



U.S. Department of Justice
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October 17, 2006

Mr. Jeffery P. Robinson
Ms. Amanda E. Lee
Schroeter, Goldmark & Bender
500 Central Building
810 Third Avenue
Seattle, WA 98104

Re: United States v. Daniel Gerard McGowan
Case No. _____
Plea Agreement

Dear Counsel:

1. **Parties/Scope:** This plea agreement is between this United States Attorney's Office for the District of Oregon (USAO) and defendant, and thus does not bind any other federal, state, or local prosecuting, administrative, or regulatory authority except as otherwise identified in this agreement. Except as specified in this agreement, it does not apply to any charges other than those specifically mentioned herein. This plea agreement is part of a global plea agreement among co-defendants Jonathan Christopher Mark Paul, Joyanna L. Zacher, Nathan Fraser Block, Daniel Gerard McGowan and the USAO. It is understood by all the parties that should one of the other defendants fail to provide information pursuant to Paragraph 7B of this Agreement, the government may terminate this plea agreement and the Court will be advised that all four defendants' cases will proceed to trial; provided that, in the event the defendant is not in breach of his obligations under Paragraph 7B and 7H of this Agreement, no Information provided by the defendant pursuant to Paragraph 7B may be used against the defendant at trial.

2. **Charges and Penalties:** Defendant agrees to plead guilty to Counts 1 through 15 of the Information as follows:

Count 1: Conspiracy to Commit Arson and Destruction of an Energy Facility of the United States in violation of Title 18, United States Code, Section 371. The maximum sentence is 5 years imprisonment, a fine of \$250,000, a 2 to 3 year period of supervised release and a mandatory \$100 fee assessment.

Count 2: Arson – Superior Lumber Company in violation of Title 18, United States Code, Section 844(l). The maximum sentence is 20 years imprisonment, a mandatory minimum of 5 years, a fine of \$250,000, a 2 to 3 year period of supervised release and a mandatory \$100 fee assessment.

Count 3: Attempted Arson – Jefferson Poplar Farm Main Office in violation of Title

18, United States Code, Section 844(l). The maximum sentence is 20 years imprisonment, a mandatory minimum of 5 years, a fine of \$250,000, a 2 to 3 year period of supervised release and a mandatory \$100 fee assessment.

Counts 4 through 15: Arson – Jefferson Poplar Farm Vehicle Shop, Shop & Office, and 10 vehicles in violation of Title 18, United States Code, Section 844(l). The maximum sentence is 20 years imprisonment, a mandatory minimum of 5 years, a fine of \$250,000, a 2 to 3 year period of supervised release and a mandatory \$100 fee assessment.

Defendant agrees to pay the fee assessment applicable to each of the above counts by the time of entry of guilty plea or explain to the Court why this cannot be done. Defendant will pay mandatory restitution as ordered by the Court.

3. **Factual Basis:** The factual basis for each count is attached hereto and by this reference incorporated herein as "Attachment 1," which defendant agrees the USAO can prove beyond a reasonable doubt.
4. **Dismissal and non-prosecution:** The USAO will move to dismiss with prejudice the Second Superseding Indictment at the time of sentencing. In addition, the defendant will not be prosecuted by any other federal, state, or local prosecuting, administrative, or regulatory authority for any of the acts set forth in that indictment or for any of the acts disclosed by the defendant in his proffer to the Government or in disclosure made in satisfaction of the obligations set forth below.
5. **Resolution of Sentencing Issues:** In addition to waiving the right to a jury trial on the issue of guilt, defendant knowingly and voluntarily agrees that sentencing issues in this case need not be alleged in a grand jury indictment, proven to a trial jury, or proven beyond a reasonable doubt. Defendant also knowingly and voluntarily consents to judicial fact-finding and resolution of any and all sentencing issues. Defendant and Government agree that the guidelines calculations should be derived from the United States Sentencing Commission Guidelines Manual with effective date of November 1, 2000.
6. **Guideline Enhancement:** The USAO will recommend the terrorism guideline enhancement found in U.S.S.G. §3A1.4 because the felony offenses either involved or were intended to promote a federal crime of terrorism. The defendant reserves the right to argue against the application of this guideline section.
7. **Acceptance:**
 - A. **Extent of Reduction for Acceptance of Responsibility:** Subject to Subsection B of this Paragraph, the USAO agrees to recommend a 3 level reduction for acceptance of responsibility if defendant's offense level is 16 or greater;

otherwise a 2 level reduction applies. The USAO reserves the right to change or omit this recommendation if defendant, between plea and sentencing, commits any new or additional violation of law, obstructs or attempts to obstruct justice, or acts inconsistently with acceptance of responsibility.

- B. **Information:** Defendant agrees to disclose to the Government all information in his possession that is true about his personal participation in any of the offenses alleged in the indictment and any uncharged criminal conduct. Defendant agrees to participate in disclosure sessions with the Government which shall be conducted pursuant to FRCrP 11(f), FRE 410, and U.S.S.G. §1B1.8 and as described below; *provided that* defendant shall not be required to reveal information that inculpates others, reveals their identities, or would be the functional equivalent of revealing their identities. During the disclosure session(s), the defendant shall:
- (1) Disclose when, where, and how each offense occurred; this disclosure shall include such details of defendant's own individual conduct and whether defendant acted alone or in concert with others.
 - (2) If an offense was done in concert with others, disclose the sum and substance of any conversations defendant had with others.
 - (3) Should defendant refuse to disclose information on the grounds that it would inculcate or reveal the identity of others, the Government may require defendant's attorney to articulate the basis for this refusal, including the reason(s) defendant believes such information would inculcate or identify another.
 - (4) If the Government is persuaded that the refused information would inculcate or reveal the identity of others, the Government will question defendant in a manner that avoids the issue or accept defendant's refusal to disclose the information.
 - (5) If the government is not persuaded that the refused information would inculcate or reveal the identity of others, the disclosure session will continue to another area of inquiry and the parties will attempt in good faith to find a way to allow defendant to disclose the refused information in a manner that will not inculcate or reveal the identity of others.
 - (6) Should the parties be unable to find a way to allow defendant to disclose the refused information and should the Government deem such information to be of vital importance to the Government, defendant and defendant's attorney will be so advised and given a reasonable amount of time to decide whether to disclose the refused information. If defendant

thereafter persists in refusing to disclose the refused information, the disclosure session will terminate, the global plea agreement with co-defendants Zacher, Block, McGowan and Paul may be declared void, and the Court will be advised that all four defendants' cases will proceed to trial.

- C. **Collateral Use:** Defendant understands that the USAO will not tolerate any further violation of federal or state law, and, should any violations become known, they will be made known to the appropriate authorities. Nothing in this agreement will preclude prosecution of defendant by those authorities for such violation. Defendant understands that nothing in this agreement will prevent the government from instituting prosecution against defendant for perjury, subornation of perjury, false statements, or false declaration if defendant commits or causes the commission of any such offense in connection with defendant's testimony.
- D. **Sentencing Information:** Defendant understands that the USAO, pursuant to 18 U.S.C. § 3661, must provide the information given under this agreement to the PSR writer and sentencing judge. USSG § 1B1.8 governs the use of such information in determining defendant's applicable guideline sentencing range.
- E. **Testimony:** It is understood by the parties of this agreement that defendant does not agree to testify at any trial, hearings or proceedings. Notwithstanding this condition of the plea agreement, the defendant acknowledges that defendant may be subpoenaed to testify at grand jury, trials and other hearings. Defendant also understands that should defendant be subpoenaed to testify, and at that time decides not to testify, and upon order of a court that defendant must testify, remains in opposition to testifying, defendant may be subject to both civil and criminal contempt proceedings.
- F. **Best Efforts:** Any benefit defendant may receive under this agreement is solely dependent on whether defendant uses his best efforts in the disclosure sessions, the proffer agreement, and as otherwise set forth in this agreement, and is not dependent upon the identification, arrest, prosecution, or conviction of any person for any crime.
- G. **Polygraph Examination:** Defendant further agrees to submit to a polygraph examination on the issue of truthfulness if it is deemed necessary by the United States, with an examiner selected by the USAO. If the examination results indicate deception, defendant will be afforded the opportunity to review and explain the deceptive responses. If, after consideration of defendant's responses, the USAO is convinced defendant's statement is not complete and truthful, the USAO may consider this agreement to have been breached by defendant.

- H. **Breach of Defendant's Agreement to Disclose Information:** It is expressly understood and agreed by the parties that the determination of whether defendant has complied with all the terms of this plea agreement rests exclusively with the USAO. Should defendant knowingly give false, misleading, or incomplete information or testimony, the parties agree that: (1) defendant may not withdraw any guilty plea; (2) the USAO is free to make any sentencing recommendation and is not bound by this agreement; (3) statements and information from defendant under this agreement or any previous proffer agreement may be used for any purpose without any restrictions; (4) defendant may be prosecuted for any crime, whether or not such crime was the subject of this agreement; and (5) The USAO may, but need not declare the plea agreements with defendants Zacher, Block, and Paul null and void; provided that in the event the USAO declares these plea agreements null and void, no information provided by any of these defendants, pursuant to Paragraph 7B of their plea agreements may be used against them at trial.
- I. **Defendant's Compliance with the Agreement to Disclose Information:** It is expressly understood and agreed by the parties that the determination of whether defendant has complied with all the terms of this plea agreement rests exclusively with the USAO.
8. **USAO Sentence Recommendation:** The sentence to be recommended by the Government in this case is based on the nature and circumstances of the offense and the history and characteristics of the defendant; the need for the sentence to reflect the seriousness of the offense, to promote respect for the law and to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide a just and fair sentence for this defendant in relation to and in comparison with all of the defendant's co-conspirators.
9. **Waiver of Appeal/Post-Conviction Relief:** Provided the Court imposes a sentence within the range set forth in paragraph 13B below, both the government and defendant knowingly and voluntarily waive the right to appeal from any aspect of the conviction and sentence unless the sentence imposed exceeds the statutory maximum, the Court imposes an upward departure pursuant to Part 5K of the Sentencing Guidelines, or the Court exercises its discretion under 18 U.S.C. § 3553(a) to impose a sentence which exceeds the advisory guideline range. Should defendant seek an appeal, despite this waiver of that right, the USAO may take any position on any issue on appeal. Defendant also waives the right to file a motion pursuant to 28 U.S.C. § 2255 to set aside the conviction and sentence, except on grounds of ineffective assistance of counsel, newly discovered evidence, or a retroactive change in the applicable guidelines or statute.

10. **Court Not Bound:** The Court is not bound by the recommendations of the parties or of the Presentence Report (PSR) writer. Because this agreement is made under Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, defendant may not withdraw any guilty plea or rescind this plea agreement if the Court does not follow the agreements or recommendations herein.
11. **Full Disclosure/Reservation of Rights:** The USAO will fully inform the PSR writer and the Court of the facts and law related to defendant's case. Except as set forth in this agreement, the parties reserve all other rights to make sentencing recommendations and to respond to motions and arguments by the opposition.
12. **Breach of Plea Agreement:** If defendant breaches the terms of this agreement, or commits any new violations of law between signing this agreement and sentencing, the USAO is relieved of its obligations under this agreement, but defendant may not withdraw any guilty plea.
13. **Substantial Assistance:**

A. **Global Resolution of Case:** Defendant will withdraw defendant's plea of not guilty and enter into a plea agreement with the Government by which defendant would enter a plea of guilty to the offenses set forth in paragraph 2 above on the condition that defendants Jonathan Christopher Mark Paul, Joyanna L. Zacher, Nathan Fraser Block and Daniel Gerard McGowan all agree to enter into appropriate plea agreements with the government.

The government acknowledges that defendant's plea agreement is of substantial assistance. Upon defendant's successful completion of every condition of the plea agreement, the government agrees to move, as authorized by 18 U.S.C. §3553(e) and U.S.S.G. §5K1.1, to authorize the Court to impose a sentence below a level established by statute as a minimum sentence for any offense to which the defendant has agreed to plead guilty.

B. **Extent of Departure:** Assuming defendant complies with the terms of this agreement, the USAO will recommend up to a 12 level downward departure pursuant to U.S.S.G. §5K1.1 (and 18 U.S.C. §3553(e), if necessary) and/or Rule 35 of the Federal Rules of Criminal Procedure and a sentence at the low end of the resulting advisory guideline, which the Government anticipates will be 96 months imprisonment. Defendant is free to request other adjustments or departures; however, the USAO will oppose any such request. The defendant agrees that any grounds upon which defendant will seek a sentencing adjustment will be raised sufficiently in advance of the sentence hearing to permit the government a full opportunity to respond to the Court. Defendant also agrees not to request defendant's sentence be lower than 63 months or lower than any sentence imposed upon co-conspirator Suzanne Savoie plus 18 months, whichever is less.

Mr. Jeffery P. Robinson
Ms. Amanda E. Lee
Re: Daniel Gerard McGowan
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I have read this agreement carefully and reviewed every part of it with my attorney. I understand the agreement and voluntarily agree to it. I am satisfied with the legal assistance provided to me by my attorney.

Date Nov 7, 2006



DANIEL GERARD MCGOWAN
Defendant

I represent defendant as legal counsel. I have carefully reviewed every part of this agreement with defendant. To my knowledge defendant's decision to enter into this agreement is an informed and voluntary one.

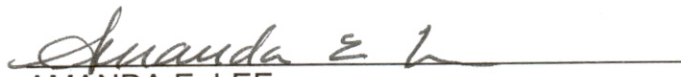
Date Nov 7, 2006



JEFFERY P. ROBINSON
Attorney for Defendant

I represent defendant as legal counsel. I have carefully reviewed every part of this agreement with defendant. To my knowledge defendant's decision to enter into this agreement is an informed and voluntary one.

Date Nov. 7, 2006



AMANDA E. LEE
Attorney for Defendant

Attachment 1

United States v. Daniel Gerard McGowan

Beginning in October 1996 and continuing through October 2001, in the District of Oregon and elsewhere, defendant Daniel Gerard McGowan and various persons at various times willfully and knowingly conspired and agreed to maliciously damage or destroy, or attempt to damage or destroy, by means of fire, buildings, vehicles, and other personal and real property owned in whole or in part by, or possessed by or leased to, others. Some of these persons intended to damage or destroy, attempt to damage or destroy, or did damage or destroy such property of the United States or a department or agency of the United States. Some intended to damage or destroy, attempt to damage or destroy, or did damage or destroy property of entities engaged in activity affecting interstate commerce. Some intended to damage or destroy, attempt to damage or destroy, or did damage or destroy property of an energy facility of the United States involved in the transmission of electricity. Some intended to damage or destroy or attempt to damage or destroy all such property.

The purpose of some of the conspirators was to influence and affect the conduct of government. The purpose of other conspirators was to influence and affect the conduct of commerce, private business, and others in the civilian population. All conspirators intended to and did participate in acts of violence, sabotage, or destruction of property potentially dangerous to human life and property in violation of the criminal laws of the United States and the State of Oregon.

In January, 2001 and in May, 2001, in the District of Oregon, defendant McGowan knowingly conspired and agreed with others to maliciously damage or destroy or attempt to damage or destroy by means of fire, buildings, other real property, vehicles, and personal property, owned in whole or in part or possessed by or leased to an entity engaged in activity affecting interstate commerce as more particularly set forth in Counts 2 through 15.