

GARDEN STATE CLE LESSON PLAN

A 1.0 CLE CREDIT COURSE

FREE DOWNLOAD LESSON PLAN AND EVALUTION

DEFENDING A CRIMINAL CASE IN FEDERAL COURT

WITH JEROME A. BALLAROTTO, ESQ.

AND FEATURING

**ROBERT RAMSEY,
SENIOR INSTRUCTOR**

Program Description

Federal criminal defense attorney lends his expertise and vast experience to a discussion of how to effectively defend a client in Federal District Court

I. INTRODUCTION

II. INITIAL CONVERSATION

- a. Selection of an attorney
- b. Multiple defendants and conflicts of interest interplay with attorney client privilege
- c. Identify law enforcement agency and agent and identify the Assistant US Attorney on the case. Department of Justice has the last word.
- d. Learn what, if anything, the client has spoken to the FBI and laboriously go through the questions asked and answers given were. FBI 302s (reports) are ultimately the source of information and statements related at the time. The FBI policy is NOT to make video or audio recordings of the statements made.

III. FBI INTERVIEWS

- Never parse the truth, if you do the FBI will testify that you gave a false exculpatory statement showing evidence of guilt
- Defendant may face prosecution for false swearing, etc.

IV. FEES

- At times, the US Attorney will seek return of fees. Not more than \$10,000 in cash for the total fees paid by the client (including incremental payments in cash which are considered “structured” cash payments) without triggering the reporting requirements of the Currency Transaction Report of the US Treasury

V. DEALING WITH THE IRS vs. FBI FOR THE DEFENSE

- Generally, you can deal with the IRS more easily and the case tends to come at a later stage to the US Attorney's Office

VI. HOW EARLY FOR COOPERATION

- a. "Best deal to first to squeal"
- b. Often the best strategy is to get where you are going as soon as possible

VII. COOPERATION AND PLEA AGREEMENTS

- a. Separate agreements
- b. Information (equivalent of state court accusation) may be filed charging the Defendant
- c. The sentencing recommendation (USSG 5K Letter) is weighted heavily, depending on the judge. Unlike state court, there is no sentencing arrangement negotiated with a top and bottom number for sentence (State Court e.g., 5 year sentence with a 3 parole disqualifier)
- d. Most judges give a discount (departure) of 50% to 66.66% on sentencing time exposure
- e. Bargaining of the facts of the case is critical at sentencing but there is little latitude generally. Exception: drug cases.

VIII. U.S. SENTENCING GUIDELINES

- a. Provide a range of sentences. Guidelines could be a separate seminar.
- b. They are now a guideline thanks to case law like U.S. v. Booker, 543 U.S. 220 (2005). Blakely v. Washington, 542 U.S. 296 (2004) and Apprendi v. New Jersey, 530 U.S. 466 (2000).

- c. Departures up and down are permitted and encouraged by many factors:
 - 1. acceptance of responsibility
 - 2. complete cooperation
 - 3. value of cooperation
 - 4. other factors considered by the Court

IX. BAIL

- a. Governed by 18 U.S.C. Sec. 3141 presumes no entitlement to bail in certain cases
- b. Bails are set by the U.S. Magistrate based on background by the US Pretrial Services Officer making a report to the Court used in determining bail with factors of: securing the defendant's release, protecting the public, and guaranteeing the defendant's return to court
- c. Appeals to the District Court
- d. The court may order substantial bail, house arrest, electronic monitoring
- e. Chance of acquittal is greater if out on bail
- f. A substantial number of pretrial detention cases (about 70%) are drug cases.

X. ARRAIGNMENT AND TRIAL PREPARATION

- a. Rule 14 Relief from Prejudicial Joinder
- b. Rule 16 Discovery and Inspection
- c. State court has open file discovery policy

- d. Federal court has very limited discovery. Per the Jencks Act, 18 USCA Sec. 3500, statements are not provided until AFTER the witness testifies on direct. Sometimes you may get your Jencks discovery at 5 PM the night BEFORE testimony. Maybe even a week ahead of time in rare cases

XI. JURY SELECTION

- a. Every Judge has his own procedures
- b. Get the background from the Judge's courtroom deputy
- c. Struck jury example discussed, a chess game
- d. Jury experts and gut instinct

XI. THE SPEEDY TRIAL ACT

- a. The 70 day requirement is rarely observed
- b. Translations alone may allow for more time and that would be in the interest of the defense generally

XII. JURY DEFERENCE TO THE FBI OR OTHER FEDERAL LAW ENFORCEMENT

- Deal with it upfront, in your opening statement

XIII. CLOSINGS IN FEDERAL COURT

- Jury charged first
- But “The Government gets to go twice”
- The Defense goes first, then the Government, then Defense has a rebuttal opportunity and finally Government rebuttal closing limited to the scope of the Defense rebuttal

XIV. JOINT DEFENSE

XV. FEDERAL PUBLIC DEFENDER AND CRIMINAL JUSTICE ACT (“CJA”) LIST OF COUNSEL TO INDIGENT DEFENDANTS

XVI. PAROLE DOES NOT EXIST IN THE FEDERAL SYSTEM—85YOU’RE YOUR DEFENDANT’S TIME IS ACTUALLY SERVED

XVII. EXPUNGEMENT ALSO DOES NOT EXIST. PRESIDENTIAL PARDON ONLY

XVIII. ADVICE FOR YOUNG ATTORNEYS

- **Maintain a high level of integrity**
- **Be able to support anything you tell a US Attorney because Federal Court is a small place**

XIX. OTHER CONSIDERATIONS

- **Witness protection**
- **Designation to a criminal facility**

Defending a Criminal Case in Federal Court

Jerome Ballarotto
Attorney

Robert Ramsey
Author

NJCLE.com

Supplemental Documents

SENTENCING TABLE (in months of imprisonment)

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
	1	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	2-8	3-9
Zone A	4	0-6	0-6	0-6	2-8	4-10
	5	0-6	0-6	1-7	4-10	6-12
	6	0-6	1-7	2-8	6-12	9-15
	7	0-6	2-8	4-10	8-14	12-18
Zone B	8	0-6	4-10	6-12	10-16	15-21
	9	4-10	6-12	8-14	12-18	18-24
	10	6-12	8-14	10-16	15-21	21-27
Zone C	11	8-14	10-16	12-18	18-24	24-30
	12	10-16	12-18	15-21	21-27	27-33
	13	12-18	15-21	18-24	24-30	30-37
	14	15-21	18-24	21-27	27-33	33-41
	15	18-24	21-27	24-30	30-37	37-46
	16	21-27	24-30	27-33	33-41	41-51
	17	24-30	27-33	30-37	37-46	46-57
	18	27-33	30-37	33-41	41-51	51-63
	19	30-37	33-41	37-46	46-57	57-71
	20	33-41	37-46	41-51	51-63	63-78
	21	37-46	41-51	46-57	57-71	70-87
	22	41-51	46-57	51-63	63-78	77-96
	23	46-57	51-63	57-71	70-87	84-105
	24	51-63	57-71	63-78	77-96	92-115
Zone D	25	57-71	63-78	70-87	84-105	100-125
	26	63-78	70-87	78-97	92-115	110-137
	27	70-87	78-97	87-108	100-125	120-150
	28	78-97	87-108	97-121	110-137	130-162
	29	87-108	97-121	108-135	121-151	140-175
	30	97-121	108-135	121-151	135-168	151-188
	31	108-135	121-151	135-168	151-188	168-210
	32	121-151	135-168	151-188	168-210	188-235
	33	135-168	151-188	168-210	188-235	210-262
	34	151-188	168-210	188-235	210-262	235-293
	35	168-210	188-235	210-262	235-293	262-327
	36	188-235	210-262	235-293	262-327	292-365
	37	210-262	235-293	262-327	292-365	324-405
	38	235-293	262-327	292-365	324-405	360-life
	39	262-327	292-365	324-405	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life



U.S. Department of Justice

United States Attorney
District of New Jersey
Appeals Division

970 Broad Street, Suite 700
Newark, NJ 07102

**CONFIDENTIAL - NOT TO BE FILED WITH THE
CLERK'S OFFICE**

November 27, 2006

Jerome A. Ballaratto, Esq.
143 White Horse Avenue
Trenton, New Jersey 08610

Re: Cooperation Agreement with [REDACTED]

Dear Mr. Ballaratto:

This letter sets forth the understandings between your client, L [REDACTED] and the United States Attorney for the District of New Jersey ("this Office") concerning [REDACTED] cooperation with this Office. This cooperation agreement supplements the plea agreement dated November 27, 2006 between the same parties, which will be filed in open court (the "plea agreement"). The plea agreement and this cooperation agreement together constitute the full and complete agreement between the parties.

[REDACTED] and this Office agree that this cooperation agreement will be disclosed to the Court but not filed with the Clerk's Office. [REDACTED] further agrees not to reveal his cooperation, or any information derived therefrom, to any third party (other than the Court) without prior consent of this Office.

[REDACTED] and this Office further agree that this cooperation agreement is contingent upon the entry of a guilty plea by T [REDACTED] pursuant to the provisions of the plea agreement. In the event that [REDACTED] does not enter a guilty plea pursuant to the provisions of the plea agreement, this Office will be released from its obligations under this cooperation agreement.

Scope of Cooperation

██████████ shall cooperate fully with this Office. As part of that obligation, ██████████ shall truthfully disclose all information concerning all matters about which this Office and other Government agencies designated by this Office may inquire and shall not commit or attempt to commit any additional crimes. ██████████ also agrees to be available at all reasonable times requested by representatives of the Government and shall truthfully testify in all proceedings, including grand jury and trial proceedings, as to any subject about which he is questioned. Furthermore, ██████████ agrees to provide to this Office, upon request, all documents and other materials relating to matters about which this Office inquires.

Full cooperation includes participating, if requested, in affirmative investigative techniques. Any such activity by Tsarouhas must be conducted only at the express direction and under the supervision of this Office and federal law enforcement personnel.

If as part of this obligation to cooperate, ██████████ provides self-incriminating statements, the statements shall be subject to the protections, terms, and conditions set forth in U.S.S.G. § 1B1.8 (a) & (b). Nothing, however, shall prevent the use of such statements in a prosecution for false statements, perjury, or obstruction of justice, or prevent the derivative use of such statements.

Informing the Court About Cooperation

The determination whether ██████████ has fully complied with this agreement and provided substantial assistance to the Government rests solely in the discretion of this Office. If this Office determines in its sole discretion that ██████████ has fully complied with this agreement and has provided substantial assistance in the investigation or prosecution of one or more persons who have committed offenses, this Office: (1) will move the sentencing judge, pursuant to Section 5K1.1 of the Sentencing Guidelines, to depart from the otherwise applicable guideline range. Whether the sentencing judge does in fact impose a sentence below the otherwise applicable guideline range is a matter committed solely to the discretion of the sentencing judge. ██████████ may not withdraw his plea if this Office determines that ██████████ has not rendered substantial assistance or has not fully complied with the terms of this agreement, or if the Court refuses to grant in whole or in part the Government's motion for a downward departure.

Other Provisions

This cooperation agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement and [REDACTED] cooperation to the attention of other prosecuting offices, if requested to do so.

Breach of Agreement

Should [REDACTED] withdraw from or violate any provision of this cooperation agreement or the plea agreement, or commit or attempt to commit any additional federal, state, or local crimes, or intentionally give materially false, incomplete, or misleading testimony or information, this Office will be released from its obligations under this agreement and the plea agreement, including any obligation to file a motion under U.S.S.G. § 5K1.1, but [REDACTED] may not withdraw the guilty plea entered into pursuant to the plea agreement. In addition, [REDACTED] shall thereafter be subject to prosecution for any federal criminal violation of which this Office has knowledge, including, but not limited to, perjury and obstruction of justice. Any such prosecution may be premised upon any information provided, or statements made, by [REDACTED] and all such information, statements, and leads therefrom may be used against [REDACTED]. Any such prosecution that is not time-barred by the applicable statute of limitations on the date this agreement is signed by Tsarouhas may be commenced, notwithstanding the expiration of the limitations period after [REDACTED] signs the agreement. [REDACTED] agrees to waive any statute of limitations with respect to any crime that would otherwise expire after Tsarouhas signs the agreement. With respect to any prosecution referred to in this agreement, Tsarouhas further waives any right to claim that statements made by him before or after the execution of this agreement, including any statements made pursuant to any prior agreement between [REDACTED] and this Office, or any leads from Tsarouhas' statements, should be suppressed under that prior agreement or under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), U.S.S.G. § 1B1.8, or otherwise.

No Other Promises

[REDACTED] acknowledges that no additional promises, agreements or conditions have been made other than those set

forth in this cooperation agreement and in the plea agreement, and none will be made unless set forth in writing and signed by the parties.

Very truly yours,

CHRISTOPHER J. CHRISTIE
United States Attorney



By: 
Assistant U.S. Attorney

APPROVED:


Michael 
ud

I have received this cooperation agreement from my attorney Jerome A. Ballaratto, Esq., I have read it, and I understand it fully. I hereby accept the terms and conditions set forth in this cooperation agreement and acknowledge that the plea agreement and this cooperation agreement together constitute the full and complete agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

AGREED AND ACCEPTED:



Date:

Jerome A. Ballaratto, Esq.

Date:

UNITED STATES DISTRICT COURT
For The District Of New Jersey

UNITED STATES OF AMERICA :

v. :

WAIVER OF INDICTMENT

Criminal Number: [REDACTED]

I, [REDACTED] the above-named defendant, who is charged with:

knowingly and intentionally open and maintain a place for the purpose of manufacturing and storing methamphetamine, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 856;

Being advised of the nature of the charge(s), the proposed Information, and of my rights, hereby waive in open court on 5/18/09 prosecution by indictment and consent that the proceeding may be by information rather than by indictment.

[REDACTED SIGNATURE]
Defendant

[REDACTED SIGNATURE]
Jerome A. Ballarotto, Esq.
Counsel for Defendant

Before:

[REDACTED SIGNATURE]
HONORABLE GARRETT E. BROWN
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

v.

[REDACTED]

:
:
:
:
:

Criminal No. [REDACTED]

21 U.S.C. § 856

INFORMATION

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

Between in or about May, 2006, and on or about November 2, 2006, at [REDACTED] in Ocean County, in the District of New Jersey, and elsewhere, defendant

[REDACTED]

did knowingly and intentionally open and maintain a place for the purpose of manufacturing methamphetamine, a Schedule II narcotic drug controlled substance.

In violation of Title 21, United States Code, Section 856.


RALPH J. MARRA, JR.
Acting United States Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

Mag./Crim. No. _____

v.

APPLICATION FOR PERMISSION
TO ENTER PLEA OF GUILTY

(Defendant with Counsel)

_____ hereby certifies as follows:
(Defendant's Name)

1. My full name is _____ and I request that all proceedings against me be held in that name.
2. I understand that the Constitution and laws of the United States guarantee me the right to be represented by a lawyer at every stage in these proceedings, including any trial on these charges, and that if I cannot afford to hire a lawyer, the Court will provide one for me.
3. I have a lawyer who is representing me in this proceeding. My lawyer's name is _____ . I am satisfied that I have had enough time to discuss this matter with my lawyer.
4. English [IS] [IS NOT] my native language. My formal education stopped after [grade] _____. I am presently [UNEMPLOYED] [EMPLOYED] as a _____ (occupation).
5. I have taken [NO] [THE FOLLOWING] drugs or medication within the past seventy-two hours: _____.
6. I [HAVE] [HAVE NEVER] been a patient in a mental hospital or institution. I [DO] [DO NOT] believe that at the present time I am mentally ill or mentally incompetent in any respect.
7. I received a copy of the [COMPLAINT] [INDICTMENT] [INFORMATION] before being called upon to plead. I have read and discussed it with my lawyer. I understand that the substance of the charge(s) against me is that I:

[add separate sheets if necessary]

WAIVER OF INDICTMENT (IF APPLICABLE)

8. My lawyer has explained to me that I have a constitutional right to be charged by an indictment of a grand jury but that I can waive that right and consent to being charged through a criminal Information filed by the United States Attorney.
9. I understand that unless I waive indictment I may not be charged with a felony unless a grand jury finds by return of an indictment that there is probable cause to believe that a crime has been committed and that I committed it.
10. I also understand that if I do not waive indictment, the government may present the case to the grand jury and request the grand jury to indict me.
11. I understand that a grand jury is composed of at least 16 and not more than 23 persons, that at least 12 grand jurors must find that there is probable cause to believe that I committed the crime. I also understand that the grand jury may or may not indict me.
12. I further understand that by waiving indictment by the grand jury, the case will proceed against me on the United States Attorney's Information as though I had been indicted.
13. My attorney has discussed the nature of the charges(s) against me and waiving my right to indictment thereon by grand jury, I fully understand those rights, and I wish to waive indictment by grand jury.
14. My decision to waive indictment by grand jury is made knowingly and voluntarily, and no threats or promises have been made to induce me to waive indictment.

THE GUILTY PLEA

15. I have told my lawyer all the facts and circumstances known to me about the charge(s) set forth in the [COMPLAINT] [INDICTMENT] [INFORMATION].
16. I am satisfied that my lawyer understands the information which I have provided, and that my lawyer has counseled and advised me on the nature of each charge and on all possible defenses that I might have in this case.
17. In addition, my lawyer has explained to me, and I understand, that if I entered a plea of NOT GUILTY (or persisted in my plea of NOT GUILTY), under the Constitution and laws of the United States I would be entitled to a speedy and public trial by a jury of twelve persons on the charge(s) contained in this [COMPLAINT] [INDICTMENT] [INFORMATION].
18. My lawyer has explained to me, and I understand, that at such a trial the jury would be told by the judge that I am presumed to be innocent, and that the Government would be

required to prove me guilty of the charge(s) against me beyond a reasonable doubt. I understand that I would not have to prove that I am innocent, and that I could not be convicted unless all twelve jurors voted unanimously for conviction.

19. My lawyer has explained to me, and I understand, that if I went to trial on these charge(s), the Government would have to produce in open court the witnesses against me, and that my lawyer could confront and cross-examine them and object to evidence offered by the Government.
20. My lawyer has further explained to me, and I understand, that I have the right to produce witnesses and could offer evidence in my defense at a trial on these charge(s), and that I would have the right, if I so chose, to testify on my own behalf at that trial; but if I chose not to testify, the jury could draw no suggestion or inference of guilt from that fact.
21. My lawyer has explained to me, and I understand, that if I plead GUILTY to any charge(s) in this [COMPLAINT] [INDICTMENT] [INFORMATION] and the judge accepts my plea, I WAIVE MY RIGHT TO TRIAL AND THE OTHER RIGHTS SET FORTH IN PARAGRAPHS 17, 18, 19 and 20 ABOVE. I am aware and understand that if my GUILTY plea is accepted, there will be no trial and a judgment of GUILTY will be entered after which, the judge, upon consideration of my presentence report, will impose punishment upon me. I understand that if I plead GUILTY, the judge may impose the same punishment as if I had pleaded "not guilty", went to trial and was convicted by a jury.
22. My lawyer has also explained to me, and I understand, that if I plead GUILTY, I WAIVE MY RIGHT NOT TO INCRIMINATE MYSELF. I understand that the judge will ask me what I did and I will have to acknowledge my guilt as charged by setting forth my actions so that the judge is satisfied that I am, indeed, guilty. I understand that any statements I make at the time I plead GUILTY, if untrue and made under oath, can be the basis of a perjury prosecution against me.

SENTENCING ISSUES

23. My lawyer has informed me, and I understand, that the maximum punishment which the law provides for the offense(s) charged in this [COMPLAINT] [INDICTMENT] [INFORMATION] is:

A MAXIMUM OF _____ years imprisonment and a fine of \$ _____ for the offense(s) charged in Count(s) _____. My lawyer has further explained, and I understand, that there is [NO] [A] mandatory minimum punishment of _____ years imprisonment and [NO] [A] mandatory minimum fine of \$ _____ for the offense(s) charged in Count(s) _____.

I understand that if I plead GUILTY to Count(s) _____ of the [COMPLAINT] [INDICTMENT] [INFORMATION], I face a maximum sentence on those Count(s) of _____ years imprisonment, plus an aggregate fine of \$ _____. My lawyer has additionally explained, and I understand, that in addition to or in lieu of the penalties already discussed, I may be ordered to make restitution to any victim of the offense and that the Court may require me to make a restitution in services instead of money or to make restitution to a designated third person or organization instead of the victim. I understand that in determining whether to order restitution and the amount of restitution the Court will consider the amount of the loss sustained by any victim as a result of the offense, my financial resources, the financial needs and earning ability of my dependents, and any other factors as the Court deems appropriate.

I understand that I will be assessed \$100 for each felony upon which I am sentenced and \$25 for each misdemeanor, if any.

24. I hereby declare that no officer or agent of any branch of government, (Federal, State or local), nor my lawyer, nor any other person, has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I will receive a lighter sentence, or probation, or any other form of leniency if I plead GUILTY. My lawyer has explained, and I understand, that only the judge may decide what punishment I shall receive, and that if any person has told me otherwise, that person is not telling me the truth.
25. I understand that the sentence to be imposed upon me is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act of 1984.
26. I understand that in deciding what sentence to impose upon me, the sentencing judge is required to consider the maximum and minimum prison terms, fines and terms of supervised release recommended under the Sentencing Guidelines. I understand that the Sentencing Guidelines may authorize departures from the maximum and minimum Guidelines recommendations under certain circumstances.
27. I understand that the Sentencing Guidelines are advisory, and that the sentencing judge must also consider the other statutory factors identified in 18 U.S.C. § 3553(a) in deciding what sentence to impose. I understand that the judge has the authority to impose a sentence more severe (up to the statutory maximum) or less severe than the sentencing range recommended by the Guidelines.
28. I have discussed with my attorney how the Sentencing Guidelines might apply to my case.
29. I understand that the Court will not be able to determine the sentence for my case until after the Presentence Report has been completed and both I and the Government have had an opportunity to read the report and challenge any facts reported by the probation officer.

30. I understand that the Court may be bound to impose a fine in accordance with statutory requirements.
31. I understand that parole has been abolished and that if I am sentenced to prison I will not be released on parole.
32. I further understand that the Court [SHALL] [MAY] impose a term of supervised release to follow any term of imprisonment and that any violation of that term of supervised release may result in an additional term of imprisonment. I understand that I am subject to a term of supervised release of up to _____ years, the statutory maximum period of supervised release for the crime(s) to which I am pleading guilty.
- I further understand that the provisions of 21 U.S.C. § _____, which provide for a mandatory minimum term of supervised release of _____ years, [DO] [DO NOT] apply to my case.
33. I understand that I will have no right to withdraw my plea on the grounds that anyone's prediction as to the Guidelines range or expectation of sentence proves inaccurate.

PLEA AGREEMENT

34. I hereby declare that I have not been forced, coerced or threatened in any manner by any person to plead GUILTY to these charge(s). Nor have I been told that if I refuse to plead GUILTY, other persons will be prosecuted.
35. There [HAS] [HAS NOT] been a plea agreement entered into between me and the United States Attorney, by Assistant United States Attorney _____ (name)

- The plea agreement DOES NOT exist in written form.
- The plea agreement DOES exist in written form. I have read it or have had it read to me in _____ (LANGUAGE). My lawyer has explained it to me and I understand it.

36. The substance of the plea agreement is:
- _____
- _____
- _____

37. The plea agreement [DOES] [DOES NOT] contain stipulations agreed to by the parties.

IF APPLICABLE, CHOOSE ONE OF THE FOLLOWING:

I understand that my plea agreement sets forth a Guidelines calculation which I agree is the total Guidelines offense level applicable to me in this case. I further understand that I have waived the right to argue that the sentencing judge should impose a sentence below the range that results from this offense level, and that the government has waived the right to argue for a sentence above the range that results from this offense level.

I understand that my plea agreement sets forth a Guidelines calculation which I agree is the total Guidelines offense level applicable to me in this case. I further understand that with the exception of arguments regarding a departure as set forth in Paragraph ___ of Schedule A to the plea agreement, I have waived the right to argue that the sentencing judge should impose a sentence below the range that results from this offense level, and the government has waived the right to argue for a sentence above the range that results from this offense level.

The plea agreement contains stipulations regarding certain facts. I understand that if the sentencing court accepts a factual stipulation set forth in the plea agreement, both I and the government have waived the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

38. I understand that my plea agreement [PROVIDES] [DOES NOT PROVIDE] that under certain circumstances I have waived my right to appeal or collaterally attack the sentence imposed in this case.

39. My lawyer has explained to me, and I understand, that if the judge accepts my GUILTY plea under the plea agreement, including the government's proposal to dismiss charges or to not bring other charges, the judge is not bound to follow the other terms in the plea agreement, including the stipulations recommending that a particular sentence or sentencing range is appropriate or that a particular provision of the Guidelines does or does not apply. I understand that if the judge does not follow one or all of the other terms of the plea agreement, including the stipulations, I will have no right to withdraw my GUILTY plea, even if the disposition of my case may be less favorable than that proposed in the plea agreement.

40. I believe that my lawyer has done all that anyone could do to counsel and assist me, AND I AM SATISFIED WITH THE ADVICE AND HELP MY LAWYER HAS GIVEN ME.

41. I know the judge will not permit anyone to plead GUILTY who claims to be innocent, and with that in mind and because I am GUILTY, I respectfully request that the Court accept my plea of GUILTY and to have the Clerk enter my plea of GUILTY as follows:

To Count(s) _____ of this [COMPLAINT] [INDICTMENT] [INFORMATION].

42. I offer my plea of GUILTY freely and voluntarily and of my own accord with full understanding of all matters set forth in the [COMPLAINT] [INDICTMENT] [INFORMATION], in this application, and in the certification of my lawyer which is attached to this application.

43. I further declare that I wish to waive the reading of the [COMPLAINT] [INDICTMENT] [INFORMATION] in open court, and I request the Court to enter my plea of GUILTY as set forth in Paragraph 41, above.

44. The following person(s), if any, assisted me in completing this application:
_____.

I hereby certify that the foregoing information and statements herein are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Signed by me in open court in the presence of my lawyer this _____ day of _____, 20_____.

Defendant

CERTIFICATION OF COUNSEL

_____ hereby certifies that:

1. I am an attorney at law of the State of _____ and have been [RETAINED BY] [ASSIGNED TO REPRESENT] the defendant _____, in [MAGISTRATE] [CRIMINAL] No. _____.
2. I have read and fully explained to the defendant the allegations contained in the [COMPLAINT] [INDICTMENT] [INFORMATION].
3. To the best of my knowledge and belief the statements, representations, and declarations made by the defendant in the foregoing Application are in all respects accurate and true.
4. (IF APPLICABLE) In my opinion the defendant's waiver of indictment by grand jury is voluntarily and knowingly made, and I recommend to the Court that the waiver be accepted by the Court.
5. In my opinion the defendant's waiver of reading the [COMPLAINT] [INDICTMENT] [INFORMATION] in open court as provided in Rule 10 is voluntarily and knowingly made, and I recommend to the Court that the waiver be accepted by the Court.
6. I have explained the maximum and any mandatory minimum penalty for each count to the defendant. I have explained to him that he may be ordered to make restitution under the Victim and Witness Protection Act.
7. I have explained to the defendant that in imposing sentence, the sentencing judge is required to consider the Sentencing Guidelines, and I have further explained how the Guidelines might apply to this offense and to the defendant. I have further explained to the defendant that the Guidelines are advisory, not mandatory, and that the sentencing judge may impose a sentence higher or lower than that recommended by the Guidelines.
8. The plea of GUILTY offered by the defendant in Paragraph 41 accords with my understanding of the facts related to me and is consistent with my advice to the defendant.
9. In my opinion the plea of GUILTY as offered by the defendant in Paragraph 41 of this Application is voluntarily made with understanding of the consequences of the plea. I recommend that the Court accept the plea of GUILTY.

Signed by me in open court in the presence of the defendant above named, and after full disclosure of the contents of this Certification to the defendant, this _____ day of _____ 20____.

Attorney for the Defendant



U.S. Department of Justice

United States Attorney
District of New Jersey

970 Broad Street, Suite 700
Newark, NJ 07102

973/645-2700

PCA/PL AGR
2006R00895

October 29, 2008

VIA FAX AND FIRST CLASS MAIL

Jerome A. Ballarotto, Esquire
143 White Horse Avenue
Trenton, New Jersey 08610

Re: Plea Agreement [REDACTED] Criminal No. [REDACTED]

Dear Mr. Ballarotto:

This letter sets forth the plea agreement between your client [REDACTED] and the United States Attorney for the District of New Jersey ("this Office").

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from [REDACTED] to a one count Information, Criminal No. to be filed, which charges that between in or about May, 2006 and on or about November 2, 2006, [REDACTED], did knowingly and intentionally open and maintain a place for the purpose of manufacturing and storing methamphetamine, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 856. If [REDACTED] enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against [REDACTED] for knowingly and intentionally manufacturing, storing and possessing methamphetamine between May, 2006 and November 2, 2006. However, in the event that the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by [REDACTED] may be commenced against him, notwithstanding the expiration of the limitations period after the defendant signs the agreement. The defendant agrees to waive any statute of limitations with respect to any crime that would otherwise expire after the defendant signs the agreement.

Sentencing

The violation of Title 21 U.S.C. § 856 to which defendant, [REDACTED] agrees to plead guilty carries a statutory maximum prison sentence of 20 years imprisonment and a statutory maximum fine of \$ 500,000. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon [REDACTED] is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. § 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence the defendant ultimately will receive.

Further, in addition to imposing any other penalty on the defendant, the sentencing judge: (1) will order the defendant to pay an assessment of \$100, pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) may order the defendant to pay restitution pursuant to 18 U.S.C. §§ 3663 *et seq.*; (3) may order the defendant, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offenses; (4) may deny the defendant certain statutorily defined benefits, pursuant to 21 U.S.C. §§ 862 and 862a; (5) must order forfeiture, pursuant to 21 U.S.C. § 853; and (6) pursuant to 21 U.S.C. § 841, must require defendant [REDACTED] to serve a term of supervised release of at least 3 years, which will begin at the expiration of any term of imprisonment imposed. Should the defendant be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, the defendant may be sentenced to not more than 3 years imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

Rights of this Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on [REDACTED] by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of the defendant's activities and relevant conduct with respect to this case.

Stipulations

This Office and [REDACTED] agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This

agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or the defendant from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and defendant [REDACTED] waive certain rights to file an appeal, collateral attack, writ or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against defendant [REDACTED]. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service and Immigration and Customs Enforcement), or any third party from initiating or prosecuting any civil proceeding against defendant [REDACTED].

No Other Promises

This agreement constitutes the plea agreement between the defendant, [REDACTED] and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

CHRISTOPHER J. CHRISTIE
United States Attorney



By: PATRICK C. ASKIN
Assistant U.S. Attorney

APPROVED:



THOMAS J. EICHER
AUSA in Charge, Trenton Division

I have received this letter from my attorney, Jerome A. Ballarotto, Esq., I have read it and I understand it fully. I hereby accept the terms and conditions set forth in this letter and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

AGREED AND ACCEPTED:

[REDACTED]

Date: [REDACTED]

JEROME A. BALLAROTTO, ESQ.

Date: [REDACTED]

Plea Agreement With Marc S. Friedman

Schedule A

1. This Office and [REDACTED] recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and [REDACTED] nevertheless agree to stipulate to the following facts:

a. The offense in Count 1 of the information involved the manufacture of 56 grams of methamphetamine, a Schedule II narcotic drug controlled substance.

b. As of the date of this letter, [REDACTED] has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged.

c. As of the date of this letter, [REDACTED] has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently.

2. If the sentencing court accepts a factual stipulation set forth above, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so. Otherwise, both parties reserve the right to file, oppose, or take any position in any appeal, collateral attack, or proceeding involving post-sentencing motions or writs.