



U.S. Department of Justice

*United States Attorney
District of Connecticut*

*Connecticut Financial Center (203)821-3700
157 Church Street
P.O. Box 1824
New Haven, Connecticut 06510 Fax (203) 773-5376*

June 22, 2006

Richard A. Reeve, Esq.
Sheehan & Reeve
105 Court St.
Ste. 301
New Haven, CT 06511

**Re: United States v. Edward Forbes Smiley III
Criminal No: 3:06CR _____ (JBA)**

Dear Mr. Reeve:

This letter confirms the plea agreement entered into between your client, Edward Forbes Smiley III (the "defendant"), and the United States Attorney's Office for the District of Connecticut (the "Government") concerning the referenced criminal matter.

THE PLEA AND OFFENSE

The defendant agrees to waive his right to be indicted and to plead guilty to a one-count Information charging him with theft of major artwork, in violation of Title 18 U.S.C. § 668. He understands that to be guilty of this offense the following essential elements of the offense must be satisfied:

1. The defendant, knowingly and willfully, stole;
2. An object of cultural heritage (namely, an object over 100 years old and worth in excess of \$5000);
3. From the care, custody, and control of a museum (namely, an organized and permanent institution, the activities or which affect interstate commerce that is situated in the United States, established for essentially educational or aesthetic purpose, that has a professional staff, which owns utilizes and cares for tangible objects that are exhibited to the public on a regular schedule).

THE PENALTIES

This offense carries a maximum penalty of 10 years imprisonment and a fine of \$1,610,400 (twice the provable loss). In addition, under 18 U.S.C. § 3583, the Court may impose a term of supervised release of not more than 3 years, to begin at the expiration of any term of imprisonment imposed. The defendant understands that, should he violate any condition of the supervised release during its term, he may be required to serve a further term of imprisonment of not greater than two years, with no credit for the time already spent on supervised release.

The defendant is also subject to the alternative fine provision of 18 U.S.C. § 3571. Under this section, the maximum fine that may be imposed on the defendant is the greatest of the following amounts: (1) twice the gross gain to the defendant resulting from the offense; (2) twice the gross loss resulting from the offense; (3) \$250,000; or (4) the amount specified in the section defining the offense.

In addition, the defendant is obligated by 18 U.S.C. § 3013 to pay a special assessment of \$100 on the count of conviction. The defendant agrees to pay the special assessment to the Clerk of the Court on the day of the guilty plea.

Finally, unless otherwise ordered, should the Court impose a fine of more than \$2,500 as part of the sentence, interest will be charged on the unpaid balance of a fine amount not paid within 15 days after the judgment date. 18 U.S.C. § 3612(f). Other penalties and fines may be assessed on the unpaid balance of a fine pursuant to 18 U.S.C. §§3572 (h), (i) and § 3612(g).

Restitution

In addition to the other penalties provided by law, the Court must also order that the defendant make restitution under 18 U.S.C. §3663A. The scope and effect of the order of restitution are set forth in the attached Rider Concerning Restitution. Restitution is payable immediately unless ordered otherwise by the Court. Under the provisions of 18 U.S.C. §§ 3663 and 3663A, the defendant would at most only be responsible for restitution to victims relating to those maps that the Government could establish he stole independent of admissions made during the course of his cooperation, namely, the 18 maps identified in Exhibit B (attached).

Nonetheless, under 18 U.S.C. §§ 3663(a)(3) and 3663A(a)(3), the defendant has agreed to make restitution to applicable victims relating to all maps he acknowledges stealing, approximately 97, as set forth in Exhibit A, as long as those maps 1) were turned over to the government by the date of sentencing for return to the applicable institution; 2) returned directly to the institution by the date of sentencing; or 3) lost by the defendant. The parties further agree that a victim's restitution losses will be the monies paid to the defendant for the map by the initial buyer, plus restoration expenses incurred to repair the map. Based on returned maps to date, the defendant has agreed to make restitution payments to the following individuals and/or entities as follows (with any remaining valuation disputes resolved by the Court), but the figures

and victims may increase by sentencing if additional maps are returned to the relevant institutions:

1. \$879,400- \$886,400 to Cohen & Taliaferro LLC (the final figure depending on the appropriate valuation of the Lattre Map of the United States (1784));
2. \$390,770-\$403,520 to Clive A. Burden Ltd (the final figure depending on the appropriate valuation of four maps);
3. \$460,740 to The Old Print Shop;
4. \$19,000 to Lawrence Fox, Esq., for a client;
5. Between \$25,000-\$70,000 to New York Public Library, Map Division (the final figure depending on the appropriate valuation regarding the John Thornton New Map of East and West New Jersey and whether the map is attributable as lost);
6. \$10,000 to Beinecke Library;
7. \$37,500 to Harold Osher; and
8. \$39,000 to Boston Public Library (the final figure depending on whether the two maps at issue, the Chesapeake Dudley chart and the Manuscript of Carolina and Georgia, are appropriately attributable as lost).

THE SENTENCING GUIDELINES

i. Applicability

The defendant understands that, although application of the United States Sentencing Guidelines is not mandatory, they are still advisory and the Court is required to consider any applicable Sentencing Guidelines as well as other factors enumerated in 18 U.S.C. § 3553(a) to tailor an appropriate sentence in this case. *See United States v. Booker*, 543 U.S. 220 (2005). The defendant expressly understands that the Sentencing Guideline determinations will be made by the Court, by a preponderance of the evidence, based upon input from the defendant, the Government, and the United States Probation Officer who prepares the presentence investigation report. The defendant further understands that he has no right to withdraw his guilty plea if his sentence or the Guideline application is other than he anticipated.

_____ ii. Acceptance of Responsibility

At this time, the Government agrees to recommend that the Court reduce by two levels the defendant's Adjusted Offense Level under section 3E1.1(a) of the Sentencing Guidelines,

based on the defendant's prompt recognition and affirmative acceptance of personal responsibility for the offense.

The Government also intends to move for a decrease of one level under § 3E1.1(b) because defendant has assisted authorities in the investigation and prosecution of his own misconduct and has thereby allowed Government and the courts to allocate their resources efficiently. Such recommendation and motion for reductions are conditioned upon the defendant's full, complete, and truthful disclosure to the Probation Office of information requested, of the circumstances surrounding his commission of the offense, of his criminal history, and of his financial condition by submitting a complete and truthful financial statement. In addition, this recommendation is conditioned upon the defendant timely providing complete information to the Government concerning his involvement in the offense to which he is pleading guilty. The defendant expressly understands that the Court is not obligated to accept the Government's recommendation on the reduction.

The Government will not make this recommendation if the defendant engages in any acts which (1) indicate that the defendant has not terminated or withdrawn from criminal conduct or associations (Sentencing Guideline §3E1.1); (2) could provide a basis for an adjustment for obstructing or impeding the administration of justice (Sentencing Guideline §3C1.1); or (3) constitute a violation of any condition of release. Moreover, the Government will not make this recommendation if the defendant seeks to withdraw his plea of guilty. The defendant expressly understands that he may not withdraw his plea of guilty if, for the reasons explained above, the Government does not make this recommendation.

iii. Stipulation

Pursuant to section 6B1.4 of the Sentencing Guidelines, the defendant and the Government have entered into a stipulation which is attached to and made a part of this plea agreement. The defendant understands that this stipulation does not purport to set forth all of the relevant conduct and characteristics that may be considered by the Court for purposes of sentencing. The defendant expressly understands that this stipulation is not binding on the Court. The defendant also understands that the Government and the United States Probation Office are obligated to advise the Court of any additional relevant facts that subsequently come to their attention.

iv. Guidelines Calculation

The Government and the defendant stipulate as follows: the parties agree that the November 2004 edition is the applicable Sentencing Guidelines Manual, unless the Manual in effect at the date of sentencing is equally or less onerous. Under § 2B1.5 of the 2004 Manual, the defendant's base offense level is 8. The base offense level is increased by 14 levels as the relevant loss amount is agreed by the parties to be more than \$400,000 but less than \$1,000,000. Two (2) levels are added because the offense involved a cultural heritage resource taken from the custody of a museum. Two (2) levels are added because the offense involved a cultural heritage

resource constituting cultural property as defined by 19 U.S.C. § 2601(6). An additional two (2) levels are added because the offense was committed for pecuniary gain or otherwise involved a commercial purpose. Three levels are subtracted under U.S.S.G. § 3E1.1(a) for acceptance of responsibility, as noted above.

The parties agree that the defendant is a Criminal History Category I, based on the defendant's representation of his Criminal History. The Government reserves the right to recalculate the relevant Criminal History Category if this representation proves inaccurate. A total offense level of 25 with a Criminal History Category I results in a sentencing range of 57-71 months' imprisonment (sentencing table) and a fine range of \$10,000 to \$100,000 (U.S.S.G. § 5E1.2(c)(3)). The parties reserve the right to seek both Guidelines and non-Guidelines departures.

The defendant expressly understands that the Court is not bound by this agreement on the Guideline and fine ranges specified above. The defendant further expressly understands that he will not be permitted to withdraw the plea of guilty if the Court imposes a sentence outside the Guideline range or fine range set forth in this agreement.

In the event the Probation Office or the Court contemplates any sentencing calculations different from those stipulated by the parties, the parties reserve the right to respond to any inquiries and make appropriate legal arguments regarding the proposed alternate calculations. Moreover, the Government expressly reserves the right to challenge or defend any sentencing determination, other than that stipulated by the parties, in any post-sentencing proceeding.

v. Appeal Rights

The parties reserve their respective rights to appeal.

vi. Information to the Court

The Government expressly reserves its right to address the Court with respect to an appropriate sentence to be imposed in this case. Moreover, it is expressly understood that the Government will discuss the facts of this case, including information regarding the defendant's background and character, 18 U.S.C. § 3661, with the United States Probation Office and will provide the Probation Officer with access to its file, with the exception of grand jury material.

WAIVER OF RIGHTS

Waiver of Right to Indictment

The defendant understands that he has the right to have the facts of this case presented to a federal grand jury, consisting of between sixteen and twenty-three citizens, twelve of whom would have to find probable cause to believe that he committed the offense set forth in the information before an indictment could be returned. The defendant expressly acknowledges that he is knowingly and intelligently waiving his right to be indicted.

Waiver of Trial Rights and Consequences of Plea

The defendant understands that he has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent him.

The defendant understands that he has the right to plead not guilty or to persist in that plea if it has already been made, the right to a public trial, the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against him, the right not to be compelled to incriminate himself, and the right to compulsory process for the attendance of witnesses to testify in his defense. The defendant understands that by pleading guilty he waives and gives up those rights and that, if the plea of guilty is accepted by the Court, there will not be a further trial of any kind.

The defendant understands that if he pleads guilty, the Court may ask him questions about each offense to which he pleads guilty, and if he answers those questions falsely under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making false statements.

Waiver of Statute of Limitations

The defendant understands and agrees that should the conviction following the defendant's plea of guilty pursuant to this plea agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this plea agreement (including any indictment or counts the Government has agreed to dismiss at sentencing pursuant to this plea agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this plea agreement and the commencement or reinstatement of such prosecution. The defendant agrees to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date the plea agreement is signed.

Waiver of Right To Post-Conviction DNA Testing of Physical Evidence

The defendant understands that the Government has various items of physical evidence in its possession in connection with this case that could be subjected to DNA testing. The defendant further understands that following conviction in this case, he could file a motion with the Court to require DNA testing of physical evidence pursuant to 18 U.S.C. § 3600 and § 3600A in an attempt to prove his innocence. The defendant fully understands his right to have all the physical evidence in this case tested for DNA, has discussed this right with his counsel, and knowingly and voluntarily waives his right to have such DNA testing performed on the physical evidence in this case. The defendant fully understands that because he is waiving this right, the physical evidence in this case will likely be destroyed or will otherwise be unavailable for DNA testing in the future.

ACKNOWLEDGMENT OF GUILT; VOLUNTARINESS OF PLEA

The defendant acknowledges that he is entering into this agreement and is pleading guilty freely and voluntarily because he is guilty. The defendant further acknowledges that he is entering into this agreement without reliance upon any discussions between the Government and him (other than those described in the plea agreement letter), without promise of benefit of any kind (other than the concessions contained in the plea agreement letter), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges his understanding of the nature of the offense to which he is pleading guilty, including the penalties provided by law. The defendant also acknowledges his complete satisfaction with the representation and advice received from his undersigned attorney. The defendant and his undersigned counsel are unaware of any conflict of interest concerning counsel's representation of the defendant in the case.

SCOPE OF THE AGREEMENT

The defendant acknowledges and understands that this agreement is limited to the undersigned parties and cannot bind any other federal authority, or any state or local authority. The defendant acknowledges that no representations have been made to him with respect to any civil or administrative consequences that may result from this plea of guilty because such matters are solely within the province and discretion of the specific administrative or governmental entity involved. Finally, the defendant understands and acknowledges that this agreement has been reached without regard to any civil tax matters that may be pending or which may arise involving him.

COLLATERAL CONSEQUENCES

The defendant further understands that he will be adjudicated guilty of the offense to which he has pleaded guilty and will be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to possess firearms. The defendant understands that pursuant to § 203(b) of the Justice for All Act, the Bureau of Prisons or the Probation Office will collect a DNA sample from the defendant for analysis and indexing. Finally, the defendant understands that the Government reserves the right to notify any state or federal agency by which he is licensed, or with which he does business, as well as any current or future employer of the fact of his conviction.

SATISFACTION OF FEDERAL CRIMINAL LIABILITY; BREACH

The defendant's guilty plea, if accepted by the Court, will satisfy the federal criminal liability of the defendant in the District of Connecticut as a result of his participation in the theft of major artwork, which forms the basis of the Information in this case.

The defendant understands that if, before sentencing, he violates any term or condition of this agreement, engages in any criminal activity, or fails to appear for sentencing, the Government may void all or part of this agreement. If the agreement is voided in whole or in part, the defendant will not be permitted to withdraw his plea of guilty.

NO OTHER PROMISES

The defendant acknowledges that no other promises, agreements, or conditions have been entered into other than those set forth in this plea agreement, and none will be entered into unless set forth in writing, signed by all the parties.

This letter shall be presented to the Court, in open court, and filed in this case.

Very truly yours,

KEVIN J. O'CONNOR
UNITED STATES ATTORNEY

CHRISTOPHER W. SCHMEISSER
ASSISTANT UNITED STATES ATTORNEY

Richard A. Reeve, Esq.

June 22, 2006

Page 9

The defendant certifies that he has read this plea agreement letter and its attachment(s) or has had it read or translated to him, that he has had ample time to discuss this agreement and its attachment(s) with counsel and that he fully understands and accepts its terms.

E. FORBES SMILEY III
The Defendant

Date

I have thoroughly read, reviewed and explained this plea agreement and its attachment(s) to my client who advises me that he understands and accepts its terms.

RICHARD A. REEVE, ESQ.
Attorney for the Defendant

Date

STIPULATION OF OFFENSE CONDUCT

EDWARD FORBES SMILEY III, the defendant herein, and the Government stipulate and agree to the following offense conduct that gives rise to the defendant's agreement to plead guilty to the information:

On June 8, 2005, in the District of Connecticut, EDWARD FORBES SMILEY III, the defendant herein, did unlawfully, knowingly, and willfully steal from the care, custody, and control of a museum an object of cultural heritage within the meaning of 18 U.S.C. § 668. During the morning of that date, the defendant was visiting the Yale University Beinecke Rare Book and Manuscript Library in New Haven ("Beinecke Library"). He requested to view several books containing historical maps. As a professional dealer of rare maps, the defendant often visited institutions with significant map collections.

At approximately 11 a.m., the Head of Public Services for the Beinecke Library reported finding an Exacto knife blade on the floor of the Rare Document Reading Room. She was suspicious because this type of blade is often used to illegally remove and steal documents, maps, and other authentic pages from rare books. She noticed a man in the reading room looking at books containing rare maps, and, after reviewing the library register, identified the man as the defendant. She searched for the defendant's name on the Internet and discovered that he was a dealer in rare maps. She then notified the Security Supervisor for the Beinecke Library, who began video and in-person surveillance of the defendant. The Security Supervisor observed the defendant engaging in what appeared suspicious activity, and called the Yale University Police Department, which dispatched a Detective to the scene.

At approximately 3 p.m., the defendant left the library and the Detective followed him, confronting the defendant a few blocks away. The defendant revealed that he had seven maps in his possession: (1) "Typvs Orbis Terrarvm"; (2) "Part of America, Part of China"; (3) "Vninersi Orbis, sevterreni glo"; (4) "Septentrio vniuersalis descriptio"; (5) "New America"; (6) "Lac Svperievr"; and (7) "Carte generale de la nouvelle France." All of these maps were seized at that time.

On June 9, 2005, the Head of Public Services for the Beinecke Library confirmed with the Yale University Police Department that the Beinecke Library was missing certain maps, including items (1), (2), and (3). All of those items had been affixed to or included in books checked out by the defendant on the previous day. Later, on June 15, 2005, a book appraiser and advisor to the Beinecke Library appraised the maps and confirmed that the above listed items were stolen from the Beinecke Library based on markings unique to the maps and other evidence, and the defendant acknowledges stealing those items.

From on or before January 1, 1998 until on or about June 8, 2005, the defendant also engaged in a series of similar thefts, which were part of the same course of conduct and plan, all involving maps and other objects of cultural heritage, from other libraries in the United States

and abroad. In addition to the Beinecke Library, the museums from which thefts occurred were: Boston Public Library, British Library in London, Houghton Library at Harvard University, Massachusetts Historical Society, Newberry Library in Chicago, New York Public Library, and Yale University Sterling Map Library.

The defendant has since the time of his arrest cooperated in the investigation and identified 97 maps which he had stolen from a series of universities and libraries in the U.S. and abroad. The list of the maps that the defendant admits stealing, including the institutions from which he admits the maps were stolen, is attached as Exhibit A.

The parties acknowledge that, to date, in part as a result of the defendant's cooperation, approximately 86 maps have been physically recovered by law enforcement on behalf of institutions identified in Exhibit A; 6 maps are in the custody of other known individuals who have not returned the maps; and 5 maps are either lost or the maps' location is unknown at the present time. The parties further agree that of the 97 maps that the defendant has admitted stealing, 18 maps can be proven to have been stolen independent of the defendant's cooperation and admissions, as identified in Exhibit B.

The Guidelines loss amount based on the 18 maps set forth in Exhibit B is between \$400,000 and \$1 million. The Government believes that the total fair market value of these 18 maps is approximately \$805,200. See Exhibit B. The defendant believes that the value of these maps is closer to \$600,000, but agrees to the applicable Guidelines loss range of \$400,000 to \$1 million. The Government estimates the total value of the 97 maps stolen to be in excess of \$3 million.

The parties further agree that the Beinecke Library is a museum under the terms of 18 U.S.C. § 668 because it is an organized and permanent institution, the activities of which affect interstate and foreign commerce that is situated in the United States, established for an essentially educational and aesthetic purpose, with a professional staff, and it owns, utilizes and cares for tangible objects that are exhibited to the public on a regular schedule.

The parties also agree that the map charged in the Information as stolen by the defendant, that is, the "Vninersi Orbis, sevterreni glo," a map of the world published in or about 1578, is an object of cultural heritage in that it is over 100 years old and worth in excess of \$5,000. Moreover, that map constitutes cultural property as defined by 19 U.S.C. § 2601(6) and further defined by Article 1 (a)-(k) of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ("UNESCO Convention"), that is, the convention referred to in 19 U.S.C. § 2601(5). Article 1 (a)-(k) of the

Richard A. Reeve, Esq.
June 22, 2006
Page 12

UNESCO Convention includes in its definition of cultural property rare manuscripts and documents, which the parties agree encompasses “Vninersi Orbis, sevterreni glo.”

The parties agree that the thefts of the “Vninersi Orbis, sevterreni glo” map and the other maps described in the attached list of maps were committed for pecuniary gain; that is, the defendant anticipated receiving monetary value for the items he stole and in most cases did receive payment for the maps.

The written stipulation above is incorporated into the preceding plea agreement. It is understood, however, that the defendant and the Government reserve their right to present additional relevant offense conduct to the attention of the Court in connection with sentencing.

EDWARD FORBES SMILEY III
The Defendant

CHRISTOPHER W. SCHMEISSER
Assistant U.S. Attorney

RICHARD A. REEVE, ESQ.
Attorney for the Defendant

RIDER CONCERNING RESTITUTION

The Court shall order that the defendant make restitution under 18 U.S.C. § 3663A to the victims directly or proximately harmed as a result of the commission of the offense. The order of restitution may include:

1. If the offense resulted in damage to or loss or destruction of property of a victim of the offense, the order of restitution shall require the defendant to:
 - A. Return the property to the owner of the property or someone designated by the owner;
or
 - B. If return of the property is impossible, impracticable, or inadequate, pay an amount equal to:

The greater of -

 - (I) the value of the property on the date of the damage, loss, or destruction; or
 - (II) the value of the property on the date of sentencing, less the value as of the date the property is returned.
2. In any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

The order of restitution has the effect of a civil judgment against the defendant. In addition to the court-ordered restitution, the Court may order that the conditions of its order of restitution be made a condition of probation or supervised release. Failure to make restitution as ordered may result in a revocation of probation, or a modification of the conditions of supervised release, or in the defendant being held in contempt under 18 U.S.C. § 3583(e). Failure to pay restitution may also result in the defendant's re-sentencing to any sentence which might originally have been imposed by the Court. 18 U.S.C. §3614. The Court may also order that the defendant give notice to any victim(s) of his offense under 18 U.S.C. § 3555.