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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

CASE NO: 1:08-CR-47-02

FRANK BRIAN AMBROSE,
Defendant.

_____/

* * * *

SENTENCING HEARING

* * * *

BEFORE: THE HONORABLE PAUL L. MALONEY
United States District Judge
Kalamazoo, Michigan
October 20, 2008

APPEARANCES:

APPEARING ON BEHALF OF THE PLAINTIFF:

HAGEN W. FRANK
Assistant United States Attorney
P.O. Box 208
Grand Rapids, Michigan 49501-0208

APPEARING ON BEHALF OF THE DEFENDANT:

MICHAEL JOSEPH BRADY
24684 Hathaway Street, 2nd Floor
Farmington Hills, Michigan 48335-1547

1 Kalamazoo, Michigan

2 October 20, 2008

3 at approximately 10:09 a.m.

4 PROCEEDINGS

5 THE COURT: This is 08-47; the United States of
6 America vs. Frank Brian Ambrose. This matter is before the
7 Court for sentencing.

8 The record should reflect that Assistant United
9 States Attorney Hagen Frank is here on behalf of the
10 government. Attorney Michael Brady is here on behalf of the
11 defendant. The defendant is present in person.

12 The presentence report has been prepared. The Court
13 has been advised that there are no objections to the
14 presentence report.

15 The Court's file reflects that on March 20 of the
16 year 2008, the defendant pled guilty to Count One of the
17 Indictment, conspiracy to commit arson, contrary to 18 U.S.
18 Code 844(f)(1). This plea was accepted by the Court on April 7
19 of the year 2008. Under the circumstances of this case, I
20 accept the plea agreement.

21 Mr. Brady, have you had an ample opportunity, sir, of
22 reviewing the presentence report with your client?

23 MR. BRADY: Yes, I have, your Honor.

24 THE COURT: And is it true that there are no
25 objections to the report?

1 MR. BRADY: It is true.

2 THE COURT: The Court has calculated the guideline
3 range at 240 months, that is the statutory maximum. The
4 guidelines as calculated call for Offense Level 36, Criminal
5 History Category VI, which ordinarily would have resulted in a
6 guideline range of 324 to 405, but of course, the statutory
7 maximum in this case is 20 years, so that becomes the guideline
8 range. Do you concur, sir?

9 MR. BRADY: Yes.

10 THE COURT: Mr. Frank, same question.

11 MR. FRANK: Yes, your Honor, we concur.

12 THE COURT: Thank you.

13 Mr. Ambrose, you've had ample opportunity, sir, of
14 reviewing the presentence report with your lawyer?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you satisfied with your lawyer's work
17 on your behalf?

18 THE DEFENDANT: Yes.

19 THE COURT: Thank you, sir.

20 All right. Mr. Frank, are you moving third level of
21 acceptance?

22 MR. FRANK: We are, your Honor.

23 THE COURT: The Court grants that motion. That does
24 not change the advisory guideline range, the Court anticipated
25 the making of the motion and the Court's granting of it.

1 Mr. Frank, contained in the presentence report, I
2 believe at Paragraph 47, is a letter from Michael J. Kiley,
3 Associate General Counsel of Michigan State University, I have
4 read that. Are there-- Is there anyone from the university or
5 another person that might be categorized as a victim under the
6 statute that wishes to address me?

7 MR. FRANK: No, your Honor.

8 THE COURT: All right. Thank you.

9 All right. Mr. Brady, I would ordinarily call on the
10 government first, but I will allow you to go first, if you
11 wish, sir.

12 MR. BRADY: No, I'm just standing there because you
13 called my name. If you want the government to go first.

14 THE COURT: All right. Thank you.

15 Mr. Frank, on behalf of the government, sir.

16 MR. FRANK: Thank you, your Honor.

17 If I could, I would like to address the government's
18 pending motion for a downward departure for substantial
19 assistance under Section 5K1.1 of the sentencing guidelines.

20 First off, your Honor, I think-- well, I know that
21 the government has moved for a pretty significant downward
22 departure based on assistance, but I would like the Court to
23 note-- I would like to note to the Court that my making this
24 motion was approved by our departure committee in the U.S.
25 Attorney's Office, which consists of three of the most tenured

1 senior Assistant U.S. Attorneys and management attorneys in our
2 office, and they approved my making this motion. I think
3 that's significant because it indicates that at least in terms
4 of the corporate memory of the U.S. Attorney's Office what
5 defendant Frank Ambrose did to assist the government warrants a
6 5K that is as significant as what we are asking for.

7 And I think that above and beyond that, just looking
8 at the course of conduct as described in our motion shows that
9 this is a pretty unusual case when it comes to substantial
10 assistance, not just in terms of timeliness, but in terms of
11 the effort that the defendant put in to helping the FBI and
12 helping our office, not just in the Western District of
13 Michigan, but in other districts as well, solve some
14 investigations that weren't going anywhere. Investigations of
15 very serious violent crime that weren't going anywhere. He
16 brought those investigations back to life. So it's not just
17 the timeliness here, and it's not just the importance of what
18 he did, it's the duration and the efforts he put into this.

19 Starting in summer of 2007 up to the present time,
20 Mr. Ambrose made himself available at all hours of the night to
21 the FBI, specifically in the person of lead agent Special Agent
22 James Shearer, and I know this for a fact, because sometimes I
23 would get texts in the middle of the night from Agent Shearer
24 relaying information that he had just got from Defendant
25 Ambrose. I lost count of the times where Agent Shearer and I

1 were sitting around talking about this investigation or other
2 investigations and a question would come up and he would pick
3 up his phone, put in a call to Mr. Ambrose, and Mr. Ambrose
4 would either pick up immediately or within five to ten minutes
5 would call back with the answer to the question.

6 So the extent of his assistance to us was significant
7 in terms of time and effort he put into it, and also to some of
8 the risks he took, because there were times when he was at
9 these gatherings of ELF extremists wearing recording devices,
10 and the FBI was not at his elbow, because these people were
11 gathering in remote locations in natural settings and such, and
12 if something had happened, the FBI would not have been there
13 within a couple of minutes to stop it. And so he took physical
14 risks on behalf of law enforcement also.

15 So based on the timeliness of what he did, the
16 duration, how long he was at it, the risks that he took, the
17 amount of travel he did, and the value of his cooperation to
18 federal law enforcement, the government submits that an eight
19 level departure from the guidelines starting at the level that
20 correlate to 240 months, we think a downward departure of eight
21 levels in this case is warranted.

22 Should I go ahead and speak to sentencing in
23 general?

24 THE COURT: Absolutely.

25 MR. FRANK: Your Honor, I think that this case is

1 going to be, if I were sitting where you are sitting, your
2 Honor, I think I would have a pretty tough task ahead of me. I
3 think this is going to be a difficult case to sentence.
4 Because it was a difficult case for me to sort of decide, for
5 me to come to a sense of what is appropriate, at least from the
6 government's law enforcement perspective. On the one hand, you
7 have very serious misconduct here, not just MSU arson, which is
8 as violent a crime as I've prosecuted. Not just MSU arson, but
9 all the other stuff the defendant stipulated to in the Eastern
10 District of Michigan and the Southern District of Indiana, so
11 you've got an extremely serious offense, and I would like to
12 talk a little bit about that angle of it first before I talk
13 about sort of the opposite pole, or at least what I see as the
14 opposite pole in this case.

15 The seriousness of the offense, as we describe in
16 sentencing memo, and as the Court probably knows just from
17 watching CNN, Earth Liberation Front and Animal Liberation
18 Front, there is very little sunlight-- daylight between the
19 two, they are very closely related. These two movements have
20 become the primary domestic terrorism law enforcement concern
21 of the FBI.

22 As we cited in our sentencing memo, back in 2002, the
23 FBI assessed that ecoextremism and animal rights extremism had
24 become or overshadowed, had overtaken right wing extremism as
25 the primary domestic terrorism problem in this country. At

1 that time, in 2002, when the deputy director for domestic
2 terrorism gave his testimony, the FBI was looking at tens of
3 million dollars in damage. At this point the damage these
4 groups have done is over a hundred million dollars. And it's
5 not just economic loss, it's not just direct economic loss, but
6 it's reasonable to infer the effect that it has on sort of
7 those intangibles, the research, for example, they tried to
8 destroy by torching Ag Hall at MSU. I mean how do you quantify
9 the cost of that? Every time this group goes out and does
10 something, particularly when they go after the U.S. Forest
11 Service or MSU, I mean research activities. I don't know how
12 you can put a price tag on that, because the kinds of
13 advancements that they are attacking, that these groups are
14 attacking are the kinds of advancements that can improve the
15 quality of life of the general populous, they can have a
16 dramatic economic impact, so it's hard to quantify the damage
17 that's done.

18 So it's not just economic, however, it's also the
19 fact that this is dangerous stuff. Every time someone sets a
20 fire, they have to anticipate that even if there is nobody else
21 around, the fire department is going to show up. Now,
22 sometimes-- I've never been a fire fighter, but I would think
23 they could just sit back and turn their hoses on and spray
24 water, I mean if it's in a luxury home under construction. I
25 wouldn't think that's something that fire fighters would risk

1 their lives going in to stop, maybe they just spray water on
2 that. But if you set fire to a historic building in the middle
3 of a major university, you've got to figure fire fighters are
4 going to show up and they are going to have to go in there and
5 put that out. And that was an extremely dangerous fire, and
6 it's just pure luck that no fire fighter was injured or killed
7 or no passerby was hit by the window that was blown out of the
8 building. So it's extremely dangerous. And we will grant the
9 defense that the defendant didn't mean for the fire to be that
10 bad. I mean obviously he didn't want to cause an explosion in
11 the room that he was in. But the fact is that when you let the
12 genie out of the bottle, so to speak, you are responsible for
13 everything that happens, and that was an extremely dangerous
14 fire, and all those other things he did. So this is, in the
15 government's view, a very serious crime.

16 Then there is the other hand, the amends, everything
17 that he has done since 2007 to try and make it better. I
18 recall note first off that he self corrected. Defendant
19 Ambrose self corrected by 2004. He knocked this stuff off, and
20 he got his life back on track. And from the summer of 2007, as
21 Mr. Brady describes in his filing, the defendant just threw
22 himself into assisting the FBI. And I've had-- I've spent a
23 lot of time talking with Frank Ambrose, probably three or four
24 days all total between preparing for grand jury and doing
25 proffers of information and all, and at least my sense is that

1 he is genuinely remorseful for all the things he did and that
2 his cooperation wasn't just damage control trying to limit his
3 sentence, but was a way to try to make right all of the things
4 he had done wrong.

5 So he has done all he could to help us. He has done
6 all he could to make it right. I think he is genuinely
7 regretful for all the things he did. And I'll say I know for a
8 fact, I know for a fact that if he could have a do-over, if he
9 could go back to 1999, knowing what he knows now, being the
10 person he is now, I don't think he would do any of that stuff
11 again. I genuinely I'm confident of that. So I think that the
12 Court's difficulty here is two poles of this case, polling 180
13 degrees out in directly opposite directions, both of those
14 poles have, at least from the view down here, have an extremely
15 strong pull on the one hand there is the seriousness of the
16 offense that for all of the 3553 statutory sentencing reasons
17 counsel a harsh punishment. And then on the other hand, there
18 is everything he has done since the time he self corrected, and
19 particularly since 2007 when Jim Shearer showed up and knocked
20 on his door. Everything he's done pulls in the opposite
21 direction.

22 In all candor, I don't envy you, your Honor, today,
23 because I think you have got, again from my view, an extremely
24 difficult task in imposing a sentence in this case.

25 Now, the one thing that is in the defense sentencing

1 memo I would like to address is the idea that they pulled some
2 of these cases from the northwest, from the operation backfire
3 prosecutions, and point to an individual named Ferguson who got
4 sentenced to probation. I went on PACER and I pulled up those
5 documents, the sentencing documents, the plea agreement, the
6 sentencing memorandum, they are publicly available. The big
7 difference with Ferguson, the reason that case, that
8 sentencing, I think, is not much of a guiding light in this
9 case is, first off, he was sentenced only under the arson
10 guideline. When he was sentenced, that 3A1.4 for terrorism, it
11 had just been passed. He was sentenced under the 1995
12 guidelines, and at that time, that guideline that did exist was
13 only for international terrorism. In 1996, that guideline was
14 changed by deleting international, so it just became a general
15 terrorism enhancement for when Ferguson was sentenced, he was
16 sentenced under a straight arson guideline of 2K1.4. There was
17 no twelve-level 3A1.4 enhancement. There was no automatic
18 Criminal History Category VI. So this is an entirely different
19 playing field.

20 And the case of Mr. Ferguson out in the northwest
21 doesn't really, I think, help the Court very much. And then
22 there was also the fact that that was a stipulated C1C
23 agreement, and this agreement is not a stipulated C1C
24 agreement. And in there the government moved for twelve levels
25 for substantial assistance. Based on my conversations with the

1 departure committee in my office in this case, twelve levels, I
2 don't know how they do it in the District of Oregon, but the
3 Western District of Michigan, that would-- that would be far,
4 far, far outside the norm. Eight levels is a pretty big deal
5 for our office.

6 So in the short of it-- long and short of it is, the
7 Ferguson case I don't think is very helpful. The bottom line
8 in this case is, your Honor, as I said, we think this is an
9 extremely-- it's going to be an extremely difficult case for
10 the Court to sentence.

11 I normally don't ask or make recommendations for
12 specific sentences, because I don't really think it's that
13 helpful to have an Assistant U.S. Attorney say what he or she
14 thinks is an appropriate sentence. But I will say that, I
15 think, from our perspective in this case, perhaps the most
16 appropriate sentence lies somewhere between that mandatory
17 minimum and 120 months. As we said in our sentencing memo,
18 under no circumstances is the government seeking 120 months
19 independent of what the Court does in the 5K motion, we are not
20 asking for more than 120 months. And in all candor, if the
21 Court imposes a sentence somewhere around seven years, it would
22 be 84 months, I guess, I don't think the government would have
23 a basis to make a meritorious basis to appeal that.

24 THE COURT: Well, the eight level reduction that you
25 are asking for in your 5K from the 240 guideline range would

1 result in a guideline range of 100 to 125, correct?

2 MR. FRANK: I believe that's correct, your Honor. If
3 I could just have a moment.

4 THE COURT: Sure.

5 (Pause in proceedings.)

6 MR. FRANK: Yes, your Honor.

7 THE COURT: All right. Thank you.

8 Thank you, Mr. Frank.

9 Mr. Brady.

10 MR. BRADY: Your Honor, I think that Mr. Frank in
11 making the seven year suggestion was contemplating the Court
12 going to the bottom of the guidelines following the granting of
13 his 5K motion, and he has signalled in a footnote that there is
14 a legal basis for a variance below that should the Court be so
15 inclined. And as I pointed out in my submission, you can go
16 wherever you want, they opened the door, and they know that.

17 I find myself in the, I suppose you would say,
18 enviable position, in following Mr. Frank, and I'm certainly
19 glad you didn't make me go first because I was standing in the
20 enviable position of being able to address the Court following
21 all that he said. He spoke, you know, both ends, the stuff
22 which is more remote in time, the seriousness of the offense,
23 and more recent in time, the self correcting, and following
24 that, the extraordinary cooperation, which as the government
25 has always characterized, it went beyond just making, you know,

1 seeking a better deal, but was seeking to make amends in their
2 view of my client's mental involvement in that. I think that's
3 all true.

4 Let me make reference to the fact, and I know the
5 Court, because you told me, has read carefully all of the
6 letters submitted by family members, I think most of whom are
7 here today. I don't know if anyone who wrote you a letter
8 didn't make the trip. I suspect one or two failed to make the
9 trip, but we have got either 13 or 14 people who have shown up,
10 all of them willing to address the Court, and I told them that
11 most people, certainly in state court, show up and their mother
12 isn't even there. And just the fact of their presence and
13 their concern in addition to the letters, I think, is, I hope,
14 useful to the Court.

15 THE COURT: Well, Mr. Brady, as I've indicated to
16 you, I have read all of the letters in detail.

17 MR. BRADY: Your Honor, one thing that Mr. Hagen
18 Frank said in his speaking as a prosecutor about the
19 seriousness of the offense, the possibilities that are inherent
20 in any fire, and the fact that that makes things serious,
21 potentially serious beyond intent. He acknowledges that there
22 was no intent for there to be an explosion, they were in the
23 room.

24 Something which I heard from Mr. Hagen Frank that I
25 hadn't heard from my client that I would like to share with the

1 Court, and I think I didn't hear it because it was in grand
2 jury, and I was sitting outside in the antechambers doing
3 crosswords or something, was that unlike at least one other
4 defendant who is going to come before you in this case,
5 Mr. Ambrose "didn't like," wouldn't use any sort of device, any
6 sort of timer, any sort of thing which will cause a fire or
7 conflagration or explosion or anything after he had left the
8 scene, because he didn't know who would come on the scene. He
9 can't control who will be there when it goes off was the
10 language I wrote down, if you use a device. I think that that
11 is-- and again, you have to take responsibility for what you do
12 and the possible consequences, but some-- it ought to make the
13 Court feel a little bit better if you are moving towards
14 leniency, to note the intent and the lack of, you know, the
15 concern for the person who isn't there now and might come to be
16 there in using something, and that was the only-- that was the
17 only thing of that sort.

18 As you know, my client was involved in the
19 above-the-line legal ecology movement working for a save the
20 forest type of foundation and when he first met his wife to
21 be. It was after that that he drove the first spike into a
22 tree, and that is what brought him into ELF. I can anticipate
23 the conversation, you've been doing all that thing, you want to
24 save forests, you know, she might have said you think that, you
25 know, that's sissy stuff trying to influence legislators going

1 to do something you put a tree-- a spike in a tree and you tell
2 them you did it, they are not going to cut that tree down,
3 you've inoculated it, you've made it safe. So this was the--
4 you'll indulge me if I say baby step across the line, which was
5 associated with the relationship that he went to, and then
6 before the government knocked on his door, had seen better of
7 and self corrected, and the self correction involved stopping
8 any involvement in these activities before he had separated
9 from Marie Mason, and then separating and divorcing, and then
10 leaving it all entirely behind. And he even left his
11 above-the-line stuff. He couldn't be involved in that
12 anymore. It had all been, in a sense, I think, spoiled for
13 him, because he knew what he had done and it was a wrong thing
14 he felt bad about, and here I think I'm just echoing what Hagen
15 Frank said about his understanding, his belief of my client.

16 So I think we have here, your Honor, someone who is
17 genuinely, as he stands before you now, a good person, who has
18 gone over the line, and we know the history of that, and it's a
19 shame that he did it. It's to his credit that he doped all
20 that out and figured it out and left it behind after he was
21 able to see it more clearly in ways that he sees it even more
22 clearly now. And after leaving it behind, he self corrected
23 with the government.

24 I think, your Honor, that Mr. Frank says that it's--
25 it might well be a difficult decision for the Court because you

1 are going to be drawn, as he suggested, in two directions.
2 There is all kinds of reason for the man who is here before you
3 and his recent activity as described to be as gentle as you
4 can, and yet Hagen Frank suggests the rules governing
5 sentencing suggest you got to look at the seriousness although
6 back in time.

7 I think, your Honor, that and I address those
8 guidelines, I think there is no utility in incarceration in
9 terms of reforming the defendant. I think that is an
10 accomplished fact. I think that the basis for any
11 incarceration, and your hands are tied, has to be strictly
12 punishment, and that is one of the legitimate reasons for
13 imposing an incarcerative sentence, which indeed you have to
14 do. But I think, your Honor, that-- and I think I started by
15 saying I didn't have to say much because what went before me
16 and what I submitted, but I would urge the Court in this case
17 to acknowledge the man who is before you who is not just a
18 criminal, who has done things for the government to soften his
19 offense, but who self corrected and then did things way above
20 just helping the government to make personal amends. And you
21 could reward that here today, and I would urge you to do so by
22 giving us a variance below the deviation.

23 And there is one other point I want to make, I hope I
24 don't lose it. The Ferguson case in Oregon that Hagen Frank
25 was talking about, and he was explaining how the guidelines

1 have changed since then, how the-- how the box into which you
2 find yourself was changed by 911 because they took the word
3 international out and so it falls into there. But and I think
4 I spent some time suggesting that philosophically and in other
5 ways Frank's activities, the way the statute is written and now
6 interpreted, can merit the terrorism slot, but that to the
7 extent it does, it overstates the actual offense under all the
8 circumstances and what brings him within that that didn't bring
9 Ron Ferguson within that puts it at the bottom end, so there
10 is, I think, a basis for a variance because of the overstating
11 of the actual offense by the guideline in that case. And I
12 think I will quit there, your Honor.

13 Thank you very much.

14 THE COURT: Thank you, Mr. Brady.

15 Mr. Ambrose, is there anything you wish to say on
16 your own behalf, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You may proceed as you wish.

19 THE DEFENDANT: Your Honor, as I stand before you
20 here, I want to make a statement about my past actions. I want
21 to apologize to all of the victims, to MSU, to the other people
22 that I hurt with my actions. I feel tremendous remorse that I
23 took such foolish actions and used such-- and used these people
24 and institutions to try to make a point. I had no right to do
25 so. I'm sorry for any loss, any fear, any other negative

1 effects my actions brought upon my victims.

2 Secondly here, I want to apologize to my family who
3 is sitting behind me here today. They raised me well. I
4 should have been able to resist the people and ideas that
5 helped lead me astray. I take full responsibility for my
6 actions, you know, but it's I should have been able to see that
7 I was doing wrong at the time and, you know, I'm sorry about
8 that. I let them down and I embarrassed them.

9 At the same time, I want to thank my family as well,
10 without their love and support I would not be able to get
11 through this time.

12 I want to right the wrongs as well, you know, more
13 than just address them and say I'm sorry for them. I want to
14 right the wrongs that I committed. I have been working with
15 the FBI as been noted, and other law enforcement. I want to
16 continue to do that. I want them to be able to pick my brain
17 and do what is necessary and use what is necessary to help stop
18 these actions from happening in the future and also go back and
19 be able to get the people who did them in the past. So
20 hopefully I can continue to do that.

21 I also would like to figure out a way to do outreach
22 to young people who are, you know, are standing where I was
23 standing back in the late '90s. To talk to them about this
24 dangers of extremism, to talk about the forces that are out
25 there that glamorize or romanticize the violent behavior and

1 make it seem like it's a legitimate way to act.

2 I would use my life as an example as to what happens
3 when you act out of line like I did. And, you know, I would
4 explain that, you know, your fleeting thoughts of youth, they
5 pass, and when the reality of supporting yourself sets in, all
6 you realize all you've left and built for yourself is a life on
7 the run, either a run from your past or a run from the law, so
8 and also you actually will realize that you've hurt the causes
9 that you've tried to help. You know, you may have thought for
10 a second you were trying to save a forest somewhere, but in
11 reality all you've done is taken a giant step backwards in any
12 sort of stride you'll be pushing for that. So I could also use
13 my skills, I'm a tradesman now. I do hardwood floors. I can
14 work for Habitat For Humanity, other charities to help repay
15 some debts to society. They are always in need of people, you
16 know, skilled people to be able to conduct their projects
17 wherever they are. That would be something that I want to
18 throw out there.

19 I wish I could take all that I did back. I've
20 changed significantly since those years where I did the bad
21 things. By working with the FBI, as far as change, you know,
22 I've eliminated basically all my former friends. I'm talking
23 about my legitimate friends. I'm not concerned about the
24 people that I did the bad things with, whatever happens,
25 happens. But just upstanding, normal citizens, they cared

1 about an issue or that, people that were there by your side if
2 you needed something, I'm a pariah to them now, they don't want
3 to talk to me, even if I wanted to, they wouldn't talk to me.
4 I only have my family and a few coworkers to fall back onto in
5 times of need, as I've noted already.

6 So once again, you know, I want to say-- express my
7 intense remorse for what I did. And my sorrow that I hurt the
8 people and institutions and businesses. My old life feels like
9 an alien memory form. I don't know how to describe it, other
10 than that. It's like somehow I can remember all these things I
11 did, but I didn't-- and I can understand, I guess, how someone
12 would get there, but I can't actually believe that I was ever
13 so foolish to do that myself.

14 So finally here, I want to ask the Court for leniency
15 in the sentencing matter. I would like to be able to remain a
16 productive part of society and repay my victims.

17 And finally, once again, I can't say I'm sorry
18 enough, so I'll say it again, I'm sorry to all of my victims.

19 THE COURT: Thank you, sir.

20 Mr. Frank, anything further?

21 MR. FRANK: No, your Honor. Well, I guess just one
22 slight correction on something Mr. Brady said. The
23 modifications to the terrorism guidelines were the result of
24 Oklahoma City, not 9/11.

25 Nothing else, your Honor.

1 THE COURT: Mr. Brady, anything further?

2 MR. BRADY: Your Honor, I didn't mention before we
3 talked about it in chambers, I was making a request of the
4 Court to make a recommendation to the Department-- the Bureau
5 of Prisons rather, and I believe you indicated that you would
6 recommend central Pennsylvania as a geographical focus, and
7 there are several prisons there, and that would assist family
8 members in visiting, and I appreciate that.

9 Secondly, and I addressed this in chambers, and I
10 understand that I'm uphill, but I want to say it here. I was
11 urging the Court to consider self reporting. There is
12 precedent for it. I understand that there is a governing
13 statute which you are able to act counter to without
14 repercussion, but that you may find controlling, I think, your
15 Honor, that there would be nothing adverse to the government,
16 it's continuing to work with Mr. Ambrose, if you would see fit
17 to allow self reporting in this case, and I would again ask you
18 to consider doing that.

19 And beyond that, I won't repeat anything I said
20 before.

21 THE COURT: All right. Thank you.

22 All right. It is the Court's duty to impose a
23 sentence sufficient, but not greater than necessary to comply
24 with the purposes of sentencing set forth in 18 U.S. Code
25 3553(a).

1 The Court recognizes that the guidelines are advisory
2 to the Court. The Court has taken the guidelines into account
3 as an initial benchmark or starting point when sentencing in
4 this case. The Court must make an individualized assessment
5 based on the facts presented. I recognize that the guideline
6 range is one of the array of factors warranting consideration.

7 I want to state for the record that I have thoroughly
8 reviewed the government's sentencing memorandum, the
9 defendant's sentencing memorandum with the many letters of
10 individuals who know Mr. Ambrose, especially family members,
11 attached to that memorandum. I have read them all and
12 thoroughly considered them. I have the government's 5K motion
13 for an eight-level departure, which in the Court's short tenure
14 on the federal bench of approximately 14 months, is a highly
15 extraordinary motion to make. Normally the 5K motions are in
16 the range of two or three levels, sometimes slightly higher,
17 but the Court has, for the first time, seen a variance or-- I'm
18 sorry, a departure request of eight levels, which I have
19 alluded to, if you start from the 240 month guideline range,
20 results in an advisory guideline range of 100 to 125.

21 I recognize that Mr. Brady has made an argument that
22 given the dynamics of the guidelines as it relates to the
23 statutory maximum of the offense to which the defendant has
24 pled guilty, that Mr. Ambrose may be entitled to additional
25 downward movement of his advisory guideline range. I'll deal

1 with that in a moment. And I also recognize that I have the
2 defendant's request for a motion for a variance beyond the
3 eight-level motion that the government has made.

4 The 3553 factors are the nature and circumstances of
5 the offense, and the history and characteristics of the
6 defendant. The sentence must reflect the seriousness of the
7 offense, promote respect for law, provide just punishment for
8 the offense, afford adequate deterrence to criminal conduct,
9 protect the public from further crimes of the defendant,
10 provide the defendant with needed medical, educational and/or
11 correctional treatment. The need to avoid unwarranted
12 sentencing disparity among similarly situated defendants, and
13 the kinds of sentences available to the Court.

14 On the last point, only a prison sentence is
15 appropriate in this case, starting with the reason that this is
16 a statute for which a mandatory minimum is required by action
17 of Congress. But the facts and circumstances here in the
18 totality call for a prison sentence.

19 On the second point, regarding unwarranted sentencing
20 disparity, the defendant has directed me to some sentence
21 dispositions in the District of Oregon. For the reasons that
22 Mr. Frank has outlined on the record, the Court does not
23 believe that those sentences are appropriately contrasted or
24 compared with the circumstances in this case. In addition to
25 that, I would note from a report of the United States

1 Sentencing Commission issued in June of 2007 on departures
2 downward on this guideline outside the operation of 5K yields
3 only about a four percent downward departure across the
4 country. So I have considered the defendant's argument in
5 regard to the reference to Oregon, but I don't feel that it's
6 attendant to the case here.

7 The defendant's also made an argument regarding the
8 application of 3A1.4, which is the, for lack of a better term,
9 terrorism adjustment, to the guideline.

10 I also note for the record, Footnote 3 of the
11 government's memorandum.

12 The defense argument is really twofold; number one,
13 the facts and circumstances of this case don't merit a
14 twelve-level enhancement. The Court disagrees with that. This
15 crime is a very very serious offense committed on the campus of
16 a major institution, not only in the State of Michigan, but
17 also an educational institution that has a worldwide reputation
18 for agricultural research. In addition to that, setting a fire
19 in an educational building in the dead of night, it seems to
20 me, is the essence of an attempt to terrorize individuals. So
21 the Court does not believe that the twelve-level enhancement
22 overstates the seriousness of the offense. So for that reason,
23 the Court rejects the defendant's argument in that regard.

24 Also referenced is the fact that the acceptance
25 adjustment for which Mr. Ambrose is duly entitled, the

1 three-level reduction, occurs before the application of the 5G
2 chapter of the guidelines, and the argument goes that as a
3 result Mr. Ambrose has not had the benefit of his acceptance.
4 I recognize the holding in the Rodriquez case, which grants the
5 Court discretion, under these circumstances, to go below and
6 give the defendant additional credit. I decline to do so. I
7 think the plea agreement in this case, as well as the 5K
8 motion, adequately capture Mr. Ambrose's acceptance of
9 responsibility, and what I will say is substantial cooperation
10 with the government.

11 As far as the 3553 factors are concerned; the nature
12 and circumstances of this offense, and the history and the
13 characteristics of the defendant. I think the essence of the
14 seriousness of the offense, not only the Congressional mandate
15 of a five-year mandatory minimum, but also the letter from the
16 Assistant General Counsel of Michigan State University places
17 in context the seriousness of this matter, and I read in part,
18 "When people come onto MSU's open campus under cover of dark
19 to destroy and to put untold numbers of people at risk, the
20 resulting harm is inflicted on the entire academic community.
21 The affront is profound in nature, and the impact is truly
22 severe, both for the institution and for the whole academic
23 enterprise." Elsewhere in the letter, Mr. Kiley, for the
24 record, K-i-l-e-y, notes the nature of the research that was
25 going on in this particular part of the ag building on MSU and

1 the purpose of the research was to confront worldwide hunger,
2 to come up with a strain of potatoes that were resistant to the
3 Tubar, T-u-b-a-r, moth. And it was designed to enhance potato
4 production so that those in Africa and other third world
5 countries can combat hunger, and malnutrition in their
6 countries. It is that effort that was attacked on December
7 31st of the year 1999 on the MSU campus. The Court views the
8 offense to be extremely serious. An open campus designed to
9 foster learning and research in this vital area is attacked by
10 Mr. Ambrose and his co-defendants on New Years Eve 1999. So
11 the Court views the offense to be extremely serious.

12 The sentence in this case must promote respect for
13 law. The institutions of higher learning in our country need
14 to be protected, and the Court's responsibility is to fashion a
15 sentence that protects as best we can those institutions of
16 higher learning and send a signal to those who would disrupt
17 that mission, that they will be dealt with severely if they
18 come into federal court.

19 Now, having said all of that, as Mr. Frank has
20 already alluded to and Mr. Brady alluded to in their arguments
21 here this morning, the other extreme on this case, and indeed
22 the seriousness of the offense is very extreme indeed in the
23 Court's judgment. The other extreme on this case is the
24 defendant himself and what he has done since this dastardly
25 crime back in 1999. First, he has no prior record. He is a

1 graduate of a big ten institution. Everyone agrees that as of
2 2004, the defendant's self corrected and stopped his activities
3 on behalf of ELF-- for purposes of the record, E-L-F-- and
4 that had largely self corrected as of 2004 when in the summer
5 of 2007, the defendant was approach by agents of the FBI
6 regarding the MSU fire.

7 I accept the defendant's genuine remorse for the
8 commission of this offense. I believe him when he says that he
9 is genuinely remorseful. And I also recognize that he has done
10 substantial-- he has made substantial efforts to assist the
11 government since he was originally approached by agents of the
12 FBI.

13 I'm also, however, mindful of the fact that the
14 instant offense is one of eleven, that through the use of fire
15 and other means gripped communities, whether it be academic,
16 residential or commercial, and gripped them in fear as a result
17 of the incidents.

18 I also recognize the defendant has been fully
19 employed for a substantial period of time. He has a trade in
20 the hardwood flooring industry. And certainly moving forward,
21 after the defendant completes his sentence, he has-- he can be
22 a very productive member of society in the philanthropic ways
23 that he indicated during the course of his allocution, whether
24 it be for Habitat for Humanity or otherwise, and of course, in
25 addition to supporting his family.

1 I also fully recognize that the defendant has
2 substantial family support. It is not often that a defendant
3 in a federal criminal case has two rows of family members
4 seated in the courtroom. I want to thank you for coming here
5 today. It's a substantial show of support for Mr. Ambrose. He
6 has already indicated that he is thankful for that support.
7 And it's clear to the court that the defendant has a very
8 substantial reservoir of family support, not only because of
9 the numbers of individuals that are here, but also one of the
10 letters that I received, I think, says more than anything
11 else. The letter was from Dr. Joseph Ambrose, who is a medical
12 professional, and he said this:

13 "My father passed away twelve years ago and left a
14 huge ache in all of our hearts. He was a man of high principal
15 and impeccable character. He left very little in the way of
16 worldly wealth, but left us something much more valuable. He
17 left us his name that was unsoiled. We have tried so hard to
18 pass our name on to our children as unsoiled as we received it,
19 and have had every expectation that our children would do
20 likewise."

21 Dr. Ambrose then goes on and makes some references to
22 his mother, the defendant's grandmother, and also indicates
23 that he feels that the defendant in this case can become a
24 productive member of society. So it's clear to the Court that
25 the defendant has substantial family support moving forward.

1 I have dealt with the nature and circumstances of the
2 offense, which is detailed in Paragraph 47. The history and
3 characteristics of the defendant. I've also opined regarding
4 the seriousness of the offense. That the sentence must promote
5 respect for law, and just punishment, obviously, for the
6 defendant, the seriousness of the offense, mitigated however,
7 by the defendant's substantial cooperation.

8 Deterrence is also important, and there are two
9 levels of deterrence, one is specific, the other general. Only
10 one is operative here, in the Court's judgment, and that is
11 general deterrence of others. I'm satisfied that Mr. Ambrose
12 has self corrected, that he does not pose a risk of further
13 criminal wrongdoing once he is released from his term of
14 imprisonment. But the Court also has to be mindful of general
15 deterrence in fashioning a sentence here that is deterring
16 others who may contemplate similar activities in the future.

17 Now, the substantial cooperation of the defendant is
18 outlined in the government's 5K motion as presented by Mr.
19 Frank today. It's been extensive. It's been effective in the
20 prosecution of other wrongdoers, including his co-defendants in
21 this particular case, who are set for sentencing in February of
22 2009. And the Court has fully assessed his cooperation to date
23 in fashioning a sentence here.

24 I would note that without the statutory cap of 240
25 months, and I recognize I'm dealing with the statutory cap, if

1 Mr. Ambrose had not cooperated with the government and had been
2 convicted of all the offenses to which he could have been
3 convicted, if the government had been able to prove beyond a
4 reasonable doubt, at the lowest end of his advisory guidelines,
5 it would have been greater than 25 years, and as high as 33.
6 But I start with the statutory cap of 240 months. The
7 government has filed a 5K motion for eight levels. I find that
8 motion to be meritorious, and the Court does intend to depart
9 down eight levels, which leaves me with an advisory guideline
10 range of 100 to 125 months. And for all the reasons that I've
11 set forth on the record here today, the Court intends to impose
12 a sentence within that range.

13 The defendant's motion for a variance below that
14 range is denied. I think under all the facts and
15 circumstances, the advisory range contained after the
16 government's 5K motion is appropriate. So for all those
17 reasons, it's the sentence of the Court that the defendant,
18 Frank Brian Ambrose, be committed to the custody of the Bureau
19 of Prisons to be imprisoned for a term of 108 months.

20 Upon release from imprisonment, the defendant shall
21 be placed on supervised release for a term of life. Within 72
22 hours of release from custody of the Bureau of Prisons, the
23 defendant shall report in person to the probation office in the
24 district to which the defendant is released.

25 While on supervised release, the defendant shall

1 comply with the mandatory and standard conditions of
2 supervision, including DNA collection, drug testing is
3 suspended. He is not to possess any firearms, destructive
4 devices or dangerous weapons.

5 Additionally, the defendant shall comply with the
6 following special conditions of supervision:

7 The defendant shall provide the probation officer
8 with access to any requested financial information.

9 He shall not apply for nor enter into any loan or
10 other credit transaction without the approval of his probation
11 officer.

12 The defendant will submit any personal computer owned
13 or controlled by the defendant to a search conducted by his
14 probation officer or designee, at a reasonable time and in a
15 reasonable manner without prior notice or search warrant to
16 determine if the defendant added, removed, updated or
17 reinstalled, repaired or otherwise modified the hardware or
18 software on the computer or hid encrypted files or data
19 inconsistent with the conditions of supervision.

20 Further, the defendant will provide all
21 computer-related billing records, including telephone, cable,
22 internet, satellite, and the like, as requested by his
23 probation officer. Refusal to submit to such search is a
24 violation of the conditions of supervised release. The
25 defendant will warn anyone with whom he shares residence that

1 the premises may be subject to search pursuant to this
2 condition.

3 The special assessment of \$100 is ordered and is due
4 immediately.

5 In light of the substantial restitution burden the
6 defendant has, the Court finds the defendant does not have the
7 able to pay a fine. Accordingly, the fine is waived.

8 I waive interest on the restitution.

9 Restitution is ordered as follows:

10 To Deer Park construction site in Bloomington,
11 Indiana, \$95,000. Vandalism of logging equipment in
12 Bloomington, \$55,000. Sterling Woods Development in
13 Bloomington, \$200,000. Crider and Crider Equipment of
14 Bloomington, \$500,000. Morgan-Monroe State Park in
15 Bloomington, \$5,500. Yellowwood State Forest, Bloomington,
16 Indiana, \$1,600. Rose Acre Farm in North Vernon, Indiana,
17 \$100,000. Martin State Park in Shoals, S-h-o-a-l-s, Indiana,
18 \$55,000. Mystic Forest in Superior Township, Michigan, in the
19 Eastern District of Michigan, \$1 million. And Willow Ridge in
20 Macomb County, \$1 million. The total loss due to this
21 conspiracy becomes \$3,021,536.

22 The Court recognizes the government has reported that
23 some of the businesses victimized by Mr. Ambrose and his
24 co-defendants have since gone out of business.

25 Any payment made that is not a payment in full shall

1 be divided proportionately among the persons named. The
2 defendant's restitution shall not be affected by any
3 restitution payments that may be made by other defendants in
4 this case. Restitution payments shall be made to the United
5 States District Court Clerk for distribution to the victims.
6 The defendant shall apply all monies received from income tax
7 refunds, lottery winnings, judgments, and any other anticipated
8 or unexpected financial gains to any outstanding court-ordered
9 financial obligation.

10 The Court also recommends the defendant be
11 incarcerated in central Pennsylvania, which is nearest to his
12 family members for purposes of his family visiting him in the
13 institution.

14 Mr. Frank, are there any counts to be dismissed,
15 sir?

16 MR. FRANK: Yes, your Honor. The government moves to
17 dismiss Counts Two through Four.

18 THE COURT: Those counts are dismissed.

19 Mr. Frank, any legal objections to the sentence
20 imposed?

21 MR. FRANK: No, sir.

22 THE COURT: All right. Mr. Frank, what is your--
23 recognizing that this is a statutory case, what is your
24 position on voluntary surrender, sir?

25 MR. FRANK: Your Honor, doing a strict legal

1 analysis, I don't think that, unless the defense can put on
2 some evidence that establishes that there are exceptional
3 circumstances, I mean I think they could probably show clear
4 and convincing that there is no flight risk or danger, but they
5 still have to show exceptional reasons for the statutory
6 exception under Section 3541(c), that would establish that
7 immediate detention is unwarranted in this case, and I just
8 don't see those facts are there right now.

9 THE COURT: Are there law enforcement reasons why in
10 the interim before he is ordered to report that would mitigate
11 towards allowing him to voluntary surrender?

12 MR. FRANK: There are some, your Honor. If I could
13 have a minute with counsel and the agent?

14 THE COURT: Sure.

15 (Pause in proceedings.)

16 MR. FRANK: Your Honor, there's a couple things he's
17 got on that he is scheduled to do.

18 THE COURT: Are those referenced in the submissions?

19 MR. FRANK: No, they are not.

20 MR. BRADY: No. One is, but the others are not.
21 There are some things Mr. Shearer knew about.

22 THE COURT: Do you want to have a sidebar?

23 MR. FRANK: Your Honor, there is nothing ongoing at
24 this point beyond what is referenced in the pleadings.

25 THE COURT: All right.

1 MR. FRANK: I don't know if that answers the Court's
2 questions.

3 THE COURT: It does. All right. Thank you.
4 Mr. Brady.

5 MR. BRADY: I think that there is at least two
6 matters, one in Quantico, which was not-- it's of use to the
7 government, and you are aware of that one. The other one is a
8 criminal prosecution, which has more than one, if I understand
9 it, necessary appearance or useful appearance by my client.
10 And I believe Mr. Shearer would find it useful if my client
11 were available and able to self report for purposes of that.

12 Mr. Frank has acknowledged that flight risk is, he
13 believes, not a factor here. I think he has a concern that as
14 the numbers got higher than he asked for and we expected, that
15 might argue towards some danger of flight risk, but he doesn't
16 say so, and so I take him at his word, and I would ask you to
17 do that as well. So I think your Honor, that there is no
18 danger of flight risk. There is utility to the government.
19 There is utility to my client. The Quantico thing, which is, I
20 think, of substantial use to the government in the education of
21 agents who are dealing with these issues across the country,
22 arguably he could be carried there for that, but the other
23 things are much more difficult and are likely to go away. I
24 would urge the Court to consider these things and allow self
25 reporting. I don't hear a strong objection from the

1 prosecution. I think the government would be served as well as
2 my client.

3 THE COURT: Mr. Frank, do you agree with that?

4 MR. FRANK: I think it's a close call, your Honor.
5 As I said, I think that under the-- given his cooperation and
6 such, I think he could make the predicate showings to be
7 considered under 3145(c), but just looking from the technical
8 side, whether they are exceptional circumstances? As I said,
9 there is, other than the things that are already in the papers
10 regarding going to Quantico and doing some training and some
11 appearances in the state case, we don't have anything going on
12 right now that-- If the Court would like a sidebar.

13 THE COURT: Sure.

14 We need to get the white noise on.

15 (Sidebar conference.)

16 (Proceedings continued with a separate sealed record
17 at sidebar.)

18 (Sidebar conference concluded.)

19 (Pause in proceedings.)

20 THE COURT: All right. We are back on the record.

21 The Court will order the portion of the transcript
22 that was held at sidebar sealed.

23 Mr. Frank.

24 MR. FRANK: Yes, your Honor. Thank you.

25 During the sidebar after discussing with the Court,

1 with counsel and defense counsel, and after having a brief
2 conversation with defendant, the government thinks that there
3 are good reasons, and if the Court's judgment-- given the
4 Court's judgment those are exceptional reasons warranting
5 exception to the mandatory remand, the government has no
6 objection to that.

7 The defendant has a date with the FBI in Quantico to
8 do some training there, to be of assistance to the Bureau
9 generally. He also has, although not a date certain, he is
10 expected to be in state court on the other side of the state
11 sometime in the next couple of months. And I've just spoken
12 with the defendant just to stress that however bad he thinks it
13 is now, that if he did flee, we would get him, and when he
14 comes back, however bad he thinks it is now, it would be ten
15 times as bad.

16 THE COURT: All right. I concur, based on the
17 record, that there are exceptional circumstances. I will allow
18 the defendant to voluntarily surrender.

19 Anything further before I give the defendant his
20 appellate rights, Mr. Frank?

21 MR. FRANK: No, your Honor. I did move to dismiss
22 Counts Two through Four.

23 THE COURT: We covered that.

24 MR. FRANK: Thank you.

25 THE COURT: Mr. Brady, anything further?

1 MR. BRADY: No.

2 THE COURT: Mr. Ambrose, I advise you, sir, you can
3 appeal your conviction if you believe that your guilty plea was
4 somehow unlawful or involuntary or if there is some other
5 fundamental defect in the proceeding not waived by your guilty
6 plea.

7 You also have a statutory right to appeal your
8 sentence under certain circumstances, particularly if you think
9 the sentence is contrary to law. However, a defendant may
10 waive those rights as part of a plea agreement, and you have
11 entered into a plea agreement which waives some or all of your
12 rights to appeal the sentence itself. Such waivers are
13 generally enforceable, but if you believe the waiver is
14 unenforceable, you can present that argument to the appellate
15 court.

16 You have the right to apply for leave to appeal in
17 forma pauperis if you are poor. If you wish to do so, with a
18 few exceptions, you need to file the documents for which your
19 attorney will acknowledge receipt on your behalf, within ten
20 days of the entry of the judgment in this case.

21 If you file the documents, the Clerk of the Court
22 will prepare and file a notice of appeal upon your request.

23 Mr. Frank.

24 MR. FRANK: Yes, your Honor, one last point. Agent
25 Shearer just pointed out to me, we are not sure the Judge

1 included MSU in the restitution.

2 THE COURT: That was my intention.

3 MR. FRANK: Yes, your Honor. I know the Court went
4 straight through the list of victims.

5 THE COURT: I think the difference between the total
6 and what I outlined is what is owed MSU.

7 MR. FRANK: Yes, sir, I just don't think--

8 THE COURT: What is the MSU figures, just so we know?

9 MR. FRANK: \$1.1 million, your Honor.

10 THE COURT: \$1.1 million, so ordered.

11 MR. FRANK: Thank you.

12 THE COURT: All right. Thank you.

13 Mr. Brady, anything further?

14 MR. BRADY: Nothing further, your Honor.

15 THE COURT: All right. Thank you.

16 MR. BRADY: We will receive notice about when and
17 where to report?

18 THE COURT: The marshal service will take care of
19 that.

20 MR. BRADY: Thank you, your Honor.

21 THE COURT: Thank you.

22 Good luck to you, Mr. Ambrose.

23 THE DEFENDANT: Thank you.

24 MR. BRADY: Is there-- Excuse me, is there a-- We
25 have to pay a hundred dollars. Is there a clerk's office in

1 this building?

2 THE COURT: You can work that out. Yes.

3 MR. BRADY: Okay.

4 THE COURT: You can take care of that.

5 Thank you.

6 COURT CLERK: All rise.

7 Court is in recess.

8 (At 11:20 a.m., proceedings were concluded.)

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REPORTER'S CERTIFICATE

I, Kathleen S. Thomas, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.



Kathleen S. Thomas, CSR-1300, RPR
U.S. District Court Reporter
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Kalamazoo, Michigan 49007