

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
THE HON. ANN L. AIKEN, JUDGE PRESIDING
UNITED STATES OF AMERICA
Government v No. 06-60069
DARREN TODD THURSTON, Defendant

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EUGENE, OREGON
THURSDAY, JULY 20, 2006
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PROCEEDINGS

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THURSDAY, JULY 20, 2006

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THE CLERK: This is the time set for Criminal
06-60069, United States of America versus Darren Todd
Thurston, hearing on defendant's oral motion to change plea.

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THE COURT: Thank you.

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Mr. Engdall.

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MR. ENGDALL: Thank you, Your Honor. We have for
the court this morning an information that we would like to
file with the court on Mr. Thurston which charges one count
of conspiracy to commit arson and destruction of an energy
facility. We also believe that it would be appropriate for
Mr. Thurston to be prepared to file a waiver of indictment
on that document. We could arraign the defendant on that,
and we believe that we will proceed with an entry of a
guilty plea this morning on that information.

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MR. FEINER: Good morning, Your Honor. Dan Feiner
appearing on behalf of Mr. Thurston. Mr. Engdall is
correct. We have executed a waiver of indictment which I'm
prepared to forward to the court at this time, and I would
point out that it is signed by my client and that I have
reviewed that with him both last night and this morning.

THE COURT: Thank you.

MR. FEINER: I'm also at the same time forwarding
a copy of the executed plea agreement which would go with

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the plea petition which we already have.

THE COURT: Thank you.

Mr. Thurston, have you received a copy of the
information in Case 60-60069?

THE DEFENDANT: Yes, I have.

THE COURT: And Mr. Feiner has been your lawyer
throughout these proceedings; is that correct?

THE DEFENDANT: Yes, he has.

THE COURT: And he's indicated last evening and

10 again today you have had a chance to review this
11 information?

12 THE DEFENDANT: Yes, I have reviewed it with him
13 and by myself.

14 THE COURT: And you have also read it to yourself?

15 THE DEFENDANT: Yeah.

16 THE COURT: And I have before me a waiver of
17 indictment form, correct?

18 THE DEFENDANT: Correct.

19 THE COURT: And so you have discussed with him
20 your right to have this case presented to the grand jury and
21 all that that means, correct?

22 THE DEFENDANT: I have, correct.

23 THE COURT: And the charges carry a maximum
24 penalty, Mr. Engdall, of what?

25 MR. ENGDALL: Yes, Your Honor. The maximum

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1 possible sentence in this particular case is five years
2 imprisonment with a fine of \$250,000.

3 THE COURT: And you understand that?

4 THE DEFENDANT: I do.

5 THE COURT: Do you wish to waive further advice of
6 rights and go forward and have the court review your
7 petition, sign the waiver of indictment, and then proceed to
8 enter a guilty plea?

9 THE DEFENDANT: I do.

10 THE COURT: Is that what you understand is
11 happening today?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: And so you are asking the court to
14 sign the waiver of indictment form?

15 THE DEFENDANT: Yes, I am.

16 THE COURT: Any questions you have for your lawyer
17 or for the court?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: All right. Ms. Engdall.

20 THE CLERK: Sir, can I have you raise your right
21 hand to be sworn.

22 (The defendant was sworn.)

23 THE COURT: Please tell me your full name.
24 THE DEFENDANT: Darren Todd Thurston.
25 THE COURT: How old are you?

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1 THE DEFENDANT: 36.
2 THE COURT: How far did you go through school?
3 THE DEFENDANT: Grade 12.
4 THE COURT: Any post-high school work?
5 THE DEFENDANT: No.
6 THE COURT: Were you able to read and understand
7 the petition that has been signed and handed to the court
8 this morning?
9 THE DEFENDANT: Yes, I was.
10 THE COURT: And your lawyer, Mr. Feiner, has been
11 your lawyer throughout these proceedings?
12 THE DEFENDANT: Yes.
13 THE COURT: And you have had a chance to discuss
14 with him the information, again, in Case 06-60069?
15 THE DEFENDANT: Yes, I have.
16 THE COURT: And he's discussed with you the nature
17 of these charges, correct?
18 THE DEFENDANT: Yes.
19 THE COURT: Lesser included offenses or defenses
20 that could be raised; is that correct?
21 THE DEFENDANT: That's correct, yes.
22 THE COURT: And you have also had the chance to
23 review with him the discovery or the evidence that the
24 government has provided to your lawyer?
25 THE DEFENDANT: Yes, I have reviewed it

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1 extensively.
2 THE COURT: And you've also had a chance to talk
3 with your lawyer about all the choices and options that you
4 have, correct?
5 THE DEFENDANT: Yes.
6 THE COURT: And you have had plenty of time to
7 think about your decisions and how you wish to proceed in
8 the case; is that correct?

9 THE DEFENDANT: That's correct.
10 THE COURT: Do you have any questions that the
11 court or your lawyer may answer for you at this time?
12 THE DEFENDANT: No.
13 THE COURT: So it's your desire to go forward and
14 enter a guilty plea to Count 1; is that correct?
15 THE DEFENDANT: That's correct, yes.
16 THE COURT: And you understand you will be
17 pleading guilty to the following elements: That you
18 willfully and knowingly agreed with at least one other
19 person to commit arson and/or destroy an energy facility.
20 THE DEFENDANT: That is correct, yes.
21 THE COURT: So that's what you understand you will
22 be pleading guilty to?
23 THE DEFENDANT: Yes.
24 THE COURT: Any questions about that?
25 THE DEFENDANT: No.

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1 THE COURT: Did you have a chance to tell your
2 lawyer all facts known to you about this case?
3 THE DEFENDANT: Yes, I have.
4 THE COURT: And are satisfied with your legal
5 representation?
6 THE DEFENDANT: I am, yeah. Yes.
7 THE COURT: I'm asking you just to use yes or no
8 because the court reporter takes down your answers, and it's
9 important that you respond in that fashion so that she can
10 take that down.
11 You understand that you took an oath to tell the
12 truth a few moments ago?
13 THE DEFENDANT: Yes.
14 THE COURT: And you understand that I am going to
15 ask you questions about the offense and your role in the
16 offense?
17 THE DEFENDANT: Yes.
18 THE COURT: And you understand that if you lie to
19 the court or you deliberately misstate information in answer
20 to questions that I place before you, separate charges of
21 perjury or false statement may be brought against you?

22 THE DEFENDANT: I understand, yes.
23 THE COURT: Are you under the influence of drugs
24 or alcohol?
25 THE DEFENDANT: No.

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1 THE COURT: Are you suffering from any injury,
2 illness, or disability that would affect your ability to
3 think or reason?
4 THE DEFENDANT: No.
5 THE COURT: Have you taken any medications in the
6 last seven days?
7 THE DEFENDANT: No.
8 THE COURT: Do you understand that conviction of a
9 crime can result in consequences in addition to
10 imprisonment?
11 THE DEFENDANT: Yes.
12 THE COURT: Such consequences may include
13 deportation or removal from the United States or denial of
14 naturalization if you are not a United States citizen; loss
15 of eligibility to receive federal benefits; loss of certain
16 civil rights, which may be temporary or permanent depending
17 on applicable state or federal law, such as the right to
18 vote, to hold public office, and to possess a firearm; and
19 the loss of the privilege to engage in certain occupations
20 licensed by the state or federal government.
21 Do you understand?
22 THE DEFENDANT: I understand that, yes.
23 THE COURT: And you understand you do not have to
24 plead guilty this morning. You can stand on all your
25 constitutional guarantees and take this matter to trial?

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1 THE DEFENDANT: I understand that, yes.
2 THE COURT: But in order for the court to accept
3 your plea of guilty, you are going to waive or give up some
4 of those rights.
5 Do you understand?
6 THE DEFENDANT: Yes.
7 THE COURT: More specifically, you are giving up

8 the following:

9 The right to a speedy and public trial by jury
10 during which you would be presumed to be innocent unless and
11 until proven guilty by the government beyond a reasonable
12 doubt and by a unanimous vote of 12 jurors.

13 You are giving up the right to have the assistance
14 of an attorney at all stages of the proceedings.

15 You are giving up the right to use the power and
16 process of the court to compel the production of evidence,
17 including the attendance of witnesses in your favor.

18 You are giving up the right to see, hear,
19 confront, and cross-examine all witnesses called testify to
20 against you.

21 You are giving up the right to decide for yourself
22 whether to take the witness stand and testify. You are also
23 giving up the right to decide not to take the witness stand
24 and have the court instruct the jury that no inference of
25 guilt may be drawn from that decision.

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1 And finally, you are giving up the right not to be
2 compelled to incriminate yourself.

3 Do you understand each and every one of those
4 rights?

5 THE DEFENDANT: I do, yes.

6 THE COURT: Are you prepared to give up each and
7 every one of those rights?

8 THE DEFENDANT: Yes.

9 THE COURT: So you understand if you plead guilty
10 this morning, there will be no trial before a judge or a
11 jury, and you will not be able to appeal from a judge's
12 denial of any pretrial motions that may have been filed,
13 save and except issues related to the court's jurisdiction?

14 THE DEFENDANT: Yes.

15 THE COURT: Noted in the petition is this guilty
16 plea is pursuant to Rule 11(c)(1)(B) and (A) as well?

17 MR. ENGDALL: Yes, Your Honor.

18 THE COURT: Underlined in purple is only one
19 section, so I wanted to make sure.

20 MR. ENGDALL: (A) and (B).

21 THE COURT: All right.
22 Let me ask you if you understand them to mean as
23 follows:
24 You have entered into a plea agreement with the
25 government whereby at or before sentencing, the government

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1 has agreed to dismiss other charges or counts in exchange
2 for this plea of guilty. The court must either accept that
3 agreement or, if the court is unwilling to accept that
4 agreement, allow you to withdraw your plea of guilty and put
5 this case back on the trial docket.

6 Do you understand?

7 THE DEFENDANT: Yes.

8 THE COURT: And further, as a part of the
9 agreement reached with the government, there are either
10 joint sentencing recommendations or sentencing concessions
11 that will be made to the court at the time of sentencing.
12 The court will listen very carefully to those joint
13 recommendations, sentencing concessions, or agreements, but
14 the court is not bound or obligated to follow those.

15 So then if the court sentences you to something
16 different than what you expect to receive, you would not be
17 able to withdraw your plea of guilty.

18 Is that how you understand the rule?

19 THE DEFENDANT: Yes.

20 THE COURT: You understand, again, the maximum
21 penalty which can be imposed upon you for the crime to which
22 you are pleading guilty is five years in prison and a fine
23 of \$250,000?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you further understand that in

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1 addition to any other penalty, you will be required to pay a
2 fee assessment in the amount of \$100?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you further understand that if you
5 are ordered to pay a fine and you willfully refuse to pay
6 the fine, you could be returned to court where the amount of

7 the unpaid balance owed on the fine can be substantially
8 increased and the court can order you to prison for up to a
9 year?

10 THE DEFENDANT: Yes.

11 THE COURT: Have you had plenty of time to talk
12 with your lawyer about the status and the Federal Sentencing
13 Guidelines system as we know it?

14 THE DEFENDANT: I have, yes.

15 THE COURT: So you understand that there will be a
16 presentence report prepared. There will be guidelines
17 calculations made and a recommendation pursuant to those
18 guidelines prepared for the court, and it will be advisory,
19 not mandatory.

20 THE DEFENDANT: I understand that, yes.

21 THE COURT: You understand the court will take
22 into consideration that guideline recommendation, along with
23 the factors in 18 U.S.C. § 3553, including but not limited
24 to the following: Nature and circumstances of the offense;
25 your own criminal history and characteristics; the goals of

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1 punishment, be it sentencing for deterrence, punishment,
2 community safety, or rehabilitation; and other factors that
3 the court deems appropriate in fashioning a reasonable but
4 not greater than necessary sentence for this offense.

5 THE DEFENDANT: Yes.

6 THE COURT: You also understand that the court may
7 not sentence you to a sentence greater than the maximum,
8 which I discussed a moment ago to be five years in prison
9 and a \$250,000 fine.

10 THE DEFENDANT: Yes.

11 THE COURT: You understand if you are sent to
12 prison, pursuant to the Federal Sentencing Guidelines, you
13 will serve your full sentence except for credit for good
14 behavior that you may earn at the rate of 54 days for each
15 year of imprisonment served beyond a one-year sentence.

16 THE DEFENDANT: Yes, I understand.

17 THE COURT: And further, if you go to prison,
18 following your prison sentence, you will serve a term of
19 supervised released. During your term of supervised

20 release, you will be supervised by a probation officer
21 according to terms and conditions set by the court. If you
22 violate those terms and conditions, you could go back to
23 prison. In your particular case, your term of supervised
24 release can be up to three years, and if you are found in
25 violation, you could go back to prison for up to 41 months.

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1 THE DEFENDANT: Yes, I understand.

2 THE COURT: Will there be restitution?

3 MR. ENGDALL: There may be. We would request the
4 restitution, Your Honor.

5 I should also advise the court that this
6 particular defendant is not a citizen of the United States,
7 and so as a result of his entry of a guilty plea today, he
8 would be subject to deportation and other sanctions as a
9 result of that.

10 THE COURT: I reviewed that paragraph earlier --

11 MR. ENGDALL: Thank you, Your Honor.

12 THE COURT: -- but I appreciate that being called
13 to your attention, and you understand that?

14 THE DEFENDANT: I understand that.

15 THE COURT: All right. You understand that in
16 addition to or in lieu of any other penalty, the court can
17 order restitution payments for any offense to which you are
18 pleading guilty, and for certain crimes of violence and
19 violence involving fraud and deceit, it is mandatory that
20 the court impose restitution in the full amount. If
21 imposed, the victim can use the order of restitution to
22 obtain a civil judgment lien. A restitution order can be
23 enforced by the United States for up to 20 years from the
24 date of the entry of judgment or 20 years from the date of
25 your release from prison, and if you willfully refuse to pay

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1 the restitution as ordered, you may be resentenced to any
2 sentence that the court could have originally imposed.

3 Do you understand?

4 THE DEFENDANT: Yes. I do, yes.

5 THE COURT: Do you understand that on a fine or

6 restitution in an amount greater than \$2,500, you will be
7 required to pay interest unless the fine or restitution is
8 paid within 15 days of the entry of judgment?

9 THE DEFENDANT: I understand, yes.

10 THE COURT: Do you understand that if you are on
11 probation, parole, or supervised release in any other state
12 or federal court, that by pleading guilty in this court,
13 your probation, parole, or supervised release could be
14 revoked, and you could receive a consecutive sentence; that
15 is, a sentence in addition to the one imposed in this case
16 by this court?

17 THE DEFENDANT: Yes.

18 THE COURT: And further, if you have charges
19 pending in any other jurisdiction and they are not a part of
20 the plea agreement or discussed now in open court, that
21 those cases may be fully prosecuted, and you could receive a
22 consecutive sentence; that is, a sentence in addition to the
23 one imposed in this case by this court?

24 THE DEFENDANT: Yes, I understand.

25 THE COURT: Now, I have a copy of the plea letter,

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1 the agreement that's been reached with the government,
2 correct?

3 THE DEFENDANT: Correct.

4 THE COURT: You told me earlier you have read it
5 and you have understood it?

6 THE DEFENDANT: I have.

7 THE COURT: And you have talked it over with your
8 lawyer?

9 THE DEFENDANT: Yes.

10 THE COURT: I'm going to ask you to listen
11 carefully while the government recites on the record the
12 terms that settle this case. When Mr. Engdall is done, I'm
13 going to ask you if that is your understanding of the
14 agreement reached with the government. If it is, please
15 tell me yes. If you have any issues or concerns, and I note
16 in pen there's -- under Paragraph 19, there's language
17 regarding the case in California referenced. So I am
18 assuming that's going to be covered in the plea agreement.

19 MR. ENGDALL: It will be, Your Honor.
20 THE COURT: So we'll discuss that again. Please
21 listen carefully.
22 MR. ENGDALL: Thank you, Your Honor.
23 The agreement with the government and the
24 defendant is as follows:
25 That he will plead guilty to Count 1 of the

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1 information as has been described to him by the court today.
2 He agrees to pay the fee assessments applicable. He also
3 agrees to pay the mandatory restitution as ordered by the
4 court.

5 With regard to the case out of the Eastern
6 District of California, the defendant agrees to transfer
7 those charges pending against him, and that case number is
8 2:06-CR-0155 DFL from the Eastern District of California to
9 this district, the District of Oregon, and to plead guilty
10 to Count 1 of that indictment. Count 1 in that particular
11 indictment charges the arson of a government building in
12 violation of Title 18 United States Code, Sections 844(f),
13 (i), and 2. The maximum sentence is 20 years imprisonment
14 in that particular case, a mandatory minimum sentence of
15 five years, a fine of \$250,000, a two to three-year period
16 of supervised release, and a mandatory fee assessment of
17 \$100.

18 The factual basis for these particular allegations
19 are as follows, Your Honor:

20 With regard to conspiracy to commit arson and
21 destruction of an energy facility of the United States,
22 beginning in October 1996 and continuing through
23 October 2001 in the District of Oregon and elsewhere,
24 Josephine Sunshine Overaker, Kevin Tubbs, Stanislas Gregory
25 Meyerhoff, Daniel Gerard McGowan, Joseph Dibee,

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1 Rebecca Rubin, Chelsea Dawn Gerlach, Kendall Tankersley,
2 Suzanne Savoie, Jonathan Christopher Mark Paul, the
3 defendant Darren Todd Thurston, Nathan Fraser Block, Joyanna
4 L. Zacher, Jacob Jeremiah Ferguson, Jennifer Lynn Kolar,

5 William C. Rodgers, and other persons willfully and
6 knowingly conspired and agreed to maliciously damage or
7 destroy or attempt to damage or destroy by means of fire
8 buildings, vehicles, and other personal and real property
9 owned in whole or in part or possessed by or leased to the
10 United States or any department or agency thereof and/or
11 used in interstate commerce or any activity affecting
12 interstate commerce, and to knowingly and willfully damage
13 and attempt to damage the property of an energy facility of
14 the United States involved in the transmission of
15 electricity.

16 The conspiracy was accomplished by the defendant
17 and the others named above when certain of the defendants
18 and others joined together in a group they called the
19 "family." This family was what is commonly known as a cell
20 of groups and movements publicly named and described by
21 certain of the defendants and others as the Earth Liberation
22 Front, the ELF; the Animal Liberation Front, the ALF; and
23 other names.

24 The primary purpose of the conspiracy -- purposes,
25 excuse me, of the conspiracy were to influence and affect

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1 the conduct of government, commerce, private business, and
2 others in the civilian population by means of force,
3 violence, sabotage, destruction of property, intimidation,
4 and coercion, and by similar means, to retaliate against the
5 conduct of government, commerce, and private business. To
6 achieve these purposes, some of the conspirators committed
7 and attempted to commit acts potentially dangerous to human
8 life and property that constituted violations of the
9 criminal laws of the United States and of individual states.

10 Some of the defendants and others targeted for
11 arson buildings, vehicles, and other real and personal
12 property owned, possessed and leased by the United States
13 and its departments and agencies, while others targeted for
14 arson buildings, vehicles, and other real and personal
15 property used in interstate commerce and in activities
16 affecting interstate commerce, and still others targeted
17 energy facilities of the United States for damage and

18 destruction.
19 The defendant and others conducted and
20 participated in meetings to plan arsons of the targeted
21 sites. Several of these meetings were called "book club"
22 meetings by the defendants and others and occurred at
23 distant locations. The book club meetings covered subjects
24 such as lock-picking, computer security, reconnaissance of
25 targets, and manufacture of timing devices to set off

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1 improvised incendiary devices.
2 Some of the defendants and others conducted
3 research and surveillance of sites targeted for arson and
4 discussed their actions among themselves by using code
5 words, code names, and nicknames. The phrase "direct
6 action" was used to include arsons and other acts of
7 destruction.
8 In preparation for the actions, some of the
9 conspirators designed and constructed destructive devices
10 which functioned as incendiary devices to ignite fires and
11 destroy the targets for arson and provided transportation to
12 the locations of the arson targets.
13 During the course of the direct actions, the
14 defendants and others dressed in dark clothing, wore masks
15 and gloves, and otherwise disguised their appearance. Some
16 of the conspirators acted as lookouts to ensure secrecy of
17 the crimes, and some placed destructive devices and
18 accelerants at sites targeted for arsons and ignited or
19 attempted to ignite the devices and accelerants.
20 In some of the arsons and attempted arsons,
21 certain of the defendants and others painted messages on the
22 walls of the targets, including Earth Liberation Front, ELF,
23 and related names and statements concerning the purposes of
24 their crimes.
25 After the arsons and attempted arsons, the

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1 defendant and others destroyed, buried, hid, and otherwise
2 disposed of physical evidence used in the commission of the
3 crimes and thereafter publicized and promoted the results of

4 the fire by means of written press releases and communiques
5 which attributed the arsons to the Earth Liberation Front
6 and the Animal Liberation Front and related groups and
7 stated the purposes of the arsons.

8 Before, during, and after the arsons, attempted
9 arsons, and destruction of an energy facility, some of the
10 defendants and others agreed among themselves never to
11 reveal to law enforcement authorities or to anyone else
12 outside the family the identity of the conspirators and
13 participants in the arsons and attempted arsons and agreed
14 among themselves to conceal or destroy any evidence
15 connecting them to the arsons and attempted arsons. Some of
16 the defendants and others possessed and/or used false
17 identification documents in order to conceal their true
18 identities, and after the arsons and attempted arsons, some
19 of the defendants and others fled and secreted themselves in
20 foreign countries in order to avoid detection and arrest by
21 law enforcement authorities in the United States.

22 With regard to the case out of the Eastern
23 District of the California, the arson at the BLM Litchfield
24 Wild Horse Corral is as follows:

25 During the month of October 2001, Darren Todd

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1 Thurston was contacted by Joseph Dibee via the Internet and
2 asked to participate in an action somewhere in the United
3 States. Thurston agreed and, along with Rebecca Rubin, on
4 or about October 15th, 2001, traveled into the United States
5 by eluding examination and inspection by immigration
6 officials. With the use of radio communication, Thurston
7 and Rubin met up with Dibee and Jennifer Kolar on the U.S.
8 side of the U.S./Canadian border. Dibee and Kolar
9 transported Thurston and Rubin to Dibee's residence in
10 Washington. While at the residence, Thurston, Dibee, Kolar,
11 Rubin, and Stanislas Meyerhoff discussed plans to do a
12 direct action at the Litchfield Wild Horse and Burro Corrals
13 located in Susanville, State and Eastern District of
14 California. Thurston agreed to participate in the horse
15 release portion of the action.

16 Rubin and Thurston thereafter watched Dibee's

17 truck to ensure that there would be no trace of evidence on
18 the truck. Thurston and Dibee installed a roof rack on
19 Dibee's truck so as to carry the necessary equipment for the
20 action. Rubin and Thurston obtained from Dibee backpacks,
21 water bladders, flashlights, tools, and pepper spray to be
22 used during the action. Thurston washed the backpacks and
23 water bladders with soap and water in a large sink in
24 Dibee's basement to ensure there would be no trace evidence
25 on the equipment. Thurston also wiped down all the tools

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1 with alcohol to make sure there would be no fingerprints so
2 as to prevent detection by law enforcement.

3 Thursday and Dibee met with Kolar and procured
4 sets of clean maps of the Susanville, California area to be
5 used during the action. The clean maps were devoid of
6 fingerprints and DNA. Thurston observed Dibee and Meyerhoff
7 mix the fuel which would be used to complete the arson.
8 Thurston and others loaded the fuel to the top of Dibee's
9 truck.

10 Thurston then traveled with Dibee, Rubin, and
11 Meyerhoff to a parking lot in Olympia, Washington, where
12 they met with several others who were also going to
13 participate in the action. After picking up the people in
14 Olympia, Washington, they traveled to Eugene, Oregon, and
15 were joined by Kevin Tubbs. From Eugene, all traveled south
16 to an area near Susanville, California.

17 Thurston observed Meyerhoff remove Tupperware-type
18 containers from the top of Dibee's truck and was told by
19 Meyerhoff they contained the timing devices to be used
20 during the arson.

21 Thurston and others gathered atop a large mound
22 overlooking the Litchfield BLM facility. They tested night
23 vision scopes that were going to be used during the horse
24 release and arson. They then drove to a nearby area and
25 once again cleaned all their equipment. They set up tents

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1 to camp for the night and to prepare for the action.

2 The following day, they discussed their plan, and

3 that night, on or about October 15th, 2001, Thurston and the
4 others dressed in black clothing and wore cotton gloves and
5 put socks over their feet to avoid detection during the
6 action. Thurston, Tubbs, Meyerhoff, and Dibee all carried
7 five-watt two-way radios and utilized code words to
8 communicate with one another, and everyone had pseudonyms
9 that were used during the action. All of this was to
10 prevent detection by law enforcement during and after the
11 action.

12 Thurston and Rubin and others left the camp area
13 and traveled to the wild horse corrals. Thurston and Rubin
14 cut the metal wire fencing surrounding the corrals and
15 attempted to drive the horses out of the corrals. A pair of
16 wire cutters was misplaced during the action and an
17 unsuccessful search was attempted. Thurston heard over the
18 radio that the incendiary devices had been set and all the
19 conspirators met at a predesignated pick-up site.

20 Thurston and Rubin were picked up by Tubbs and
21 then traveled to where the incendiary devices had been
22 placed and picked up Meyerhoff and Dibee. Thurston and the
23 others then went to a location where they split up and left
24 the Susanville area in three separate vehicles. On the trip
25 back to Olympia, Washington, Thurston prepared a rough draft

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1 of the communique on his Palm Pilot. Thurston and Dibee
2 returned to the parking lot in Olympia, Washington, and
3 dropped off several of the coconspirators. Thurston and
4 Rubin spent that night at Dibee's residence. The following
5 day, Thurston and Rubin washed Dibee's truck, the backpacks,
6 water bladders, and tools to remove any potential evidence.
7 The roof rack was removed from Dibee's truck and returned to
8 the store for a refund. Thurston and Rubin then returned to
9 their residences in Vancouver, Canada.

10 One of the incendiary devices functioned, and the
11 Litchfield BLM Wild Horse and Burro Corral Facility was
12 damaged by fire. The buildings and other real and personal
13 property were owned and possessed by the United States and
14 the Bureau of Land Management, the Department of Interior,
15 located at the Wild Horse and Burro Facility, Susanville,

16 California.

17 Thurston later prepared a final copy of the
18 communique and sent it via Internet to several nonprofit
19 groups wherein which the responsibility for the horse
20 release and arson were claimed.

21 The plea agreement continues. The USAO, the
22 United States Attorney's Office for the District of Oregon
23 will move to dismiss all remaining charges at the time
24 Mr. Thurston is sentenced. The USAO further agrees not to
25 bring additional charges against the defendant for offenses

27

1 relating to arson, conspiracy, conspiracy to commit arson,
2 or destruction of an energy facility in which the defendant
3 may have been involved directly or indirectly up to and
4 including December 11th, 2005, which took place in the
5 District of Oregon. The USAO will also move to dismiss at
6 the time of sentencing in this case all pending charges in
7 pending Case No. 05-497-KI, which is also presently filed in
8 the District of Oregon. The United States Attorney's for
9 the Eastern District of California will dismiss all
10 remaining charges at the time of sentencing.

11 With regard to the resolution of sentencing
12 issues, in addition to waiving the right to a jury trial on
13 the issue of guilt, defendant knowingly and voluntarily
14 agrees that sentencing issues in this case need not be
15 alleged in a grand jury indictment, proven to a trial jury,
16 or proven beyond a reasonable doubt. Defendant also
17 knowingly and voluntarily consents to a judicial
18 fact-finding and resolution of any and all sentencing
19 issues. Defendant and government agree that the guidelines
20 calculations should be derived from the United States
21 Sentencing Guidelines Commission Guidelines Manual with an
22 effective date of November 1, 2000. The defendant and
23 government understand and agree that the court will consider
24 Title 18 United States Code § 3553(a) in determining the
25 appropriate sentence in this case.

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1 The United States Attorney's Office for the

2 District of Oregon will recommend the terrorism guideline
3 enhancement found in United States Sentencing Guideline
4 Section 3A1.4 be used because the felony offense either
5 involved or were intended to promote a federal crime of
6 terrorism.

7 The United States Attorney's Office agrees to
8 recommend a three-level reduction for acceptance of
9 responsibility if defendant's offense level is 15 or
10 greater. Otherwise, a two-level reduction applies pursuant
11 to United States Code ° 3E1.1. The United States Attorney's
12 Office reserves the right to change or omit this
13 recommendation if the defendant between plea and sentencing
14 commits any new or additional violation of law, obstructs or
15 attempts to obstruct justice, or acts inconsistently with
16 acceptance of responsibility.

17 The United States Attorney's Office will recommend
18 that the defendant receive a four-level decrease for his
19 role as a minimal participant in the offense under the
20 provisions of the United States Sentencing Guidelines
21 sections 3B1.2(a).

22 The sentence recommendation by the United States
23 Attorney's Office, the sentence to be recommended by the
24 government in this case is based upon the nature and
25 circumstances of the offense; the history and circumstances

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1 and characteristics of the defendant; the need for the
2 sentence to reflect the seriousness of the offense; to
3 promote respect for the law and to provide just punishment
4 for the offense; to afford adequate deterrence to criminal
5 conduct; to protect the public from further crimes of the
6 defendant; and to provide a just and fair sentence for this
7 defendant in relation to and in comparison with all of the
8 defendants and coconspirators.

9 Defendant knowingly and voluntarily waives the
10 right to appeal from any aspect of the conviction and
11 sentence on any grounds unless the sentence imposed exceeds
12 the statutory maximum, the court imposes an upward departure
13 pursuant to Part 5K of the sentencing guidelines, or the
14 court exercises its discretion under 18 United States Code °

15 3553(a) to impose a sentence which exceeds the advisory
16 guidelines range. Should defendant seek an appeal despite
17 this waiver of that right, the United States Attorney's
18 Office may take any position on any issue on appeal.
19 Defendant also waives the right to file a motion pursuant to
20 28 United States Code § 2255 to set aside the conviction and
21 sentence except on the grounds of ineffective assistance of
22 counsel, newly discovered evidence, or a retroactive change
23 in the applicable guidelines or statute.
24 The court is not bound by the recommendations of
25 the parties or of the presentence report writer. Because

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1 this agreement is made under Rule 11(c)(1)(B) and (A) of the
2 Federal Rules of Criminal Procedure, the defendant may not
3 withdraw any guilty plea or rescind this plea agreement if
4 the court does not follow the agreements or recommendations.

5 The United States Attorney's Office will fully
6 inform the presentence report writer and the court of the
7 facts and law related to defendant's case. Except as set
8 forth in this agreement, the parties reserve all
9 other rights to make sentencing recommendations and to
10 respond to motions and arguments by the opposition. The
11 defendant is a citizen of Canada and a treaty exists between
12 the United States and Canada concerning the transfer of
13 prisoners. The United States Attorney's Office agrees to
14 recommend defendant be allowed to be transferred pursuant to
15 such treaty to serve his sentence should he apply for such
16 transfer and so long as he otherwise qualifies.

17 If the defendant breaches the terms of this
18 agreement or commits any new violations of law between
19 signing the agreement and sentencing, the United States
20 Attorney's Office is relieved of its obligation under this
21 agreement, but defendant may not withdraw his guilty plea.

22 There are terms of cooperation, Your Honor, and
23 after a discussion with counsel and defendant, it's my
24 understanding that they have carefully and prudently gone
25 over each one of those particular conditions, are familiar

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1 with them, and so I will briefly summarize that. If the
2 defendant does indeed cooperate as articulated in Paragraph
3 15 of the plea agreement, that the government, assuming the
4 defendant complies with the terms of the agreement and
5 assuming the base offense level is calculated at a 38, will
6 recommend up to a 17-level downward departure for the
7 defendant. And if the base offense level is determined to
8 be less than 38, and assuming the defendant complies with
9 the terms of the agreement, the United States Attorney's
10 Office will recommend a departure which may be less than 17.
11 In either instance, the United States Attorney's Office will
12 recommend that the sentence be imposed at the low end of the
13 resulting advisory guideline range and anticipates the
14 sentence to be 37 months in prison. The United States
15 Attorney's Office for the Eastern District of the California
16 is in agreement with the anticipated 30-month -- excuse
17 me -- 37-month sentence, and upon the defendant's completion
18 of all stated conditions in this plea agreement will
19 recommend a sentence in their case to be 37 months to run
20 concurrent with the anticipated 37-month sentence in the
21 District of Oregon.

22 Defendant agrees to have the sentence hearing
23 postponed in order to continue cooperation efforts with the
24 United States Attorney's Office should the United States
25 Attorney's Office request such a continuance.

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1 By signing this agreement, the defendant agrees to
2 abandon all firearms as are listed in Paragraph 17 of the
3 plea agreement that were seized during the course of
4 investigation of this case.

5 This letter states the full extent of the
6 agreement between the parties. There are no other promises
7 or agreements, express or implied. Defendant accepts this
8 plea offer today, and that is it in sum and substance, Your
9 Honor.

10 THE COURT: Thank you.

11 Sir, is that your understanding of the agreement
12 you have reached with the government?

13 THE DEFENDANT: Yes, it is.

14 THE COURT: And this is the only agreement between
15 you and the United States government that settles this case;
16 is that correct?

17 THE DEFENDANT: Yes.

18 THE COURT: No other officer or agent of any
19 branch of government, be it federal, state, or local, or
20 anyone else has promised or suggested that you would receive
21 a lesser term of imprisonment, probation, or any other form
22 of leniency except as contained in the letter prepared by
23 the government and read out loud by Mr. Engdall just a
24 moment ago?

25 THE DEFENDANT: That's correct.

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1 THE COURT: And you understand you cannot rely on
2 promises or suggestions made outside the presence of the
3 court?

4 THE DEFENDANT: Yes.

5 THE COURT: And you did review Paragraph 15 which
6 outlines your obligations regarding cooperation?

7 THE DEFENDANT: I have reviewed it, yes.

8 THE COURT: And you understand it?

9 THE DEFENDANT: I do, yes.

10 THE COURT: Is anybody threatening you, forcing
11 you, intimidating you, twisting your arm, or making you
12 plead guilty this morning?

13 THE DEFENDANT: No.

14 THE COURT: Do you make this plea freely and
15 voluntarily?

16 THE DEFENDANT: Yes.

17 THE COURT: And you understand the court must be
18 satisfied that a crime occurred and that you in fact
19 committed the crime before your plea may be accepted?

20 THE DEFENDANT: Yes.

21 THE COURT: And Mr. Engdall read verbatim the
22 factual basis for this guilty plea, correct?

23 THE DEFENDANT: Yes.

24 THE COURT: And it's contained in the letter and
25 referenced in your petition as the attachment with the

1 paragraphs specified in the recitation of facts --

2 THE DEFENDANT: Yes.

3 THE COURT: -- read by Mr. Engdall, correct?

4 THE DEFENDANT: Correct.

5 THE COURT: Do you want me to read those out loud
6 for you?

7 THE DEFENDANT: No.

8 THE COURT: Are all those facts true?

9 THE DEFENDANT: Yes, they are true.

10 THE COURT: They are true. And it's a three-page
11 recitation -- four-page recitation of facts.

12 THE DEFENDANT: Correct.

13 THE COURT: And those facts are true both with
14 regard to Count 1, conspiracy to commit arson and
15 destruction of an energy facility of the United States, and
16 with regard to the Eastern District of California Case
17 Number 2:06-CR-0155 DFL, the BLM Litchfield arson?

18 THE DEFENDANT: Yes, both of those in Attachment
19 1, correct.

20 THE COURT: Satisfied, Mr. Engdall?

21 MR. ENGDALL: Yes, Your Honor. Thank you.

22 THE COURT: To the charge contained in Case
23 06-60069, the count of conspiracy to commit arson and
24 destruction of an energy facility of the United States, how
25 do you wish to plead? Guilty or not guilty?

1 THE DEFENDANT: Guilty.

2 THE COURT: Guilty plea is received. It's my
3 understanding that once the case is transferred up here, we
4 will set another hearing to do the change of plea with
5 regard to the Eastern District of California case, correct?

6 MR. FEINER: That is correct, Your Honor.

7 THE COURT: All right. Sentencing date.

8 THE CLERK: December 14th at 9:00 o'clock.

9 THE COURT: Do we have anything else we need to
10 take up this morning?

11 MR. FEINER: Yes, Your Honor. We would move at
12 this time to seal the plea petition, plea agreement, and the

13 attachment.

14 MR. ENGDALL: No objection, Your Honor.

15 THE COURT: You concur. That will be done.

16 MR. FEINER: Thank you.

17 THE COURT: Anything further?

18 MR. FEINER: Nothing.

19 MR. ENGDALL: Thank you, Your Honor.

20 THE COURT: Thank you. We are in recess.

21 THE CLERK: Court is in recess.

22 (The proceedings were concluded this

23 20th day of July, 2006.)

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1 I hereby certify that the foregoing is a true and
2 correct transcript of the oral proceedings had in the
3 above-entitled matter, to the best of my skill and ability,
4 dated this 8th day of September, 2006.

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7 Kristi L. Anderson, Certified Realtime Reporter