: Thank you, Your Honor.

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1 THE COURT: All right. As I understand it, there
2 are basically two objections that have any real substance,
3 one of which has to do with whether Mr. Claiborne qualifies
4 for the safety valve. And the second is, you know, if he
5 does, then I guess the second issue is whether his offense
6 level should be recalculated.

7 And it's not entirely clear to me what the
8 government's position is on one of the elements regarding the

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9 safety valve, and that has to do with whether the defendant
10 has made an effort to provide information. And I am not sure
11 what the government's position is on this.

12 MR. STEVENS: Well, Judge, honestly, I don't think
13 that's any longer an issue. Attached to Mr. Dwyer's reply of
14 yesterday was a letter --

15 THE COURT: Right.

16 MR. STEVENS: -- that the government has no problem
17 accepting.

18 THE COURT: Okay.

19 MR. STEVENS: And I think it fits that requirement.

20 THE COURT: Okay.

21 MR. STEVENS: So that shouldn't be an issue today.

22 THE COURT: Okay. But this is still an issue of
23 whether there was violence or a threat of violence used by
24 Mr. Claiborne, and that has to do with the circumstances that
25 preceded his arrest; that is, his running through the home of
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1 a Mrs. Clemons; and whether that disqualifies him for the
2 safety valve.

3 MR. DWYER: Yes, Your Honor.

4 THE COURT: Why don't you say what you have to say
5 about that, Mr. Dwyer?

6 MR. DWYER: Well, Your Honor, I don't have much more
7 to say than we offered in the two pleadings that we filed. I
8 think it's clear that after he was spotted by the police and
9 fled from them, he ran up the street a short distance. Mrs.
10 Clemens' door through her house was open. He ran past her.
11 She was outside. He ran through the house; immediately
12 exited the house through the rear door.

13 We know that, because Mrs. Clemens' 18-year-old

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14 daughter was in the kitchen as Mr. Claiborne ran through the
15 house. So the question is is his running down the street and
16 running through an open door of Mrs. Clemens' house and
17 immediately out the back door, does that qualify him for
18 reckless endangerment during flight. And we've indicated
19 with the case law that we cited in the objections and frankly
20 we think that the case law that the government cited
21 establishes this that when courts have said that a person
22 recklessly endangered others in flight, the conduct was
23 significantly more egregious than the conduct we have at
24 issue in this case.

25 And I think it is important to make the distinction ⁵

1 that we were not suggesting in any way that this was good
2 conduct or approved conduct. What I am saying is that the
3 government, on the basis of what I understand the facts to
4 be, has not proved that he used violence or threatened
5 violence; a substantial risk of violence or threat of
6 violence to others. And for that reason, I do not believe
7 that the adjustment found in Section 3(c)(1.2) -- the
8 reckless endangerment adjustment -- applies to Mr.
9 Claiborne's conduct.

10 THE COURT: The conduct, as I understand it, really
11 the facts relating to the conduct really aren't in dispute.
12 This was a situation where Mr. Claiborne was being chased by
13 the police. He saw an opportunity which was essentially an
14 open door to someone's home. Whether he knew the person or
15 didn't is not relevant, in my view. He wasn't invited in.

16 MR. DWYER: That's correct.

17 THE COURT: He ran through this lady's house and out
18 through the back door, because the police were chasing him.

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19 MR. DWYER: That's correct, Your Honor.

20 THE COURT: Okay. And the owner of the house was in
21 her front yard at the time with some children, but there was
22 an older daughter -- an 18-year-old -- who was inside the
23 house in the kitchen --

24 MR. DWYER: Yes, Your Honor.

25 THE COURT: -- at the time Mr. Claiborne ran

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1 through.

2 MR. DWYER: Yes. That's correct, Your Honor.

3 THE COURT: He didn't have a gun. Or if he did, he
4 didn't display one.

5 MR. DWYER: He did not have a gun, Your Honor. And
6 there is no suggestion that I've seen anywhere that anybody
7 thought he was armed.

8 THE COURT: He made no oral threats to anyone in the
9 house? Okay. And he didn't hurt anybody physically. He had
10 no physical contact with anyone in the house.

11 MR. STEVENS: That's correct. That's correct,
12 Judge.

13 THE COURT: Okay.

14 MR. STEVENS: Judge, if I may, I would just point
15 out in the Memorandum filed as Exhibit A with the defendant's
16 reply to the government's response, it does indicate -- and I
17 don't know that this is the case or not -- Mrs. Clemons told
18 me something similar: That she heard a gunshot that caused
19 excitement; and that they were attempting to get back in the
20 house when the defendant ran through the door; that her
21 daughter was inside; that he ran immediately past them as
22 they were trying to get in the door of the house --

23 I don't dispute that the defendant did not make

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24 physical contact with anyone and didn't physically assault
25 anyone, but I think that that may be an important fact.

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1 Also, Judge, I have here -- and I've given it to Mr.
2 Dwyer this morning -- basically, I didn't intend to mark
3 this. But with the Memorandum that was attached to the
4 defendant's reply, I think it might be at least worthwhile to
5 point out to the Court that Miss Clemons did appear at the
6 grand jury. And I have provided this to Mr. Dwyer and
7 indicated that this concerned her when he ran into her house,
8 because she didn't know if he had a gun or if they would
9 start shooting or whatever. "You know, one of me or my kids
10 could have got shot." That's what she said.

11 Now, obviously, as you said, the defendant didn't
12 display a gun at any time that I'm aware of, but that was
13 Miss Clement's concern; whether that impacts the Court's
14 decision or not is obviously up to the Court. I am willing
15 to submit that grand jury testimony as a marked exhibit if
16 you'd like, Judge. But I would otherwise just proffer that
17 portion of the grand jury testimony.

18 THE COURT: I'll accept your proffer on that. Thank
19 you. Do you want to respond on the issue of whether this
20 conduct qualifies Mr. Claiborne for this two-level increase
21 in his offense level for, I guess, reckless endangerment if
22 nothing else?

23 MR. STEVENS: Yes, Judge, I would. I think
24 honestly, Judge, that that's a much stronger argument for the
25 government. For Mr. Claiborne to not receive the safety

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1 valve, the Court would have to find he used violence or
2 credible threats of violence or possessed a firearm.

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3 Now, there is no issue about him possessing a
4 firearm, so far as the government is concerned. The issue is
5 the use of violence or credible threats of violence, and
6 that's a difficult standard to meet, I admit, under the
7 circumstances of this case. But the reckless endangerment
8 during flight is a much different standard. That would be
9 that the defendant "recklessly created a substantial risk of
10 the death or serious bodily injury to another person in the
11 course of fleeing from a law enforcement officer."

12 I think that the undisputed facts here are, Your
13 Honor, that this defendant ran past Miss Clemons and her
14 grandchildren in front of the house; beat them inside the
15 house to the front door; ran into the house; and that Miss
16 Clemens' daughter was inside the house. The police officers
17 were in hot pursuit of Mr. Claiborne, believing that he
18 committed a felony, which he's pleaded guilty to, and
19 followed him into that house.

20 Obviously, there is no dispute, I would think, that
21 the police officers were armed. So Mr. Claiborne, in his
22 flight from the police, by going into Miss Clemens' house,
23 brought these armed police officers in hot pursuit in behind
24 him. And I think that those circumstances really don't make
25 this all that close of a case regarding recklessly creating a
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1 substantial risk of at least serious bodily injury to someone
2 in that house.

3 THE COURT: Is there anything else on this?

4 MR. DWYER: Your Honor, I think that the facts show
5 that he was in the house only momentarily. As the Court
6 indicated, we don't contest that he wasn't invited into the
7 house. But the police learned immediately from Mrs. Clemens'

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8 daughter that Mr. Claiborne had exited the house through the
9 back door immediately. And the police had time to talk to
10 Miss Clemons out front, and it was she who invited the police
11 or asked the police to go in the house.

12 So, you know, there are some timing suggestions here
13 that I think belie this that there are police officers that
14 are storming the house with loaded weapons drawn and ready to
15 shoot at the defendant or anybody else in there. I don't
16 think it is quite so dramatic. I think that the police
17 pulled up out front; talked to Miss Clemons; and then went
18 into the house at her invitation; learned immediately from
19 Shadonna Clemons that the defendant had already left the
20 house through the back door and in fact done so right after
21 entering the house. And so that this wasn't an armed
22 confrontation in any sense.

23 And, again, I think that what we're saying is that
24 this did not create a substantial risk of death or serious
25 bodily injury. That is a high standard, and I think that the
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1 cases applying the adjustment reflect that the conduct to
2 which this adjustment applies is much more egregious and much
3 more violent and reckless than was relevant in this case.

4 THE COURT: Thank you. Let's talk about the safety
5 valve issue first because, obviously, if he's not safety
6 valve eligible, whether this enhancement for reckless
7 endangerment applies becomes less important. I don't say
8 it's not relevant, but it becomes less important.

9 At issue here is whether Mr. Claiborne has satisfied
10 all of the requirements of Section 5(c)(1.2), which would
11 allow the Court to sentence him below the mandatory 60-month
12 sentence of imprisonment. And of course the safety valve

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13 provision in the guidelines is virtually identical to the
14 statutory provision of Section 3553.

15 The question here is whether Mr. Claiborne did not
16 use violence or a credible threat of violence in connection
17 with this offense. And the information is undisputed that he
18 did not make any oral threats of violence to any individual:
19 Miss Clemons, her children, her daughter, or anyone. He did
20 not display a weapon. He made no suggestion of committing a
21 violent act. He was trying to get away. That was his goal.

22 He had no physical contact with anyone in the course
23 of running through that house. And while going through
24 someone's home uninvited under any circumstances but
25 certainly under these circumstances is something that should

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1 not happen, I don't believe it rises to the level of "use of
2 violence or a credible threat of violence." There was no
3 threat of violence at all.

4 I am sure that the young woman who was in the
5 kitchen was quite disturbed and perhaps frightened by some
6 stranger running through her home. But, again, that doesn't
7 create a credible threat of violence. And, again, there was
8 no actual use of violence. So I believe that, in light of
9 the factors, Mr. Claiborne is entitled to be considered under
10 the safety valve. And so the Court is free to sentence him
11 below the mandatory five-year minimum.

12 Now, that same conduct has to be evaluated in the
13 context of Section 3(c)(1.2) which provides that, "The
14 defendant's offense level is to be increased by two levels if
15 he created a substantial risk of death or serious bodily
16 injury to any other individual in the course of fleeing from
17 a law enforcement officer."

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18 What is critical here is the language of Section
19 3(c)(1.2). That language is written in terms of the creation
20 of a substantial risk of death or a substantial risk of
21 serious bodily injury. There doesn't appear to be any claim
22 here that Mr. Claiborne presented a substantial risk of death
23 to any individual based his conduct. And the information
24 that I have, in my view, does not rise to the level of a
25 substantial risk of serious bodily injury.

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1 There is no information that has been presented to
2 me concerning the officers. I presume they were armed; but
3 whether they had their guns drawn when they came to
4 Mrs. Clemens' home or when he entered the home; whether there
5 was some mention of a shot having been fired or Miss Clemons
6 having heard a shotgun. There is no connection between that
7 and the situation involving Mr. Claiborne. I don't know if
8 the police were shooting at him or even what Mrs. Clemons
9 heard was in fact a gunshot.

10 There isn't even enough information to tell me how
11 much time passed between when Mr. Claiborne ran through the
12 home and whether the police arrived; whenever they on are
13 foot; were they in a car? How did they approach the house?
14 How much time had passed? How long had he been gone? Were
15 the police in so-called "hot pursuit" of this individual or
16 were they just looking for him? It is not clear.

17 And because of this limited information, I don't
18 believe that it has been shown sufficiently that Mr.
19 Claiborne presented a substantial risk of death or
20 substantial risk of bodily injury to any individual in the
21 course of his flight from the police. So I will sustain the
22 defendant's objection to the two-level increase of his

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23 offense level under Section 3(c)(1.2). I believe those are
24 all the objections. Right?

25 MR. DWYER: Yes, Your Honor.

13

1 THE COURT: Okay. And just so the record is clear,
2 while the Court gives consideration to the Sentencing
3 Guidelines, the Court is not required to follow them;
4 however, I think that the guidelines are certainly
5 instructive and will provide some guidance to the Court in
6 determining what's an appropriate sentence in this case.

7 Mr. Claiborne, do you want to step up to the podium,
8 please? Mr. Claiborne, have you had enough time to read the
9 Presentence Report and discuss it with your lawyer?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. The Court will adopt the
12 factual statements of the report as its Findings of Fact.

13 Mr. Dwyer, is there any reason why sentence should
14 not be imposed at this time?

15 MR. DWYER: No, Your Honor.

16 THE COURT: Mr. Stevens?

17 MR. STEVENS: No, Your Honor.

18 THE COURT: I am sorry. Mr. Claiborne, is there
19 anything that you want to say before sentence is imposed?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Mr. Dwyer?

22 MR. DWYER: Thank you, Your Honor. With the Court's
23 sustaining of the objection and deciding that the safety
24 valve applies, I believe that looking at the Sentencing
25 Guidelines for productive purposes in this case that the

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1 offense level would be 20 -- excuse me -- and that the
2 criminal history category one. And under the Sentencing
3 Guidelines, the range would be --

4 THE COURT: 46 to 57 months, I think. Am I right?

5 MR. DWYER: Your Honor, I believe it would be 33 to
6 41.

7 THE COURT: Okay. What would his offense level come
8 down to? He gets a reduction for the --

9 MR. DWYER: The Court is correct.

10 THE COURT: -- for the 5(c)(1.2). Right?

11 MR. DWYER: You have demonstrated why I am a lawyer
12 and not an accountant, Your Honor. It is 21, and Mr. Stevens
13 is correct. And the Court was correct. It is 37 to 46, and
14 that number we had used in our objections too. So thank you,
15 Your Honor. That, as we indicated in our objections, in
16 light of Booker, we think that even the 37- to 46-month range
17 is too high and would ask the Court to consider the factors.

18 We've laid out those factors: The history and
19 character of Mr. Claiborne; the needs of the public; the
20 nature of this offense. And I want also we need to consider,
21 you know, how the Sentencing Commission crafted its
22 guidelines in crack cases, which we've gone into in our
23 objections. And I won't go through all of that again, Your
24 Honor. I know that the Court has read and considered that.

25 I would just make mention of a person who's no

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1 longer with us, and I am thinking of Judge Cahill. And, you
2 know, Judge Cahill and I didn't always agree on everything;
3 and we had battles about what was appropriate and
4 inappropriate in his courtroom. But I never left feeling he
5 didn't consider justice his primary goal. And Judge Cahill

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6 used justice not in the sense that you see so often in
7 popular literature and just in everyday usage which is,
8 "Bring him to justice or we're going to get justice" in the
9 sense of revenge. I really think Judge Cahill looked at both
10 sides and weighed the community's interest and weighed the
11 defendant's interest and weighed the good of the public in
12 general in making his decisions.

13 And I bring him up because I think one of the most
14 eloquent things he ever wrote was his decision in which he
15 found in the disparity between crack and powder cocaine
16 violated the Constitution. His opinion was scholarly. It
17 was eloquent and impassioned almost in finding that this was
18 a very troubling distinction and unconstitutional.

19 The Eighth Circuit saw otherwise. But as we
20 indicated briefly in our objections -- and I am sure that the
21 Court knows -- everybody other than Congress that has
22 investigated that disparity subsequent has determined that it
23 is in fact unfair and unreasonable. And it is not even
24 supported by the public anymore. And it is that distinction
25 that drives the length of the sentence under the guidelines,

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1 and I think that the Court should take that into account in
2 crafting a sentence.

3 As we've indicated in the objections, if this were a
4 powder cocaine case, Mr. Claiborne would be looking not even
5 at a mandatory minimum; and his sentence we believe would be
6 six to twelve months. Crack exists on a market-driven basis.
7 It is much easier to sell small amounts of cocaine to poor
8 people if you can make it hard so that you can break it up
9 rather than have to measure out tiny quantities of powder.
10 That's the reason that I believe crack exists. It is the

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11 same thing as powder cocaine.

12 Now, I don't want to distract us by reopening that
13 whole debate. But I think that the existence of a
14 controversy about that is important; and I think that the
15 sentence being grounded under the guidelines principally on
16 that distinction renders it suspect and I think inappropriate
17 in Mr. Claiborne's case.

18 You know, Mr. Claiborne is a very young man from my
19 perspective. He is not much older than my children. And my
20 children aren't very old. I started late. But I see Mario,
21 and I don't mean to diminish him in any sense by referring to
22 him by his first name. But I've had a lot of contact with
23 him over the course of representing him. More than many
24 clients. I've had long talks in his office. I've been able
25 to get him on the phone. I can tell you that he is a very

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1 kind young man. I tell you he is a very nervous young man.
2 A very risk-averse young man.

3 In light of what I know about him, it is deeply
4 distressing that he got himself involved in selling drugs. I
5 think he realizes what a horrible mistake that was. And I
6 use the word "mistake" with some trepidation, because I
7 always tell clients not to use that word, because it implies
8 something that you can erase like an arithmetic mistake with
9 a pencil. It is not that, and he knows that.

10 But this is a young man who, for the most part, has
11 been trying to do the right thing. And he's succeeded
12 recently. He has had no bond violations while he has been
13 out on bond. He supports his children. He supports his
14 wife. They both work. They're trying to do the right thing.
15 His family is here in the courtroom today. They depend on

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16 hi m.

17 As you read the letter from his mother-in-law -- and
18 I'll use that term or lack of explanation -- she values him
19 highly as well. He accepted responsibility in this case. He
20 walked in and pled guilty and ended up pleading guilty to a
21 superseding indictment, because we could not reach an
22 agreement with the government. And, as a consequence, they
23 added a charge to the indictment. So the original indictment
24 went from one to two counts in the superseding indictment,
25 and he accepted responsibility for all of that.

18

1 I think that, given direction and patience and
2 compassion, that this is a young man who is ultimately going
3 to succeed in life. I think that success is important for
4 him, and I think it is important for his children. I think
5 it is important for the community. I am not here to ask the
6 Court to award merit badges or some other accolades to Mr.
7 Claiborne.

8 One of the things my father said to me often enough
9 that I got very tired of it as a child is that, "You don't
10 get points for stopping at red lights." And I don't tell the
11 Court about Mr. Claiborne's success with his family or having
12 a job as I agree that stopping at red lights you're supposed
13 to do that. But it is the picture of the whole person that I
14 want the Court to see this morning in sentencing Mr.
15 Claiborne.

16 This is not a young man who is vicious or in need of
17 incapacitation or a danger to the community. This is a young
18 man who has made serious errors; who has rectified those
19 errors I believe by straightening his life out. He did it
20 with the help of the criminal justice system, it is not the

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21 way you want somebody to come to the wisdom and understanding
22 at least to the extent that he has it today. But there has
23 been some success in that regard. And I would like Court to
24 continue the momentum of that success by being compassionate
25 here this morning and sentencing him to considerably lower 19

1 than what the guidelines would call for. Thank you.

2 THE COURT: Thank you.

3 Mr. Stevens?

4 MR. STEVENS: Thank you, Judge. I would point out,
5 as Mr. Dwyer did, that Judge Cahill's opinion, though
6 well-reasoned, was reversed; and that issue has been decided
7 over and over again. I won't belabor the point. But powder
8 cocaine has been found repeatedly as a legal issue as not to
9 be the same as crack cocaine. I would point out that if this
10 were a meth case or an LSD case, there would be a similar
11 penalty or even higher penalty and would point out that
12 there's plenty of research to show that both of those crimes
13 are, in the vast majority of cases, white defendants.

14 I don't think that's at all an issue here. As Mr.
15 Dwyer pointed out, Congress has repeatedly said that these
16 are the correct penalties for this sort of crime. And it
17 seems to me that, in the vast majority of cases, when you're
18 interpreting a statute to sentence someone, Congress is the
19 only one that matters. It is their opinion that is the only
20 one that matters on this issue.

21 The letter from the mother-in-law indicates that
22 Mr. Claiborne cleaned his life up three years. I am not
23 going to quibble with dates. But the second to the two
24 counts in this case was less than a year-and-a-half ago. It
25 seems to me that she may simply just not know what Mr.

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1 Claiborne has been up to in the last three years.
2 Specifically, in November of 2003 and May of 2003.

3 Also, Judge, we had issues here today regarding
4 safety valve and the reckless endangerment during flight
5 issue. And I would just point out that the safety valve, by
6 requiring the defendant have no criminal history points,
7 seems to presume that a defendant with no criminal history
8 points is not a recidivism risk. And as the government
9 pointed out in its Memorandum, Mr. Claiborne did plead guilty
10 to two separate crack crimes six months apart.

11 So I am not sure that the safety valve applies under
12 its language, that this is not a somewhat different case for
13 most safety valve cases for that reason. It is a kind of a
14 quirk of the guidelines in a case like this essentially Mr.
15 Claiborne gets one of those incidents for free. His penalty
16 will not reflect that it is two separate crack cocaine
17 incidents. And his penalty would be no different if it were
18 one, but he's pled guilty to two.

19 And finally, Judge, the Court found that there was
20 no a substantial risk due to Mr. Claiborne's flight; and that
21 if I understand the Court, there was at least some risk. And
22 I would ask the Court to take that into consideration also.
23 Thank you, Judge.

24 THE COURT: Thank you. Well, as I said before, the
25 Court considers the Sentencing Guidelines in determining

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1 what's an appropriate sentence. And I think that, in light
2 of the Court's ruling on the objections, I am still not clear
3 what the guideline range comes down to. I thought you said
4 37 to 46 months, but I thought it was higher. Am I missing

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5 something?

6 MR. DWYER: Your Honor, if he is eligible for the
7 safety value, he'd have a two-level reduction under
8 3(c) (1.1 --

9 THE COURT: So that's basically four points taken
10 off.

11 MR. DWYER: Yes, Your Honor.

12 THE COURT: Four levels coming down. So that brings
13 him down to 21 --

14 MR. DWYER: 21.

15 THE COURT: -- 21? Okay. I got you now. Okay.

16 Mr. Claiborne, in reading the Presentence Report,
17 which is essentially all the information that I have about
18 you, I couldn't quite figure out what is going on in your
19 life. You are what? 21?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: You've gotten yourself involved in
22 selling drugs. You pled guilty to two separate counts, two
23 separate sales. You were arrested after the first sale, but
24 that didn't stop you. You went ahead and sold again.

25 Now, why you were willing to take that risk, I don't
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1 know. And I can't figure out if you were just unlucky or if
2 you're stupid. I hope you are not stupid, because if you
3 are, you're going to do this again. Selling drugs is not the
4 way to support yourself. It was not the way to support your
5 family. Because, as you stand here now, you are about to go
6 to prison. You're not going to be able to support your
7 family from prison.

8 So you need to ask yourself: Is there something
9 else I can do to provide financial support for myself and my

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10 family that will not place me in jeopardy of being taken away
11 from them and incarcerated for -- but for your being granted
12 these objections -- a minimum of 60 months. That's a long
13 time for someone to be sent away from their family.

14 Even though I've granted your objections, under the
15 Sentencing Guidelines, you're still looking at a minimum of
16 three years being taken away from St. Louis and from your
17 family and from everything that you know. Now, have you
18 given any thought to what you might do differently next time?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Well, I hope you give some serious
21 thought to that, because I am very concerned that, because
22 you're so young, you don't fully realize the effect of what
23 you've done has on your family and what it is going to have
24 on you and your future. And, you know, you mentioned Judge
25 Cahill earlier. And one of the things I think I've inherited
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1 from him, aside from inheriting his docket when his took
2 senior status, I've gotten used to lecturing people. He was
3 really good at that. I can't come close. But it really does
4 disturb me when I see someone of your age in a federal
5 courtroom about to go to prison. Most 21-year-olds are not
6 out there selling drugs, Mr. Claiborne.

7 What you are doing is not normal behavior, and it
8 doesn't have to be the only thing that you do in life. I
9 know there are a lot of things you want for yourself and for
10 your family. But you are going to have to learn how to get
11 those things through legitimate means, just like the majority
12 of people do. And you may have to do without some things.

13 You don't have to have the latest music or the
14 latest fashions, even though you want them, because your

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15 freedom has got to be more important to you than some fad.
16 Okay? When you get to the point where you value your freedom
17 more, I think that you will change your whole attitude about
18 what you do in life.

19 Now I want to talk to you about Mrs. Clemons. This
20 lady had every right to have her door open on a nice day
21 while she was outside with her children. You had absolutely
22 no right to run through her house. Going into someone's
23 house in that way is a personal violation. I understand you
24 didn't threaten anyone. And your only thought probably was,
25 "How do I get away from the police?" But you had no business
24

1 involving Mrs. Clemons and her family in your crime. That is
2 unforgivable.

3 I am concerned that the Sentencing Guidelines, while
4 they take into account a lot of factors, in this situation,
5 the 37-month low end of the range is, in my view, excessive
6 in light of your criminal history which is zero and in light
7 of the circumstances involved in this case. I don't want to
8 minimize what you did, because what you did was very serious.
9 You committed two serious felony crimes.

10 However, when I consider the quantity of drugs that
11 are involved; the fact that you qualify for the safety valve;
12 and your criminal history; and the likelihood of your
13 committing further similar crimes in the future, I come to
14 the conclusion that a 37-month sentence would be tantamount
15 to throwing you away.

16 I don't think that that's appropriate in your
17 situation. And when I compare your situation to that of
18 other individuals that I have seen in this court who have
19 committed similar crimes but perhaps involving a larger -- a

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20 much amount of drugs -- and the sentences that they receive,
21 I don't believe that 37 months is commensurate in any way
22 with that.

23 As I said before, I do believe some term of
24 imprisonment is appropriate in your case. And I hope that
25 you don't view this as just the cost of doing business, and I
25

1 hope that you never get to the point where you feel that the
2 risk of going to prison is worth it, because it never is.

3 Having said that, it is the judgment of the Court
4 that the defendant, Mario Claiborne, be committed to the
5 custody of Bureau of Prisons to be imprisoned for a term of
6 15 months on Count 1 and 15 months on Count 2; both terms to
7 be served concurrently.

8 After you are released from prison, Mr. Claiborne,
9 you'll be placed on supervised release for three years on
10 Count 1 and three years on Count 2. Both terms of
11 supervision will also run concurrently.

12 Within 72 hours after you are released from the
13 custody of the Bureau of Prisons, you must report in person
14 to the Probation Office in the district to which you are
15 released. While you are on supervised release, you will have
16 to comply with the standard conditions of supervision that
17 the Court has established and you have to comply with some
18 additional conditions. The first is that you not use any
19 corroborates unlawfully; and that you submit to a drug test
20 within the first 15 days of your supervised release term and
21 submit to at least two periodic drug tests after that.

22 You will also be required to participate in a drug
23 abuse treatment program as directed by the Probation Office.
24 The Probation Office may direct you to a community

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25 corrections center; a comprehensive sanctions center; or some
26

1 other inpatient program or an outpatient program. You will
2 have to pay the cost of participating in that program, and
3 the amount of your payment will be determined by the
4 Probation Office on a sliding fee scale.

5 You will have the opportunity to enroll in GED
6 classes while you are incarcerated and to obtain your GED.
7 If I don't have your GED by the time you are released from
8 prison, then as a further condition of supervised release,
9 you will have to participate in GED classes as directed by
10 the Probation Office.

11 As I said before, I was very disturbed by the
12 conduct that you've engaged in in fleeing from the police and
13 your dragging in Mrs. Clemons into all of this. So as a
14 further condition of supervised release, I am going to
15 require that you write a letter of apology to Mrs. Clemons
16 and her family. That letter will be submitted to the U.S.
17 Attorney's Office, who will then forward that letter to
18 Mrs. Clemons.

19 And in that letter, I hope that you will sincerely
20 apologize for breaking into her house and for disturbing her
21 and her family and for frightening her and her children by
22 your conduct.

23 THE DEFENDANT: Yes, I did that already. But I'll
24 do it again.

25 THE COURT: If you've done it already, then I don't
27

1 require you to do it again.

2 MR. DWYER: That apology has been expressed orally,

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3 Your Honor. But we're happy to write a letter.

4 THE COURT: I want you to write a letter. Okay.

5 The defendant does not have the ability to pay a fine. So
6 none will be imposed. There is a 100-dollar assessment for
7 each of the two counts of conviction for a total of \$200.

8 That assessment is due immediately.

9 Was there a waiver of appeal?

10 MR. DWYER: No, Your Honor, there was not.

11 THE COURT: Mr. Claiborne, you have the right to
12 appeal this sentence. And if you wish to appeal, you must
13 file a Notice of Appeal within ten days from today.

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: If you don't file the notice on time,
16 you will lose your right to appeal. You are entitled to have
17 an attorney appointed to represent you on appeal and to file
18 your Notice of Appeal free of charge. If you decide to
19 handle the appeal without a lawyer, all you need to do is
20 contact the Clerk's Office; and someone there will prepare
21 and file the notice for you. Do you understand your appeal
22 rights?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Would you like me to make a
25 recommendation to the BOP?

28

1 MR. DWYER: Your Honor, I'd just ask them to
2 incarcerate him as close as possible to the St. Louis area.

3 THE COURT: Okay. I'll include that recommendation
4 in the judgment. Okay. I don't know what Judge Stohr's
5 policy is, but I am sure you all know what my policy is,
6 which is that detention is mandatory unless there is some
7 circumstances that would make this an exception.

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8 MR. DWYER: Your Honor, because both Mr. Claiborne
9 and the mother of his children are employed full time, they
10 work at other hours, so that there is somebody to take care
11 of the children, and they're very young children. So that
12 until Thursday of last week, this was going to be handled by
13 Judge Stohr, and they have not made arrangements
14 alternatively for child care, since that time to cover the
15 period between sentencing and the time he would face
16 imprisonment. I think Judge Stohr's policy is not so
17 automatic as yours, but I think that the child care needs;
18 the fact that he has not had any violations while on pretrial
19 release under the circumstances of this case would be
20 sufficiently exceptional to adjust a voluntary surrender.

21 THE COURT: Okay. Mr. Stevens, what is the
22 government's position?

23 MR. STEVENS: Judge, on that issue, I don't know of
24 any exceptional circumstances. And at this time, if the
25 Court would indulge the government, I would like to interpose
29

1 an objection on the sentence of 15 months on Counts 1 and 2
2 as well as for purposes of the record to the Court's findings
3 and conclusions regarding the reckless endangerment
4 enhancement.

5 THE COURT: All right. Thank you. Well, you know,
6 I am not unsympathetic to child care needs. But Mr.
7 Claiborne has known for some time that he was going to be
8 sentenced and whether he knew that he would be remanded on
9 the day of sentencing is really not that material. He knew
10 that he faced a possibility of being incarcerated at some
11 point. And so arrangements should have been made sooner for
12 scheduling child care.

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13 I understand that there have not been any violations
14 of the pretrial release conditions. And that's certainly to
15 Mr. Claiborne's credit, but I don't believe that the
16 circumstances that you've presented to me warrant an
17 exception from the mandatory detention provision.

18 So, Mr. Claiborne, you will be remanded to the
19 custody of the marshal.

20 Is there anything else from government?

21 MR. STEVENS: No, Your Honor. Thank you.

22 THE COURT: Mr. Dwyer?

23 MR. DWYER: Thank you, Your Honor.

24 (Whereupon, the proceedings concluded at 10:31 a.m.)

25 * * *

UNITED STATES OF AMERICA)
EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION) ss:

C E R T I F I C A T E

I, Gary Bond, Certified Shorthand Reporter in and for the United States District Court for the Eastern District of Missouri, do hereby certify that I was present at and reported in machine shorthand the proceedings had the 28th day of March, 2005, in the above mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys in this action, nor financially interested in the action.

I further certify that this transcript contains pages 1 through 29 and that this reporter takes no responsibility for missing or damaged pages of this

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transcript when same transcript is copied by any party other than this reporter.

IN WITNESS WHEREOF, I have hereunto set my hand at St. Louis, Missouri, this 1st day of May, 2005.

/s/Gary Bond

Gary Bond, RPR, RMR
Certified Shorthand Reporter

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