

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

FRANK BRIAN AMBROSE,

Defendant.

Hon. Paul L. Maloney

Case No.: 1:08-CR-47

Michael Joseph Brady (P-30410)
Attorney for Defendant Frank Brian Ambrose
24684 Hathaway Street, 2nd Floor
Farmington Hills, Michigan 48335-1547
(248) 417-2679
FAX: 248/855-5999
MichaelJFB@aol.com

SENTENCING MEMORANDUM
ON BEHALF OF DEFENDANT
FRANK BRIAN AMBROSE

Introduction and Overview

Through counsel, Frank Brian Ambrose files the following Sentencing Memorandum setting forth factors that the Court is being asked to consider in determining what type and length of sentence is sufficient, but not greater than necessary, to comply with the statutory directives set forth in 18 U.S.C. § 3553(a).

The single factor most likely to influence the sentence ultimately imposed in this case is the quality and the quantity of open-handed, useful cooperation Frank Ambrose has provided to the government. Within the government's Motion for Departure pursuant to U.S.S.G. § 5K1.1 is contained an evaluation and a summary of Mr. Ambrose's assistance over about an eighteen month time period, assistance which continues right up through the present time. Counsel has

read and does accept as balanced and accurate the government's assessment of the assistance rendered to the government by Mr. Ambrose.¹ Defendant's only factual challenge *vis-a-vis* statements contained within the government's Motion For Downward Departure relates to the government assertion that Defendant "admitted . . . that he had been involved in the Ice Mountain attempt" (Government 5K Motion, document 146, p. 3).²

The services Frank Ambrose performed for the government are significant and important. But his character, his background, and his personal history are, in this case, especially important to understand in order properly to evaluate his service. Defendant is not a bad guy. In Frank Ambrose's case, and this sets this case apart from every other case in which undersigned counsel has been involved as an attorney, it is not good enough just to focus upon the assistance provided. The Court needs also to appreciate the character of the man—not an issue to be pressed by the defense in every criminal case, for sure. How and why did Frank Ambrose become entangled, for a while at least, in a course of criminal behavior? Is Frank Ambrose nothing more than a run-of-the-mill scumbag who turns on others of the same sort solely to obtain a lighter sentence? What characteristics define him? What is he and who is he? Characteristics of the man are relevant in this case to the fixing of an appropriate sentence.

¹To quote from the government's Motion for Downward Departure: "In the Government's evaluation, and as described *supra*, the Defendant's information and cooperation was hugely significant and useful. His testimony was complete and truthful, and he did his absolute best over time to recall details of events that happened and things he did years ago. ***The nature, extent, and value of his assistance went far beyond the norm, and the Government would not be surprised if Defendant's activities set a high-water mark for assistance in the Court's estimation***" (Government's 5K Motion, Document 146, p. 7, emphasis added).

²Defendant was not involved in the attempt on Ice mountain and never said he was. Defendant told the government that he does recall conversations to which he was a party concerning Ice Mountain as an environmental miscreant about which something might appropriately be done, but never participated in any serious conversations or in any planning to carry anything out, and certainly never knew about or participated in any way in the attempt which was made by some person or persons upon Ice Mounty facilities in western Michigan. Frank Ambrose and Marie Mason did talk about Ice Mountain in very abstract, hypothetical, you might say preliminary terms, and then, unbeknownst to Frank Ambrose, somebody did make an attempt on the facility. But not Frank Ambrose. Government agents first approached Frank Ambrose during the course of an investigation into Ice Mountain, that is certainly true. But what they came away with was ultimately a mountain of information about other things entirely, including insights into methods and tactics and ways of getting inside the head of ELF.

Eleven letters to the Court on Mr. Ambrose's behalf have been sent to undersigned counsel and are being filed in support of this Sentencing Memorandum as a single 16 page PDF document—a face sheet lists and identifies the eleven letters which follow it. Read together, these letters provide the Court with a coherent, clear, and compelling window into Frank Ambrose, which counsel is loath to attempt to summarize.³ These letters are worthy of a careful reading. They speak clearly, and with considerable authority, albeit from several different points of view. They describe a young man who was lured away and drawn into a wilderness for a time, but who found his own way back to his family and to himself years before he signed on to hand himself and others over to the government to atone for his offenses.⁴

Sentencing under *Booker*

On January 12, 2005, the Supreme Court ruled that its Sixth Amendment holding in *Blakely v. Washington*, 124 S. Ct. 2531 (2004) and *Apprendi v. New Jersey*, 530 U.S. 466 (2000) applies to the Federal Sentencing Guidelines. *United States v. Booker*, 125 S. Ct. 738, 756 (2005). Given the mandatory nature of the Sentencing Guidelines at the time, the Court found there to be no relevant distinction between the sentence imposed pursuant to the Washington statutes in *Blakely* and the sentences imposed pursuant to the Federal Sentencing Guidelines in the cases before the Court. *Ibid.* at 751. Accordingly, reaffirming its holding in *Apprendi*, the Court concluded that:

³ The letters are arranged according to date of composition, from earliest-written (April 6, 2008 by his sister Sandra Pastore), to latest written (September 12, 2008, by his employer Vincent DeSanto), and in no other way. An index page identifies each letter, seriatim, by name of writer(s), address, and relationship of the writer(s) to Frank Ambrose. No letter was written or re-written at the suggestion of counsel. No letter submitted to counsel for inclusion here was withheld from the Court.

⁴In the course of describing Frank Ambrose's work with the government, the government acknowledged that "*Ambrose had voluntarily ceased his illegal activities and left the ELF movement several years before*" the initial contact with him was made (Government's 5K Motion, document 146, p. 4, emphasis added). The government also acknowledges that, without Frank Ambrose's involvement, no convictions against any person, including Frank Ambrose, could have been had ("Investigative efforts in the MSU arson to that time had not produced enough evidence to support a successful prosecution against all [read "any"] of the investigative targets" [*Ibidem*, p. 4]).

“[a]ny fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt.”

Ibid., at 756.

Based on this conclusion, the Court further found those provisions of the federal Sentencing Reform Act of 1984 that make the Guidelines mandatory, 18 U.S.C. § 3553(b)(1) or which rely upon the Guidelines’ mandatory nature, 18 U.S.C. § 3742(e), incompatible with its Sixth Amendment holding. *Booker*, 125 S. Ct. at 756. Accordingly, the Court severed and excised those provisions, mak[ing] the Guidelines effectively advisory. *Ibid.*, at 757.

Instead of being bound by the Sentencing Guidelines, the Sentencing Reform Act, as revised by *Booker*, requires a sentencing court to consider Guidelines ranges, see 18 U.S.C.A. § 3553(a)(4) (Supp.2004), but it permits the Court to tailor the sentence in light of other statutory concerns as well, see § 3553(a). *Booker*, 125 S. Ct. at 757. Thus, under *Booker*, sentencing courts must treat the guidelines as just one of a number of sentencing factors set forth in 18 U.S.C. § 3553(a).

The primary directive in Section 3553(a) is for sentencing courts to impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph 2. Section 3553(a)(2) states that such purposes are:

- (a). to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (b). to afford adequate deterrence to criminal conduct;
- (c). to protect the public from further crimes of the defendant; and
- (d). to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

In determining the minimally sufficient sentence, § 3553(a) further directs sentencing

courts to consider the following factors:

- (a). The nature and circumstances of the offense and the history and characteristics of the defendant (§ 3553[a][1]);
- (b). The kinds of sentences available (§ 3553[a][3]);
- (c). The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct (§ 3553[a][6]); and
- (d). The need to provide restitution to any victims of the offense. (§ 3553[a][7]).

Other statutory sections also give the district court direction in sentencing. Under 18 U.S.C. § 3582, imposition of a term of imprisonment is subject to the following limitation: in determining whether and to what extent imprisonment is appropriate based on the Section 3553(a) factors, the judge is required to “recogniz[e] that imprisonment is *not* an appropriate means of promoting correction and rehabilitation” (emphasis added).

Under 18 U.S.C. § 3661, *No limitation* shall be placed on the information concerning the background, character, and conduct of [the defendant] which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence (emphasis added). This statutory language certainly overrides the (now-advisory) policy statements in Part H of the sentencing guidelines, which list as not ordinarily relevant to sentencing a variety of factors such as the defendant’s age, educational and vocational skills, mental and emotional conditions, drug or alcohol dependence, and lack of guidance as a youth. *See* U.S.S.G. § 5H1.

The directives of *Booker* and § 3553(a) make clear that courts may no longer uncritically apply the guidelines. Such an approach would be inconsistent with the holdings of the merits majority in *Booker*, rejecting mandatory guideline sentences based on judicial fact-finding, and the remedial majority in *Booker*, directing courts to consider all of the § 3353(a) factors, many of which the guidelines either reject or ignore. *United States v. Ranum*, 353 F. Supp. 2d 984, 985-86 (E.D. Wisc. Jan. 19, 2005) (Adelman, J.). As another district court judge has correctly

observed, any approach which automatically gives heavy weight to the guideline range comes perilously close to the mandatory regime found to be constitutionally infirm in *Booker*. *United States v. Jaber*, 362 F. Supp. 2d 365, 371 (D. Mass. March 16, 2005) (Gertner, J.). See also *United States v. Ameline*, 400 F.3d 646, 655-56 (9th Cir. Feb. 9, 2005) (advisory guideline range is only one of many factors that a sentencing judge must consider in determining an appropriate individualized sentence), *reh'g en banc granted*, 401 F.3d 1007 (9th Cir. 2005).

Justice Scalia explains the point well in his dissent from *Booker*'s remedial holding:

Thus, logic compels the conclusion that the sentencing judge, after considering the recited factors (including the guidelines), has full discretion, as full as what he possessed before the Act was passed, to sentence anywhere within the statutory range. If the majority thought otherwise, if it thought the Guidelines not only had to be considered (as the amputated statute requires) but had generally to be followed, its opinion would surely say so.

Booker, 125 S. Ct. at 791 (Scalia, J., dissenting in part). Likewise, if the remedial majority thought the guidelines had to be given heavy weight, its opinion would have said so. The remedial majority clearly understood that giving any special weight to the guideline range relative to the other Section 3553(a) factors would violate the Sixth Amendment.

In sum, in every case, a sentencing court must now consider **all** of the § 3553(a) factors, not just the guidelines, in determining a sentence that is sufficient but not greater than necessary to meet the goals of sentencing. And where the guidelines conflict with other sentencing factors set forth in § 3553(a), these statutory sentencing factors should generally trump the guidelines. See *United States v. Denardi*, 892 F.2d 269, 276-77 (3d Cir. 1989) (Becker, J, concurring in part, dissenting in part) (arguing that since § 3553(a) requires a sentence be no greater than necessary to meet the four purposes of sentencing, imposition of sentence greater than necessary to meet those purposes violates statute and is reversible, even if within guideline range).

Application of the Statutory Sentencing Factors to the Facts of this Case

In the present case, the following factors must be considered when determining what type and length of sentence is sufficient, but not greater than necessary, to satisfy the purposes of

sentencing:

**1. The Nature and Circumstances of the Offense
and the History and Characteristics of the Offender**

(a) Nature and Circumstances of Offense.

The charged offenses involved so-called “direct action” by an environmental activist which were specifically designed to hurt no person but were rather intended to influence those who, in the prior but now discarded view of Mr. Ambrose, were engaged in large scale harmful activities which did damage to planet earth and to its environment⁵. The offenses which bring Mr. Ambrose to court involved, by way of example, disruptions of commercial activities. Property was damaged. Property was destroyed. Although it is the government’s position that “ELF direct actions include acts that . . . are dangerous to human life” [*Ibid.*]), it was indeed a tenet of the ELF “ethic” never to cause physical harm to any person. Although “back in the day,” Mr. Ambrose would perhaps have described his offenses in romantic terms clothed in principled morality and appeals to the “higher good.” But that was then and this is now. He now views the things which he did, usually in concert with Marie Mason, very much differently. He now sees his actions then as naive, misdirected, and immoral. And, yes, completely ineffective. The most crucial thing to keep in mind as the Court struggles to arrive at a just and proper sentence, is that Frank Ambrose had ceased all (illegal) ELF activity years before he was first approached by Agent Jim Shearer as agent Shearer was investigating a case Frank Ambrose was not himself involved in. The government knew that Frank Ambrose had long since completely withdrawn from any and all ELF activities when they knocked on is door. He had withdrawn even from all innocent political action on behalf of environmental issues he was dedicated to

⁵Note 3 on p. 4 of the government’s 5K Motion includes a statement of the government’s understanding of the Earth Liberation Front: “The ELF was, and remains, a loosely organized movement of individuals who are committed to the eradication of commercial, research, and other activities that its adherents consider harmful to the natural environment. ELF espouses a philosophy of what its adherents refer to as “direct action,” a term that denotes acts of politically motivated violence designed to force segments of society, including the general civilian population, private business, and government, to change their attitudes about environmental issues and/or to cease activities considered by the movement to have a negative impact on the natural environment. . . .”

before he met Marie Mason. She took that away from him too. She spoiled it and made it dirty.

Frank Ambrose didn't spend nearly as much time thinking about what he had done and why he had stopped doing it before FBI Agent Jim Shearer came into his life as he has since that time. In the course of his extensive cooperation with the government he has thoroughly explored his mind and his memories and has thereby acquired a thoughtful understanding of what brought him to become involved in these offenses in the first place, and what brings others to this place. Frank understands the ideas and influences which continue to bring other young men and women to view the Earth Liberation Front as an attractive and compelling outlet for youthful zeal. There was never anything venal about what Frank Ambrose did. He never made a profit. Indeed, he contributed his time and his own money to finance the projects which he at the time regarded as moral and necessary, but which he came to see and still sees as criminal, unkind, and naive. He did these bad things which he did for reasons which seemed to him at the time to be "morally necessary."⁶

(b) History and Characteristics of Mr. Ambrose.

The principles underlying Defendant Frank Ambrose's history and character are suggested within the several letters written to the Court on his behalf. As a child he was in the Junior Ranger Program.⁷ As a young man he spent a lot of time fishing and studying animals and the plant life he encountered in the woods by his home. He took out every single book in his local library dealing with snakes as a very young man, intent on learning absolutely

⁶In the course of his involvement with Jim Shearer and others representing the government, Mr. Ambrose became a useful instrument for good. Indeed, the government has already made use of Mr. Ambrose's "expertise" in educational contexts to benefit agents in the field, and there are plans in place to derive further benefit from his cooperation at a seminar for federal agents scheduled for later this year. He is willing to continue to educate and assist the government by, *inter alia*, speaking to agents in training about the practices and procedures, including security techniques, of the Earth Liberation Front, and about the recruitment techniques employed to influence new adherents, and the psychological profiles of the most likely new recruits. With this information, and with Frank Ambrose on board to apply it in the field, the government stands a better chance of weakening and perhaps unraveling ELF than it does without him.

⁷Letter of Sandra Pastore, letters exhibit p. 2.

everything he could about them, learning also the names and characteristics of all plant life he encountered (“In college, if I did not know the name of a particular tree I could send him [Frank] a leaf, he would call and let me know its identity.”)⁸ He was a Biology major in college and “joined the environmental club, sponsoring recycling programs and earth day events.”⁹ When he graduated from Purdue University his first employment was in furtherance of his dedication to promoting ecological and environmental concerns, especially, at that time, doing battle against the clear-cutting of forests. Before he met co-defendant Marie Mason and fell under her spell, he was engaged in community-based, always completely innocent political action in furtherance of the goals of American Land Alliance, the non-governmental non-profit organization (NGO) dedicated to preserving forests by opposing clear-cutting and other industry activities thought to be detrimental.

Much changed rather rapidly after he met Marie Mason, a woman thirteen years his senior whom he would marry a year later. Marie Mason had been involved in what she called “direct action.” Direct action is a euphemism. It refers to things like spiking trees and then announcing that you’ve done it so old stands of trees would not be cut down, having been “inoculated” by the spikes. This was indeed what Frank Ambrose first became involved in, something he had never done before he met Marie Mason. It was a sort of continuation of his pre-existing concerns for preserving stands of trees from indiscriminate clear cutting, but turned to the dark side. Frank Ambrose’s original, principled devotion to environmental causes was run off one path and steered onto another after he met Marie Mason. Under her tutelage, Frank’s understanding of things which might be done, “more convincingly to influence corporate policy and public thinking about environmental concerns” expanded beyond spiking trees and announcing they had been spiked so no lumberjack would cut the trees and they would survive the saw. Finally, once again to belabor an important point, it is most certainly true that Mr.

⁸*Ibid.*

⁹*Ibid.*

Ambrose withdrew entirely from **all** such “direct action” leaving it all behind **years** before he was first visited by a federal agent. When Frank Ambrose first came in contact with Jim Shearer and Jim Shearer’s brother agents, he had been separated from Marie Mason for some time, and had been completely uninvolved in any Earth Liberation Front-type “direct action” even longer.

**2. The Need for the Sentence Imposed
To Promote Certain Statutory Objectives:**

(a) to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense,

(b) to afford a adequate deterrence to criminal conduct,

(c) to protect the public from further crimes of the defendant, and

(d) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

(a). If punish him you must to promote respect for the law, then punish him, but do so in light of the extraordinary extent to which he has mitigated his offense by making it possible for the government to better understand and deal with others drawn to these behaviors.

(b). Deterrence of criminal conduct might in this case be seen as one of the things Mr. Ambrose has given the government rather open handedly. The government’s description of Mr. Ambrose’s cooperation as articulated within its Motion For Downward Departure, is once a gain apposite.

(c). As Frank Ambrose had voluntarily and completely left all such activities behind long before he met and began to cooperate with the government, protection of the public from “further crimes of the defendant” would not seem to be an issue.

(d). The fourth statutory objective of sentencing, providing the offender with needed training, treatment, or care, is minimized in this case by the education Mr. Ambrose has enjoyed and benefitted from, and by the useful, hard-working member of society he has turned himself into.

3. The Kinds of Sentences Available

In *Booker*, the Supreme Court severed and excised 18 U.S.C. § 3553(b), the portion of the federal sentencing statute that made it mandatory for courts to sentence within a particular sentencing guidelines range. *Booker*, 125 S. Ct. at 756. This renders the sentencing guidelines advisory. *Id.* 18 U.S.C. § 3551.

4. The Sentencing Range Established by the Sentencing Commission

In footnote #1 of its Motion For Downward Departure, the government acknowledges that Mr. Ambrose would effectively be denied the advantage of his acceptance of responsibility unless this Court exercises its discretion to depart downward from the guidelines sentence arrived at after whatever downward departure the Court might grant in response to the government's 5K Motion.¹⁰ Defendant urges the Court to reduce the effective guidelines by subtracting the additional two levels for acceptance of responsibility, computing such reduction **after** first granting the government's motion for an eight level reduction.

Additionally, Defendant maintains that the 12 levels scored in paragraph #55 of the Presentence Investigation Report by invoking the terrorism statute overstates the true severity of the offense charged. Too broad a brush is employed. Frank Ambrose did plead guilty, and in the course of doing so he acknowledged that the act of setting a fire in an empty building poses a **potential** danger to persons who might be in the area of the building, walking by outside the building, thus making out the necessary factual basis for the plea which he entered. No attempt is being made to deny that admission now. On the other hand, the Court is asked to take notice that it was, and presumably is yet the ethic of the Earth Liberation Front (ELF) to select

¹⁰In its entirety, the government's footnote #1 reads: "The Government notes that, because USSG § 1B.1(e) requires that the adjustment for acceptance of responsibility under § 3E1.1 be applied against the offense level that exists before application of Chapter 5G requirements, Defendant stands to receive no practical benefit from his § 3E1.1 credit. However, the Court has the discretion to depart downward from the Guideline sentence to compensate for that dynamic. *United States v. Rodriguez*, 64 F.3d 638, 643 (11th Cir. 1995). **The Government would have no objection to the Court's exercising that discretion in this case.**" (Emphasis added)

targets and to employ procedures which result in the avoidance of (intentional, reasonably foreseeable) harm to any person, and it was Frank Ambrose's ethic while he was acting under the influence of ELF. This quibble, if the Court sees it that way, is intended to address the aggravation of the charges against Frank Ambrose, and the guidelines which attach thereto, as a result of the "terrorism" designation attached to Mr. Ambrose's actions by the charging instruments filed by the government. Either the intentional or the reckless placing of actual persons into harm's way is a necessary predicate to the charges brought and the plea entered in this case. Defendant notes that, in common parlance, "terrorism" suggests the intentional evoking of fear of personal harm within a populace. Fear of sudden, unexplained, out-of-nowhere explosions in crowded places in full daylight when and where the civilian victims of such acts would otherwise have felt safe, that's what we see in Iraq and understand as terrorism. That is what we felt after September 11, 2001. The disruption caused by fear is itself the goal of such person-directed terrorist acts. Fear, not thought, is the tool. Disruption is the goal. Just as proscriptions in law against simple assault seek to protect a person's **right not to be put in fear**, so does and should the laws proscribing terrorism, at bottom, be understood to address a populace's **right not to be fearful of sudden, unexpected acts of violence** against their persons.

All legislation tends to throw nets broad enough to capture both the greater and lesser instances of harmful behavior, often by including only potentially harmful behavior within its reach. Frank Ambrose acknowledged at the taking of his plea that his actions at Michigan State were potentially harmful to others. The example was given at the taking of the plea, if memory serves, of a person walking by the building when the fumes exploded and blew out windows in the office. A person walking by could have been struck by flying glass, hypothetically. All Frank Ambrose wants this Court to note is that there was an affirmative effort to avoid any and all harm to other persons. The attempt was to influence the thinking of policy makers and the attitudes of voters about certain issues involving the environment, never to put anyone in fear of personal harm. The goal was to promote thought, not fear.

In summary, the legal argument counsel is making is that points scored for terrorism overstate the actual severity of the offense at Michigan State. Other offenses which Mr. Ambrose acknowledged but did not plead guilty to involved factual scenarios where imagination could not conjure up a person walking by a window which might explode because the plan went amiss. It was to be a fire, not an explosion. The room burst into flames with Frank Ambrose and Marie Mason in the room. Marie Mason's hair caught fire. Not a part of the plan. Not a window into the intent of the parties. The intent was, as Mr. Ambrose now fully acknowledges, both illegal and immoral. It was to damage property to influence policy while having no right to do so. But there was never an intent actually to harm any person. It is always the task of the law to draw lines, to see some bad acts as less bad or more bad than other bad acts. Terrorism? Maybe somehow within the broad sweep of the very broadly written statute, indeed defendant by his plea has acknowledged as much, but way at the bottom end of what that evocative word can be expected to conjure.

5. The Need To Avoid Unwarranted Disparities

Recently there have been several federal prosecutions of ELF members around the country. Because there have not been that many ELF cases to reach decision overall, and because "unwarranted disparities" between outcomes in similar cases brought under the same statutes are to be avoided pursuant to 18 U.S.C. § 3553, the sentencing outcomes which have come down in a multi-defendant ELF case in Oregon might appropriately be considered in arriving at a sentence to be imposed in this case in Michigan. As the chart below makes pretty clear, outcomes in the Oregon cases are markedly different from the outcome proposed in Frank Ambrose's case, even taking into account the government's 5k Motion. Frank Ambrose's posture before the court is in very many ways truly parallel to that of Jacob Ferguson, the principal cooperating witness in Oregon. Mr. Ambrose's crimes have been far fewer in number and losses attributable to his actions have been far smaller, but they both cooperated fully and effectively.

In *United States v Simmons*, 501 F 3d 620, 626-627 (6CA 2007), the court of appeals for the Sixth Circuit concludes that the disparity to be avoided which is addressed by 18 U.S.C. § 3553 is national disparity, not disparity within a case. To the extent that the Court is concerned about disparity between outcomes involving similar fact situations between different districts within the federal system, the Court's attention is directed to the case of the *United States of America v. Jacob Ferguson* (Case CR-06-60071-AA in the Oregon Federal District Court).

Among the defendants in that fourteen defendant case, Frank Ambrose's situation is most like that of defendant Jacob Ferguson, the main government informant, although Mr. Ferguson's criminal involvement was far more serious. Jacob Ferguson was involved in 21 arsons and was responsible for some \$30,000,000.00 in property damage losses. Here comes the fun part: Jacob Ferguson's recommendation was for probation, and probation he did receive.¹¹

Full, detailed information regarding the several defendants listed above as co-defendants of Jacob Ferguson in the Oregon Federal District Court case is readily available on undersigned counsel's hard drive. The greater the level of detail, the more clear does the fact of sentencing disparity appear, but to insert that information here at length would distract unduly from the task at hand, and will not be presented to the Court unless asked for. To provide at least some idea, though, the following chart has been prepared to provide the Court with the highlights. Each of the 14 defendants in the Oregon Federal District Court case appear, accompanied by the number of arsons each was involved in, the magnitude of losses attributable to each defendant, the sentence recommended for each, and the sentence actually imposed.

Chart comparing the several Oregon Defendants

¹¹During indoctrination into extremist radical groups, including ELF, new recruits are routinely told **never to snitch** because the snitch will end up getting the same time or penalty as those who refuse to cooperate with the government. That drummed in belief was overthrown in Oregon when Jacob Ferguson was sentenced to probation and not ordered to pay restitution. But depending on how he is treated at sentencing, Frank Ambrose could become exhibit "A" in support of the notion that one should never cooperate with the government even as, Frank Ambrose sets a new "high water mark for assistance in the court's estimation."

Defendant	# of arsons	loss	recommendation	sentence
Jacob Ferguson	21	\$30 million+	probation	probation
Stanislas Meyerhof	11 (or more)	\$30 million+	188 months	156 mos.
Kevin Tubbs	11	\$20 million	168	151
Chelsea Gerlach	7	\$27 million	121	108
Daniel McGowan*	3	\$2 million	92	82
Nathan Block*	3	\$2 million	92	93
Joyanna Zacher*	3	\$2 million	92	93
Jennifer Kolar	4	\$7 million	84	60
Suzanne Savoie	3	\$2 million	63	51
Kendall Tankersley	2	\$1 million	51	46
Darren Thurston	1	\$207,000	37	37
Jonathon Paul*	3	\$1.2 million	57	51
Briana Waters (trial)	1	\$6 million	120	72
Tre Arrow*	2	unknown	78	78

(* indicates a non-cooperation agreement.)

6. The need to provide restitution to offense victims

Frank Ambrose is gainfully employed and can be involved in making some restitution against his obligation only when not incarcerated. As he is no longer any sort of danger to society and has, indeed, made himself an asset to the government, any sentence even a day longer than the number the Court is unable to go beneath because of the government's unwillingness in this case to release the Court from being bound by the five year mandatory minimum, necessarily involves the Court in an embarrassing cross-district sentencing disparity contrary to the logic and intent of USSG § 3553.

Proposed Statement of Reasons Pursuant to 18 U.S.C. § 3553(c)(a) for sentencing below guideline range.

The government has moved the Court prior to sentencing for a reduction of eight levels in the guidelines and has gone out of its way to signal (within footnote #1 of its Motion) that it supports the suggestion that the Court should exercise its discretion to lower by an additional two levels (for acceptance of responsibility) where defendant falls in the guidelines, doing so pursuant to *United States v. Rodriguez*, 64 F.3d 638, 643 (11th Cir. 1995). The representations

of counsel regarding the cooperation of Mr. Ambrose convince the Court that his assistance was indeed substantial, significant, timely, truthful, completely reliable, and complete. The arc of Mr. Ambrose's life to date, as it can be discovered from the Probation Department Presentence Report and submissions by counsel from friends and family suggest conclusively to the Court that there is no reasonable likelihood that Frank Ambrose will re-offend. Indeed, given the opportunity, there is much reason to believe that Mr. Ambrose will willingly make himself available to the government for as long as the government finds such service useful in ways designed to educate government officials charged with understanding and dealing with the Earth Liberation Front and like organizations. The Court is also cognizant of the fact that Mr. Ambrose placed himself at personal risk on numerous occasions in furtherance of the government's interests. The Court is comfortable in concluding from Defendant's post-offense conduct that he has, in fact, learned from his experience. The Court is made comfortable by the defendant's withdrawal from the Earth Liberation Front on his own, and by his years of spotless, productive behavior after leaving ELF and before his involvement with the government and the federal criminal justice system. For these reasons and others appearing in this record the Court finds it appropriate to grant a variance below the guideline range ultimately arrived at, sentencing defendant only to the mandatory minimum imposed by statute. By making its motion pursuant to USSG §5K1.1 for a downward departure of eight levels in the guidelines based upon substantial assistance, the government has freed the Court to depart downward from the Guideline sentencing range otherwise applicable in this case, without restriction, but the government has not made a motion pursuant to 18 U.S.C. §3553(e) to allow the Court to impose a sentence below five years, a level established by statute as a minimum sentence, something which the government could have done.

Summary and Conclusion

How should we understand what motivates Frank Ambrose? One pattern we can see is that things are not done by half measures. As a young man he developed an interest in

wildlife. He borrowed and read every book in his local library dealing with snakes. He learned how to swim. He practiced every day for years and went through Purdue University on a swimming scholarship. His interest in wildlife spawned an interest in ecology and he sought and obtained employment which made him a regional representative of a non-profit organization seeking to preserve the natural environment, much to the chagrin of his father who wanted him to use his education to get a “real job” where he could make money. His genuine interest in things environmental and ecological drew Marie Mason to him when they met in Detroit one day when he was at a conference in his capacity as regional representative for the American Land Alliance. She had an interest in causes in some ways similar to his, although she had descended along a path which gave darker expression to her attempts to influence and change the world. He did follow her and he did go down that darker path, but only for a while. Not following her longer than he did is the one break in his pattern of dogged determination to follow through on things. He had followed her long enough to do the things he pled guilty to in this case, certainly. But then he drew back from ELF, ending forever the illegal expression of his sincere concerns for the environment and living things. And he drew back from Marie Mason. One and the same thing, perhaps. Frank Ambrose had been entirely uninvolved in any illegal activity of the sort engaged in by environmental activists in the name of ELF for “several years” when investigators knocked on his door about Ice Mountain, something he was **not** involved in.

Which brings us, of course, to Frank Ambrose’s cooperation. Another story of intense, full-throated dedication to whatever he undertook. Fishing, swimming, snakes, trees, all living things. Once he was on board with the federal agents’ agenda, he didn’t hold back. He did more than anyone in the government involved in this case had ever seen done by a cooperating defendant. He was proactive. He was on a mission. It was like a second job which often took priority over the employment which supported him. He embraced fully and without reserve, and now honestly and completely believes that ELF was disruptive and negative rather than useful and positive. He cooperated wholeheartedly. And in that total and wholehearted, unstinting

dedication to a cause, once embraced, we see Frank Ambrose to be, at bottom, the same person he had always been. Turned for a time into an instrument of destruction on behalf of something perceived at the time to be good, he has now turned himself into a truly positive force. Certainly he is seen that way by Jim Shearer and in a more abstract way by AUSA Hagen Frank. Undersigned counsel asks this Court to understand take part in the government's perception of Frank Ambrose as a force for good as articulated in the government's Motion for Reduction pursuant to USSG § 5K1.1(a). And then do balanced justice by finding good cause for a variance below the guidelines as finally arrived at.

WHEREFORE, for the foregoing reasons, Defendant Frank Brian Ambrose respectfully submits that a sentence not a day higher than the mandatory minimum of five years is more than sufficient, and in fact is greater than necessary, to comply with the statutory directives set forth in 18 U.S.C. § 3553(a). Defendant also requests that he be allowed to self-report at such time and place as may be designated, should he be ordered to prison. Finally, Frank Ambrose requests that the Court recommend to the Bureau of Prisons that he be assigned to FCI Allenwood Low, in Allenwood, Pennsylvania, because it is in relatively easy reach for visitation by his parents and other members of his family who remain at his side.

Respectfully submitted,

/s/ Michael Joseph Brady (P-30410)
Attorney for Defendant Frank Brian
Ambrose
24684 Hatha way Street, 2nd Floor
Farmington Hills, Michigan 48335
(248) 417-2679
FAX: 248/855-5999
MichaelJFB@aol.com

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